A VERSENYPOLITIKA VÉGREHAJTÁSÁRA VONATKOZÓ ELJÁRÁSOK

BIZOTTSÁG

ÁLLAMI TÁMOGATÁS – ÍRORSZÁG

Állami támogatás C 2/08 (ex N 572/07) – A hajóűrtartalom-adó módosítása

Felhívás észrevételek benyújtására az EK-Szerződés 88. cikkének (2) bekezdése értelmében

(EGT-vonatkozású szöveg)

(2008/C 117/14)

A Bizottság 2008. január 15-i levelében, amelynek eredeti nyelvű másolata ezen összefoglalót követően megtalálható, értesítette Írországot, hogy a fent említett intézkedéssel kapcsolatban az EK-Szerződés 88. cikkének (2) bekezdése szerinti eljárás megindításáról határozott.

Az érdekelt felek a Bizottság által indított eljárás tárgyát képező intézkedésre vonatkozó észrevételeiket az összefoglaló és az azt kísérő levél közzétételét követő egy hónapon belül nyújthatják be a következő címre:

European Commission (Európai Bizottság)
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Az észrevételeket továbbítják Írország részére. A megjegyzéseket benyújtó érdekelt fél személyazonosságának bizalmas kezelését írásban, a kérés indokainak megjelölésével kérheti.

AZ ÖSSZEFOGLALÁS SZÖVEGE

1. ELJÁRÁS

1. Az írországi hatóságok 2007. október 3-án és 2007. november 19-én kelt elektronikus levelükkel értesítették a Bizottságot a hatályos ír hajóűrtartalomadó-rendszer (N 504/02 számú támogatás) módosításáról.

2. A TÉNYÁLLÁS

2. Emlékeztetőül, a 2002-ben bevezetett írországi hajóűrtartalom-adó „*a tengeri szállítással foglalkozó hajózási társaságokra alkalmazandó adórendszer. A feltételeknek megfelelő társaságok választhatnak, hogy tengeri szállítási tevékenységük után a flottájuk nettó űrtartalma vagy az elért nyereség alapján adóznak*” ([1]).

3. Egyik előfeltétele „*a hajóűrtartalom-adózásra való jogosultságnak, hogy a hajóűrtartalom alapján számítva a társaság által üzemeltetett adóköteles hajók legalább 25 %-a a társaság saját tulajdonában legyen. A hajóűrtartalom szerinti adózásnak az is feltétele, hogy a társaság által bérelt (beleértve az időbérletet is) adóköteles hajók űrtartalma ne haladja meg az általa üzemeltetett összes adóköteles hajó nettó űrtartalmának 75 %-át. […] A »hajóbérlet« a hajó olyan bérbeadását jelenti, amikor a bérbeadó azt a személyzettel együtt bocsátja rendelkezésre, szemben a személyzet nélküli hajóbérlettel, amelynek keretében magának a bérlőnek kell a személyzetet biztosítania*”.

4. Az írországi hatóságok jelenlegi szándéka arra irányul, hogy eltöröljék az időbérletre vonatkozó fenti korlátozást. Így a szóban forgó értesítésük alapján egy társaság vagy társaságok egy csoportja akkor is élvezheti a hajóűrtartalom-alapú adózás előnyeit, ha egyetlen hajó sincs a tulajdonában.

3. ÉRTÉKELÉS

5. A támogatás megléte vonatkozásában a Bizottság úgy ítéli meg, hogy az e határozat tárgyát képező értesítés semmilyen tekintetben nem változtatja meg a 2002-ben jóváhagyott írországi hajóűrtartalom-adó állami támogatásnak való minősítését.

([1]) A Bizottság 2002. december 11-i határozata, C(2002) 4371 végleges, (26) preambulumbekezdés.

6. Jóllehet az iránymutatások nem tartalmaznak korlátozásokat az időbérletbe adott hajóknak a hajóűrtartalomadórendszerbe való bevonása tekintetében, a Bizottság – döntéshozatali gyakorlata során – gondosan ügyelt arra, hogy elkerülje a verseny torzulásait, és ténylegesen egyenlő versenyfeltételeket biztosítson a tulajdonban és az időbérletben levő hajók arányának 1:3, illetve 1:4 körüli meghatározásával.

7. A Bizottság megítélése szerint az ilyen jellegű korlátozások egy vagy több tagállamban való megszüntetése a verseny torzulásával és ezáltal az Európai Unión belüli versenyfeltételek egyenlőségének torzulásával járhat.

A LEVÉL SZÖVEGE

„The Commission wishes to inform Ireland that, having examined the information supplied by your authorities on the measure referred to above, it has decided to initiate the procedure laid down in Article 88(2) of the EC Treaty.

1. **PROCEDURE**

1. By electronic letters of 3 October 2007 and 19 November 2007, the Irish authorities notified an amendment to the existing tonnage tax scheme N 504/02, initially approved by the Commission on 11 December 2002 ([2]).

2. **DETAILED DESCRIPTION OF THE MEASURE**

2.1. **Summary of the 2002 tonnage tax**

2. The Irish tonnage tax of 2002 is a "tax scheme applicable to shipping companies engaged in seagoing transport. Qualifying companies may choose to have their shipping activities taxed on basis of the net tonnage of their fleet instead of on the basis of their actual profits. Qualifying companies must opt for the regime within three years from the date of the entry into force of the legislation. Companies having opted for the tonnage tax must remain subject to this regime for a period of 10 years (tonnage tax period).

   If several qualifying Irish companies are members of the same group of companies, all of them must opt for the tonnage tax system. Business activities other than those subject to the tonnage tax would be taxed on the basis of the normal provisions of corporate taxation.

   Under the […] tonnage tax scheme the amount of tax for qualifying maritime companies is established on the basis of the net tonnage of their qualifying fleet. For each vessel subject to the tonnage tax, the taxable profits pertaining to qualifying activities shall be fixed at a lump sum calculated by reference to its net tonnage as follows, per 100 net tons (NT) and per 24-hour period started, irrespective of whether the vessel is operational or not:

Up to and including 1 000 net tons	EUR 1,00 per 100 NT
Between 1 001 and 10 000 net tons	EUR 0,75 per 100 NT
Between 10 001 and 25 000 net tons	EUR 0,50 per 100 NT
More than 25 000 net tons	EUR 0,25 per 100 NT

   The standard Irish corporation tax of 12,5 % is then applied to the profits determined in that way" ([3]).

3. Amongst others, one "precondition for being eligible for the tonnage tax scheme is that the share of qualifying ships owned by the company itself, calculated on their tonnage, is not less than 25 % of the tonnage of all its qualifying ships. It is indeed required for entering and remaining within tonnage tax that a company should not have "chartered in" (also time charter) more than 75 % of the net tonnage of the qualifying ships operated by it. In the case of a group, the limit is 75 % of the aggregate net tonnage of all the qualifying ships operated by all group members that are qualifying companies. "To charter in a ship" means to rent it with a crew provided by the charterer, in contrast to the definition of the bareboat charter whereby the lessee must man the ship" ([4]).

2.2. **The notified amendments**

2.2.1. *Removal of time charter limit*

4. The Irish authorities now intend to abolish the above time charter limitation. Thus, according to their present notification, a company or a group of companies could benefit from the tonnage tax without owning a single ship. According to the Irish authorities the abolition of that limit is required for several reasons:

   (a) to secure Irish-based shipping companies, fulfilling all other current qualification criteria but unable to elect to tonnage tax due to an excess of time chartering activity;

   (b) the amendment of the above provision allows for additional flexibility for Irish tonnage tax companies engaged in tonnage tax activity to capitalise on market conditions where otherwise they would be in breach of tonnage tax conditions;

   (c) to achieve parity with other Member State regimes on time-chartering;

   (d) to increase expansion of on-shore ship-management activity;

   (e) to avoid ceding business to non-tonnage tax and ultimately non-EU ship operators or being expelled from the Irish tonnage tax regime for breaching the limit.

2.2.2. *Duration*

5. The notified amendment of the tonnage tax shall be applicable only after Commission approval, but retroactively commencing from the appearance of the amendment in national legislation in January 2006.

([2]) Document C(2002) 4371 fin.

([3]) Commission Decision of 11 December 2002 C(2002) 4371 fin, points (3) to (6).

([4]) Commission Decision of 11 December 2002 C(2002) 4371 fin, point (26).

6. The amendment does not alter the duration of tonnage tax: the current tonnage tax regime is limited in duration to 10 years. "Qualifying companies" will, in general, have 36 months only in which to elect to enter the tonnage tax regime on becoming qualifying companies i.e. a company chargeable to Irish corporation tax, operating "qualifying ships" and carrying on the strategic and commercial management of the qualifying ships in Ireland.

2.2.3. *Beneficiaries*

7. The amendment will apply to all companies that are currently in a position to benefit from the tonnage tax regime and to the following: those qualifying companies, or groups of companies

(a) chargeable to Irish corporation tax;

(b) whose profits are derived from qualifying ships carrying on "qualifying activities" and which opt for the tonnage tax regime; and

(c) who carry out the strategic and commercial management of qualifying shipping from the State.

2.2.4. *Budget*

8. The Irish authorities project that the first year cost of this measure, applied from 1 January 2006 will be in the region of EUR 5,88 million in the immediate short-term given the current market upturn. It is anticipated that the cost in the medium term (+ 2 years) will fall as earnings fall to more typical market levels, approximately EUR 1,38 million.

2.3. **Time charter**

9. In cases where the inclusion of time chartered vessels under the tonnage tax was notified, the Commission's decisional practice has focussed on schemes complying with a proportion of one owned vessel to maximum three time chartered vessels (1:3). In the case of Denmark, taking account of the arguments provided, a proportion of (1:4) was authorised ([5]).

([5]) 1. Dutch tonnage tax (N 738/95, approved on 20 March 1996) no indications on *ratio*;
2. German tonnage tax (Case N 396/ 98, approved on 25 November 1998) *ratio* owned to time chartered shps 1:3;
3. UK tonnage tax (Case N 790/99, approved on 2 August 2000) *ratio* owned to time chartered shps 1:3;
4. Spanish tonnage tax (Case N 736/01, approved on 27 February 2002) *ratio* owned to time chartered shps 1:3;
5. Danish tonnage tax (Case N 563/01, approved on 12 March 2002) *ratio* owned to time chartered shps 1:4;
6. Finnish tonnage tax (Case N 195/02, approved on 16 October 2002) *ratio* owned to time chartered shps 1:1;
7. Irish tonnage tax (Case N 504/02, approved on 11 December 2002) *ratio* owned to time chartered shps 1:3;
8. Belgian tonnage tax (Case N 433/02, approved on 19 March 2003) *ratio* owned to time chartered shps 1:3;
9. French tonnage tax (Case N 737/02, approved on 13 May 2003) *ratio* owned to time chartered shps 1:3;
10. Basque (Sp) tonnage tax (Case N 572/02, approved on 5 February 2003) *ratio* owned to time chartered shps 1:3;
11. Italian tonnage tax (N 114/04, approved on 20 October 2004) no indications on *ratio*;
12. Lithuanian tonnage tax (Case N 330/05, approved on 19 July 2006) *ratio* owned to time chartered shps 1:3;
13. Polish tonnage tax (Case N 93/06, approved on 10 July 2007) *ratio* owned to time chartered shps 1:4.

3. **ASSESSMENT**

3.1. **Presence of aid**

10. As regards the presence of aid, the Commission considers that the notification that is the subject matter of the present decision does not in any way alter the qualification as State aid of the Irish tonnage tax approved in 2002.

11. Indeed, even after a potential abolition of the said time charter limit, the Irish authorities would still be granting subsidies through State resources and thereby favour certain undertakings since the measure is specific to the shipping sector. Such subsidies threaten to distort competition and could affect trade between Member States since such shipping activities are essentially carried out on an international level playing field. For these reasons, the notified amendment of the 2002 Irish tonnage tax does not alter its aid qualification within the meaning of Article 87(1) of the Treaty.

3.2. **Legal basis for assessment**

12. The legal basis for assessing the compatibility of the notified measures are the Community Guidelines on State aid to maritime transport ([6]) (hereinafter the *guidelines*).

3.3. **Compatibility of the measure**

13. Even though the guidelines do not mention any limits for the inclusion of time chartered ships under tonnage tax schemes, in its decision making practice the Commission has authorised schemes where companies with a *ratio* of 1:3 or 1:4 owned to time chartered ships were eligible to tonnage tax. The exception of the 1:4 *ratio* as compared to the initial 1:3 *ratio* in Decision No 563/2001/EC concerning the initial approval of the Danish tonnage tax was justified on the basis of an in depth market analysis and the following arguments reproduced below:

14. It should first be mentioned that the Commission is promoting the respect of a level playing field between Member States that apply a Tonnage Tax. A first observation in this respect shows that the guidelines do not provide for any restriction to the proportion of chartered vessels, which may be allowed under a Tonnage Tax. Second, it is to be noted that the Member States which notified the Commission of a Tonnage Tax in the past could thus freely choose the proportion of chartered ships to notify. Third, Denmark has chosen a respective proportion of 1:4 on the basis that its maritime industry has a long lasting tradition to operate in a more intensive way by means of chartered ships as compared to those Member States which notified a lower proportion. Fourth, the Commission can accept that a lower proportion than 1:4 in other Member States will thus not provide a competitive disadvantage to their Tonnage Tax schemes as compared to the Danish one, since they could have notified otherwise. And fifth, the Danish Tonnage Tax has a feature (the non-remittance of deferred taxes) which may potentially make this scheme less attractive as compared to other Tonnage Tax schemes ([7]).

([6]) OJ C 13. 17.1.2004.
([7]) Commission Decision No 563/2001/EC, point 3.3.2.

15. The Commission notes that Ireland did not provide arguments such as the ones provided here above under point three and five and notes that the full abolition of such time charter limits may trigger fiscal competition between more or less attractive tonnage tax schemes across the EU. In the light of the *guidelines*' acknowledgement that such fiscal competition needs to be taken into account ([8]), the amendments proposed by the Irish authorities under the present notification to fully remove the time charter limit may be contrary to the "common interest" expressed in Article 87(3) c of the Treaty on which the approval of tonnage taxes is based.

3.4. **The Commission's doubts**

16. For the above mentioned reasons the Commission expresses its doubts as regards the compatibility of a unilateral abolition by Ireland of the maximum number of time chartered ships allowable under its tonnage tax scheme.

17. On the same grounds the Commission also expresses its doubts as regards any potential retroactivity of the planned measure. This may occur in case aid related to the amendment in object is effectively granted as from January 2006.

In the light of the foregoing considerations, the Commission, acting under the procedure laid down in Article 88(2) of the EC Treaty, requests Ireland to submit its comments and to provide all such information as may help to assess the measure, within one month of the date of receipt of this letter. It requests your authorities to forward a copy of this letter to the potential recipient of the aid immediately.

The Commission wishes to remind Ireland that Article 88(3) of the EC Treaty has suspensory effect, and would draw your attention to Article 14 of Council Regulation (EC) No 659/1999, which provides that all unlawful aid may be recovered from the recipient.

The Commission warns Ireland that it will inform interested parties by publishing this letter and a meaningful summary of it in the *Official Journal of the European Union*. It will also inform interested parties in the EFTA countries which are signatories to the EEA Agreement, by publication of a notice in the EEA Supplement to the *Official Journal of the European Union* and will inform the EFTA Surveillance Authority by sending a copy of this letter. All such interested parties will be invited to submit their comments within one month of the date of such publication.".

([8]) Guidelines point 3.1: Fiscal treatment of shipowning companies.