II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 13 January 2009

on State aid C 22/07 (ex N 43/07) as regards the extension to dredging and cable-laying activities of the regime exempting maritime transport companies from the payment of the income tax and social contributions of seafarers in Denmark

(notified under document number C(2008) 8886)

(Only the Danish text is authentic)

(Text with EEA relevance)

(2009/380/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provision(s) cited above [1] and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter of 15 January 2007 [2], Denmark notified the Commission of an amendment to the regime exempting ship-owners from the payment in Denmark of the income tax of their seafarers (the so-called DIS regime). The DIS regime was authorised by Commission decision of 13 November 2002 [3].

(2) The notified amendment has been registered under N 43/07. By letter of 27 March 2007 [4], Denmark transmitted to the Commission new information that was requested by letter of 20 March 2007 [5].

(3) By letter dated 10 July 2007 [6], the Commission informed Denmark of the opening of a formal investigation procedure, pursuant to Article 4(4) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [7] (hereinafter the State Aid Procedure Regulation) Denmark submitted its comments by letter dated 5 September 2007 [8].

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* [9]. By this decision, the Commission invited interested parties to submit their comments on the measures under examination.

[1] OJ C 213, 12.9.2007, p. 22.
[2] Registered under Reference TREN(2007) A/21157.
[3] The text of the decision in Case N 116/98 is available in the official language at the following Internet address: http://ec.europa.eu/community_law/state_aids/transports-1998/nn116-98.pdf
[4] Registered under Reference TREN(2007) A/28077.
[5] Registered under Reference TREN(2007) D/306985.
[6] Registered under Reference C(2007) 3219 final.
[7] OJ L 83, 27.3.1999, p. 1.
[8] Registered under Reference TREN(2007) A/41561.
[9] See footnote 1.

(5) The Commission received comments from the following interested parties: the European Dredgers' Association, the European Community Ship-owners Association, the Chamber of British Shipping, the Norwegian Ship-owner association, *Armateurs de France, Alcatel-Lucent* and the Danish Shipowners' Association. The Commission forwarded their respective comments to Denmark, which was given the opportunity to react. Denmark sent its comments by letter dated 9 January 2008 ([10]).

2. DETAILED DESCRIPTION OF THE NOTIFIED MEASURES

(6) The description of the notified measures was already set out in the aforementioned decision of 10 July 2007.

2.1. Description of the notified amendment to the DIS regime

(7) The main purpose of the notified measures (Bill No L 110 (2006-07), Section 11) is to extend the so-called DIS regime to seafarers working on board cable-layers and dredgers.

(8) With respect to cable-laying vessels, their activities have not been so far eligible for the DIS regime, although cable-layers were allowed to register in the DIS register under the Danish legislation.

(9) Denmark wants from now on to extend the full advantage of the DIS regime to cable-layers.

(10) With respect to dredgers, an Executive Order of 27 May 2005 implementing the DIS regime (hereinafter the Executive Order) specifies what can be considered as maritime transport for the dredging industry with a view to establishing rules for the eligibility of dredging activities. Pursuant to Section 13 of the Executive Order, the following activities of dredgers are regarded as maritime transport:

1. sailing between the port and the extraction site;

2. sailing between the place of extraction and the place where the extracted materials are to be unloaded, including the unloading itself;

3. sailing between the place of unloading and the port;

4. sailing at and between places of extraction;

5. sailing to provide assistance at the request of public authorities in connection with clearing up after oil spills etc.

(11) Under the current Danish law, sand dredgers cannot be registered in the DIS register. Sand dredgers therefore cannot meet the basic conditions for applying for the DIS regime. Since, in addition, sand dredgers are to a certain extent used for, e.g. construction work in territorial waters – Denmark has found it difficult to include sand dredgers in the general net wages scheme. Instead, Denmark decided to tax persons working on board sand dredgers according to the taxation general rules and subsequently to refund the tax to the vessel owners once the conditions for this are met.

(12) So dredging is indirectly covered by the DIS regime and benefits from the same advantages as those benefiting maritime transport companies operating vessels registered in the DIS register.

2.2. Description of the existing DIS regime

(13) The DIS regime was described in the aforementioned Commission decision of 10 July 2007 ([11]).

(14) The existing regime consists of an exemption – for shipowners — from the payment of social contributions and income tax of their seafarers working on board ships registered in the *Dansk Internationalt Skibsregister,* the Danish International Register of Shipping (hereinafter referred to as the DIS register) when the ships are used for the commercial transport of passengers or goods.

(15) The Commission recalls that the DIS register was introduced by Law No 408 of 1 July 1988 and entered into force on 23 August 1988. It was devised to combat flagging-out from the national Danish register to third countries.

(16) It is a condition that the tax exemption is taken into account when the wages are set. The tax benefit thus accrues to the shipping company and not to the individual seafarers.

([10]) Registered under Reference TREN(2008) A/80508.

([11]) Registered under Reference C(2007) 3219 final.

(17) The DIS regime was nevertheless approved by the Commission on 13 November 2002.

(18) Denmark also applies at present one other scheme in favour of maritime transport operators: the tonnage tax scheme ([12]).

2.3. **Budget**

(19) The entire budget of the DIS regime is around DKK 600 million.

3. **REASONS FOR OPENING THE INVESTIGATION PROCEDURE**

3.1. **Doubts about the compatibility of the measures concerning cable laying**

(20) In its opening decision, the Commission considered that it should examine the potential economic effects that the extension in question may have on the sector concerned. The sector concerned is the laying of telecom or energy cables on the sea bed and the repairing of existing cables on the sea bed.

(21) The Commission considered it impossible to divide a given maritime voyage into a part falling under the notion of maritime transport and a part excluded thereof. It supported rather the view that it is necessary for all kinds of maritime activities, to undertake a global assessment in order to conclude whether or not a voyage at sea examined falls entirely within the notion of maritime transport.

(22) As a consequence, the Commission expressed in the decision for formal opening of the procedure the opinion that the laying of cables at sea might not be construed as the superposition of a maritime transport service and of the effective laying of cables at sea.

(23) Cable-laying vessels do not usually transport cable drums from one port to another port or from one port to an off-shore installation, this being the definition of maritime transport set up in Council Regulations (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries ([13]) and (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) ([14]). Instead cable-layers lay cables, at the request of a client, from a determined point located on a coast to a determined point located on another coast. Therefore, cable-laying vessels do not appear to deliver straightforward maritime transport services, within the meaning of these EC Regulations, that is to say the carriage of goods by sea between any port of a Member State and any port or off-shore installation of another Member State. Even if such vessels may occasionally transport goods by sea, as provided for in the Regulations (EEC) No 4055/86 and (EEC) No 3577/92, this activity corresponding to the definition of maritime transport appears to be merely ancillary to their main activity which consists in laying cables.

(24) In addition, the Commission noted at that stage that it was not yet proven that cable-laying companies established within the Community suffered from the same competitive constraints as those of maritime transport operators on the world market. According to the Commission, it is not clear whether Community cable-layers face a competition, exerted by flags of convenience, of the same intensity as that characterizing maritime transport.

(25) The Commission thus considered in its opening decision that cable-laying might not be considered to constitute maritime transport and consequently might not be eligible for State aid to maritime transport within the meaning of the Community guidelines on State aid to maritime transport (hereinafter the Guidelines) ([15]).

3.2. **Doubts about the compatibility of the measures concerning dredging**

(26) The opening decision set out that the Commission had serious doubts as to whether all dredging activities covered by the scheme constitute maritime transport within the meaning of the Guidelines. The Commission thus considered that not all of these dredging activities might be eligible for State aid to maritime transport.

4. **COMMENTS FROM DENMARK ON THE DECISION OPENING THE INVESTIGATION**

4.1. **Comments with respect to cable-laying**

(27) With regard to cable-laying vessels, Denmark emphasises that the Commission services, in a letter dated 11 August 2006 ([16]), assured Denmark that cable-laying vessels could be covered by the State aid measures at stake provided that the requirement of 50 % maritime transport was fulfilled.

([12]) Case NN 116/98 approved by Commission decision of 13 November 2002. The text of the decision is available in the official language at the following Internet address: http://europa.eu.int/comm/secretariat_general/sgb/state_aids/transports-1998/nn116-98.pdf

([13]) OJ L 378, 31.12.1986, p. 1.

([14]) OJ L 364, 12.12.1992, p. 7.

([15]) OJ C 13, 17.1.2004, p. 3.

([16]) Registered under Reference TREN(2006) D/212345.

(28) According to Denmark, the Commission stated that cable-laying activities could be equated with maritime transport with respect to that part of the activities involving the transport of cable drums from the port of loading to the location on the high sea where cable-laying was to start, implying that the ratio of maritime activities on all activities should be calculated on the basis of the distance the vessel sails without laying a cable.

(29) In addition, Denmark underlines that it has not understood why the Commission in its letter dated 10 July 2007 is of the view that cable-laying cannot be a combination of maritime transport and other activities and maintains that this view is contrary to the letter of the Commission services dated 11 August 2006.

4.2. **Comments with respect to dredging**

(30) According to Denmark, the Guidelines make is possible to divide the overall activity of dredgers into maritime transport and other activities. Therefore Denmark does not understand why a similar division cannot be made for cable-laying vessels.

(31) Denmark emphasises that the judgment of the Court of Justice in Case C-251/04, mentioned by the Commission in its opening decision, does not alter the basis for the assurance that the Commission has granted to Denmark by the aforementioned letter of 11 August 2006. According to Denmark, the Court clarified the question of whether tug boats' activities were covered by Regulation (EEC) No 3577/92, concluding that they were not. Denmark is of the opinion that the judgment in question is irrelevant to the application of the Guidelines to cable-laying vessels.

(32) The Danish authorities mention that the Guidelines deal not only with maritime transport as defined in Regulations (EEC) No 4055/86 and (EEC) No 3577/92 but, '[…] *also, in specific parts, relate to towage and dredging*'.

(33) According to the Guidelines at least 50 % of all activities constitute maritime transport which, for dredgers, is defined in the Guidelines, according to the Danish authorities, as '[…] *transport at sea of extracted materials* […]'. According to the Danish authorities, the Guidelines should be interpreted as qualifying the transport at sea of extracted materials as maritime transport.

(34) Denmark also disputes the initiative of the Commission to unilaterally extend the scope of an investigation procedure to cover areas that are not included in the notification which is the subject of the investigation as the Commission seems to be carrying out [17]. According to Denmark, there is no provision in Chapter II of the State Aid Procedure Regulation on notified aid allowing the Commission to include already existing State aid measures in the investigation. If the Commission wishes to investigate existing State aid measures it should, according to Denmark, do so under Chapter V on procedure regarding existing aid schemes of the said Regulation.

(35) Denmark states that it notified the amendments on 21 January 2005 in the form of two bills which the Government had put before Parliament on 12 January 2005 (Bill on taxation of seafarers and Bill amending the tonnage tax Act). According to Denmark, the two bills in question could be regarded as approved by the Commission for the two following reasons:

— firstly because, as alleged by the Danish authorities, the Commission did not react to the letter of 21 January 2005 from the Permanent Representation within the deadline set up by the State Aid Procedure Regulation,

— secondly, the Commission services subsequently confirmed that the amendments complied with the Guidelines.

(36) Therefore Denmark alleges that the Act on taxation of seafarers in its version of spring 2005 is an approved State aid measure under EU law.

(37) Therefore Denmark concludes that the investigation procedure can only cover the allegedly sole notified measure, i.e. the possible inclusion of seafarers on board cable-laying vessels in the DIS scheme.

(38) In relation to dredging vessels, the Danish government indicates that on 13 December 2006 it adopted the Act amending the Act on the taxation of seafarers. The amendment to the Act on taxation of seafarers in question was notified on 15 January 2007.

(39) Denmark considers the transport at deep sea of extracted materials to be maritime transport for the purpose of the Guidelines. Dredgers are therefore covered by the Guidelines regardless of the content of Regulations (EEC) No 4055/86 and (EEC) No 3577/92 where the dredgers are carrying out maritime transport (defined, according to Denmark, as '*transport at sea of extracted material*') for at least 50 % of their operational time.

[17] Commission press release IP/07/1047 of 10 July 2007.

(40) The Danish authorities add that activities in 'limited maritime traffic' are not covered by the Danish State aid schemes. 'Limited maritime traffic' is understood to be activities in ports and fjords, for example. Excavation or dredging work in and around ports and fjords therefore always falls outside the scope of the DIS regime. The same applies to cases where a vessel is lying stationary.

(41) The Danish authorities explain that, in practice, excavation and dredging work are (most) often carried out using bucket-chain dredgers which do not have their own engines and so fall outside the scope of the DIS regime for that reason too. Vessels with their own motive power can be covered. However vessels employed on contracting activities at sea are also excluded from the DIS regime. Contracting activities are understood to mean the construction and repair of ports, moles, bridges, oil rigs, wind farms and other installations at sea.

5. OBSERVATIONS EXPRESSED BY INTERESTED PARTIES

5.1. European Dredging Association, hereinafter (EUDA)

(42) According to EUDA, the Commission has introduced a much stricter regime for State aid to dredging activities than it was the case under the 1997 Guidelines. While supporting the objective of maintaining a dredging fleet within the Community, EUDA expresses two general concerns:

— firstly, EUDA supports the view that the maritime cluster of the European dredging industry should be able to benefit from State aid under the Guidelines in all cases where it is confronted with competition from third countries' vessels,

— secondly, EUDA thinks that State aid approved by the Commission on the basis of the Guidelines should not impose any unduly administrative burdens on the maritime cluster of the European dredging industry.

5.2. European Community Shipowners' Association (ECSA)

(43) ECSA considers that the approach of the Commission is very theoretical and does not take into account the objectives and the contents of the Guidelines.

(44) According to ECSA, it is already a precondition in the Guidelines that a substantial part of dredging activity consists of maritime transport. ECSA holds that dredgers and cable-layers transport respectively extracted materials and cables from point A to point B. In this respect the loading and unloading point would be irrelevant according to ECSA.

(45) ECSA emphasises that the coverage of the transport activities of dredgers and cable-layers by the Guidelines is fully in accordance with the objectives of the Guidelines since these specialised vessels also operate in a global market with fierce global competition and within a global labour market.

5.3. Chamber of British Shipping

(46) The *Chamber of British Shipping* underlines that the Guidelines acknowledges that eligible and non-eligible activities of dredgers could indeed be carried out by the same ship and must in consequence be differentiated. Therefore the *Chamber of British Shipping* expresses concerns at the statement that *'the Commission considers it impossible to divide a given activity into a part falling under the notion of maritime transport and a part excluded thereof'*.

(47) In the opinion of the *Chamber of British Shipping* there is no need to draw a distinction between the transport of goods or passengers that is carried out to or from a place which appears on a list of ports and installations and such transport to some other specific points at sea. It is concerned that a new test seems to be introduced, relating to the purpose for which the cargo or passenger is being transported. Therefore it holds that the motive of the customer is not relevant to the eligibility of a shipping operation. The *Chamber of British Shipping* clarifies that the specific destination of the material transported is mostly determined by the client in accordance with its future use and/or environmental or other licences.

(48) Concerning the description of the normal operation of a cable-layer in the notice published in the *Official Journal of the European Union*, the *Chamber of British Shipping* disagrees with the preliminary assessment of the Commission: according to it, cable-layers load their customer's cargo of cable at port facilities and transport it to a sequence of other locations, which may include other ports, where it is delivered through progressive laying on or in the seabed.

5.4. Norwegian Shipowners' Association

(49) According to the Norwegian Shipowners' Association, the Commission should interpret the concept of 'maritime transport' in a flexible manner, given that cable-laying and dredging companies have the same international mobility and are subject to the same forces of global competition as classic 'maritime transportation'.

(50) In their view the transport and the laying of a cable from point A to point B is a simultaneous and integrated operation, where the cable is gradually 'unloaded' on the seabed.

(51) Similarly, the Norwegian Shipowners' Association is of the opinion that transportation aiming at disposing of sludge resulting from a dredging operation must be considered as transportation, even if the dredging and/or unloading site is neither a port, nor an offshore installation.

5.5. **Armateurs de France**

(52) According to *Armateurs de France,* maritime transport is not defined identically in Regulations (EEC) No 4055/86 and (EEC) No 3577/92, as the Guidelines refer to. Therefore the definition for maritime transport concerning State aid matters does not have to be the same as the definition set out in the Regulations. *Armateurs de France* holds that nevertheless the definition provided for by Regulation (EEC) No 3577/92 is understood as not being exhaustive. According to *Armateurs de France,* the Guidelines do not thus exclude cable-laying and dredging activities.

(53) In the opinion of *Armateurs de France,* the judgment of the Court of Justice of 11 January 2007 in Case C-251/04 is not relevant for the activities in question as it does not exclude cable-laying or dredging activities from maritime transport. *Armateurs de France* emphasises that these activities are not services 'related, incidental or ancillary to the provision of maritime transport services', within the meaning of the judgment, but constitute rather a transport at sea of goods to or from offshore installations.

(54) *Armateurs de France* maintains that, if the Guidelines were to be interpreted so that only pure maritime transport could be eligible for aid to maritime transport, such an interpretation would in theory also exclude from the scope of the Guidelines vessels travelling empty on their way back from transporting goods. Since the Guidelines already cover towage and dredging vessels in the case that more than 50 % of the activity effectively carried out by a tug during a given year constitutes maritime transport, according to *Armateurs de France,* this concept should be extended to all service vessels, such as dredgers and cable-layers.

5.6. **Alcatel-Lucent**

(55) *Alcatel-Lucent* underlines the importance of cable-layers in the maritime labour market, taking into account the requirement of high level of technical knowledge in that field. In the opinion of *Alcatel-Lucent,* cable-layers employ the most qualified workers in the maritime labour market. Therefore the extension of the DIS regime to cable-layers fulfils the objective of State aid to maritime transport as defined in the Guidelines as it would safeguard high quality employment in Europe for European marine employees. Due to the crisis on the telecom market, the fleet of Community-flagged telecom cable vessels decreased from 80 to 35 vessels competing with vessels registered under flags of convenience.

(56) The market is global. It reached 100 000 km per year at the height of the Internet bubble, then decreased to 20 000 km per year between 2003 and 2006 and approaches at present 50 000 km to 70 000 km per year.

(57) Taking into account that cable connections include trans-oceanic journeys and that the biggest cable-laying vessels can only stock about 3 000 km of cable drums, *Alcatel-Lucent* is of the opinion that the most significant activity of cable-laying vessels consists of transporting cable drums from the cable drum factory to the point at sea where the cable has to be connected and from which it will be laid down on the sea bed. According to Alcatel, a cable-laying vessel falls within maritime transport, taking into consideration the constantly unload of cargo among the itinerary while navigating the vessel. Therefore the cabling operation has to be considered as transport of cargo.

(58) In the opinion of *Alcatel-Lucent*, Regulations (EEC) No 4055/86 and (EEC) No 3577/92 do not strictly limit the kinds of destinations at sea (between two ports or between a port and an off-shore installation). In its view, a certain point at sea should also be considered as a destination falling under the Guidelines. Furthermore it could be considered that with the first metre of cable-laying on seabed the cable-laying becomes an off-shore installation and therefore the following cable-laying is nothing else than transport to this off-shore installation.

(59) In the view of *Alcatel-Lucent,* the judgment of the Court of Justice of 11 January 2007 in Case C-251/04 indirectly allows the extension of the definition of maritime transport as long as it is covered by the objectives of the Guidelines. According to *Alcatel-Lucent,* their main objectives are safeguarding vessels under the Community flag and maintaining a competitive fleet on world markets. Therefore, even though cable-laying activities would be considered as the provision of a service (incidental or ancillary to the provision of maritime transport services), the Guidelines are applicable to cable-laying activities, since these activities also fulfil the objectives of the Guidelines.

(60) *Alcatel-Lucent* is finally of the view that, with regard to environmental considerations, it is important to maintain a large fleet of cable-layers under the Community flag.

5.7. **Danish Shipowners' Association**

(61) According to the Danish Shipowners' Association, cable-laying is an activity '*in its own right*' and not an assistance service along the lines of towage, which the ECJ judgment of 11 January 2007 in Case C-251/04 regarded as not covered by Regulations (EEC) No 4055/86 and (EEC) No 3577/92. Furthermore, the Danish Shipowners' Association considers it more important to take the objectives of the Guidelines into consideration. Therefore the Danish Shipowners' Association recalls that the European cable-laying industry provides jobs for many seafarers in Europe. Moreover, cable-laying can help providing safety rules and standards as well as registration of such vessels in Community registers.

(62) The Danish Shipowners' Association holds that cable-laying is exposed to the same competitive constraints as those known by Community maritime transport operators on the world market. To sail between continents is also the task of cable-layers.

(63) Furthermore the Danish Shipowners' Association is of the view that the Danish rules on sand-dredging are covered by the Guidelines, taking into account the similar wording. According to the Danish Shipowners' Association, excavation is not covered by the Danish legislation in question. Moreover dredging is eligible only when the requirement that at least 50 % of the activities concerned constitute maritime transport is complied with.

5.8. **Comments from Denmark on third parties' observations**

(64) In commenting on the observations submitted by interested parties, the Danish authorities reiterate their former arguments and stress that all interested parties have been supportive of covering cable-laying vessels by the Guidelines.

6. **ASSESSMENT OF THE MEASURES**

6.1. **Cable laying**

(65) Firstly, the Commission notes that, like maritime transport, cable-laying activities require qualified seafarers, with similar qualifications as those working onboard traditional maritime transport vessels. It further notes that seafarers on board cable-layers are governed by the same labour law and social framework as other seafarers.

(66) Secondly, the Commission recognises that cable-layers are sea-going vessels and that they are obliged to undergo the same technical and safety controls as vessels dedicated to maritime transport.

(67) Thirdly, the Commission agrees that there is a risk that cable-laying companies could relocate their on-shore activities outside the Community for the purpose of finding more accommodating fiscal climates and subsequently re-flag their vessels under flags of convenience. In this context, the Commission acknowledges that cable-laying is by nature a global market.

(68) The Commission further notes that the extension of the DIS regime to cable-laying activities at sea would help preserve Community employment on board sea-going cable-laying vessels controlled by Danish interests.

(69) The challenges that Community cable-laying has to face in terms of global competition and relocation of on-shore activities are similar to those of Community maritime transport. In the same vein, Community cable-laying activities are subject to the same legal environment in the labour, technical and safety fields that Community maritime transport. Finally, qualified and trained seafarers are necessary as is the case in maritime transport.

(70) These features are those which are at the origin of the Guidelines. Indeed, Section 2.2, first subparagraph, of the Guidelines mentions the improvement of safety at sea, the encouragement of flagging or re-flagging to Member States' registers, the contribution to the consolidation of the maritime cluster in the Member States, the safeguard and improvement of the maritime know-how and the promotion of employment of European seafarers as the main objectives pursued. This is especially the case as regards State aid in the form of reduction in labour-related costs (Section 3.2 of the Guidelines) considered as 'social measures to improve competitiveness' (see title of Section 3 of the Guidelines).

(71) Consequently, although the Commission still maintains that cable-laying activities do not fall within the definition of maritime transport as laid-down by the aforementioned regulations and the Guidelines, it considers that cable-laying should be associated by analogy with maritime transport for the purpose of applying Section 3.2 of the Guidelines and that cable-laying should be thus covered by the scope of the same provision.

(72) The Commission thus concludes that the extension of the DIS regime to cable-laying vessels could be accepted by applying Section 3.2 of the Guidelines to them by analogy and thus that this extension is compatible with the common market.

6.2. **Dredging**

(73) The Commission refutes the argument made by Denmark concerning the alleged abuse of power on the part of the Commission when it opened the investigation procedure on the provisions of the DIS regime concerning dredging. The aforementioned Executive Order was annexed to the notification: the Commission considers that it had the obligation to examine this enclosure too and determine whether or not the Executive Order was an alteration to the DIS regime approved by the Commission in its aforementioned decision of 12 December 2002 in Case NN 116/98 and to the measures communicated to the Commission by Denmark in 2005 to adapt the DIS regime to the 2004 Guidelines.

(74) In addition the Commission refutes the allegation that the two bills were approved by the letter from the Commission services of 18 May 2005. This letter made it clear that the acceptance by a Member State of appropriate measures proposed by the Commission through the Guidelines should not be considered, from a procedural perspective, as a notification of a new aid or of an amendment to an existing aid. In the said reply, the Commission also made it clear that the measures submitted by the Danish authorities constituted a mere transposition of the appropriate measures proposed in the Guidelines and that they did not necessitate a notification under Article 88(3) of the EC Treaty.

(75) Furthermore, the Executive Order, attached to the notification, substantially departs from the bill submitted by the aforementioned letter of 21 January 2008, by extending very widely the scope of eligible dredging activities beyond what was foreseen in the bill sent by the aforementioned submission. In opening an investigation, the Commission considered the provisions of the Executive Order not as a new aid (and illegal aid since they were already put into force) but as a misuse of an existing aid pursuant to Article 16 of the State Aid Procedure Regulation. Therefore the relevant chapter of the Regulation is not Chapter V on procedure regarding existing aid schemes, as assumed by the Danish authorities in their comments, but Chapter IV on procedure regarding misuse of aid.

(76) The Commission was therefore fully entitled to open the investigation procedure with respect to the Executive Order.

(77) Section 3.2, fifth subparagraph, of the Guidelines lays down the conditions under which State aid in the form of reductions in labour-related costs can be awarded to dredging activities. The conditions that seafarers must be Community seafarers working on board seagoing within the meaning of Section 3.2 third subparagraph of the Guidelines and that the dredgers must be registered in a Member State are already those of the DIS-regime.

(78) In addition, the Danish authorities have made it clear in their comments on the opening decision that only self-propelled dredgers are eligible to the DIS-regime and that, i.a., dredging activities carried out in and around ports and fjords are excluded from the DIS regime.

(79) As regards the condition that dredgers have to carry out maritime transport at sea for at least 50 % of their operational time, the Commission notes that 'maritime transport' in the case of dredging is defined by Section 3.1, 16th subparagraph of the Guidelines as '*the transport at deep sea of extracted materials*' and excludes '*extractions or dredging as such*'. In this context, the Commission observes that extraction or dredging as such are excluded from the definition of eligible dredging activities as described in the abovementioned Danish Order. The Commission further considers that '*sailing between the place of extraction and the place where the extracted materials are to be unloaded*' and '*sailing between places of extraction*' are indeed transporting the extracted materials. The Commission also accepts that in maritime transport ships do not always sail loaded because of imbalances on certain trades. It is therefore logical to consider by analogy that '*sailing between the port and the extraction site*' and '*sailing between the place of unloading and the port*' are maritime transport. Similarly 'unloading' is inherent to maritime transport. Finally, when dredgers provide assistance at the request of public authorities in deep sea, the time they spend directly and exclusively for that benefits maritime transport.

(80) The Commission therefore concludes that the activities of dredgers as defined by the Executive Order can benefit from the DIS regime except for activities corresponding to the '*sailing at places of extraction*', which cannot indeed be distinguished from extracting or dredging as such.

(81) The acceptation by the Commission of most of the activities defined by the Danish authorities in the abovementioned Order as eligible to the DIS-regime is also based on the following elements.

(82) Dredging requires qualified seafarers governed by the same labour-law and social framework as other seafarers.

(83) Dredgers are sea-going vessels and they are obliged to undergo the same technical and safety controls as vessels dedicated to maritime transport.

(84) Finally there is a risk that dredging companies would relocate their on-shore activities outside the Community for the purpose of finding more accommodating fiscal climates and regimes of social security and subsequently re-flag their vessels under flags of convenience.

(85) The Commission thus considers that DIS regime can apply to dredging at sea as defined by the Executive Order with the exception of the sailing at places of extraction.

6.3. **Limitation to the duration of the validity of Commission decisions in the field of State aid**

(86) In its recent practice, the Commission no longer approves open-ended State aid regimes – or amendments thereto – and thus requests now that schemes be notified for a duration of up to a maximum of 10 years.

(87) This is why the Commission is obliged to impose a termination on the notified measure, consistent with its current practice. Consequently the Commission must decide that the Danish authorities re-notify the amendment of the DIS scheme assessed in the present Decision under Article 88(3) of the EC Treaty at the latest 10 years after the date of notification of the present Decision,

HAS ADOPTED THIS DECISION:

Article 1

1. The measures which Denmark envisages to implement in favour of sea-going cable-laying vessels are compatible with the common market within the meaning of Article 87(1) of the EC Treaty.

2. The measures implemented by Denmark in favour of sea going dredging are compatible with the common market provided that sailing at places of extraction is excluded from the eligible activities.

Article 2

Denmark must re-notify the amendment of the DIS scheme assessed in the present Decision according to Article 88(3) of the EC Treaty within 10 years as from the date of notification of the present Decision.

Article 3

This Decision is addressed to the Kingdom of Denmark.

Done at Brussels, 13 January 2009.

For the Commission

Antonio TAJANI

Vice-President