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[1] Text with EEA relevance

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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

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[1] Text with EEA relevance

II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) No 297/2010

of 9 April 2010

amending Regulation (EC) No 272/2009 supplementing the common basic standards on civil aviation security

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002 [1] and in particular Article 4(2) thereof,

Whereas:

(1) General measures supplementing the common basic standards on civil aviation security should be adopted in the field of screening, access control and other security controls as well as in the field of prohibited articles, third country recognition of equivalence, staff recruitment, training, special security procedures and exemptions from security controls.

(2) These general measures are necessary in order to achieve a common level of aviation security within the European Union to protect the travelling public from acts of unlawful interference. One-stop security is the main facilitating element offered by EU legislation. Therefore the harmonisation of screening methods is essential in order to maintain one-stop security within the EU including controls of liquids, aerosols and gels without impeding the benefits of the Single aviation market for EU citizens.

(3) The Annex to Commission Regulation (EC) No 272/2009 of 2 April 2009 supplementing the common basic standards on civil aviation security laid down in the Annex to Regulation (EC) No 300/2008 of the European Parliament and of the Council [2], details in its Part A.3 the methods of screening allowed for baggage, cargo and mail which is to be loaded into the hold of an aircraft. It is necessary from time to time to make provision for additional methods of screening shown to be effective for screening some or all types of cargo and to provide a legal basis for the development of detailed implementing measures. Metal detection equipment is considered to be an effective screening method for some types of cargo.

(4) Regulation (EC) No 272/2009 does not provide for liquids, aerosols and gels to be considered as a category of articles that may be prohibited from introduction into security restricted areas and on board an aircraft. Instead Regulation (EC) No 272/2009 requires methods, including technologies, for detection of liquid explosives to be deployed on an EU-wide basis at airports as swiftly as possible, but no later than 29 April 2010.

(5) It is now time to put an end to the restrictions on liquids, aerosols and gels, moving progressively from banning most liquids to a system of screening for liquid explosives. To this end, transitional arrangements beyond April 2010 are required to phase-in the deployment of detection methods, including technologies, at all EU airports without compromising aviation security. The concerns of the law enforcement community, aimed at preventing possible terrorist threats in the future, require an effective mechanism in place until airports are in a position to install reliable detection equipment. Therefore a new approach is needed. This should be achieved by 29 April 2013, the date by which all airports should have the capability to screen liquids, aerosols and gels.

[1] OJ L 97, 9.4.2008, p. 72.

[2] OJ L 91, 3.4.2009, p. 7.

(6) However, such an approach should not prevent airports from deploying and using equipment at an earlier date, provided that the equipment meets the standards set by the implementing legislation adopted by the Commission. This way, airports would be able to facilitate the carriage of liquids, aerosols and gels by departing passengers by deploying, for example, screening equipment for liquid explosives at one security check lane. Furthermore, some airports may choose to install advanced equipment more quickly.

(7) Given the need for flexibility on how to operate security measures at airports the common basic standards on civil aviation security remain strictly technology neutral. Member States and airports may choose the technologies to be deployed and operated most effectively and efficiently at airports from the available options listed in Regulation (EC) No 272/2009 amended herewith.

(8) Operating screening equipment capable of detecting liquid explosives requires airports or other entities responsible for aviation security to procure and deploy equipment proven to comply with the technical standards adopted pursuant to Article 4(3) of Regulation (EC) No 300/2008. Member States should ensure that all regulatory requirements are in place to allow such equipment to be deployed in time to meet the deadlines referred to in this Regulation.

(9) During the transitional period, passengers should be clearly informed of the EU airports applying liquid screening. Airports and airlines should cooperate to ensure that confiscation of liquids, aerosols and gels remains a means of last resort.

(10) The general measures provided for by Regulation (EC) No 272/2009 should be amended to introduce rules allowing metal detection equipment to be used for the screening of hold baggage, cargo and mail, where appropriate and authorising phasing-in arrangements for liquids, aerosols and gels to be brought into the security restricted area or on board an aircraft to apply for a limited period of time, in order not to compromise standards of security.

(11) Regulation (EC) No 272/2009 should therefore be amended accordingly.

(12) Developments of technological or regulatory nature both at EU and international level may affect the dates laid down in this Regulation. Where appropriate, the Commission may make proposals for revision, in particular taking into account the operability of equipment and passenger facilitation.

(13) Regulation (EC) No 300/2008 shall apply in full as from the date specified in the implementing rules adopted in accordance with the procedures referred to in Article 4(2) and 4(3) of that Regulation but not later than 29 April 2010. This Regulation should therefore apply as from 29 April 2010 together with Regulation (EC) No 300/2008 and its supplementing and implementing acts.

(14) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Civil Aviation Security set up by Article 19(1) of Regulation (EC) No 300/2008,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EC) No 272/2009 is amended as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Union*.

It shall apply from 29 April 2010.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 9 April 2010.

For the Commission
The President
José Manuel BARROSO

ANNEX

The Annex to Regulation (EC) No 272/2009 is amended as follows:

1. In part A.3, points (f) and (g) are replaced by the following:

   '(f) explosive trace detection (ETD) equipment;

   (g) simulation chamber; and

   (h) metal detection equipment.'

2. After Part B the following part B1 is added:

'PART B1.

Liquids, aerosols and gels

Liquids, aerosols and gels shall be permitted to be taken into security restricted areas and on board an aircraft provided they are screened or exempted from screening in accordance with the requirements of implementing rules adopted pursuant to Article 4(3) of Regulation (EC) No 300/2008.

1. By 29 April 2011 liquids, aerosols and gels obtained at a third country airport or on board an aircraft of a non-Community air carrier shall be permitted into security restricted areas and on board an aircraft, on condition that the liquid is packed in a bag that conforms to the recommended security control guidelines of the International Civil Aviation Organisation and the bag displays satisfactory proof of purchase within the preceding thirty-six hours airside at the airport or on board the aircraft. They shall be screened in accordance with the requirements of implementing rules adopted pursuant to Article 4(3) of Regulation (EC) No 300/2008.

2. By 29 April 2013 all airports shall screen liquids, aerosols and gels in accordance with the requirements of implementing rules adopted pursuant to Article 4(3) of Regulation (EC) No 300/2008.

3. Member States shall ensure that all regulatory requirements are in place to allow deployment of liquid screening equipment complying with the requirements of implementing rules adopted pursuant to Article 4(3) of Regulation (EC) No 300/2008, in time to meet the deadlines referred to under paragraph 1 and 2.

Passengers shall be clearly informed of the EU airports where they are permitted to take liquids, aerosols and gels into the security restricted area and on board aircraft, and any conditions associated with it.'

COMMISSION REGULATION (EU) No 298/2010

of 9 April 2010

amending Regulation (EC) No 1451/2007 as regards the extension of the duration of derogations allowing the placing of biocidal products on the market

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market [1], and in particular Article 16(2) thereof,

Whereas:

(1) Commission Regulation (EC) No 1451/2007 of 4 December 2007 on the second phase of the 10-year work programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market [2] sets out, in Annex II, an exhaustive list of existing active substances to be evaluated under the work programme for the systematic examination of active substances already on the market, hereinafter referred to as the 'review programme', and prohibits the placing on the market of biocidal products containing active substances not listed in that Annex or in Annex I or IA to Directive 98/8/EC.

(2) However, Regulation (EC) No 1451/2007 enables the Commission to grant derogation from that prohibition in cases where a Member State considers that an active substance is essential for reasons of health, safety or protection of cultural heritage or is critical for the functioning of society, and where there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health and provides that Member States may allow the placing on the market of active substances consisting solely of food or feed that are intended for use as repellents or attractants of product type 19.

(3) Those derogations may currently be used until 14 May 2010, since the review programme was initially foreseen to run only until that date.

(4) Directive 98/8/EC, as amended by Directive 2009/107/EC [3] extended the review programme until 14 May 2014.

(5) For reasons of consistency, it is appropriate to align the duration of the derogations provided for in Articles 5 and 6 of Regulation (EC) No 1451/2007 with the duration of the review programme.

(6) Regulation (EC) No 1451/2007 should therefore be amended accordingly.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Biocidal Products,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1451/2007 is amended as follows:

1. Article 5(3) is replaced by the following:

'3. Taking account of the comments received, the Commission may grant a derogation from Article 4(1) allowing the placing of the substance on the market of the requesting Member States until the date referred to in the first subparagraph of Article 16(2) of Directive 98/8/EC at the latest, provided that the Member States:

(a) ensure that continued use is possible only if products containing the substance are approved for the intended essential use;

(b) conclude that, taking into account all available information, it is reasonable to assume that continued use does not have any unacceptable effect on human or animal health or on the environment;

(c) impose all appropriate risk reduction measures when granting approval;

[1] OJ L 123, 24.4.1998, p. 1.
[2] OJ L 325, 11.12.2007, p. 3.
[3] OJ L 262, 6.10.2009, p. 40.

(d) ensure that such approved biocidal products remaining on the market after 1 September 2006 are relabelled in order to match the use conditions laid down by the Member States in accordance with this paragraph; and

(e) ensure that, where appropriate, alternatives for such uses are being sought by the holders of the approvals or the Member States concerned, or a dossier is being prepared for submission in accordance with the procedure laid down in Article 11 of Directive 98/8/EC at the latest two years before the date referred to in the first subparagraph of Article 16(2) of Directive 98/8/EC.'

2. The first paragraph of Article 6 is replaced by the following:

'By way of derogation from Article 4(1), Member States may allow until the date referred to in the first subparagraph of Article 16(2) of Directive 98/8/EC at the latest the placing on the market of active substances consisting solely of food or feed that are intended for use as repellents or attractants of product type 19.'

Article 2

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 9 April 2010.

For the Commission
The President
José Manuel BARROSO

COMMISSION REGULATION (EU) No 299/2010

of 9 April 2010

establishing the standard import values for determining the entry price of certain fruit and vegetables

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) [1],

Having regard to Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules for Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector [2], and in particular Article 138(1) thereof,

Whereas:

Regulation (EC) No 1580/2007 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the standard values for imports from third countries, in respect of the products and periods stipulated in Annex XV, Part A thereto,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 138 of Regulation (EC) No 1580/2007 are fixed in the Annex hereto.

Article 2

This Regulation shall enter into force on 10 April 2010.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 9 April 2010.

For the Commission,
On behalf of the President,
Jean-Luc DEMARTY
Director-General for Agriculture and Rural Development

[1] OJ L 299, 16.11.2007, p. 1.
[2] OJ L 350, 31.12.2007, p. 1.

ANNEX

Standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)

CN code	Third country code (1)	Standard import value
0702 00 00	IL	160,8
	JO	113,1
	MA	135,9
	TN	140,7
	TR	115,0
	ZZ	133,1
0707 00 05	JO	92,1
	MA	75,2
	TR	126,1
	ZZ	97,8
0709 90 70	MA	64,6
	TR	115,1
	ZZ	89,9
0805 10 20	EG	48,9
	IL	50,4
	MA	49,9
	TN	56,1
	TR	65,2
	ZZ	54,1
0805 50 10	EG	65,1
	IL	66,2
	TR	63,8
	ZA	71,7
	ZZ	66,7
0808 10 80	AR	94,9
	BR	84,8
	CA	112,7
	CL	87,6
	CN	73,9
	MK	22,1
	NZ	123,3
	US	131,8
	UY	74,3
	ZA	82,6
	ZZ	88,8
0808 20 50	AR	84,6
	CL	111,3
	CN	52,9
	ZA	85,9
	ZZ	83,7

(1) Nomenclature of countries laid down by Commission Regulation (EC) No 1833/2006 (OJ L 354, 14.12.2006, p. 19). Code 'ZZ' stands for 'of other origin'.

DECISIONS

COUNCIL DECISION 2010/212/CFSP

of 29 March 2010

relating to the position of the European Union for the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 thereof,

Whereas:

(1) The European Union continues to regard the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) as the cornerstone of the global nuclear non-proliferation regime, the essential foundation for the pursuit of nuclear disarmament in accordance with Article VI of the NPT and an important element in the further development of nuclear energy applications for peaceful purposes.

(2) On 12 December 2003, the European Council adopted the EU strategy against proliferation of Weapons of Mass Destruction, in order to steer its action in this field. On 8 December 2008, the Council adopted a document on 'New lines for action by the European Union in combating the proliferation of weapons of mass destruction and their delivery systems'.

(3) On 12 December 2008, the European Council endorsed the Council's statement on strengthening international security, reaffirming its determination to combat the proliferation of weapons of mass destruction and their means of delivery and promoting concrete and realistic disarmament initiatives which the Union submitted at the United Nations General Assembly.

(4) The United Nations Security Council unanimously adopted Resolution 1540 (2004), describing the proliferation of weapons of mass destruction and their means of delivery as a threat to international peace and security. On 12 June 2006, the Council adopted Joint Action 2006/419/CFSP [1], and on 14 May 2008, the Council adopted Joint Action 2008/368/CFSP [2], both in support of the implementation of United Nations Security Council Resolution 1540 (2004) and in the framework of the implementation of the EU strategy against the Proliferation of Weapons of Mass Destruction.

(5) The United Nations Security Council, meeting at the level of Heads of State and Government, unanimously adopted Resolution 1887 (2009), resolving to seek a safer world for all and to create the conditions for a world without nuclear weapons, in accordance with the goals of the NPT, in a way that promotes international stability, and based on the principle of undiminished security for all, calling upon all states that are not parties to the NPT to accede to it as non-nuclear-weapon States Parties, and calling upon States Parties to the NPT to comply fully with all their obligations and fulfil their commitments under the NPT and to cooperate so that the 2010 NPT Review Conference can successfully strengthen the NPT and set realistic and achievable goals in all the NPT's three pillars: non-proliferation, the peaceful uses of nuclear energy, and disarmament.

(6) Since 2004, the Council has adopted several Joint Actions on support for International Atomic Energy Agency's (IAEA) activities in the areas of nuclear security and verification and in the framework of the implementation of the EU strategy against Proliferation of Weapons of Mass Destruction, most recently Joint Action 2008/314/CFSP [3].

(7) On 8 December 2008, the Council adopted Council Conclusions on an EU contribution of up to EUR 25 million for the establishment of an IAEA nuclear fuel bank.

(8) Since 2006, the Council has adopted several Joint Actions on support for activities of the Preparatory Commission of the Comprehensive Nuclear-Test-Ban Treaty Organisation in order to strengthen its monitoring and verification capabilities. These include, most recently, Joint Action 2008/588/CFSP [4]. In addition, the Council has promoted the early entry into force and universalisation of the Comprehensive Nuclear-Test-Ban Treaty (CTBT).

(9) The President of the United States has convened a Summit on Nuclear Security, on 13 April 2010, to reinforce a commitment towards global nuclear security, including addressing the threat of nuclear terrorism.

[1] OJ L 165, 17.6.2006, p. 30.
[2] OJ L 127, 15.5.2008, p. 78.
[3] OJ L 107, 17.4.2008, p. 62.
[4] OJ L 189, 17.7.2008, p. 28.

(10) The 1995 Review and Extension Conference of the Parties to the NPT adopted decisions on the indefinite extension of the NPT, on principles and objectives for nuclear non-proliferation and disarmament and on strengthening the review process for the NPT, and a Resolution on the Middle East.

(11) The 2000 NPT Review Conference adopted a final document.

(12) On 25 April 2005, the Council adopted Common Position 2005/329/PESC relating to the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons [1].

(13) The Preparatory Committee for the 2010 NPT Review Conference held three sessions, from 30 April to 11 May 2007 in Vienna, 28 April to 9 May 2008 in Geneva and 4 to 15 May 2009 in New York.

(14) In the light of the outcomes of the 2000 NPT Review Conference and of the 2005 NPT Review Conference and of the discussions at the three sessions of the Preparatory Committee for the 2010 NPT Review Conference, and bearing in mind the current situation, it is appropriate to update and develop further the objectives set out in Common Position 2005/329/PESC, and the initiatives carried out under its terms,

HAS ADOPTED THIS DECISION:

Article 1

The objective of the Union shall be to strengthen the international nuclear non-proliferation regime by promoting a substantive and balanced outcome of the 2010 Review Conference of the Parties of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), in order to achieve tangible and realistic progress towards the goals enshrined in the NPT.

To attain this goal, the Union shall aim to promote in particular the adoption of a set of concrete, effective, pragmatic and consensual measures for stepping up international efforts against proliferation, pursuing disarmament and ensuring the responsible development of peaceful uses of nuclear energy by countries wishing to develop their capacities in this field. To this end, the Union has elaborated and submitted to the 2010 NPT Review Conference a Working Paper on the EU forward-looking proposals on all three pillars of the NPT [2], to be part of an ambitious action plan to be adopted by the 2010 NPT Review Conference.

[1] OJ L 106, 27.4.2005, p. 32.
[2] NPT/CONF.2010/PC.III/WP.26.

Article 2

At the 2010 NPT Review Conference, the Union shall work, in particular, to ensure the States Parties to the NPT (hereinafter 'the States Parties') address the following priorities:

1. a reaffirmation by all States Parties of their commitment to comply with their obligations and to fulfil the goals of the NPT and towards universal accession to the NPT;

2. strengthening the implementation of the NPT through the adoption of a set of concrete, effective, pragmatic and consensual measures for stepping up international efforts against proliferation, pursuing disarmament and ensuring the responsible development of peaceful uses of nuclear energy and making progress on implementing the NPT 1995 Resolution on the Middle East;

3. reaffirming the commitment to and stressing the need for concrete progress in nuclear arms control and disarmament processes, especially through an overall reduction in the global stockpile of nuclear weapons, in accordance with Article VI of the NPT, taking into account the special responsibility of the states that possess the largest arsenals, and agreement on specific and early measures, including achieving rapid entry into force of the Comprehensive Nuclear-Test-Ban Treaty (CTBT) and the start of negotiations in the Conference on Disarmament on a Treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices (FMCT) as indispensable steps towards fulfilment of the obligations and final objective enshrined in Article VI of the NPT;

4. strengthening the effectiveness and comprehensiveness of the non-proliferation regime through making the conclusion of a Comprehensive Safeguards Agreement together with the Additional Protocol the verification standard, under Article III of the NPT;

5. strengthening the NPT through a common understanding of States Parties on how to respond effectively to a State Party's withdrawal from the NPT;

6. upholding the NPT, bearing in mind current major proliferation challenges, in particular in the Democratic People's Republic of Korea and the Islamic Republic of Iran, through a common understanding of States Parties on how to respond resolutely and effectively to cases of non-compliance;

7. broadening acceptance and support of the concept of responsible development of peaceful uses of nuclear energy in the best safety, security and non-proliferation conditions and of multilateral approaches to the nuclear fuel cycle.

Article 3

For the purposes of the objective laid down in Article 1 and the priorities defined in Article 2, the Union shall:

(a) contribute to a structured and balanced review of the operation of the NPT at the 2010 NPT Review Conference, including the implementation of undertakings of the States Parties under the NPT, as well as the identification of areas in which, and of means through which, further progress should be sought in future, in particular with a view to the 2015 NPT Review Conference;

(b) help build a consensus on the basis of the framework established by the NPT by supporting the decisions and the Resolution on the Middle East adopted at the 1995 NPT Review and Extension Conference and the final document of the 2000 NPT Review Conference, and shall bear in mind the current situation, and shall promote, inter alia, the following essential issues:

1. undertaking efforts to preserve the integrity of the NPT and to strengthen its authority and implementation;

2. recognising that the NPT is a unique and irreplaceable multilateral instrument for maintaining and reinforcing international peace, security and stability, in that it establishes a legal framework for preventing proliferation of nuclear weapons and for developing further a verification system guaranteeing that non-nuclear-weapons states use nuclear energy solely for peaceful purposes, and that it represents the essential foundation for the pursuit of nuclear disarmament in accordance with Article VI thereof, and an important element in the further development of nuclear energy applications for peaceful purposes, stressing that the NPT, with its three mutually reinforcing pillars, represents joint security interests of all States Parties;

3. stressing the absolute necessity of full compliance with all the provisions of the NPT by all States Parties;

4. stressing the need for policies and strategies of States Parties to be consistent with the provisions of the NPT;

5. working towards universal accession to the NPT; calling on all states not parties to the NPT to become States Parties without delay as non-nuclear-weapon States Parties and, pending their accession to the NPT, to adhere to its terms and pledge commitments to non-proliferation and disarmament;

6. welcoming the contribution of civil society in promoting the principles and objectives of the NPT;

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7. reaffirming the commitment to seeking a safer world for all and to creating the conditions for a world without nuclear weapons, in accordance with the goals of the NPT; convinced that intermediate steps on the path towards this objective can also represent significant increases in security for all;

8. welcoming the considerable nuclear arms reductions which have taken place since the end of the Cold War, including by two Member States of the Union; stressing the need for an overall reduction in nuclear arsenals in the pursuit of gradual, systematic nuclear disarmament under Article VI of the NPT, taking into account the special responsibility of the states that possess the largest arsenals; welcoming, in this context, the negotiations on a new START agreement between the United States and the Russian Federation; reiterating the need for more progress in decreasing their arsenals and in reducing the operational readiness of their nuclear weapon systems to the minimum level necessary;

9. with regard to non-strategic nuclear weapons:

   (i) calling on all States Parties possessing such weapons to include them in their general arms control and disarmament processes, with a view to their verifiable and irreversible reduction and elimination;

   (ii) agreeing to the importance of further transparency and confidence-building measures in order to advance this nuclear disarmament process;

   (iii) encouraging the United States and the Russian Federation to further develop the unilateral 1991/92 Presidential initiatives and to include non-strategic nuclear weapons in the next round of their bilateral nuclear arms reductions, leading to lower ceilings for the numbers of both strategic and non-strategic nuclear weapons in their arsenals;

10. recognising the application of the principle of irreversibility to guide all measures in the field of nuclear disarmament and arms control, as a contribution to the maintenance and reinforcement of international peace, security and stability, taking these conditions into account;

11. recognising the importance, from the point of view of nuclear disarmament, of the programmes for the destruction and elimination of nuclear weapons and the elimination of fissile material as defined under the G8 Global Partnership;

12. pursuing efforts to secure verifiability, transparency and other confidence building measures by the nuclear powers to support further progress in disarmament; welcoming in this regard the increased transparency shown by some nuclear-weapon states, including by two Members States of the Union, on the nuclear weapons they possess, and calling on others to do likewise;

13. reaffirming also the commitment to treaty-based nuclear arms control and disarmament and underlining the need to renew multilateral efforts and reactivate multilateral instruments, in particular the Conference on Disarmament;

14. calling on states to sign and ratify the CTBT without delay and without conditions, particularly the nine remaining states listed in Annex II of the CTBT that have not yet done so, since the CTBT forms an essential part of the nuclear disarmament and non-proliferation regime, and with a view to its entry into force as soon as possible; welcoming in this regard the recent commitments by the United States towards early ratification of the CTBT;

15. pending the entry into force of the CTBT, calling on all states to abide by a moratorium on nuclear test explosions, to refrain from any action contrary to the obligations and provisions of the CTBT and to dismantle, as soon as possible, all nuclear testing facilities in a manner that is transparent and open to the international community; highlighting the importance of and welcoming the work of the CTBT Organisation Preparatory Commission, particularly with regard to the International Monitoring System;

16. welcoming the adoption by consensus in 2009 of the Programme of Work of the Conference on Disarmament and, on this basis, appealing for the immediate commencement and early conclusion of the negotiations on a FMCT, on the basis of document CD/1299 of 24 March 1995 and the mandate contained therein, as agreed in Decision of 29 May 2009 of the Conference on Disarmament for the establishment of a Programme of Work for the 2009 session (CD/1864);

17. pending entry into force of a FMCT, calling on all states concerned to declare and uphold an immediate moratorium on the production of fissile material for nuclear weapons or other nuclear explosive devices, as well as to dismantle or convert for non-explosive use only the facilities dedicated to the production of fissile materials for nuclear weapons; welcoming the action of those of the five nuclear-weapon states, in particular within the Union, which have decreed the relevant moratoria and dismantled such facilities;

18. calling on all states concerned to take appropriate practical measures in order to reduce the risk of accidental nuclear war;

19. pursuing consideration of the issue of security assurances to the non-nuclear-weapon States Parties;

20. calling on nuclear-weapon states to reaffirm existing security assurances noted by the United Nations Security Council in Resolution 984 (1995), recognizing that such security assurances strengthen the nuclear non-proliferation regime, and to sign and ratify the relevant protocols to the Treaties establishing nuclear-weapon free zones drawn up following the requisite consultations in accordance with 1999 United Nation Disarmament Commission (UNDC) guidelines, recognising that treaty-based security assurances are available to such zones;

21. stressing the need to advance the general arms control and disarmament processes and calling for further progress on all aspects of disarmament to enhance global security;

22. working for the start of consultations on a Treaty banning short- and intermediate-range ground-to-ground missiles;

23. calling for universal accession to, and effective implementation of the Hague Code of Conduct against Ballistic Missile Proliferation;

24. highlighting the importance of universal accession and implementation of the Biological and Toxin Weapons Convention, the Chemical Weapons Convention and the conventions, measures and initiatives contributing to conventional arms control;

25. working for the resolution of the problems of regional instability and insecurity and of the conflict situations which are often at the root of armament programmes;

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26. recognising that major nuclear proliferation challenges have occurred in recent years, in particular in the Democratic People's Republic of Korea and the Islamic Republic of Iran, stressing that the international community must be ready to face up to them and stressing the need to take resolute action in response;

27. stressing the need to strengthen the role of the United Nations Security Council, as final arbiter, in order that it can take appropriate action in the event of non-compliance with NPT obligations, in keeping with the Statute of the International Atomic Energy Agency (IAEA), including the application of safeguards;

28. drawing attention to the potential implications for international peace and security of withdrawal from the NPT; urging the international community to respond to a notice of withdrawal and its consequences with purpose and urgency; stressing the requirement for the United Nations Security Council to act promptly and, in particular, to address without delay any State Party's notice of withdrawal from the NPT; urging States Parties to promote the adoption of measures in this regard, including arrangements for maintaining adequate IAEA safeguards on all nuclear materials, equipment, technologies and facilities developed for peaceful purposes;

29. calling for nuclear cooperation to be suspended where the IAEA is not able to provide adequate assurances that a state's nuclear programme is designed exclusively for peaceful purposes, until such time as the IAEA is able to provide such assurances;

30. calling upon all states in the region to make progress towards, inter alia, the establishment of an effectively verifiable Middle East zone free of nuclear weapons and other weapons of mass destruction and their delivery systems, and to refrain from taking measures that preclude the achievement of this objective; acknowledging the importance of reaching agreement on concrete practical steps as part of a process, involving all states of the region, aimed at facilitating the implementation of the 1995 NPT Resolution on the Middle East;

31. calling also upon all States Parties, and in particular the nuclear-weapon States Parties, to extend their cooperation and to exert their utmost efforts towards the establishment by regional parties of an effectively verifiable Middle East zone free of nuclear weapons and other weapons of mass destruction and their delivery systems, in keeping with the 1995 NPT Resolution on the Middle East;

32. since security in Europe is linked to security in the Mediterranean, giving high priority to implementation of the nuclear non-proliferation regime in that region;

33. acknowledging the importance of nuclear-weapon-free zones for peace and security, on the basis of arrangements freely entered into between the states of the region concerned, in accordance with 1999 UNDC guidelines;

34. stressing the need to do everything possible to prevent the risk of nuclear terrorism, linked to possible terrorist access to nuclear weapons or materials that could be used in the manufacture of radiological dispersal devices and, in this context, stressing the need for compliance with obligations under United Nations Security Council Resolutions 1540 (2004) and 1887 (2009) and calling for improved nuclear security for high radioactive sources;

35. calling on all states that have not yet done so, to sign, ratify and implement the International Convention for the Suppression of Acts of Nuclear Terrorism, as important part of the international legal framework to address the threats of nuclear terrorism;

36. in the light of the increased threat of nuclear proliferation and terrorism, supporting the G8 Global Partnership Initiative and IAEA action and other multilateral mechanisms in this regard, such as the Proliferation Security Initiative, the Global Initiative to Combat Nuclear Terrorism and the Global Threat Reduction Initiative; welcoming the security objectives of the Global Nuclear Security Summit;

37. recognising that Comprehensive Safeguards Agreements with Additional Protocols have a deterrent effect on nuclear proliferation and form today's verification standard;

38. continuing to work towards universalisation and strengthening of the IAEA safeguards system to ensure greater detectability of violations of non-proliferation obligations, in particular through the adoption and implementation by all states concerned of the Comprehensive Safeguards Agreement together with the Additional Protocol and, where relevant, the Revised Small Quantities Protocol, and for further strengthening the safeguards system;

39. working for recognition by the 2010 NPT Review Conference and the IAEA Board of Governors, that the conclusion and implementation of a Comprehensive Safeguards Agreement together with an Additional Protocol is today's verification standard, under Article III of the NPT;

40. highlighting the IAEA's unique role in verifying states' compliance with their nuclear non-proliferation commitments;

41. stressing further the IAEA's important role in assisting them, on request, to improve the security of nuclear materials and installations, and calling on states to support the IAEA;

42. recognising the importance of appropriate effective export controls, in compliance with United Nations Security Council Resolutions 1540 (2004) and 1887 (2009) and in accordance with paragraph 2 of Article III of the NPT;

43. implementing, at national level, effective export, transit, transhipment and re-export controls, including appropriate laws and regulations for that purpose, and resolute international and national efforts to combat proliferation financing and to control access to intangible transfers of technology;

44. enacting effective criminal sanctions against acts of proliferation, in order to deter illegal export, transit, brokering, trafficking and related financing, in compliance with United Nations Security Council Resolution 1540 (2004);

45. urging the Zangger Committee and the Nuclear Suppliers Group (NSG) to share their experience on export controls, so that all states can draw on the arrangements of the Zangger Committee and the NSG guidelines and their implementation;

46. pointing out the need to finalise at an early date the strengthening of the NSG guidelines, in particular on strengthened export controls on enrichment and reprocessing technologies, and to work within the NSG towards making the adherence to the Additional Protocol a condition for nuclear supply;

47. calling on the States Parties to the Convention on the Physical Protection of Nuclear Material to ratify as soon as possible the Amendment to the Convention, in order to expedite its entry into force;

48. encouraging the development of proliferation-resistant and safeguards-friendly technologies;

PEACEFUL USES OF NUCLEAR ENERGY

49. recognising the right of States Parties to use nuclear energy for peaceful purposes, in accordance with Article IV the NPT, with due regard for Articles I, II and III thereof, inter alia, in the area of production of electricity, industry, health and agriculture;

50. remaining committed to assuring a responsible development of peaceful uses of nuclear energy in the best safety, security and non-proliferation conditions;

51. in that respect, encouraging the States Parties to reaffirm and comply with the principles and standards governing the responsible development of peaceful uses of nuclear energy;

52. underlining the importance of continuing international cooperation in order to strengthen nuclear safety, safe waste management, radiological protection and civil nuclear liability and calling upon states that have not yet done so to accede to all the relevant conventions as soon as possible and to implement fully the ensuing commitments;

53. supporting national, bilateral and international efforts to train the necessary skilled workforce required to ensure the responsible development of peaceful uses of nuclear energy under the best safety, security and non-proliferation conditions;

54. remaining firmly convinced of the benefits of multilateral approaches to the nuclear fuel cycle, in which assurance mechanisms, singly or in conjunction with other complementary mechanisms, should not act to distort the existing well-functioning market, and should address the right of peaceful uses of nuclear energy by providing nuclear fuel supply security for countries developing a nuclear programme in the best safety, security and non-proliferation conditions;

55. acknowledging that several initiatives, including the establishment of a Low Enriched Uranium bank under the control of the IAEA, can provide back-up mechanisms to interested countries and facilitate lasting multilateral solutions;

56. encouraging and engaging in further dialogue and consultation to clarify outstanding issues and to increase support for the concept of multilateral approaches to the nuclear fuel cycle.

Article 4

Action taken by the Union for the purposes of Articles 1, 2 and 3 shall comprise:

(a) demarches with regard to States Parties, and, where appropriate, with regard to states not parties to the NPT, in order to urge their support for the objectives set out in Articles 1, 2 and 3 of this Decision;

(b) the pursuit of agreement by Member States on draft proposals on substantive issues for submission on behalf of the Union for consideration by States Parties which may form the basis for decisions of the 2010 NPT Review Conference;

(c) statements by the Union in the General Debate and in the debates in the three Main Committees and their Subsidiary Bodies of the 2010 NPT Review Conference.

Article 5

This Decision shall take effect on the date of its adoption.

Article 6

This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, 29 March 2010.

For the Council
The President
E. ESPINOSA

COMMISSION DECISION

of 18 December 2009

on State aid C 34/07 (ex N 93/06) related to the introduction of a tonnage tax scheme in favour of international maritime transport in Poland

(notified under document C(2009) 10376)

(Only the Polish text is authentic)

(Text with EEA relevance)

(2010/213/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (TFEU), and in particular the first subparagraph of Article 108(2) thereof ([1]),

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 ([2]) and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By letter of 1 February 2006 ([3]), Poland notified the Commission of a Tonnage Tax scheme. The case has been registered under Number N 93/06.

(2) By letters of 9 March, 29 May, 14 November 2006 and 11 April 2007 ([4]), the Commission services requested further information. By letters of 20 April, 9 May and 6 September 2006, 5 January and 8 June 2007 ([5]), the Polish authorities replied to the Commission. In addition, a meeting at a technical level took place on 19 January 2007.

(3) By letter dated 12 September 2007 ([6]), the Commission informed the Republic of Poland that it had decided to initiate the formal investigation procedure laid down in Article 88(2) of the EC Treaty in respect of the aid (hereinafter 'the opening decision').

(4) Poland submitted its comments by letter dated 18 October 2007 ([7]).

(5) The Commission decision to initiate the formal investigation procedure was published in the *Official Journal of the European Union* ([8]). The Commission invited interested parties to submit their comments on the aid.

(6) The Commission received comments from one interested party ([9]). It forwarded them to Poland, but the latter did not use its right to react to them.

(7) Following a meeting between the Commission services and the Polish authorities on 14 January 2009, by letter of 25 February 2009 ([10]) the Polish authorities committed to modify their tonnage tax scheme on a number of issues on which the Commission had expressed its concerns in the decision to open the formal investigation procedure. By letters of 24 March 2009 ([11]), 26 October 2009 ([12]) and 9 December 2009 ([13]) the Polish authorities submitted further information.

2. DETAILED DESCRIPTION OF THE AID

2.1. Summary

(8) For ship-owners engaged in international maritime transport, tonnage tax is deemed to replace corporation tax or personal income tax by a lump sum amount calculated on the basis of the tonnage of the fleet operated. International maritime transport is defined as transport between a Polish port and a foreign port, between foreign ports, or between Polish ports but only on condition that this voyage is a leg of a longer voyage also serving a foreign port. Activities on routes exclusively within Poland (cabotage) are thus not eligible for tonnage tax under the current Tonnage Tax Act.

2.2. The tonnage tax scheme

(9) The Polish tonnage tax scheme is established by the Tonnage Tax Act, adopted on 24 August 2006 ([14]). The Act is planned to enter into force as from 1 January 2011 once the Commission has approved the scheme.

([1]) With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the TFEU. The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.
([2]) OJ C 300, 12.12.2007, p. 22.
([3]) Registered under Reference TREN(2006) A/12656.
([4]) References TREN(2006) D/204393, D/210227, D/223420 and TREN(2007) D/307010.
([5]) Registered under References TREN(2006) A/19774, A/22657, A/31398 and TREN(2007) A/21073, A/34300.
([6]) Registered under Reference C(2007) 4016.
([7]) Registered under Reference TREN(2007) A/45675.
([8]) See footnote 2.
([9]) Registered under Reference TREN(2007) A/51337.
([10]) Registered under Reference TREN(2009) A/10443.
([11]) Registered under Reference TREN(2009) A/13527.
([12]) Registered under References TREN(2009) A/34359.
([13]) Registered under Reference TREN(2009) A/38744.
([14]) Journal of Laws 2006, No 183, item 1353.

(10) The Tonnage Tax Act allows tonnage tax liable ship operators to be exempted from paying tax on profits, as defined in the Act of 31 January 1989 on the financial management of State enterprises ([15]) and the Act of 1 December 1995 on payments from profits earned by single-member companies of the State Treasury ([16]), in relation to revenue from eligible activities. The ship operators have the right to choose tonnage tax treatment by submitting a special declaration, by which they opt for this type of taxation.

(11) Pursuant to Article 5 of the Tonnage Tax Act, for each vessel subject to tonnage tax, the taxable profits pertaining to eligible activities shall be fixed at a lump sum calculated on the basis of its net tonnage as follows, per 100 NT, per 24-hour period started and corresponding to the period of operation in the month concerned of all the operator's ships, the revenue from which is subject to tonnage tax:

Net capacity of vessel	Calculation of flat-rate revenue
Up to 1 000 NT	The equivalent of EUR 0,5 per 100 NT
From 1 001 to 10 000 NT	The equivalent of EUR 0,35 per 100 NT over 1 000 NT
From 10 001 to 25 000 NT	The equivalent of EUR 0,20 per 100 NT over 10 000 NT
From 25 001 NT	The equivalent of EUR 0,10 per 100 NT over 25 000 NT

(12) For the purposes of calculation, the net capacity of the vessel is rounded up or down in the following manner: a capacity of less than 50 NT is discarded and a capacity of 50 NT or more is rounded up to the nearest 100 NT.

(13) The amount of tonnage tax due is calculated from the taxable base to which the rate of 19 % is applied.

(14) The amount of tonnage tax will be calculated in EUR and paid in PLN using the average exchange rate, as published by the National Bank of Poland, for the last day of the month in respect of which tonnage tax is payable. The amount of tonnage tax due is calculated without deduction of any cost incurred in the generation of such revenue.

(15) Under Article 8 of the Tonnage Tax Act, revenues from the sale of an eligible vessel by a tonnage tax company will go out of the perimeter of tonnage tax revenues and be taxed at a flat rate of 15 % where they are not fully used within three years for the purchase, repair, modernisation or adaptation of another vessel.

([15]) Journal of Laws 1992, No 6, item 27, as amended.
([16]) Journal of Laws, No 154, item 792.

(16) Individuals or members of a partnership, liable to personal income tax, were to be allowed to deduct the amount of health insurance contributions from the tonnage tax amount paid directly by them during the relevant tax year ([17]) (Article 6 of the Tonnage Tax Act) and the amount of social security contributions which they paid during the relevant tax year ([18]) from the tonnage tax base (Article 4(3) of the Tonnage Tax Act).

(17) In their letter from 25 February 2009 the Polish authorities committed to remove from the Tonnage Tax Act the possibility to deduct social security and health insurance contributions if the shipowner is a natural person or a natural person in a partnership ([19]). Therefore, these possibilities for deduction will not be applied and the same method of calculation of the tonnage tax base and the amount of the tonnage tax to be paid will be applied for all entities eligible for tonnage tax.

2.3. **Eligibility criteria**

2.3.1. *Eligible vessels*

(18) Only seagoing vessels listed in the Polish maritime register are eligible for tonnage tax. Therefore an eligible vessel is a vessel that is flagged in Poland and engaged in international maritime transport, which complies with all the requirements for navigation at sea. Acceptance of a ship as seagoing will normally require the ship to be certified as such under the International Load Line or the Safety of Life at Sea Convention (hereinafter the 'SOLAS Convention') ([20]).

2.3.2. *Eligible activities*

(19) The activities eligible for tonnage tax are as follows ([21]):

(i) transport of freight and/or passengers;

(ii) sea rescue operations;

(iii) maritime towage, on condition that at least 50 % of the revenue from the work actually performed by the tug over a fiscal year was generated by the provision of maritime transport and not towage to and from a port;

([17]) As defined in the Act of 27 August 2004 on healthcare services financed from public funds; Journal of Laws No 210, item 2135, as amended.
([18]) As defined in the Social Security System Act of 13 October 1998; Journal of Laws 2007, No 11, item 74, as amended.
([19]) Cf. Article 4(3)-(5), Article 6 and Article 12(3) of the Act.
([20]) The SOLAS Convention was adopted by the International Maritime Organisation (IMO) at London, on 1 November 1974 (implemented in Poland Journal of Laws, No 61, item 318 and 319) together with the Protocol to the same Convention, done at London on 17 February 1978 (implemented in Poland, Journal of Laws 1984, No 61, items 320 and 321, and 1986, No 35, item 177).
([21]) Article 3.1 of the Tonnage Tax Act.

(iv) dredging, on condition that 50 % of the revenue from the work actually performed by the dredger during the course of a year is generated by the transport at sea of materials.

(20) In their letter from 25 February 2009 the Polish authorities committed to modify the third and fourth provisions above ([22]) by introducing the criterion that in order to include towage and dredging in the tonnage tax scheme, at least 50 % of the annual operational time of each tug or dredger over a fiscal year should constitute maritime transport.

(21) In addition, Article 3(2) of the Tonnage Tax Act provides ancillary activities that are eligible for tonnage tax on condition that they are connected with the provision of eligible services stipulated above.

(22) Article 3(3) of the Tonnage Tax Act establishes a list of activities that are never eligible for tonnage tax, such as exploration from the sea bed, fishing, construction, underwater works, etc.

2.3.3. *Eligible entities*

(23) Eligible companies are operators fulfilling certain criteria.

(24) An operator is defined in Article 2(3) of the Tonnage Tax Act as: (i) a private individual (natural person) or a legal person, having respectively its place of residence, registered office or management on the territory of Poland; (ii) a partner in a civil partnership, registered partnership, limited partnership or limited joint-stock partnership having its registered office, management or place of residence on the territory of Poland; or (iii) a foreign entrepreneur/undertaking within the meaning of the Act of 2 July 2004 on freedom of economic activity ([23]), performing in Poland activities eligible for tonnage tax ([24]); and meeting at least one of the following conditions:

— to be directly involved in navigation using maritime vessels personally owned or owned by another person and to hold a valid Document of Compliance ([25]);

— to be the owner of a vessel but not to engage personally in navigation of his own vessel or that of another person;

— to manage a vessel of another person, on behalf and account of that person on a contractual basis, and to hold a valid Document of Compliance ([26]).

(25) As regards the last condition (management of vessels), by letter of 8 June 2007 the Polish authorities committed to allow managing companies to benefit from the tonnage tax only if they ensure simultaneously both management of crews and technical management of vessels.

(26) In addition, by letter of 26 October 2009 ([27]) the Polish authorities clarified that the ship management companies comply with all requirements contained in the Communication from the Commission providing guidance on State aid to shipmanagement companies (hereinafter 'Ship Management Guidelines') ([28]).

(27) In particular, as regards the conditions of the Ship Management Guidelines that shipmanagement companies should contribute to the economy and employment within the Union (Section 5.1. thereof) and that there should be an economic link between the managed ships and the Union (Section 5.2. thereof), the Polish authorities committed that the Polish Tonnage Tax Act will require that the ship management should be carried out from the territory of the EU and that mainly Union nationals will be employed in land-based activities or ships. In addition, ship management of non-Union ships is excluded from the benefit of the tonnage tax scheme.

(28) As far as the requirement of compliance with the international and EU standards contained in the Ship Management Guidelines (Section 5.3 thereof) is concerned, the Polish authorities clarified that Poland is a member of the International Maritime Organisation and as an EU Member State it fulfils all international and European standards ([29]). A number of national legislative acts ensure the compliance of shipowners, shipmanagers and other companies with the international requirements ([30]), whose application is ensured and controlled by the respective public authorities.

(29) Regarding the flag link requirement for shipmanagers (Section 5.4. of the Ship Management Guidelines), the Polish authorities pointed out the strict obligation for shipowners to fly under the Polish flag is also fully applicable to shipmanagers.

([22]) Contained in Article 3(1) second and fourth indent of the Tonnage Tax Act.
([23]) Journal of Laws No 173, item 1807, as amended.
([24]) See Section 2.3.2. above.
([25]) The Document of Compliance is issued in accordance with the SOLAS Convention to an operator who meets the requirements of the International Management Code for the Safe Operation of Ships and for Pollution Prevention (hereinafter 'the ISM Code'). The ISM Code was adopted by IMO by resolution A.741(18) (implemented in Poland, Official Journal of Minister of Infrastructure 2005, No 4, item 28).
([26]) See footnote 25.
([27]) Registered under References TREN(2009) A/34359.
([28]) OJ C 132, 11.6.2009, p. 6.
([29]) In particular, Poland is a State Party to the SOLAS, MARPOL and STCW Conventions with all amendments thereto.
([30]) In particular, Safety at Sea Act 2000 (with amendments), Prevention of Pollution from Ships Act 1995 (with amendments), Maritime Equipment Act 2004, Employment on the Merchant Ships Act 1991 (with amendments), Maritime Code Act 2001 (with amendments).

(30) Concerning the specific training and social conditions contained in Section 6 of the Ship Management Guidelines, by letter dated 9 December 2009 ([31]) the Polish authorities undertook the commitment that from the moment of entry into force of the tonnage tax scheme they will require from each seafarers' employer, be it the ship owner or the ship management company, to comply with the particular provisions of the Maritime Labour Convention, 2006 ([32]) ([33]).

2.3.4. *Strategic and technical management*

(31) In point 33 of the opening decision the Commission's understanding as regards strategic management was that 'a tonnage tax company must take its decisions on significant capital expenditure and disposals in Poland. In assessing these matters the extent to which foreign based personnel work under the direction of, and report to, personnel based in Poland would be taken into account by the Polish authorities. Also important in assessing whether the strategic function is carried out in Poland will be the location of headquarters, including senior managers and the location of decision making of both directors' board and operational board'.

(32) With respect to commercial management the Commission noted in point 34 of the opening decision that 'the fiscal authorities will verify that route planning, taking of bookings for passengers or cargo, provisioning and catering ships, personnel management and training, technical management of ships, including the taking of decisions on the repair and maintenance of vessel take place in Poland. Also relevant is the maintenance of support facilities such as training centres, terminals, etc. in Poland and the extent to which foreign offices or branches work under the direction of personnel based in Poland. The fact that a ship is flagged, classed, insured or financed in Poland may add further weight to the indicators set out above. But in any case both parts of the test, examination of strategic management and of commercial management must be passed'.

(33) Following the opening decision the Polish authorities clarified that the requirements contained in points 33 and 34 of the opening decision are not correct and that in fact the conditions contained in the Tonnage Tax Act as regards eligibility of operators are alternative and not cumulative. In fact, Article 2(3)(a) and (b) of the Tonnage Tax Act stipulates that an operator (i.e. a person eligible for tonnage tax provided his activities are eligible) is 'a natural or legal person, a partner of a civil partnership, registered partnership, limited partnership, limited joint-stock company, who must have, respectively, a place of residence, seat or Management Board in Poland'. In other words only one of the following three conditions should be fulfilled: (i) either all key decisions should be taken in Poland (including commercial and strategic management), or (ii) the headquarters, or (iii) the senior personnel should be established in Poland.

(34) The Polish authorities further explained that Article 2(3)(c) of the Tonnage Tax Act clearly provides that the operator can also be a foreign entrepreneur ([34]) who is engaged in Poland in activities eligible for tonnage tax. Therefore, companies are not restricted to operate exclusively from Poland in order to be eligible to the Polish tonnage tax regime but may have their establishments in other Member States of the Union/EEA.

2.3.5. *Use of chartered-in vessels*

(35) After the opening decision the Polish authorities clarified that pursuant to the Tonnage Tax Act (Article 2(3)(a) to (c) thereof) companies limiting their activities to chartering-in ships on a time or voyage basis cannot benefit from the tonnage tax. As a result, only operators who are shipowners or use chartered-in vessels on a bareboat basis or are managers can be eligible for tonnage tax.

2.3.6. *Ring fencing measures*

(36) The Tonnage Tax Act provides for a number of ring-fencing measures to avoid spill-over effects into non-eligible activities in Poland or in other countries. These ring-fencing measures are intended to prevent non-qualifying activities from enjoying the benefit of the tonnage tax scheme ([35]).

2.3.7. *The 'all or nothing' option*

(37) Articles 3 and 4 of the Tonnage Tax Act provide that tonnage tax eligible ship-owners must put under tonnage tax all eligible vessels and all eligible activities performed onboard these vessels. Consequently, a selective use of the tonnage tax scheme (cherry picking) is entirely excluded.

(38) This rule also applies to company groups. All eligible companies, tax-liable in Poland, of a company group must enter the Polish tonnage tax scheme for all their eligible activities, as soon as one company of the group has opted for it.

([31]) Registered under reference TREN(2009) A/38744.

([32]) Integrated into EU law by Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC (OJ L 124, 20.5.2009, p. 30).

([33]) This condition will be inserted in an internal regulation implementing the Tonnage Tax Act.

([34]) Within the meaning of the provisions of the Polish Act of 2 July 2004 on freedom of economic activity, Dz. U. No 173, item 1807, as amended.

([35]) See Sections 2.7.4 – 2.7.9 of the opening decision.

(39) Pursuant to Article 11 of the Tonnage Tax Act, in the case of a merger between ship-owners of which at least one is liable for tonnage tax, or where a tonnage tax company acquires other ship-owners, the newly formed shipping company will be liable for tonnage tax for all its aggregated eligible fleet.

(40) Moreover, in case of cessation by a company of eligible for tonnage tax activities, the Tonnage Tax Act provides that it will not be possible to opt again for tonnage tax until three tax years have elapsed, counting from the end of the calendar year in which the operator ceased the activities or opted out of tonnage tax.

(41) Furthermore, tonnage tax companies are for a certain period prevented from 'opting out' from tonnage tax. This period, called the 'tonnage tax period', is intended to avoid that ship-owners alternate periods under tonnage tax and periods under corporation tax depending on the level of their debts and profits. The tonnage tax period is currently fixed at 5 years in the Tonnage Tax Act (Article 10 of the Act).

(42) However, by letter of 23 February 2009 the Polish authorities committed to modify the Tonnage Tax Act by extending this period to 10 years. Therefore, once companies decide to opt in, they will be obliged to stay in the tonnage tax scheme for at least 10 years.

2.4. **Flag-link**

(43) The notified Polish tonnage tax scheme has an explicit flag link, that is to say a requirement whereby only vessels listed in the Polish maritime register are eligible for tonnage tax.

2.5. **Duration of the scheme**

(44) By letter of 13 April 2006, the Polish authorities made a commitment to limit the duration of the proposed tonnage tax regime to 10 years and to re-notify any prolongation or renewal of the scheme after this 10-year period. In addition, by letter dated 9 December 2009 they indicated that the tonnage tax scheme will enter into force as from 1 January 2011.

2.6. **Possible overlap with other schemes**

(45) According to the information at the disposal of the Commission, there is at the moment no existing aid scheme in favour of maritime transport in Poland.

2.7. **Annual reporting**

(46) The Polish authorities have undertaken in their notification to provide the Commission with annual reports on the situation with regard to changes in the Polish registered fleet and seafarer employment on that fleet, together with the number of tonnage tax companies or groups.

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

(47) In the opening decision the Commission expressed concerns about the following five features of the Polish tonnage tax regime and their compatibility with the internal market:

— the fact that the scheme allowed natural persons to benefit from the tonnage tax; and also the fact that the scheme allowed natural or legal persons, subject to personal income tax who have opted for tonnage tax, to deduct social security contributions and health insurance contributions from respectively their tonnage tax and tonnage tax base;

— the inclusion within tonnage tax of tugs and dredgers where such vessels provide services constituting maritime transport for less than half of their operational time over a fiscal year;

— the possibility for a ship-owner to put under tonnage tax vessels for which the company does not cumulatively ensure, on its own account or for the account of a third party, the three following functions: the commercial and technical management of vessels and the management of crews, beyond a tonnage exceeding four times the tonnage of vessels for which it ensures the three functions;

— the requirements in relation to strategic management and technical management that effectively all key decisions be taken in Poland and that the senior personnel, the headquarters and the board of directors and operational board should be in Poland, which could give rise to a *de facto* discrimination and limit the freedom of establishment of ship-owners from another Member State;

— the fact that tonnage tax companies could opt out of the tonnage tax system already 5 years after having opted in it.

4. **COMMENTS FROM POLAND**

(48) After the adoption of the decision to initiate the formal investigation procedure, the Polish authorities made a number of clarifications regarding the facts described in the opening decision. They were duly taken into account in chapter 2 of the present decision and will thus not be repeated hereafter. The comments presented below are only those in respect of the concerns raised by the Commission in the opening decision.

Eligibility of natural persons to the tonnage tax; deduction in the case of natural persons liable to tonnage tax of health insurance contributions and of social security contributions from respectively their tonnage tax and the tax base

(49) In the decision to open the formal investigation procedure, the Commission raised the question whether the inclusion of natural persons in the tonnage tax scheme should be possible. The Polish authorities argued that the failure to include natural persons in the tonnage tax scheme would lead to the incompatibility of the Tonnage Tax Act with the Constitution of Poland, because the latter ensures equal treatment of everyone by the public authorities. In addition, the Polish legislation does not prevent persons other that legal persons from engaging in maritime transport and, thus ship-owners may also be natural persons.

(50) Regarding the issue whether the deductibility of social security contributions and health insurance contributions from respectively the amount and the base of tonnage tax is compatible with the internal market, the Polish authorities clarified that the deductibility is only possible for natural persons. They also considered that such a reduction stems from the fact that social insurance and health insurance contributions are compensated by the personal income tax scheme. In order to claim deductions it is not important whether income tax is paid based on income or revenue. Social insurance and health insurance contributions deductions may also be made by taxpayers who have opted for a lump sum of register income tax, under which revenue is subject to taxation. They further argued that the fact that tonnage tax is not paid on the basis of real income should not decide about the lack of the possibility to deduct social insurance and health insurance contributions, respectively from the tax base and from tax.

(51) Furthermore, the Polish authorities argued that depriving shipowners who are natural persons of the possibility of deducting social insurance and health insurance contributions respectively from the tax base and from tonnage tax would lead to differentiation in the legal and tax standing of shipowners, depending on whether, apart from engaging in activities subject to tonnage tax, they generate other income, i.e. from hiring and employment relationship.

(52) The Polish authorities further clarified that the deductions system only concerns persons who engage in eligible business activities, and not to the sailors employed by them.

(53) Nevertheless, as indicated in recital 17 of the present decision, by letter from 25 February 2009 the Polish authorities committed to modify their tonnage tax scheme by removing from the Tonnage Tax Act the possibility to deduct social security and health insurance contributions if the shipowner is a natural person or a natural person in a partnership (i.e. Article 4(3) to (5), Article 6 and Article 12(3) of the Act).

Eligibility of dredging and towage activities

(54) With regard to the Commission's preliminary assessment that the eligibility for tonnage tax of dredging and towage activities should be based on the operating time of a given tug or dredger in the fiscal year and not on the level of generated income, the Polish authorities argued that the linking to work time to the possibility of taxing a given activity with tonnage tax will not always reflect the use of this activity during the year.

(55) In their view, it would be more appropriate to retain the present solutions, i.e. to refer to the share volume from activities covered by tonnage tax in the overall volume of revenue, as in such cases there exists the possibility of verifying data included in the accounts kept by the taxpayer. The Polish authorities stated that this kind of solution is simpler to control, both for the tax payer and the tax authorities, and this should permit the elimination of the unauthorised use of tonnage tax to cover these given types of activities in situations when the required conditions are not met.

(56) Nevertheless, as noted in recital 20 of the present decision, in response to the concerns raised by the Commission in the decision to open formal investigation procedure, by letter of 25 February 2009 the Polish authorities committed to modify their tonnage tax by introducing the criterion that in order to include towage and dredging in the tonnage tax, at least 50 % of the annual operational time of each tug or dredger over a fiscal year should constitute maritime transport.

Eligibility of technical management and management of crews, as well as chartered-in ships on a time or voyage basis in the tonnage tax scheme

(57) In the decision to open formal investigation procedure the Commission clarified that only those vessels should be included in the tonnage tax in relation to which the ship-owner ensures either crew management and the technical management of the ship or the commercial management of the ship, providing that the tonnage of the mentioned ships does not exceed four times the tonnage of vessels in relation to which the ship-owner carries out at the same time these three functions, namely: technical management of the ship, crew management and commercial management. The Polish authorities argued that they had conceived their tonnage tax system on the basis of the Community guidelines on State aid to maritime transport ([36]) (hereinafter 'the Guidelines'), which do not contain such

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

detailed conditions which therefore did not have to be included in the provisions of the Tonnage Tax Act.

(58) As regards chartered-in ships on a time or voyage basis, as indicated in recital 35 of the present decision the Polish authorities clarified that they will not be eligible for tonnage tax.

Requirements in relation to strategic management and commercial management

(59) Regarding the requirements, described in the opening decision, in relation to strategic management and technical management that effectively all key decisions should be taken in Poland and that the senior personnel, the headquarters and the board of directors and operational board should be in Poland, the Polish authorities stated that these requirements do not stem from the provisions of the Tonnage Tax Act. According to the Polish authorities, the provisions of the Tonnage tax Act do not anticipate assessment (inspection) of strategic and commercial management.

(60) They further clarified that the conditions regarding strategic and commercial management are alternative and not cumulative. In other words only one of the three factors must be fulfilled: (i) either all key decisions should be taken in Poland (including commercial and strategic management), or (ii) the headquarters, or (iii) the senior personnel should be established in Poland.

(61) Therefore, according to the Polish authorities, the companies are not restricted to operate exclusively from Poland in order to be eligible to the Polish tonnage tax regime but may have their establishments in other Member States of the Union/EEA.

(62) As regards the freedom of establishment, the Polish authorities explained that the shipowner can also be a foreign entrepreneur ([37]) who is engaged in Poland in activities eligible for tonnage tax. In fact, they argued that it is possible to register in the Polish Register of Ships a vessel owned by a citizen of a European Union Member State or a legal person whose seat is in a European Union Member State, as well as a vessel which:

— is at least half-owned by a citizen of a Member State or a legal person whose registered seat is in a Member State, providing that the owner of the ship has his place of residence or the seat of his principal plant or branch in a Member State (may be entered in the Polish Register of Ships in the Permanent Register of Ships on application of all the joint-owners);

— is owned by an association of capital with registered seat abroad, in which association the citizen of a European Union Member State or the legal person whose registered seat is in a European Union Member State holds share capital, providing that the owner of the ship has his place of residence or the seat of his principal plant or branch in a European Union Member State (may be entered in the Polish Register of Ships in the Permanent Register of Ships on application of the owner).

(63) The Polish authorities also clarified that foreign persons from the Member States and EEA countries may embark upon and conduct business activities along the same principles as Polish entrepreneurs. In addition, citizens of non-EU/EEA states may also embark upon and conduct business activities along the same principles as Polish citizens if they are legally residing in Poland. Furthermore, foreign entrepreneurs (a foreign person carrying out business activities abroad) may take up business activities in the form of branches and set up representations in Poland (pursuant to the Business Activities Freedom Act).

(64) A branch is a separate and organisationally independent part of business activities carried out by the entrepreneur beyond the entrepreneur's seat or principal place of business activity. The Polish authorities argued that opening a foreign entrepreneur's branch is not complicated, and does not require that the foreign entrepreneur meet detailed conditions. As regards representations, they may involve exclusively activities relating to advertising and promotion of the foreign entrepreneur.

(65) Based on the above, regarding the Commission's preliminary assessment that the conditions for strategic and commercial management contained in the tonnage tax scheme seem to limit the possibilities for subsidiaries to be established and appear to give rise to problems of *de facto* discrimination and to limit the freedom of establishment, the Polish authorities argued that such conclusion is unfounded and not based on the applicable legislation.

The 'All-or-nothing' option

(66) In relation to the 5-year lock-in period foreseen in the notified scheme, the Polish authorities underlined that the Guidelines do not set up conditions relating to lock-in periods.

(67) In addition, the introduction of the 5-year tonnage tax period establish the possibility of attaining a more rapid effect of the implemented regulations, such as the return of vessels owned by Polish ship-owners to the use of the Polish ensign i.e. the European Union ensign.

(68) Poland concluded that in the light of the commitment that after 10 years Poland will once again submit the tonnage tax scheme to the European Commission as an aid scheme, the prolongation of the tonnage tax period to 10 years will lead to difficulties in the appropriate analysis of the introduced scheme, which must be carried out before it is once again submitted by Poland.

([37]) Within the meaning of the provisions of the Polish Act of 2 July 2004 on freedom of economic activity, Dz. U. No 173, item 1807, as amended.

(69) Nevertheless, as noted in recital 42 of the present decision, the Polish authorities subsequently committed to modify their tonnage tax scheme by extending the tonnage tax period for companies to 10 years.

5. COMMENTS FROM INTERESTED PARTIES

(70) Only one interested party, Bugsier Reederei- und Bergungsgesellschaft mbH & Co. KG (hereinafter Bugsier Reederei), reacted by letter of 20 December 2007 to the publication in the Official Journal of the notice summarising the Commission Decision of 11 December 2007.

(71) According to Bugsier Reederei, towage should not be covered by the Polish tonnage tax regime. In their view, such an inclusion could cause serious distortion of competition in the European towage sector.

6. ASSESSMENT OF THE MEASURE

6.1. Existence of aid under Article 107(1) of the TFEU

(72) Under Article 107(1) of the TFEU, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

(73) Through the tonnage tax scheme, the Polish authorities grant an advantage, by lowering the corporate or personal income tax that this sector would otherwise have to bear, through State resources, thereby favouring certain undertakings since the measure is specific to the maritime transport sector. Such advantages threaten to distort competition and could affect trade between Member States, since such shipping activities are essentially carried out on a worldwide market on which undertakings from other Member States compete.

(74) Therefore, the Commission considers that the notified scheme should be qualified as State aid within the meaning of Article 107(1) of the TFEU.

6.2. Legal basis for the assessment

(75) Under Article 107(3)(c) of the TFEU, aid to facilitate the development of certain economic activities may be considered compatible with the internal market, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, and thus provides a possible basis for an exemption from the general prohibition of State aid. In the present case, the Commission considers Article 107(3)(c) of the TFEU to be the appropriate legal basis applicable to the notified scheme.

(76) In particular, aid in favour of the maritime sector must be examined in the light of the Guidelines, including the Ship Management Guidelines, which set out the rules for the eligibility of crew and technical management of ships for tonnage tax or other tax arrangements.

6.3. Assessment of compatibility

(77) The Guidelines determine the conditions under which Member States are allowed to set up certain State aid schemes to support their maritime transport industry in the pursuit of general objectives, such as:

— improving a safe, efficient, secure and environment friendly maritime transport,

— encouraging the flagging or re-flagging to Member States' registers,

— contributing to the consolidation of the maritime cluster established in the Member States while maintaining an overall competitive fleet on world markets,

— maintaining and improving maritime know-how and protecting and promoting employment for EU/EEA seafarers, and

— contributing to the promotion of new services in the field of short sea shipping following the White Paper on Community transport policy.

(78) Section 3.1 fifth subparagraph of the Guidelines specifically mentions tonnage tax schemes as examples of fiscal measures that 'have been shown to safeguard high quality employment in the on-shore maritime sector', and may thus be considered compatible with the internal market.

(79) However, the Guidelines lay down certain criteria, which such schemes must meet to be considered compatible with the internal market.

(80) The criteria had been reviewed in the opening decision and the Commission had doubts as regards several of them. The following gives the final assessment of the Commission as regards each of them.

6.4. Eligibility of natural persons to the tonnage tax; deduction in the case of natural persons liable to tonnage tax of health insurance contributions and of social security contributions from respectively their tonnage tax and the tax base

(81) In the decision to initiate the formal investigation procedure the Commission questioned whether natural persons should be eligible for tonnage tax. Indeed, Section 3.1., fourth subparagraph of the Guidelines states that 'the system of replacing the normal

corporate tax system by a tonnage tax is a State aid' ([38]). In fact, natural persons are subject to personal income tax rather than corporate tax. Moreover, the tonnage tax schemes approved so far by the Commission have only covered replacement of corporate tax systems with tonnage tax schemes.

(82) Nevertheless, the Commission takes note that the scope of the Guidelines is not limited to only legal persons, but includes all possible entities which carry out maritime transport. Indeed, Section 2.1., first subparagraph of the Guidelines stipulates that 'The Guidelines draw no distinction between types of beneficiary in terms of their legal structure (whether companies, partnerships or **individuals**), nor between public or private ownership, and any reference to companies shall be taken to include all other types of legal entity.' ([38]) This is moreover coherent with the approach followed by EU competition law which only refers to undertakings independently from their legal form.

(83) In addition, there will be no distinction in the treatment of natural and legal persons, since the calculation of the tax base will be the same and the same rate of 19 % will be subsequently applied to all entities.

(84) Therefore, there is no reason to treat differently under the guidelines natural persons and the doubts of the Commission in this respect are alleviated.

(85) Moreover, natural persons will not be allowed to further reduce their tonnage tax due (up to the level of paying no tax), since following the commitment undertaken by the Polish authorities, the natural persons will not be able to deduct social security and health insurance contributions from respectively their tonnage tax and tonnage tax base. This will further ensure an equal level of tonnage tax payment for all entities eligible for tonnage tax irrespective of their legal form (natural or legal persons, foreign entrepreneurs, etc.).

(86) As regards the possibility for natural persons to deduct social security and health insurance contributions from respectively their tonnage tax and tonnage tax base, the Commission takes note of the commitment undertaken by the Polish authorities according to which this will be removed from the law. This commitment also includes legal persons subject to personal income tax. The Commission welcomes this commitment as such a possibility would run against the rationale of the tonnage tax (replacing the normal profit obtained by deducting real charges from revenues by notional profit) and provide undue advantages. It could also introduce an unjustified distinction in the treatment between natural persons and legal persons.

([38]) Emphasis added.

(87) In addition, the Commission considers that the definition of foreign and national entities contained in Article 2(3) of the Tonnage Tax Act does not raise concerns as regards possible discrimination between these entities, excluding any potential disadvantages for the foreign entities with respect to their eligibility to the Polish tonnage tax scheme.

6.5. **Eligible main activities**

(88) As indicated in the decision to initiate the formal investigation procedure, the Commission considers that the coverage by tonnage tax of the international maritime transport of freight and/or passengers is consistent with the Guidelines.

(89) Furthermore, as regards the inclusion in the tonnage tax scheme of activities related to transport of freight and/or passengers, the Commission notes that the Guidelines indeed apply to companies carrying out maritime services, i.e. carriage of goods or passengers at sea ([39]), therefore the Guidelines explicitly cover the transport of passengers and/or freight as services eligible for tonnage tax. With respect to sea rescue operations (vessels for the rescue and transport of person at sea) the Commission considers, in line with its decision making practice ([40]), that such services should be eligible for tonnage tax as they are ancillary to and directly related to maritime transport.

(90) With respect to towage, the Guidelines stipulate in Section 3.1 fourteenth subparagraph that 'towage' is covered by the scope of the Guidelines only if more than 50 % of the towage activity effectively carried out by a tug during a given year constitutes 'maritime transport'. Waiting time may be proportionally assimilated to that part of total activity effectively carried out by a tug which constitutes 'maritime transport'.

(91) With respect to dredging, the Guidelines establish at Section 3.1 sixteenth subparagraph: 'However, fiscal arrangements for companies (such as tonnage tax) may be applied to those dredgers whose activity consists in "maritime transport" — that is, the transport at deep sea of extracted materials — for more than 50 % of their annual operational time and only in respect of such transport activities.'

([39]) See Section 2, third subparagraph of the Guidelines, as well as Council Regulation (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 (OJ L 378, 31.12.1986, p. 1); and Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ L 364, 12.12.1992, p. 7).

([40]) See, in particular, State aid N 330/05 — Lithuania — Aid to shipping companies — Tonnage Tax Scheme, adopted on 19.7.2006 (OJ C 90, 25.4.2007, p. 11); State aid N 114/04 — Italy — Tonnage Tax Scheme for the maritime transport, adopted on 20.10.2004 (OJ C 136, 3.6.2005. p. 42).

(92) It must be noted that for both towage and dredging the modifications which the Polish authorities committed to make in their Tonnage Tax Act ([41]) will link the eligibility of a tug or a dredger for tonnage tax as to whether at least 50 % of their annual operational time constitutes eligible activities, thus bringing this requirement fully into line with the provisions of the Guidelines.

(93) In addition, as regards dredging, the tonnage tax scheme (Article 3(1), fourth indent of the Tonnage Tax Act) applies a definition of the activities carried out by dredgers that constitute maritime transport, i.e. the transport at sea of extracted materials, which is in line with the one set out in the Guidelines. The Commission thus considers that the eligibility criteria for dredging are consistent with the Guidelines.

(94) However, as regards towage, the 'condition that at least 50 % of the [operational time] ([42]) from the work actually carried out by the tugboat during the course of the year was generated by the provision of towage services other than towage to and from a port or within the port' (Article 3(1), second indent of the Tonnage Tax Act) is not entirely in line with the Guidelines.

(95) Indeed, this provision explicitly excludes towage to reach or get out from a port or within a port, which is in line with the Guidelines ([43]). However, it cannot be excluded that other towage services such as towage in inland waters or towage at sea without reaching a port may be eligible for tonnage tax. This runs counter to the provisions of the Guidelines, which stipulate that the eligibility for tonnage tax should be limited to only those activities of the tugboats which constitute 'maritime transport', i.e. carriage of goods or passengers at sea. In *Commission* vs. *Greece* ([44]) the Court further clarified that 'Although towage is a service normally provided for remuneration, it does not in principle entail a straightforward carriage of goods or passengers by sea. Rather, it involves assisting the movement of a vessel, rig, platform or buoy. A towing vessel which assists another vessel […] is assisting the vessel by which the passengers or goods are transported but is not itself the transporting vessel' ([45]). Therefore, towage activities cannot be considered as constituting maritime transport. Consequently, only those services provided by the tug-boats, which directly involve the transport of passengers or goods at sea, could be eligible for tonnage tax.

(96) In light of the above, the Commission does not object to the possibility for tugboats to be eligible for tonnage tax, provided that at least 50 % of the operational time from the work actually carried out by the tugboat during the course of the year was generated by the provision of services which constitute maritime transport.

([41]) See recital 20 of the present decision.
([42]) The text is presented in the form it will appear after the planned by the Polish authorities amendment.
([43]) In particular with Section 3.1., fourteenth subparagraph of the Guidelines, which states that: 'towage activities which are carried out, inter alia, in ports, or which consist in assisting a self-propelled vessel to reach port do not constitute "maritime transport" '.
([44]) C-251/04 from 11 January 2007.
([45]) Cf. paragraph 31 of the judgement.

6.6. **Management activities**

Technical management and management of crews

(97) As far as the technical management and the management of crews are concerned, the Commission has to ensure that the Polish tonnage tax scheme fulfils all the requirements contained in the Ship Management Guidelines. In this respect, the Commission notes the following.

(98) Firstly, as regards the requirements that shipmanagement companies should contribute to the economy and employment within the Union (Section 5.1. thereof) and that there should be an economic link between the managed ships and the Union (Section 5.2. thereof), the Polish authorities committed that the Tonnage Tax Act will require that the ship management should be carried out from the territory of the EU and that mainly Union nationals will be employed in land-based activities or ships. In addition, ship management of non-Union ships is excluded from the benefit of the tonnage tax scheme. Therefore, the Commission considers that the conditions set out in Sections 5.1 and 5.2 of the Ship Management Guidelines are fulfilled.

(99) Secondly, the Commission acknowledges that Poland is a member of the International Maritime Organisation and it is a party to all relevant international conventions, which it has incorporated in its national legislation. In addition, it fulfills all its obligations as far as the relevant EU law is concerned. Consequently, the Commission considers that the tonnage tax scheme complies with the international and European standards, as out in Section 5.3 of the Ship Management Guidelines.

(100) Thirdly, the Commission considers that the condition that shipmanagers should manage ships flying exclusively under the Polish flag is fully in line with Section 5.4. of the Ship Management Guidelines.

(101) Fourthly, the Commission notes that even though the Polish tonnage tax scheme will be only applicable to 'full' ship managers, i.e. those who carry out simultaneously crew and technical management, since such managers are carrying out also crew management, the particular requirements contained in Section 6 of the Ship Management Guidelines should be also applicable to them. These requirements relate to training as well as to improving social conditions for seafarers.

(102) In this respect, the Commission acknowledges that the Polish authorities committed that they will require from each seafarers employer, be it the ship owner or the ship management company, to comply with the particular provisions of the Maritime Labour Convention, 2006 ([46]). Therefore, the Polish tonnage tax scheme will fulfil the obligations imposed on crew managers contained in Section 6 of the Ship Management Guidelines.

(103) In view of the above, the Commission concludes that the requirements contained in the tonnage tax act with respect to management companies are in line with the Ship Management Guidelines.

Strategic and commercial management

(104) The Commission takes note of the clarifications made by the Polish authorities in relation to the conditions for strategic and commercial management ([47]), and confirms that the conditions contained in the tonnage tax scheme regarding such management are indeed alternative and not cumulative. Thus, in order to be eligible for tonnage tax, only one of the following three conditions should be fulfilled: (i) either all key decisions should be taken in Poland, or (ii) the headquarters should be situated in Poland, or (iii) the senior personnel should be established in Poland.

(105) Consequently, the companies will not be restricted to operate exclusively from Poland in order to be eligible for tonnage tax, but may have their establishments in other Member States of the Union/EEA.

(106) In light of the above, the Commission considers that the conditions regarding strategic and commercial management contained in the Polish tonnage tax scheme will not prevent companies from other EC/EEA states to benefit from the Polish tonnage tax. Moreover, these conditions are proportional to the pursued objective to verify that tonnage tax companies actually contribute to the economic activities and employment in Poland, which is in line with the Guidelines.

Chartered-in vessels

(107) The Commission takes note of the clarifications made by the Polish authorities regarding the requirements governing the inclusion of chartered-in vessels in the tonnage tax scheme.

(108) In this respect, the Commission confirms that it is in line with the Guidelines not to include in the tonnage tax scheme companies which limit their activities only to chartering-in of ships on a time and/or voyage basis.

([46]) Integrated into EU law by Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC (OJ L 124, 20.5.2009, p. 30).

([47]) See recitals 31-34 of the present decision.

(109) The Polish authorities further explained that only operators who carry out at the same time the commercial management, technical management and management of crews regarding a certain chartered-in vessel, will be eligible for tonnage tax. The Commission, therefore, understands that only chartered-in vessels on a bareboat basis will be eligible for tonnage tax, being the only kind of chartered-in vessels for which all the three functions will be exercised. Thus, it has no objections with respect to the eligibility for tonnage tax of chartered-in vessels on a bare-boat basis, as such vessels are assimilated as own vessels for the purposes of the tonnage tax schemes.

6.7. **Ring-fencing measures**

(110) The Commission confirms its initial finding in the decision to initiate the formal investigation procedure ([48]) that the ring-fencing measures in respect of verification of intra-group transactions based on the arm's length principle and keeping separate accounting between eligible and non-eligible activities are sufficient in order to prevent any possible spill-over into non-shipping activities and tax evasion.

(111) Therefore, the Commission will only assess below the rules regarding the 'all or nothing option'.

(112) The tonnage tax legislation provides that the choice of entering the notified scheme must be made jointly by all companies — tax liable in Poland — being part of a group of undertakings for all their eligible activities.

(113) The rules established in case of a merger, clarified in recital 39 of the present decision, ensure that the newly formed shipping company should opt in for the tonnage tax as long as at least one of the participating in the merger ship-owners was liable to tonnage tax.

(114) With regard to the rules on cessation of activities, limiting companies to opt again for tonnage tax until three tax years have elapsed, the Commission considers that they are well designed to avoid 'cherry-picking', so companies will not be able to opt for either corporation tax or tonnage tax during different periods of their economic activities, depending on which tax system is more advantageous.

(115) In addition, the Commission notes that the commitment to amend the tonnage tax scheme so that companies should maintain vessels under tonnage tax for a period of 10 years is consistent with the existing tonnage tax schemes already approved by the Commission and, thus addresses the concerns raised by the Commission in its decision to initiate the formal investigation procedure.

([48]) See in particular recitals 102-104 thereof.

(116) To conclude, the Commission considers that the tonnage tax scheme under examination satisfies the criterion of the 'all or nothing' option applicable to eligible activities.

6.8. **Compliance with aid ceiling**

(117) Chapter 11 of the Guidelines indicate that 'the total amount of aid granted under Chapters 3 to 6 [that is to say tonnage tax, exemption from the payment of income tax and social contributions for seafarers, aid to crew relief, investment and regional aid] should not exceed the total amount of taxes and social contributions collected from shipping activities and seafarers'.

(118) According to the information provided by the Polish authorities, there is no existing aid scheme in Poland that would be capable of adding State aid to the benefits of the present scheme. Therefore, the Commission concludes that the aid ceiling provided for in Chapter 11 of the Guidelines will be respected.

6.9. **Reports**

(119) The Polish authorities agreed to provide the Commission with annual reports on the implementation of the tonnage tax scheme and on its effects on the Union registered fleet and on the employment of Union seafarers, as required by Chapter 12 of the Guidelines,

HAS ADOPTED THIS DECISION:

Article 1

The aid which Poland is planning to implement on the basis of the Polish Tonnage Tax Act is compatible with the internal market subject to the condition set out in Article 2.

Article 2

Towage activities shall be eligible for tonnage tax, provided that at least 50 % of the operational time from the work actually carried out by each tugboat during the course of the year was generated by the provision of services which constitute maritime transport.

Article 3

Poland shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 4

This Decision is addressed to the Republic of Poland.

Done at Brussels, 18 December 2009.

For the Commission
Antonio TAJANI
Vice-President

CORRIGENDA

Corrigendum to Commission Decision 2009/488/EC, Euratom of 11 June 2009 on the conclusion of a Memorandum of Understanding between the European Commission and the European Organization for Nuclear Research (CERN)

(Official Journal of the European Union L 161 of 24 June 2009)

On page 15, concluding sentence and signatures:

for: 'Done in duplicate at Brussels, 17 June 2009.

For CERN	*For the Commission*
Torsten ÅKESSON	Janez POTOČNIK
President of the CERN Council	*Member of the Commission*'
Rolf-Dieter HEUER	
Director-General of the CERN	

read: 'Done in duplicate in … on …

For the European Commission	*For CERN*
…	…'

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