



31.1.2019

## NOTICE TO MEMBERS

**Subject: Petition No 0502/2018 by S.W. (British) on the DIS taxation in Denmark**

### 1. Summary of petition

The petitioner is a seafarer working on-board a Danish-flagged vessel. He claims that the passing of a new law in Denmark, which brings the company he works for under the DIS (Danish International Ship Register) tax regime, is severely disadvantageous and discriminatory towards foreign workers. The petitioner claims that in the future affected workers will be paid a net salary, but will then be subject to taxation and social security contributions in their own country of residence, resulting in a situation of double taxation.

### 2. Admissibility

Declared admissible on 16 October 2018. Information requested from Commission under Rule 216(6).

### 3. Commission reply, received on 31 January 2019

#### The Commission's observations

As EU law stands at present, direct taxation falls essentially within the competence of Member States. EU secondary legislation in the area of direct taxation is limited. In areas where no EU secondary legislation is applicable, Member States have the competence to design their own tax systems, and to decide whom and what to tax, when to tax, at what rate and how as long as they respect their obligations under the Treaty on the Functioning of the European Union (TFEU). Thus they are not allowed to discriminate in their tax laws on the basis of nationality or residence against the nationals of any Member State, including their own, or against anyone who exercises the freedoms guaranteed by the TFEU. Nor can they apply unjustified and disproportionate restrictions on the exercise of these freedoms.

It follows that Member States have considerable autonomy in this field. They are not required to conclude bilateral tax treaties<sup>1</sup>, nor in principle to prevent double taxation<sup>2</sup> or draw up their tax rules on the basis of those of other Member States<sup>3</sup>. It is settled case-law that the TFEU provisions on the fundamental freedoms are not concerned with disparities in treatment which may result from divergences between Member States' tax laws, as long as these are applied in accordance with objective criteria and without regard to the nationality of the persons subject to them. The Court of Justice of the European Union has also held that the Treaty offers no guarantee to a citizen of the Union that transferring his activities to a Member State other than that in which he previously resided will be neutral as regards taxation (see Case C-403/03 *Schempp*, paragraph 45 and the case-law cited therein). Disparities may be to the citizen's advantage or not, depending on the specific circumstances (*ibid.*).

The Danish International Ship Register (DIS) scheme essentially exempts from Danish taxation the income earned by seafarers working on-board Danish flagged vessels. Therefore, by definition, it cannot result in double taxation. The exemption is applied in a non-discriminatory manner and without regard to the residence or nationality of the seafarers in question.

In accordance with Article 11(4) of Regulation (EC) No 883/2004<sup>4</sup>, seafarers are subject to the social security legislation of the Member State in which the vessel they work on is registered even if they were residents of another Member State. Social security contributions are therefore due in the vessel's flag Member State and not in the Member State of the seafarer's residence.

### Conclusion

The national system at issue is applied in a non-discriminatory manner, without regard to the residence or nationality of the seafarers. The Commission therefore has no valid reason to initiate infringement proceedings as regards the DIS scheme or otherwise intervene on behalf of the petitioner. The State aid notification of the DIS scheme extension is however currently subject to assessment by the Commission services.

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<sup>1</sup> Case C-336/96 *Gilly*.

<sup>2</sup> Case C-128/08 *Damseaux* and Case C-67/08 *Block*.

<sup>3</sup> Case C-298/05 *Columbus Container Services*.

<sup>4</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (Text with relevance for the EEA and for Switzerland), *OJ L 166*, 30.4.2004, p. 1–123