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Act
on Enhancing the Competitiveness of Ships engaged in Sea Transport
(1277/2007, amendments up to 967/2008 included)

Chapter 1 – **General provisions**

Section 1 – *Objective*

The objective of this Act is to enhance the international competitiveness of the Finnish merchant fleet.

Section 2 – *Scope of application*

Subsidies to enhance the competitiveness of the manning costs of ships engaged in sea transport shall be granted from State funds in the manner provided in this Act.

Section 3 – *Definitions*

For the purposes of this Act:

- 1) *passenger ship* means a ship which may carry more than 12 passengers;
- 2) *cargo ship* means a ship that is not a passenger ship;
- 3) *tug or pusher craft* means a cargo ship intended for towing or pushing and which is mainly used for transportation;
- 4) *sea transport* means the maritime carriage of passengers or goods as well as towing or pushing; towing or pushing primarily performed in ports and assisting power-driven ships into harbour shall not constitute sea transport;
- 5) *passenger* means every person other than the master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship; however, children under the age of one year shall be excluded from the passenger complement;
- 6) *ship primarily engaged in foreign sea transport* means a ship which is engaged in sea transport between Finland and foreign ports or outside Finnish territorial waters, including transport via the Saimaa Canal, for more than half of its operational time during the calendar year;
- 6a) *ship primarily engaged in domestic sea transport* means a ship which is engaged in sea transport in Finnish territorial waters between Finnish ports for more than half of its operational time during the calendar year; (967/2008)
- 7) *subsidy year* means one calendar year;
- 8) *subsidy authority* means the Finnish Maritime Administration; and
- 9) *Register of Merchant Vessels* means the register kept by the subsidy authority of ships eligible to apply for the subsidy under this Act.

Chapter 2 – Register of Merchant Vessels

Section 4 – *Entry of a ship in the Register of Merchant Vessels*

- (1) Upon application, the subsidy authority shall enter the following types of ship contained in the Finnish Register of Ships in the Register of Merchant Vessels:
 - 1) a passenger ship, cargo ship, tug or pusher craft intended mainly for operations in foreign sea transport during the subsidy year; (967/2008)
 - 2) a cargo ship of 500 gross tonnage and upwards and surveyed for Baltic Sea trade, North Sea trade, European trade or worldwide trade and intended mainly for operations in domestic sea transport subject to international competition during the subsidy year; (967/2008)
 - 3) a tug or pusher craft of 300 gross tonnage and upwards and surveyed for Baltic Sea trade, North Sea trade, European trade or worldwide trade and intended mainly for operations in domestic transport subject to international competition during the subsidy year. (967/2008)
- (2) The application may be filed by the Finnish owner of the ship or by a Finnish employer engaging in shipping with a foreign owner's ship registered in Finland.
- (3) The keeper of the Register of Ships in the Åland Islands shall, upon application, enter in the Register of Merchant Vessels a ship entered in the Register of Ships in the Åland Islands, subject to the conditions laid down in this section.

Section 5 – *Removal of a ship from the Register of Merchant Vessels*

- (1) The subsidy authority shall, upon application or *ex officio*, remove a ship from the Register of Merchant Vessels if the ship no longer, other than temporarily, meets the conditions for entry in the Register of Merchant Vessels.
- (2) Prior to taking the decision to remove a ship from the Register of Merchant Vessels, the subsidy authority shall consult the ship's Finnish owner or the Finnish employer engaging in shipping with a foreign owner's ship registered in Finland, if the removal is due to a reason other than the withdrawal of the ship from the Finnish Register of Ships.
- (3) Prior to taking the decision to remove a ship from the Register of Merchant Vessels, the subsidy authority shall consult the keeper of the Register of Ships in the Åland Islands if the removal concerns a ship entered in the Register of Ships in the Åland Islands and is due to a reason other than the removal of the ship from the Finnish Register of Ships.

Chapter 3 – Labour law provisions applicable on a ship entered in the Register of Merchant Vessels

Section 6 – *Agreement through a collective agreement*

- (1) Finnish law shall be observed on a ship entered in the Register of Merchant Vessels unless otherwise provided.
- (2) Agreement in derogation to the provisions of the Seamen's Act (423/1978), the Seamen's Working Hours Act (296/1976), the Seamen's Annual Holidays Act (433/1984) or the Act on Cooperation within Undertakings (334/2007) may be reached through a collective agreement that is applied to the employment

relationships on a ship entered in the Register of Merchant Vessels. The associations entering into the collective agreement shall represent those groups of employees whose terms of employment are covered by the collective agreement. The collective agreement and its appendices shall lay out in detail the terms to be observed instead of the legislative provisions.

- (3) A provision in the collective agreement reducing benefits corresponding to employee benefits provided for in the above Acts and confirmed in international conventions binding on Finland or in European Community legislation shall be null and void and the provisions of international conventions or the European Community legislation shall be applied in its stead or, if this is not feasible, those legislative provisions through which the provisions of an international convention or European Community legislation have been implemented.
- (4) An employer bound by a collective agreement as referred to above in subsection 2 may apply the provisions of the collective agreement to employees not bound by such an agreement but to whose employment the collective agreement in other respects applies.

Section 7 – Standing of a foreign employees' association

In derogation from the provisions laid down in section 1(1) of the Collective Agreements Act (436/1946), a collective agreement to be observed in the employment relationships of a ship entered in the Register of Merchant Vessels may be concluded, providing that the relevant Finnish labour market parties have not concluded a collective agreement concerning the same work, by a foreign employees' association meeting the conditions laid down in the International Labour Organization's Convention concerning Freedom of Association and Protection of the Right to Organize (Treaty Series 45/1949) and the International Labour Organization's Convention concerning the Application of the Principles of the Right to Organize and to Bargain Collectively (Treaty Series 32/1951).

Section 8 – Labour law derogations concerning passenger ships

In regular scheduled traffic to Finland, section 6(2–4), and section 7 shall not apply to Finnish passenger ships allowed to carry more than 120 passengers.

Section 9 – Competent court in civil and criminal matters concerning employment

- (1) Civil and criminal matters concerning employment as referred to in this Act and arising therefrom shall be addressed and resolved by a maritime court as referred to in Chapter 21, sections 1 and 3 of the Maritime Act (674/1994).
- (2) Civil matters concerning collective agreements as referred to in this Act shall be heard and resolved by a labour court. However, agreement may be made through a collective agreement entered into with a foreign employees' association that a civil case concerning the terms of employment of an employee to whose employment the collective agreement shall apply may be resolved by a court in the home country of the employees' association.

Chapter 4 – Subsidy

Section 10 – *General conditions to granting the subsidy*

- (1) The subsidy authority shall grant the subsidy referred to in this Act if:
- 1) the ship has been entered in the Register of Merchant Vessels and it has met the conditions for inclusion in the Register of Merchant Vessels during the period for which the subsidy is sought;
 - 2) the ship's manning costs have, in the manner agreed between the labour market parties, been brought to a level that enables internationally competitive operations in sea transport, when the subsidy referred to in this Act is also taken into account;
 - 3) the ship has primarily operated in foreign sea transport during the subsidy year, or the ship referred to in section 4(1)(2) or (3) has primarily operated in domestic sea transport subject to international competition or in foreign sea transport during the subsidy year; (967/2008)
 - 4) the taxes and employer contributions of the seafarers working on the ship have been paid to Finland; and
 - 5) no other subsidies except those granted pursuant to this Act are paid during the subsidy period to reduce the ship's manning costs.
- (2) A passenger ship engaged in regular passenger services between ports in the European Community shall be granted the subsidy only in respect of citizens of the European Community's Member States and States in the European Economic Area.

Section 11 – *Amount of subsidy payable based on the seamen's income of a fully taxable seafarer*

Subsidy in respect of a fully taxable seafarer, in accordance with section 9 of the Income Tax Act (1535/1992), shall be paid in an amount equivalent to the following paid for the subsidy period:

- 1) the withholding tax withheld on the seamen's income referred to in section 74 of the Income Tax Act, which has been withheld according to the tax rate determined for seamen's income; however, no subsidy is paid to the extent that the withholding tax rate has been increased by virtue of section 17 of the Prepayment and Withholding Tax Act (1118/1996);
- 2) the employer's social security contribution;
- 3) the employer's share of the seamen's pension insurance contribution;
- 4) the employer's share of the unemployment insurance contribution;
- 5) the employer's share of the accident insurance contribution;
- 6) the employer's share of the group life insurance contribution; and
- 7) the employer's share of the voluntary personal accident insurance and personal supplemental insurance contribution.

Section 12 – *Amount of subsidy payable based on work performed aboard a ship by a seafarer subject to a limited tax liability to income tax*

- (1) Subsidy on the income received from a ship entered in the Register of Merchant Vessels by a seafarer subject to limited liability to income tax, in accordance with section 9 of the Income Tax Act, shall be paid in an amount equivalent to the following paid for the subsidy period:
- 1) tax at source; and

- 2) employer's social security contribution.
- (2) Subsection 2 has been repealed. (967/2008)

Chapter 5 – **Subsidy procedure**

Section 13 – *Subsidy period*

- (1) The subsidy periods run from 1 January to 30 June and from 1 July to 31 December. The subsidy year is the calendar year.
- (2) Upon application, the subsidy authority shall determine the subsidy period as one calendar month in respect of a passenger ship allowed to carry more than 120 passengers, provided that the granting of the subsidy is based on tax returns concerning monthly payments filed with the tax administration and payment vouchers issued by the tax administration accordant with these.

Section 14 – *Applying for the subsidy*

- (1) An application for the subsidy may be filed by the Finnish owner of a ship entered in the Register of Merchant Vessels or, if the owner is foreign, by the Finnish employer engaging in shipping with the ship. An application for the subsidy may also be filed by the Finnish owner of a ship entered in the Register of Merchant Vessels in the Åland Islands or, if the owner is foreign, by a Finnish employer engaging in shipping with the ship.
- (2) The subsidy application shall be made to the subsidy authority in writing. The application shall indicate the subsidy claimed and its grounds. The application shall be signed by the applicant. The applicant shall provide correct and adequate information on all the facts relevant to granting the subsidy. The applicant may also sign the application by electronic signature.
- (3) The application for the subsidy shall be made for each subsidy period through an application filed with the subsidy authority within four months of the end of each subsidy period.

Section 15 – *Payroll accounting*

The employer shall organise its payroll accounting in such a manner that it allows the determination, by ship and employee, of the amount of seamen's income and the withholding tax, tax at source, sickness insurance contribution and employer's social security contribution withheld and paid thereon, as well as the amounts of the employer contributions to seamen's pension insurance and other insurance schemes.

Section 16 – *Requisite information and reports*

- (1) The applicant shall ensure that the subsidy authority has at its disposal all the information concerning the ship and its operations necessary for determining the conditions for the subsidy and the amount of subsidy. At the request of the subsidy authority, an extract from the ship's log countersigned by the applicant shall be submitted for each subsidy period to confirm the operations of the ship.

- (2) The applicant shall forward to the subsidy authority copies of all returns filed with the tax administration as well as information on the breakdown between the employer's various ships of the items referred to and paid in the tax returns, and on the allocation of the payments to payments constituting the grounds for the subsidy and other payments.
- (3) For each subsidy period, the applicant shall supply the subsidy authority with a report on pension insurance contributions paid to the Seamen's Pension Fund during the subsidy period.
- (4) For each subsidy period, the applicant shall supply the subsidy authority with a ship-specific report issued by an insurance company on the pension contributions based on seamen's income, referred to in section 11, which have been paid during the subsidy period.

Section 17 – *Subsidy authority's right to obtain information*

- (1) Non-disclosure provisions and other restrictions on access to information notwithstanding, the subsidy authority is entitled to obtain:
 - 1) from the tax administration for purposes of determining and monitoring the amount of the subsidy referred to in this Act, the necessary information on returns filed with the tax administration and the payments made based thereon, as well as any tax information needed to conduct the monitoring performed by the subsidy authority as provided in this Act;
 - 2) from the Seamen's Pension Fund, the ship-specific information on pension contributions made to the Seamen's Pension Fund, for purposes of determining and monitoring the subsidy referred to in this Act;
 - 3) from Customs, the information on the ship's operations necessary for the purposes of determining and monitoring the amount of subsidy as referred to in this Act.
- (2) The subsidy authority shall be entitled to obtain the information referred to above in subsection 1 free of charge.

Section 18 – *Consultation of national labour market organisations*

- (1) Prior to deciding a matter, the subsidy authority shall consult the relevant national labour market organisations if it is considering refusing the subsidy in full or for the most part.
- (2) The subsidy authority may consult the relevant labour market organisations in consequence of an application for an advance ruling.
- (3) In this consultation, the provisions of the Act on the Openness of Government Activities (621/1999) shall be observed.

Section 19 – *Granting the subsidy*

- (1) The subsidy shall be granted upon application *ex post facto* on the basis of the information and reports referred to in sections 14, 16 and 17 when the general conditions for granting the subsidy as referred to in section 10 are fulfilled.

- (2) The conditions for granting the subsidy are provisionally examined in the context of the processing of an application concerning the subsidy period but resolved *ex post facto* for the full subsidy year.

Section 20 – *Advance ruling*

- (1) Upon application, the subsidy authority may issue an advance ruling on whether a ship, under the circumstances referred to in the application, can be entered in the Register of Merchant Vessels and whether the subsidy may be granted for the ship under this Act. The issue of an advance ruling is conditional upon the matter being of particular importance to the applicant's financial activities. The application shall give a detailed question on which the advance ruling is sought, and the information necessary to resolving the matter shall be provided.
- (2) An advance ruling shall be issued to remain in force for no longer than until the end of the subsidy year following its issue. The subsidy authority shall apply the advance ruling in the calendar year for which it was issued. The provisions of section 14 and elsewhere in this Act shall apply to the application for the type of subsidy to which the advance ruling pertains.
- (3) Advance ruling matters shall be dealt with as urgent matters.

Section 21 – *Subsidy recipient's duty to notify changes*

The Finnish owner of a ship entered in the Register of Merchant Vessels or the Finnish employer engaging in shipping with a foreign owner's ship registered in Finland shall without undue delay notify the subsidy authority of any changes which may affect the ship's remaining in or removal from the Register of Merchant Vessels, or changes to the conditions for granting the subsidy or the amount of the subsidy.

Section 22 – *Return and recovery of the subsidy*

- (1) If an *ex post* evaluation of the conditions to and amount of the subsidy reveals that the applicant has been paid an unwarranted subsidy, the unwarranted subsidy shall be recovered by the State of Finland:
 - 1) if the applicant has provided materially false, misleading or incomplete information in applying for entry in the Register of Merchant Vessels or for the subsidy;
 - 2) if the applicant has withheld information that has a material impact on the approval of the ship for the Register of Merchant Vessels or on receiving the subsidy;
 - 3) if the applicant, despite a request to that effect, has refused to provide material information, documents or other materials necessary for monitoring the administration of the Register of Merchant Vessels or for receiving the subsidy; or
 - 4) if the subsidy in other respects has been granted or paid on ungrounded or false grounds.
- (2) The provisions that have been laid down separately shall apply to the statute of limitations on claims. However, if the subsidy has been paid on ungrounded or false grounds as stated in subsection 1(4), an order to return the subsidy may be issued for at most the subsidy year in which the mistake was noticed and the year preceding. Recovery may be waived in part or in full if it would lead to a manifestly unreasonable outcome.

- (3) Interest corresponding to the effective base rate of the Bank of Finland increased by four percentage units shall be paid on the amount to be returned from the date of payment of the subsidy. If the amount to be returned is not paid by the deadline imposed, annual penalty interest as laid out in section 4 of the Interest Act (633/1982) shall be paid thereon.

Chapter 6 – **Miscellaneous provisions**

Section 23 – *Processing of information*

- (1) The provisions of the Personal Data Act (523/1999) shall apply to the processing of personal information as referred to in this Act and held by the authorities. The provisions of the Act on the Openness of Government Activities shall apply to the disclosure of such information.
- (2) The information referred to in this Act may be disclosed to and from the authorities also by means of a technical interface or by other electronic means. Electronic submission of an application and its appendices as well as other information requires that the applicant and subsidy authority agree in advance on the manner of submission.

Section 24 – *Non-disclosure obligation*

Any person who, in the performance of measures relating to duties under this Act, has become privy to information concerning the characteristics, personal circumstances or financial standing of another person may not disclose such information to a third party in violation of the Personal Data Act and the Act on the Openness of Government Activities.

Section 25 – *Safeguarding of information*

- (1) The subsidy authority shall keep the documents relating to entry in and removal from the Register of Merchant Vessels, advance rulings and subsidies in accordance with this Act in the manner provided in the Archives Act (831/1994). The aforementioned documents shall be kept by the subsidy authority for a period of ten years unless the National Archives Service has declared the documents to be kept permanently.
- (2) The period for keeping documents and information commences when the decision is issued or the case before the subsidy authority otherwise ceases to be pending.

Section 26 – *Charges made for decisions*

A charge in the manner laid down in the Act on Criteria for Charges Payable to the State (150/1992) and section 34 of the Act on the Openness of Government Activities shall be made for entry in and removal from the Register of Merchant Vessels, decisions in consequence of subsidy applications and advance rulings.

Section 27 – Request for rectification and appeal

- (1) A request for rectification may be made against a decision taken by the subsidy authority within thirty days of the service of the decision. The request for rectification shall be made to the subsidy authority.
- (2) A decision issued on a request for rectification may be appealed in the manner provided in the Administrative Judicial Procedure Act (586/1996).
- (3) In addition to the separate provisions concerning appealing, the subsidy authority may appeal a decision issued by an Administrative Court by virtue of this Act, if the Administrative Court has modified or reversed the decision of the subsidy authority.
- (4) Appeals against charges made by the subsidy authority under this Act shall be lodged in the manner provided in section 11 b of the Act on Criteria for Charges Payable to the State.

Section 28 – Enforcement

- (1) A decision taken by the subsidy authority may be enforced regardless of an appeal, unless the authority processing the request for rectification or the appellate authority prohibits or suspends the enforcement or stipulates otherwise in ruling on the enforcement.
- (2) A decision issued in a case concerning recovery may be enforced in the order provided under section 3 of the Act on the Collection of Taxes and Charges (706/2007).

Section 29 – Announcements and notifications

- (1) The subsidy authority shall make available for examination on its website the conditions for entry of ships in the Register of Merchant Vessels and of granting the subsidy.
- (2) The subsidy authority shall inform those entered in the Register of Merchant Vessels and eligible for the subsidy of the subsidy available for application well before the deadline for filing applications for each subsidy period.
- (3) The subsidy authority shall submit to the Ministry of Transport and Communications information on the subsidies paid pursuant to this Act and on the effects of the Act on the development of maritime transport.
- (4) Separate provisions will be laid down on the reporting to the European Commission and the coordination of subsidies required under the Community guidelines on State aid for maritime transport.
- (5) The subsidy authority shall provide other authorities with information on the subsidies paid pursuant to this Act in the manner separately provided.

Section 30 – Supervisory authority

- (1) Enforcement of this Act is supervised by the Ministry of Transport and Communications.

- (2) The subsidy authority shall monitor compliance with the conditions to entry in the Register of Merchant Vessels and the veracity of the conditions for granting the subsidy.

Section 31 – *Further provisions*

Further provisions may be laid down by a Decree of the Ministry of Transport and Communications on:

- 1) the procedure concerning subsidy applications and the provision of information as referred to in sections 14 and 16 of this Act;
- 2) granting the subsidy as referred to in section 19 of this Act; and
- 3) the subsidy recipient's duty to notify as referred to in section 21.

Section 32 – *Entry into force*

- (1) This Act enters into force on a date to be provided by Government Decree.
- (2) This Act applies to subsidies paid in respect of costs arising on and after 1 January 2008.
- (3) Measures necessary for the implementation of this Act may be undertaken before the Act's entry into force.
- (4) This Act repeals the Act on the Register of Merchant Vessels Engaged on International Voyages (1707/1991), issued on 30 December 1991, as amended.

Section 33 – *Transitional provisions*

- (1) The provisions in force at the time of the entry into force of this Act shall apply to subsidy applications pending prior to the entry into force of this Act.
- (2) Subsidies payable in accordance with the Act on the Register of Merchant Vessels Engaged on International Voyages shall be taken into account as subsidies already paid when granting subsidies under this Act payable for the same period of time.
- (3) In accordance with the Act on Temporary Exemption of Seamen's Income Earned on Certain Passenger Ships from Tax Withholding (625/2004), the amount of withholding tax remaining unpaid to the tax authorities shall be taken into account as subsidy already paid when determining the amount of subsidy under this Act for the period between 1 January 2008 and the date of entry into force of this Act.

The Act on the Amendment of the Act on Enhancing the Competitiveness of Ships engaged in Sea Transport (967/2008) entered into force on 15 September 2009.

Act 967/2008 applies to subsidies paid in respect of costs arising on and after 1 January 2009.