



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.07.1995
COM(95) 410 final

95/0219 (CNS)

Proposal for a
COUNCIL REGULATION (EC)
on aid to shipbuilding

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. Introduction

The current rules on state aid to shipbuilding are laid down in the Seventh Directive on Aid to Shipbuilding (Directive 90/684/EEC, as most recently amended by Directive 94/73/EC). The period of validity of the Directive, which as from 1 January 1995 has extended to the EEA, expires on 31 December 1995. New arrangements need to be established to comply with the Community's obligations under an international agreement, concluded within the framework of OECD, respecting normal competitive conditions in the commercial shipbuilding and repair industry, which is due to enter into force on 1 January 1996.

II. Existing Policy

The Community's current policy towards aid to shipbuilding, as enshrined in the Seventh Directive and its predecessor the Sixth Directive, was introduced primarily as a defensive instrument in the light of the particular difficulties the sector has faced for several years characterised by a serious imbalance between world supply and demand leading to depressed prices, aggravated by the unfair pricing practices of certain competitors and state subsidies and other indirect forms of support like home credit schemes. At the same time the aim has been to provide, in accordance with the aims of the internal market, a level playing field so far as intra-Community competition in shipbuilding is concerned by providing a common set of rules.

Overall that policy has largely achieved its aims, safeguarding the Community yards by maintaining Community shipbuilding activity in those segments where Community yards will remain competitive under normal market conditions and encouraging less competitive yards to undertake the necessary restructuring. Although the size of the Community's shipbuilding industry has declined over the years, a competitive industry remains of vital interest to the Community and contributes to its economic and social development.

In parallel with this approach the Community sought to negotiate a balanced international agreement to re-establish normal competitive conditions in the shipbuilding sector which would eliminate injurious competition. After nearly five years of negotiations such an agreement was reached last year within the framework of OECD. Since this agreement, which is due to enter into force on 1 January 1996, includes inter alia a strict aid discipline the Community needs to adapt its shipbuilding aid policy accordingly in order to meet its obligations under the agreement.

III. The OECD Agreement, in particular the regime applying to aids

The agreement will enter into force on 1 January 1996 and can be reviewed after 3 years.

There are two elements of the agreement which require Community implementing legislation: those relating to "antidumping" and to aids. As regards the former the Commission will be making a separate proposal to the Council for a regulation to implement the injurious pricing instrument at Community level to ensure in particular that Community shipbuilders are able to have full and effective recourse to its provisions. The latter will entail a Council Regulation putting into effect within the Community the provisions of the agreement.

Under the agreement all measures of support specifically provided, directly or indirectly, to commercial shipbuilding are prohibited except those expressly provided for. Aid is only allowed in certain limited circumstances as follows:

- aid for research and development;
- social aid related to closures;
- export credits for ships in accordance with the revised OECD Understanding on Export Credits for Ships which predated the agreement;
- domestic credits under equivalent terms and conditions.

Aid for restructuring is generally not allowed except for Korea and - within the Community - Belgium, Portugal and Spain.

IV. Commission Proposal

The attached proposal for a regulation is intended to give effect to these provisions. In addition it provides, like the Seventh Directive, for notification and monitoring arrangements so that the Commission can effectively ensure compliance with the rules and fulfil the reporting requirements under the agreement.

It is proposed that the regulation should have a duration of 3 years, ie up until 31 December 1998, when policy can be reviewed in the light of experience of operation of the agreement and prevailing market conditions.

V. Current Market Situation

The market situation remains difficult with capacity still well in excess of demand. However the latest data available to the Commission services show some signs of improvement in the overall market situation.

World and Community production in 1994 remained stable, with ships completed amounting to 12.5 million cgt and 2.6 million cgt respectively. Elsewhere in Western Europe, Finland, Norway and Sweden registered decreases. Japan and Korea increased their market shares to 41% and 16.6% respectively.

However in 1994 there was a further increase in new orders at the world level, totalling 16.753 million cgt, representing an increase of 15.3% compared with 1993 (which itself showed a 64.7% increase on the previous year) and the highest level ever recorded. However in the Community there was a slight decrease. New orders totalling 2.883 million cgt were obtained, which represents a reduction of 1.2%. Elsewhere in Western Europe, Finland, Norway and Sweden together experienced a reduction of some 10%. At world level, Japan, with an increase in orders of 42.2%, experienced the largest increase and maintained its lead. In Korea, which recorded an increase of 238.4% in 1993, there was a 16% reduction in new orders in 1994.

Moreover the world order book as at the end of 1994 had increased by 16.8% on 1993 to reach 28.9 million cgt, the highest level since the beginning of the 1980s. Within the Community the order book increased to 5.512 million cgt, an increase of 3.7% compared with the position as at 31 December 1993. This represented a share of the world order book of 19%, down 2.4% on 1993. The other Western European shipbuilders slightly increased their market share to 4.7%. Japan and Korea substantially increased their order books to 8 million cgt and 5.8 million cgt respectively, representing increases of 27.8% and 22.4% respectively compared with 1993 levels.

The upturn in orders was not however matched by a parallel increase in prices.

Nevertheless despite this somewhat mixed picture there are encouraging signs of a market upturn being maintained with the prospect of a continuing need for replacement vessels due to the old age of the world fleet and stricter safety and environmental protection requirements and the expected boost to world trade deriving from the GATT agreement. However at the same time there is concern about the adverse effect of planned substantial increases of capacity in Korea. In this respect the Commission will continue with its efforts to exert the necessary pressure, both on a bilateral and on a multilateral level, in order to find a solution to this problem.

VI. Conclusion

In the light of the above it is accordingly proposed that the Council adopts, after consultation of the European Parliament and the Economic and Social Committee, the attached proposal for a regulation. In order to avoid a legal vacuum, the Commission requests the Council to take a decision before the end of 1995.

Proposal for a
COUNCIL REGULATION (EC)
on aid to shipbuilding

THE COUNCIL OF THE EUROPEAN UNION

Having regard to the Treaty establishing the European Community, and in particular Articles 92(3)(e), 94, 113 and 228 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas Council Directive 90/684/EEC, as last amended by Directive 94/73/EC, will expire on 31 December 1995.

Whereas within the framework of the Organisation for Economic Co-operation and Development (OECD) an agreement⁽¹⁾ has been concluded between the European Community and certain third countries respecting normal competitive conditions in the commercial shipbuilding and repair industry,

Whereas that agreement should enter into force on 1 January 1996,

Whereas the agreement provides for the elimination of all direct shipbuilding aids except social aids related to closures; and aids to research and development within the limit of certain ceilings;

Whereas indirect measures of support to shipbuilding in the form of credit facilities and loan guarantees for shipowners are permitted by the agreement provided that these measures are in conformity with the OECD understanding on export credits for ships¹.

Whereas the agreement can be reviewed three years after it has come into force;

HAS ADOPTED THIS REGULATION

⁽¹⁾ (Official Journal of the European Communities C375 of 30 December 1994 - Proposal for a Council Decision on the conclusion of the Agreement respecting normal competitive conditions in the shipbuilding and repair industry)

GENERAL

Article 1

For the purposes of this Regulation the following definitions shall apply:

(a) "Shipbuilding"

means the building in the Community of the following self-propelled seagoing commercial vessels:

- vessels of not less than 100 gt used for the transportation of passengers and/or goods;
- vessels of not less than 100 gt for the performance of a specialised service (for example dredgers and ice-breakers, excluding floating docks and mobile offshore units);
- tugs of not less than 365 Kw;
- fishing vessels of not less than 100 gt for export outside the European Economic Area;
- unfinished shells of the above vessels that are afloat and mobile.

but excludes military vessels and modifications made or features added to other vessels exclusively for military purposes provided that any measures or practices taken in respect of such vessels, modifications or features are not disguised actions taken in favour of commercial shipbuilding inconsistent with this regulation.

(b) "Ship Repair"

means the repair or reconditioning in the Community of self-propelled seagoing commercial vessels as defined in (a);

- (c) "ship conversion" means the conversion in the Community of self-propelled seagoing commercial vessels, as defined in (a), of not less than 1000 gt on condition that conversion operations entail radical alterations to the cargo plan, the hull or the propulsion system;
- (d) "self-propelled seagoing" means that by means of its permanent propulsion and steering a vessel has all the characteristics of self-navigability on the high seas;
- (e) "OECD agreement" means the agreement respecting normal competitive conditions in the commercial shipbuilding and repair industry;
- (f) "aid" means State aid within the meaning of Articles 92 and 93 of the Treaty, including not only aid granted by the State itself but also that granted by regional or local authorities or other bodies and any aid elements contained in financing measures taken by Member States in respect of shipbuilding, conversion or repair undertakings which cannot be regarded as a genuine provision of risk capital according to standard investment practice in a market economy.

- (g) "related entity" means any natural or juridical person (i) who owns or controls a shipbuilder or (ii) is owned or controlled by a shipbuilder, directly or indirectly, whether through stock ownership or otherwise. Control is presumed to arise when a person or a shipbuilder owns or controls an interest of 25% in the other.

Article 2

1. Aid granted specifically, whether directly or indirectly, for shipbuilding, conversion and repair, as defined under this Regulation, financed by Member States or their regional or local authorities or through State resources in any form whatsoever may be considered compatible with the common market only if it complies with the provisions of this Regulation. This applies not only to undertakings engaged in such activities but also to related entities.
2. No aid granted pursuant to this Regulation may be conditional upon discriminatory practices as to products originating in other Member States.

CHAPTER II

COMPATIBLE MEASURES

Article 3

Aid for closures

1. Aid to cover the cost of measures for the exclusive benefit of workers who lose retirement benefits or who are made redundant or otherwise separated permanently from employment in the respective shipbuilding enterprise, when such assistance is related to the discontinuance or curtailment of shipyards, bankruptcy, or changes in activities away from shipbuilding may be considered compatible with the common market.
2. The costs eligible for such aid are, in particular:
 - payments to workers made redundant or retired before legal retirement age;
 - counselling services to workers made or to be made redundant or retired before legal retirement age including payments made by yards to facilitate the creation of small undertakings;
 - payments to workers for vocational retraining.

Article 4

Aid for research and development

1. Aid for research and development to the shipbuilding, conversion and repair industry may be considered compatible with the common market where this public assistance relates to:

- (i) fundamental research;
 - (ii) basic industrial research (provided that the aid intensity is limited to 50% of eligible costs);
 - (iii) applied research (provided that the aid intensity is limited to 35% of eligible costs);
 - (iv) development (provided that the aid intensity is limited to 25% of eligible costs).
2. The maximum allowable aid intensity for research and development carried out by small and medium sized shipbuilding enterprises (for the purposes of this regulation defined as enterprises with less than 300 employees whose yearly turnover does not exceed 20 mecus and which are not more than twenty-five per cent owned by a large company) shall be 20 percentage points higher than those specified at (ii) to (iv) in paragraph 1 of this Article.
3. For the purposes of this Article the following definitions apply to research and development:
- (a) Eligible costs shall be only those relating to:
 - (i) costs of instruments, material, land and buildings to the extent that they are used for the specific research and development project;
 - (ii) costs of researchers, technicians and other supporting staff to the extent that they are engaged in the specific research and development project;
 - (iii) consultancy and equivalent services including bought in research, technical knowledge, patents, etc;
 - (iv) overhead costs (infrastructure and support services) to the extent that they are related to the research and development project, on condition that they do not exceed 45 percent of the total costs of the project for basic industrial research and 20 per cent for applied research and 10 per cent for development;
 - (b) the term "fundamental research" means research activities independently conducted by higher education or research establishments for the enlargement of general scientific and technical knowledge, not linked to industrial or commercial objectives;
 - (c) "basic industrial research" is understood to mean original theoretical and experimental work whose objective is to achieve new and better understanding of the laws of science and engineering in general and as they might apply to an industrial sector or to the activities of a particular undertaking;
 - (d) "applied research" is understood to mean investigation or experimental work on the basis of the results of the basic research with a view to facilitating the attainment of specific practical objectives such as the creation of new products, production processes and services. It normally ends with the creation of a first prototype and does not include efforts whose principal aim is the design, development or testing of specific items of services to be considered for sale;

- (e) "development" is understood to mean work based on the systematic use of scientific and technical knowledge in a design, development, testing or evaluation of a potential new product, production processes or service or of an improvement of an existing product or service to meet specific performance requirements and objectives. This stage will normally include pre-production models such as pilot and demonstration projects but does not include industrial application and commercial exploitation;
- (f) aid for research and development specifically provided to the shipbuilding, conversion and repair industry includes, but is not limited to, the following cases:
- (i) research and development projects carried out by the shipbuilding, conversion or repair industry or research institutes controlled by or financed by this industry;
 - (ii) research and development projects carried out by the shipping industry or research institutes controlled by or financed by this industry when the project is directly related to shipbuilding or repair;
 - (iii) research and development projects carried out by universities, public and or independent private research institutes and other industrial sectors in collaboration with the shipbuilding industry;
 - (iv) research and development projects carried out by universities, public and/or independent private research institutions and other industrial sectors, when at the time the project is carried out, it is reasonably anticipated that the results will be of substantial specific importance for the shipbuilding, conversion and repair industry.
4. Information on the results of research and development is to be published promptly, at least annually.

Article 5

Indirect support measures

1. Support to shipowners or third parties in the form of officially supported loans and guarantees available as aid for the building or conversion but not repair of ships may be considered compatible with the common market provided that such measures comply with the OECD Understanding on Export Credits for Ships as set out in document C/WP6(94)6⁽²⁾, or any agreements which modify or replace it.
2. Aid related to shipbuilding and ship conversion granted as development assistance to a developing country may be deemed compatible with the common market if it complies with the terms laid down for that purpose in the Understanding referred to in paragraph 1 of this Article or with any later addendum or corrigendum to that Understanding.
3. Support granted by a Member State to its shipowners or to third parties in that state for the building or conversion of ships may not distort or threaten to distort competition between shipyards in that Member State and shipyards in other Member States in the placing of orders.

⁽²⁾ Official Journal C 375 of 30 December 1994, p. 38

Spain, Portugal, Belgium

Restructuring aid granted in Spain, Portugal and Belgium in the form of investment assistance and any assistance for social measures not covered under Article 3 and paid after 1 January 1996 may be considered compatible with the common market. Release of this aid must be subject to individual notification and prior approval by the Commission before 31 December 1996 and will be subject to the following maximum limits and payments deadlines:

	Aid Volume	Ultimate Payment Deadline
Spain	10 billion pesetas	31 December 1998
Portugal	5.2 million contos	31 December 1998
Belgium	1320 million Belgian francs	31 December 1997

Article 7

Other Measures

1. In extraordinary circumstances, and subject to Article 92 of the EC Treaty, other aids may be deemed compatible with the common market. If the Commission considers that this is the case, it is habilitated to request a derogation from the Parties Group under the provision of Article 5.5 of the OECD agreement.
2. For research and development projects related to safety and the environment, and subject to Article 92 of the EC Treaty, a higher aid intensity than foreseen in Article 4 paragraph 1 points (ii) to (iv) may be deemed compatible with the common market. If the Commission considers that this is the case, it is habilitated to request the approval of the project from the Parties Group under the provision of Annex I B 3. (2) of the OECD agreement.
3. Where any measures granted pursuant to this Regulation are subject of Dispute Panel Proceedings under Article 8 of the OECD agreement or, in the case of export credits, the subject of consultation mechanisms as provided by the OECD Understanding on Export Credits for Ships, the Community's position will be determined by the Commission after consultation of the special Committee set up under Article 113 of the EC Treaty.

CHAPTER III

MONITORING PROCEDURE

Article 8

1. In addition to the provisions of Article 93 of the Treaty, aid to shipbuilding and repair undertakings shall be subject to the special notification rules provided for in paragraph 2.

2. The following shall be notified to the Commission in advance by the Member States and authorised by the Commission before they are put into effect:
 - (a) any aid scheme - new or existing - or any amendment of an existing scheme covered by this Regulation;
 - (b) any decision to apply any generally applicable regional aid scheme to the undertakings covered by this Regulation in order to verify compatibility with Article 92 of the EC Treaty;
 - (c) any individual application of aid schemes in the case referred to in Article 5.2 or when specifically provided for by the Commission in its approval of the aid scheme concerned.

Article 9

1. For the Commission's monitoring of the implementation of the aid rules contained in Chapter II, Member States shall supply the Commission with:
 - (a) monthly reports on officially supported credit facilities granted for each shipbuilding and conversion contract by the end of the month following the month of signing each contract, in accordance with the annexed schedule 1;
 - (b) where Member States have schemes providing for official guarantees and insurance for ships, yearly reports including the annual results of the scheme, claims paid, income from premiums and fees, income from recoveries and any other appropriate information requested by the Commission;
 - (c) completion reports on each shipbuilding and conversion contract signed before 1 January 1996 by the end of the month following the month of completion in accordance with the annexed schedule 2;
 - (d) yearly reports - to be provided by 1 March of the year following the year subject to the report - giving details of the total financial support paid to each individual national shipyard during the previous calendar year, in accordance with the annexed schedule 3;
 - (e) in the case of shipyards able to build merchant ships over 5000 gt, yearly reports - to be provided not later than two months after the annual general meeting approves the shipyard's yearly report - giving publicly available information on capacity developments and on the structure of ownership in accordance with the annexed schedule 4;

Article 10

This Regulation shall apply from 1 January 1996 to 31 December 1998.

EUROPEAN COMMUNITY

REPORT ON SUPPORT TO SHIPOWNERS AND OTHER THIRD PARTIES FOR NEW BUILDING OR CONVERSION OF SHIPS

1. Name and nationality of company in receipt aid

2. Contract price

3. Credit granted

- Form (eg export credit, home credit etc..) :
- Volume :
- Repayment period :
- Frequency of payments :
- Interest rate

4. Guarantees granted

- Volume :
- Premium paid :
- Duration :
- Other terms and conditions :

5. Month of aid granting

6. New building or conversion contract (please specify which)

- Ship type and yard No :
- Deadweight (DWT) :
- Gross tonnage (GT) :
- Compensated gross tonnage (CGT) :
- Performing yard : - Country :
- Name :
- Completion/delivery date :

Contact for inquiries :

Date :

Position :

Signature :

EUROPEAN COMMUNITY

REPORT OF MERCHANT SHIP COMPLETIONS

Section 1 : Contracts details

1. New building/conversion		
2. Company	3. Yard	4. Yard No
5. Registered owner		
6. Holding owner		
7. Vessel's country of registration		
8. Date contract signed	9. Completion/delivery date	

Section 3 : Financial arrangements

	Currency	ECU (Prevailing rate)	% of contract price
14. Contract-price			
15. Estimated contract loss (if any)			
16. Contract-related aid granted to customer or ultimate owners :			
A. Granted to yard :			
(a) grants			
(b) credit facilities			
(c) specific fiscal concession			
(d) other support			
B. Granted to customer or ultimate owners :			
(a) grants			
(b) credit facilities			
(c) fiscal concession			
(d) other support			

Section 2 : Ship details

10. Type of vessel (by OECD category)	
11. Deadweight	
12. Gross tonnage (GT)	13. Compensated gross tonnage (CGT)
.....

Contract for inquiries : Date :

Position : Signature :

EUROPEAN COMMUNITY

REPORT OF COMPANY FINANCIAL SUPPORT

Name of company.....

	Eligible costs (including for (1) details of numbers of workers involved)	Aid received		Legal basis (including date of approval by Commission)
		Form	Amount	
1. Social aids : (a) Redundancy payments (b) Early-retirement payments (c) Reconversion payments (d) Vocational retraining 2. Research and development aid (a) Fundamental research (b) Basic industrial research (c) Applied research (d) Development 3. Generally applicable regional aids (please specify nature of support) - -				

Contact for inquiries :.....

Date :

.....

Position :.....

Signature :.....

Schedule 4

REPORT ON YARDS ABLE TO BUILD MERCHANT SHIPS OVER 5000 GT

1. Name of the company ()
2. Total available capacity () (cgt)
3. Data on the dock/berth

Dock or berth	Maximum size of ships (gt)
()	()
()	()
()	()
4. Description of any plans for future capacity expansion or reduction
5. Structure of ownership (capital structure, share of direct and indirect public ownership)
6. Financial statements (balance sheet, profit and loss statement, including, if available, separate accounts covering the shipbuilding activities of holding)
7. Transfer of public resources (including debt guarantees, bond infusions etc...)
8. Exemptions from financial or other obligations (including tax privileges, etc...)
9. Capital contribution (including equity infusions, withdrawal of capital dividend, loans and their refunding, etc...)
10. Debt write-off
11. Transfer of losses

ISSN 0254-1475

COM(95) 410 final

DOCUMENTS

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Catalogue number : CB-CO-95-448-EN-C

ISBN 92-77-92881-6

Office for Official Publications of the European Communities

L-2985 Luxembourg