COUNCIL DIRECTIVE

of 21 December 1990

on aid to shipbuilding

(90/684/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 92 (3) (d) and 113 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Wheres Council Directive 87/167/EEC of 26 January 1987 on aid to shipbuilding (4) will expire on 31 December 1990;

Whereas the aid policy laid down in that Directive has in general met the objectives set out at its introduction;

Whereas although since 1989 there have been significant improvements in the world market for shipbuilding, a satisfactory equilibrium between supply and demand has still not been established and the price improvements which have taken place are still insufficient in the overall context to restore a normal market situation within the sector, allowing prices to reflect full production costs and a reasonable return on invested capital;

Whereas the positive international trend is likely to lead to a normalization of the market, provided the consequences of the Gulf crisis are faced properly and the reasons behind the symptoms of crisis in the world economy are understood;

Whereas, parallel to his market amelioration, international efforts are being deployed within the Organization for Economic Cooperation and Development (OECD) framework to reach a multilateral agreement between the world's most important shipbuilding nations on a rapid phasing-out of all direct and indirect public support measures to shipbuilding, ship conversion and ship repair and of other obstacles to re-establishing normal and fair competition conditions in the sector;

Whereas this agreement must ensure fair competition at an international level among shipyards through a balanced and equitable elimination of all existing impediments to normal competition conditions and must provide a suitable instrument for counteracting all illegal practices and forms of assistance inconsistent with the agreement;

Whereas the provisions of this Directive are without prejudice to the amendments necessary to comply with international obligations entered into by the Community;

Whereas a competitive shipbuilding industry is of vital interest to the Community and contributes to its economic and social development by providing a substantial market for a range of industries, including those using advanced technology; whereas it contributes also to the maintenance of employment in a number of regions, including some which are already suffering a high rate of unemployment; whereas this is also true of ship conversion and ship repair;

Whereas a complete abolition of aid to the sector is still not possible in view of the present market situation and in view of the need to encourage restructuring in many yards; whereas a tight and selective aid policy should be continued in order to support the present trend in production towards more technologically-advanced ships and in order to ensure fair and uniform conditions for intra-Community competition; whereas such a policy constitutes the most appropriate approach in terms of ensuring the maintenance of a sufficient level of activity in European shipyards and, thereby, the survival of an efficient and competitive European shipbuilding industry;

Whereas the basic aid policy laid down in Directive 87/167/EEC, differentiating between, on the one hand, production aid based on a common ceiling and, on the other, restructuring aid supporting desirable structural changes, remains the most appropriate way of ensuring that the industry is competitive in the long term;

Whereas, although it is proposed to treat ship conversion in the same way as shipbuilding to a certain extent, aid to the ship-repair sector should not be permitted, in view of the continuing overcapacity in this sector, except for investments, closure and research and development aid;

(1) OJ No C 223, 7. 9. 1990, p. 4.
(2) Opinion delivered on 23 November 1990 (not yet published in the Official Journal).
(3) OJ No C 332, 31. 12. 1990.
(4) OJ No L 69, 12. 3. 1987, p. 55.

Whereas there is every reason, for the sake of transparency and equity, to continue to include in the present aid policy indirect aid granted to shipbuilding through investment aid to shipowners for the building and conversion of ships;

Whereas the reduced level of aid acceptable for ship conversion and for small specialized vessels, for which the competition is mainly intra-European, should be applied, based on experience, to the largest possible section of this market;

Whereas every effort should be made to encourage the introduction of high-technology vessels in Community yards;

Whereas, since increased efficiency is a principal objective pursued by this Directive, the yearly review of the production aid ceiling should always aim at its progressive reduction;

Whereas it should be ensured that investment aid is granted only under certain limited conditions;

Whereas it is of vital importance for the restoration of a healthy shipbuilding industry in the long term that the Community, together with the main shipbuilding nations effectively ensures that structural contractions obtained inside its territory through the application of its aid policy remain irreversible as long as an adequate balance between supply and demand has not been achieved;

Whereas the transitional period accorded to Spain and Portugal and to the territory of the former German Democratic Republic will expire on 31 December 1990;

Whereas, however, as the stage of restructuring of the Spanish shipbuilding industry has still not reached a level where it is competitive with the other Member States of the Community, a specific further two-year restructuring programme should be carried out while exemption from the production aid ceiling should be allowed for 1991;

Whereas a short-term financial restructuring of the shipbuilding industry in Greece is necessary in order to enable its public owners to restore its competitiveness by selling it off to new owners;

Whereas the efficiency of the present aid policy and confidence in it can only be obtained by close and timely monitoring by the Commission of Member States' implementation of the aid rules; whereas, therefore, compliance by Member States with their reporting obligations, on which such a monitoring system is based, should be secured by providing for the suspension of all outstanding payments of aid already approved until all due reports have been received by the Commission; whereas this provision must also apply to the non-transmission of reports relating to aid schemes which have already been authorized,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL

Article 1

For the purpose of this Directive the following definitions shall apply:

(a) 'shipbuilding':

means the building in the Community of the following metal-hulled sea-going vessels:

— merchant ships for the carriage of passengers and/or cargo, of not less than 100 GRT,

— fishing vessels of not less than 100 GRT,

— dredgers or ships for other work at sea of not less then 100 GRT excluding drilling platforms,

— tugs of not less than 365 kW;

(b) 'ship conversion':

means the conversion in the Community of metal-hulled sea-going vessels, as defined in (a), of not less than 1 000 GRT, on condition that conversion operations entail radical alterations to the cargo plan, the hull or the propulsion system or the passenger accommodation;

(c) 'ship repair':

means the repair of the vessels referred to in (a):

(d) '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 and any aid elements contained in the financing measures taken by Member States in respect of the shipbuilding or ship repair undertakings which they directly or indirectly control and which do not count as the provision of risk capital according to standard company practice in a market economy.

Such aid may be considered compatible with the common market provided that it complies with the criteria for derogation contained in this Directive;

(e) 'contract value before aid':

means the price laid down in the contract plus any aid granted directly to the shipyard.

Article 2

No aid granted pursuant to this Directive may be conditional upon discriminatory practices as to products originating in other Member States.

Article 3

Aid to shipowners

1. All forms of aid to shipowners or to third parties which are available as aid for the building or conversion of ships shall be subject to the notification rules in Article 11.

This aid shall include credit facilities, guarantees and tax concessions granted to shipowners or third parties for the purposes referred to in the first subparagraph.

2. The grant equivalent of the aid shall be subject in full to the rules set out in Article 4 and the monitoring procedures laid down in Article 12, where the aid is actually used for the building or conversion of ships in Community shipyards.

3. Aid granted by a Member State to its shipowners or to third parties in that State for the building or conversion of ships may not lead to distortions of competition between national shipyards and shipyards in other Member States in the placing of orders.

4. These provisions shall be without prejudice to changes in the Community rules on aid to shipowners provided that observance of the principle of transparency of aid for shipbuilding and ship conversion is ensured.

CHAPTER II

OPERATING AID

Article 4

Contract-related production aid

1. Production aid in favour of shipbuilding and ship conversion may be considered compatible with the common market provided that the total amount of aid granted in support of any individual contract does not exceed, in grant equivalent, a common maximum ceiling expressed as a percentage of the contract value before aid, hereinafter referred to as the ceiling.

2. The ceiling shall be fixed by the Commission with reference to the prevailing difference between the cost structures of the most competitive Community yards and the prices charged by their main international competitors with particular regard to the market segments in which the Community yards remain relatively most competitive.

However, the Commission shall pay particular attention to ensuring that the aid for the building of small specialized vessels, a market segment normally served by small yards, in particular small ships of a contract value of less than ECU 10 million and for which the competition is mainly inter-European, is kept at the lowest possible level, nevertheless allowing for the particular situation in Greece.

This provision shall also apply to all types of ship conversion, irrespective of the value of the contract.

3. The ceiling shall be reviewed every 12 months, or sooner if warranted by exceptional circumstances, with the aim of progressively reducing the ceiling. In its review of the ceiling, the Commission shall also ensure that there are no undue concentrations of shipbuilding activities in specific market segments to an extent contrary to Community interests. The aid ceiling applicable to a contract shall be that in force at the date of signature of the final contract. However, this rule shall not apply in respect of any ship delivered more than three years from the date of signing of the final contract. In such cases, the ceiling applicable to that contract shall be that in force three years before the date of delivery of the ship.

The Commission may grant an extension of the three-year delivery limit laid down in the first subparagraph when this is found justified by the technical complexity of the individual shipbuilding project concerned or by delays resulting from unexpected disruptions of a substantial and defensible nature in the working programme of a yard.

4. The ceiling shall apply not only to all forms of production aid — whether under sectoral, general or regional aid schemes — granted directly to the yards but also to the aid covered by Article 3 (2).

5. The combined effect of aid under the various aid schemes applied shall in no case exceed the ceiling fixed according to paragraph 2; the grant of aid in individual cases shall not necessitate prior notification to, or authorization from, the Commission.

However, where there is competition between yards in different Member States for a particular contract, the Commission shall require prior notification of the relevant aid proposals at the request of any Member State. In such cases, the Commission shall adopt a position within 30 days of notification; such proposals may not be implemented before the Commission has given its authorization. By its decision in such cases the Commission shall ensure that the planned aid does not affect trading conditions to an extent contrary to the common interest.

6. Aid in the form of credit facilities for the building or conversion of vessels complying with the Organization for Economic Cooperation and Development (OECD) Council resolution of 3 August 1981 (Understanding on Export Credits for Ships) or with any agreement replacing the resolution shall not be counted within the ceiling. Such aid may be considered compatible with the common market provided that it complies with the abovementioned resolution or any agreements which replace it.

7. Aid related to shipbuilding and ship conversion granted as development assistance to a developing country shall not be subject to the ceiling. It may be deemed compatible with the common market if it complies with the terms laid down for that purpose by OECD Working Party No 6 in its Agreement concerning the interpretation of Articles 6 to 8 of the Understanding referred to in paragraph 6 of this Article or with any later addendum or corrigendum to the said Agreement.

The Commission must be given prior notification of any such individual aid proposal. It shall verify the particular development content of the proposed aid and satisfy itself that it falls within the scope of the Agreement referred to in the first subparagraph.

Article 5

Other operating aid

1. Aid to facilitate the continued operation of shipbuilding and ship conversion companies, including loss compensation, rescue aid and all other types of operating aid not directly supporting particular restructuring measures covered in Chapter III, may be deemed compatible with the common market provided that such aid together with production aid allocated directly to individual shipbuilding and ship conversion contracts in accordance with Article 4 (4) does not exceed the ceiling expressed as a percentage of the aid recipient's annual turnover in shipbuilding and ship conversion.

2. It shall be incumbent on the Member States to furnish evidence of the extent to which the turnover and losses of the recipient of the aid result, on the one hand, from shipbuilding and ship conversion and, on the other, from its other activities, if any, and, if some of the aid is intended to offset losses or expenditure arising from the restructuring measures referred to in Chapter III, to identify and specify those measures.

CHAPTER III

RESTRUCTURING AID

Article 6

Investment aid

1. Investment aid, whether specific or non-specific, may not be granted for the creation of new shipyards or for investment in existing yards unless it is linked to a restructuring plan which does not involve any increase in the shipbuilding capacity of the yard or unless it is directly linked to a corresponding irreversible reduction in the capacity of other yards in the same Member State over the same period. Such aid may not be granted to ship repair yards unless linked to a restructuring plan which results in a reduction in the overall ship repair capacity of the Member State concerned. In this context the Commission may take into account capacity reductions carried out in the immediately preceding years.

2. Paragraph 1 shall not apply to the opening of a new shipyard in a Member State which otherwise would have no shipbuilding facilities or to investments in a Member State's only existing yard, provided that the effect of the yard in question on the Community market is minimal.

3. In accordance with paragraph 1, investment aid may be deemed compatible with the common market provided that:

— the amount and intensity of such aid are justified by the extent of the restructuring involved,

— it is limited to supporting expenditure directly related to the investment.

4. In examining the aid referred to in paragraphs 1 and 3, the Commission shall take account of the extent of the contribution of the investment programme concerned to such Community objectives for the sector as innovation, specialization, working conditions, health, safety and the environment.

Article 7

Aid for closures

1. Aid to defray the normal costs resulting from the partial or total closure of shipbuilding or ship repair yards may be considered compatible with the common market provided that the capacity reduction resulting from such aid is of a genuine and irreversible nature.

In order to establish the irreversible nature of aided closures, the Member State concerned shall ensure that the closed shipbuilding and ship repair facilities remain closed for a period of not less than five years.

Within this five-year period, the closed site may not be used for activities in anticipation of a return to shipbuilding after the expiry of the five-year period.

If, after a period of five years but before the 10th anniversary of the closure, a Member State wishes to reopen a closed shipbuilding or ship repair facility, it must obtain the Commission's prior approval.

The Commission's decision will be taken with reference both to the currently existing worldwide balance between supply and demand and to whether it is envisaged that aid is to be granted for reopening the facilities.

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,

— expenditure incurred for the redevelopment of the yard, its buildings, installations and infrastructure for use other than that specified in Article 1 (a), (b) and (c),

— in the event of total closure of a yard, the residual book value of its installations (ignoring that portion of any revaluation since 1 January 1982 which exceeds the national inflation rate).

3. The amount and intensity of aid must be justified by the extent of the restructuring involved, account being taken of the structural problems of the region concerned and, in the case of conversion to other industrial activities, of the Community legislation and rules applicable to the new sector concerned.

Article 8

Aid for research and development

1. Aid to defray expenditure by shipbuilding and ship repair undertakings for research and development projects may be considered compatible with the common market.

2. For the purposes of this Directive, the eligible costs shall be only those relating to fundamental research, basic industrial research and applied research and development, all as defined by the Commission in Annex I to the Community framework for State aids for research and development [1], excluding those related to industrial application and commercial exploitation of the results.

CHAPTER IV

SPAIN AND GREECE

Article 9

1. With the exception of the second subparagraph of Article 4 (5), Chapter II of this Directive shall not be applicable to Spain until 1 January 1992.

2. During 1991, operating aid for shipbuilding and ship conversion in Spain may be considered compatible with the common market provided that:

— Spain's shipbuilding industry carries out, in addition to the 1987 to 1990 restructuring programme and according to the timetable set, all the restructuring measures laid down in the supplementary restructuring plan for 1991 and 1992 submitted to the Commission by the Spanish Government,

— the Spanish Government, jointly with the Commission, mandates an independent consultancy to monitor the implementation, according to the timetable, of the aforementioned restructuring programme; this consultancy shall supply six-monthly reports to the Commission and the Spanish authorities containing details of the progress that the sector has made, in compliance with the restructuring plan, in order to be capable of operating with the same aid level as the other Member States,

— where the six-monthly reports give reason to doubt that the shipbuilding industry will attain the planned level of competitiveness, the Spanish Government will take measures to reinforce the restructuring of the sector which are accepted by the Commission as capable of rectifying the situation,

— operating aid is reduced from the 1990 level.

Article 10

1. Article 5 of this Directive shall not be applicable to Greece until 1 January 1992.

2. During 1991, operating aid for shipbuilding, ship conversion and ship repair not related to new contracts may be considered compatible with the common market if granted for the financial restructuring of yards in connection with a systematic and specific restructuring programme linked to the disposal by sale of the yards.

3. Notwithstanding the obligation to dispose of the yards by sale referred to in paragraph 2, the Greek Government shall be allowed to maintain a 51 % majority holding in one of the yards if justified by defence interests.

CHAPTER V

MONITORING PROCEDURE

Article 11

1. In addition to the provisions of Articles 92 and 93 of the Treaty, aid to shipbuilding, ship conversion and ship

[1] OJ No C 83, 11. 4. 1986, p. 2.