COUNCIL DIRECTIVE

of 26 January 1987

on aid to shipbuilding

(87/167/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),

Whereas Council Directive 81/363/EEC of 28 April 1981 on aid to shipbuilding (4), as last amended by Directive 85/2/EEC (5), will expire on 31 December 1986;

Whereas, although progress had been made in the structural adaptation of the Community's shipbuilding industry since the adoption of Directive 81/363/EEC (the Fifth Directive), the world crisis in shipbuilding continues to deepen together with the imbalance between shipbuilding capacity and demand, causing prices to fall to a level which is often below the fixed cost of European shipyards; whereas the price problem has been aggravated by the development of very cost-competitive capacity in third countries particularly in the production of standardized vessels in series;

Whereas the recovery in demand envisaged in the Fifth Directive has not taken place, given that the demand outlook for shipbuilding is not encouraging and in view of the fact that any resumption in demand is likely to lead immediately to an expansion of production facilities in certain third countries;

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 it is now clear that the sector is suffering from a fundamental structural crisis, rather than a cyclical problem of demand, in which it would be short-sighted to continue to respond to the aggravation of the crisis by multiplying the volume of operating aids which tend to increase the segregation of the internal market and constitute a continuing drain on the scarce budgetary resources of the Member States without inducing any lasting improvement in the competitiveness of the Community's shipbuilding industry;

Whereas, in view in particular of the cost differences which exist for most categories of ship in comparison to shipyards in some third countries, the immediate abolition of aid to the sector may not be possible in view of the need to encourage restructuring in many yards; whereas a tighter and more selective aid policy is nevertheless necessary 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 these considerations call for a differentiated approach with regard to the various types of aid at present granted by Member States; whereas a level of production aid which is geared towards supporting production where the Community's cost disadvantage is lowest and where there is a real possibility of restoring long-term competitiveness seems to offer the most appropriate approach in response to the abovementioned objectives of improving competitiveness and reducing intra-Community distortions in trade; whereas this level of aid should be attained by means of a common maximum ceiling to be revised periodically after consultation with the Member States and on the basis of an independent expert study

(1) OJ No C 281, 7. 11. 1986, p. 4.
(2) OJ No C 7, 12. 1. 1987.
(3) Opinion delivered on 16 December 1986 (not yet published in the Official Journal).
(4) OJ No L 137, 23. 5. 1981, p. 39.
(5) OJ No L 2, 3. 1. 1985, p. 13.

which takes due account of the expected long-term development of the shipbuilding industry so as to ensure both the optimal activity levels justifiable on economic grounds and the continuation of structural adjustment; whereas, since increased efficiency is a principal objective pursued by the premises of this Directive, the yearly review of the production aid ceiling should always aim at its progressive reduction; whereas it is necessary, in order to avoid discrimination, to make all forms of operating aid subject to the common maximum ceiling, including loss compensation and such aid as is granted indirectly through third persons; whereas, in order to permit all Member States to compete equally and in view of the persistent structural disparities of yards in the different Member States, it may be necessary to authorize restructuring aid to enable desirable structural changes to be carried out provided that they do not lead to increases in capacity; whereas, although it is proposed to treat ship conversion in the same way as shipbuilding, it is not appropriate to permit aid to the ship-repair sector in view of the continuing overcapacity in this sector, except for closure and research and development aid;

Whereas the restructuring process in Spain and Portugal is less advanced than in the other Member States and the immediate application of the common maximum ceiling for production aid may cause some difficulties in these two Member States, particular arrangements should be allowed to enable them gradually, after a further period of restructuring, to comply with the aid regime applicable to the Community as a whole;

Whereas, in order to ensure full transparency, which is a vital element in assuring the proper functioning of a Community aid system both in respect of operational aids and burden-sharing with regard to restructuring efforts, it will be necessary to strengthen the notification rules, including notification of aid to shipowners for the building or conversion of ships, together with the *a posteriori* reporting obligations of Member States as regards actual aid payments and the achievement of restructuring objectives;

Whereas the reductions in world shipping capacities should be made in such a way as to cause the least possible damage and to be as fair as possible;

Whereas additional measures should be adopted in order to alleviate the social and regional consequences of the restructuring of the shipbuilding sector;

Whereas Community measures should also be adopted in order to improve demand for new ships from Community shipyards,

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 than 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 10.

These aids 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 these aids shall be subject in full to the rules set forth in Article 4 and the monitoring procedures laid down in Article 11, where these aids are 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 entirely without prejudice to any future Community rules on aid to shipowners.

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 regard to ensure that the aid for the building of small specialized vessels, a market segment normally served by small yards, in particular small ships costing less than 6 million ECU, and for which the competition is mainly inter-European, is kept at the lowest possible level, nevertheless allowing for the particular situation in Greece.

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.

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 must in no case exceed the ceiling fixed according to paragraph 2; the granting 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 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.

Prior notification of any such individual aid proposal must be given to the Commission. The Commission 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 preceding subparagraph.

Article 5

Other operating aid

1. Aids to facilitate the continued operation of shipbuilding and ship conversion companies, including loss compensation, rescue aid and all other type of operating aid not directly supporting particular restructuring measures covered in Chapter III, may de 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 if such aid would be likely to increase the Member States' shipbuilding capacity.

Such aid may not be granted for ship repair unless linked to a restructuring plan which results in an overall reduction in the 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 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.

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 PORTUGAL

Article 9

1. Chapter II of this Directive shall be applicable neither in Spain nor, subject to paragraph 3 of this Article, in Portugal.

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

— Spain's shipbuilding industry has undertaken a systematic and specific restructuring programme, including capacity reductions, which can be considered capable of allowing it, within four years, to operate competitively,

— the aid is being progressively reduced.

3. The Portuguese Republic will be subject to all the provisions of this Directive. However, Portugal may, at any time before 31 December 1987 with immediate effect, or at the latest by 29 February 1988, with effect from 1 January 1988, opt for being exempted from the rules laid down in Chapter II either generally or as regards certain yards. Should Portugal choose this option, operating aid for shipbuilding and ship conversion may be considered compatible with the common market provided that:

— the shipbuilding industry or — should only certain yards be involved, those yards — has undertaken a systematic and specific restructuring programme, aiming at capacity reductions, which can be considered capable of allowing it, within four years, to operate competitively,

— the aid is progressively reduced.

CHAPTER V

MONITORING PROCEDURE

Article 10

1. In addition to the provisions of Articles 92 and 93 of the Treaty, aid to shipbuilding, ship conversion and ship repair undertakings covered by this Directive 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 authorized 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 Directive;

(b) any decision to apply any general or regional aid scheme to the undertakings covered by this Directive;

(c) any individual application of aid schemes in the cases referred to in the second subparagraph of Article 4 (5) and in Article 4 (7) or when specifically provided for by the Commission in its approval of the aid scheme concerned.

Article 11

1. For the Commission's monitoring of the implementation of the aid rules contained in Chapters II and III, Member States shall supply the Commission for its exclusive use with:

— current reports on each shipbuilding and ship conversion contract at the time of ordering and completion containing details of the financial contract support, in accordance with the form set out in the annexed schedule 1,

— six-monthly reports — to be provided by 1 October and 1 April in respect of the preceding half calendar years — on aid granted to shipowners, in accordance with the form set out in the annexed schedule 2,

— yearly reports giving details of the annual results of, and total financial support granted to, each individual national shipyard which has received aid, in accordance with the form set out in the attached schedule 3,

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