COMMISSION

COMMISSION DECISION
of 25 April 2001
on State aid granted by France to the shipyard ACHCN

(notified under document number C(2001) 1143)

(Only the French text is authentic)

(Text with EEA relevance)

(2002/132/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having regard to Council Regulation (EC) No 1540/98 of 29 June 1998 establishing new rules on aid to shipbuilding [1],

Having regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 of the Treaty, and in particular Article 7 thereof [2],

Having called on the interested parties to submit their comments pursuant to that Article [3],

Whereas:

I. PROCEDURE

(1) At the beginning of 1998, following persistent and alarmist reports on the situation at Ateliers et Chantiers du Havre Constructions Navales (hereinafter ACHCN), the Commission sent the French authorities a request for information, initially by letter dated 12 June 1998. This request was answered with a holding letter. Eventually, in October, following another request from the Commission, the French authorities sent a reply by letter dated 30 November 1998.

(2) The information stated that ACHCN had not been in control of the industrial process and had been unable to assess the financial impact of the difficulties, which had prompted the authorities to release additional emergency aid in order to ensure that the orders were completed. The total amount of aid that the French Government was preparing to grant ACHCN was estimated at FRF 1 868 million.

(3) By letter dated 4 February 1999, the Commission informed France of its decision to initiate proceedings under Article 88(2) of the EC Treaty in respect of the aid.

(4) The Commission decision to initiate proceedings was published in the *Official Journal of the European Communities*. The Commission invited interested parties to submit their comments on the aid in question.

II. BACKGROUND

(5) In carrying out an order for three chemical tankers obtained from Stolt Nielsen in 1995 for a total amount of FRF 1 126 million, the shipyard ACHCN encountered serious difficulties at the beginning of 1997. The firm had hoped to overcome its organisational difficulties by reducing its workforce by 15 % and cutting capacity by reducing the size of its building berths. At the financial level, cash flow was to have been maintained by the immediate release by the French Government of aid for the order for the three chemical tankers, pursuant to Article 4 of Council Directive 90/684/EEC of 21 December 1990 on aid to shipbuilding [4] in force at the time, and the aid provided for in the plan for upgrading the French shipbuilding industry, approved by the Commission in July 1995. In addition, aid to cover the social aspects of the restructuring was to have been granted, following a notification in February 1997 which the Commission approved in December 1997.

[1] OJ L 202, 18.7.1998, p. 1.
[2] OJ L 83, 27.3.1999, p. 1.
[3] OJ C 113, 24.4.1999, p. 7.
[4] OJ L 380, 31.12.1990, p. 27.

(6) The three aid packages for which the shipyard was eligible at the time of the order, i.e. at the end of 1995, amounted to a total of FRF 318 million, broken down as follows:

(i) contract-related aid: FRF 111,4 million (9 % of contract price before aid);

(ii) aid to upgrade French shipyards, authorised by the Commission in July 1995: FRF 207,5 million.

There was also restructuring aid of FRF 21,8 million, provided that it was allocated to the social plan.

III. **DESCRIPTION**

(7) In initiating the Article 88(3) procedure in January 1999, on the grounds that the shipyard estimated that its losses on the order would be FRF 1 868 million and that the loss would be covered by public resources well in excess of the amounts already authorised by it, the Commission considered that such aid constituted operating aid not offset by any factor that could have justified it under the provisions in force on aid to shipbuilding.

(8) The Commission asked the French authorities to provide, in addition to their comments, the following information:

(i) a complete breakdown of the company accounts, including all aid payments made since the signing of the contract with Stolt Nielsen;

(ii) a copy of the contract in question;

(iii) details of the construction of the last two tankers in terms of value and progress of work.

IV. **COMMENTS FROM THE FRENCH AUTHORITIES**

(9) The French authorities supplied detailed company accounts for the years up to and including 1997, accounts payable at 30 June 1999 and a copy of the contracts and their amendments. As regards the progress of work on the tankers, the first was being completed, the hull of the second was 80 % completed and only a few components of the third had been assembled.

(10) In their comments, the French authorities detailed the events that had resulted in ACHCN not being in control of the industrial process or the financial position. In essence, the shipyard, despite having considerable know-how in the field of shipbuilding, had been unable to meet an overly ambitious challenge, having launched itself into building a type of vessel of which it had no experience. In addition to the lack of experience there had been external problems such as delays in supplies of steel sheet and quality specifications imposed by the shipowner with which the yard had never previously had to deal.

(11) The authorities considered, however, that there was no early warning of a subsequent deterioration, a view supported by the accounts payable which show that at the end of 1996 the yard was still in control of the situation and, even in 1997, when the restructuring plan referred to in recital 5 was notified, productivity gains at the yard should have helped to restore the situation since the building delays could be attributed to temporary hitches. They also stated that their intervention had been intended to prevent the sudden bankruptcy of ACHCN which could have caused serious social unrest, given the yard's importance to the industrial fabric of Le Havre.

(12) As the situation had altered since the French authorities' first reply to the Commission in November 1998, they also supplied the following information:

(i) the first vessel, which should have been delivered originally in July 1997, a deadline which was then postponed by agreement to 31 October 1998, was eventually delivered only in June 1999. Because of the delay, the owner was able to apply the rejection clause. In the absence of another buyer, the price paid was the current market price at the time of delivery, i.e. USD 53 million instead of the contract price of USD 73 million;

(ii) as regards the other two vessels, the yard decided in January 1999 to halt the construction of the third tanker of which only a few hull sections had been manufactured. The cost of completing the tanker, given productivity in the yard, would have exceeded the possible price paid by the owner; ACHCN accordingly concluded that it was industrially impossible to build the vessel. As regards the second tanker, it was decided to carry on building it to the launch stage and to find a yard outside France which could complete it. At 1 June 1999, the hull was 90 % completed and its launch was planned for October 1999. The decision was based on the need to remove an incomplete hull from a patent slip located right in the centre of the port of Le Havre since it would otherwise have had to be demolished, at a price.

(13) As the total loss on the order suspended in June 1999 would thus have totalled FRF 2 033 million, ACHCN decided to halt shipbuilding activities and ask the authorities to finance a total and irreversible closure plan, consisting of three parts.

(14) For the first part, the French authorities suggested covering the losses as follows:

(i) FRF 111,4 million accounting for 9 % of contract-related aid (already authorised under the aid scheme in force) and FRF 207,5 million accounting for other aid approved by the Commission (1995 upgrading plan and 1998 restructuring plan);

(ii) FRF 1 714,1 million of closure aid. The aid was intended to finance the completion of the first tanker and work on the second tanker up to the launch stage.

(15) The second part concerns social aid and consists in the implementing of a social plan for the entire ACHCN workforce, i.e. 692 employees on open-ended contracts. The statutory redundancy procedure under the Labour Code was initiated in August 1999. The State provided the firm with the necessary funds to cover the expenditure which the latter would normally have borne, ACHCN being in a state of virtual bankruptcy and hence incapable of financing the plan. The measures included redundancy benefit, compensation in lieu of notice, mobility aid, recruitment aid, retraining leave, implementation of retraining and early retirement agreements, financing of a retraining cell and other possible benefits. The initial budget was FRF 270 million, adjusted according to the number of workers benefiting from each measure. Out of a total workforce of 692 persons, the departures were staggered as follows:

Date	Redundancies
August 1999	400
October 1999	100
November 1999	100
December 1999	50
June 2000	42

(16) The third part provides for reindustrialisation measures designed to offset the direct and indirect job losses caused in Le Havre by the closure of the shipyard. As major industrial development programmes were due to start very shortly in the Le Havre area, especially in the port of Le Havre (Port 2000 project), the main task was to ensure the urgent allocation to the Le Havre area of the appropriations earmarked for small firms and industries in SME and SMI development funds (FDPMI) and the PAT grant scheme for assisting employment in small firms. All the proposed measures are covered by schemes already authorised by the Commission.

(17) Lastly, the French authorities reported that ACHCN had undertaken to sell all its assets in step with the reduction in the workforce and to transfer the proceeds to the French Treasury in repayment, albeit inevitably only partial, of the restructuring aid granted by the State. Thus the entire production facilities of the shipyard will be disposed of.

V. **ASSESSMENT OF THE AID**

(18) The measures in question constitute aid within the meaning of Article 87(1) of the EC Treaty inasmuch as they distort competition by favouring ACHCN and ship production.

(19) As they concern a shipyard, they must be assessed under Regulation (EC) No 1540/98, Article 4 of which provides that aid to defray the normal costs resulting from the total or partial closure of shipbuilding, ship repair or ship conversion yards may be considered compatible with the common market provided that the resulting capacity reduction is of a genuine and irreversible nature.

(20) In view of the commitments given by the French Government regarding the definitive closure of the yard, which has in the meantime become a reality with the complete cessation of business, the departure of workers according to schedule and the auctioning of the firm's entire installations, it must be concluded that there has been a complete and irreversible closure and the aid should be considered in that light.

(21) From a social standpoint, the costs possibly eligible for aid include the following:

(i) benefits paid to workers made redundant or retired before legal retirement age;

(ii) the costs of counselling services for workers made redundant or taking early retirement, including payments made by the yard to facilitate the setting-up of small businesses which are independent of the shipyards in question and whose activities are not principally shipbuilding, ship repair or ship conversion;

(iii) payments to workers for retraining.

(22) The budget of FRF 270 million provided for in the social aid section communicated by the French authorities covers the type of expenditure referred to in recital 21, whilst the amount allocated, on average FRF 390 000 per worker, is in line with amounts already granted in France in similar circumstances. When the three Normed shipyards were closed in 1987, the level of aid to cover the social plan, entirely financed by the French Government and approved by the Commission, was practically identical. Accordingly, the measures contained in the social plan can be regarded as compatible with the common market.

(23) Article 4(2) of Regulation No 1540/98 states that expenditure incurred for the redevelopment of the yard, its buildings, installations and infrastructure for use other than shipbuilding, ship repair and ship conversion are among the costs eligible for closure aid.

(24) Accordingly, provided that, as the French authorities stated, the industrial development programme for the Le Havre region receives support under schemes already authorised by the Commission, the proposed reindustrialisation measures are also compatible with the common market.

(25) Article 4(3) of Regulation No 1540/98 specifies that, in the case of firms which totally cease shipbuilding, ship repair or ship conversion, loans or loan guarantees for working capital needed to enable the firm to complete unfinished work may also be deemed compatible with the common market, provided that this is kept to the minimum necessary and a significant proportion of the work has already been done.

(26) Article 4(4) states that the amount and intensity of aid must be justified by the extent of the closures involved, account being taken of the structural problems of the region concerned.

(27) The final balance of non-notified aid intended to offset the loss incurred by the shipyard amounts to FRF 1 714,1 million.

(28) The Commission notes that the State aid complies with Article 4(3) and (4) of the Regulation, primarily because the aid was used only as working capital to allow the yard to complete unfinished work. Only one of the tankers had been completely finished and the construction of the second was strictly limited to what was necessary to allow the vessel to leave the yard. Thus the shipyard was able to remove a partially built vessel which would otherwise have had to be broken up; at the same time it allowed the workforce of the firm, which held a key position in the industrial fabric of Le Havre, to be cut back gradually.

(29) The aid granted cannot be regarded as non-repayable aid as the French Government granted it only on condition that the entire proceeds from the liquidation of the yard at public auction should be paid into the public purse.

(30) It must therefore be concluded that the aid constituted an advance subordinated to the payment of the entire proceeds from the liquidation of the firm and, to the extent that the proceeds from the sale of the installations failed to match the full amount of the advance, the aid may be justified by the fact that the yard will be irreversibly closed without any possibility of reactivation as all the equipment will have been sold.

VI. **CONCLUSION**

(31) The Commission concludes that the assistance granted by the French Government for the closure of Ateliers et Chantiers du Havre Constructions Navales, comprising aid for a social plan amounting to FRF 270 million and aid to complete ongoing work amounting to FRF 1 714 million, is compatible with the common market. The Commission has already noted that the French Government will be refunded part of the aid granted by transferring to the public purse the proceeds from the sale of the yard's installations,

HAS ADOPTED THIS DECISION:

Article 1

The State aid of FRF 270 million granted by France to ACHCN to enable it to carry out the social plan and the closure aid of FRF 1 714 million are compatible with the common market.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 25 April 2001.

For the Commission

Mario MONTI

Member of the Commission