COMMISSION DECISION

of 19 September 2001

on the State aid which the Netherlands is planning to implement in the form of development assistance for a high-technology dredger for the Republic of Djibouti

(notified under document number C(2001) 2900)

(Only the Dutch text is authentic)

(Text with EEA relevance)

(2002/284/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 93 of the EC Treaty [2], and in particular Article 7 thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above and having regard to their comments [3],

Whereas:

I. **Procedure**

(1) By letter dated 12 April 2000, the Dutch authorities, acting pursuant to Article 88(3) of the EC Treaty, notified the Commission of development assistance which they intended to grant to the Republic of Djibouti for the purchase of a dredger of more than 365 KW to be built by the Damen Shipyards in Gorinchem.

(2) By letter dated 13 February 2001, the Commission notified the Dutch authorities that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid. The Dutch authorities submitted their comments to the Commission by letter dated 21 February 2001.

(3) The Commission's decision to initiate the procedure was published in the *Official Journal of the European Communities* [4]. The Commission invited interested parties to submit their comments.

(4) The Commission did not receive any comments from interested parties.

II. **Detailed description of the aid**

(5) The project, which provides for development assistance under a general scheme for aid to developing countries, concerns a transaction involving the dredger and three other vessels for a total amount of NLG 11,664 million (EUR 5,293 million). Provision has been made for aid totalling NLG 3,447 million (EUR 1,464 million). Only the dredger falls within the scope of Regulation (EC) No 1540/98. The cost price is NLG 9,564 million (EUR 4,340 million) and the aid earmarked amounts to NLG 2,392 million (EUR 1,085 million), or 25 % of the contract price. The recipient is the autonomous port of Djibouti.

(6) The Commission decided to initiate the Article 88(2) procedure because it doubted whether the project complied fully with the conditions laid down in Article 3(5) of Regulation (EC) No 1540/98 concerning the compatibility of aid related to shipbuilding granted as development assistance.

(7) New provisions have been incorporated into Article 3(5) of Regulation (EC) No 1540/98 in cases where aid for shipbuilding is granted in the form of development assistance to a developing country. The Article states that such aid may be deemed compatible with the common market if it complies with the terms laid down for that purpose by OECD Working Party 6 in its Agreement concerning the interpretation of Articles 6 to 8 of the OECD Understanding on export credits for ships. The Commission must verify the particular

[1] OJ L 202, 18.7.1998, p. 1.
[2] OJ L 83, 27.3.1999, p. 1.
[3] OJ C 172, 16.6.2001, p. 12.
[4] OJ C 172, 16.6.2001, p. 12.

development content of the proposed aid and satisfy itself that it falls within the scope of the OECD Understanding on export credits and that the offer of development assistance is open to bids from different yards.

(8) On the basis of the information available to the Commission, it concluded that the projects complied with the OECD criteria.

(9) However, the Commission doubted whether the development assistance was open to bids from different yards and could not therefore rule out the possibility that it constituted operating aid for Damen.

III. **Comments from the Netherlands**

(10) The Dutch authorities provided new information of which they were not aware at the time of the various meetings held before the procedure was initiated.

(11) They explained that the authorities in Djibouti had asked two other Dutch shipyards to submit bids, but that this request was not taken up. It also emerges from various letters that other Dutch shipyards were aware of the transaction.

(12) In addition, the Dutch authorities referred once again to their role in the new procedure for ensuring that invitations to tender in the field of development assistance receive significant publicity in future. Thanks to this procedure, all Dutch shipyards will be better informed about specific projects for which a Dutch shipyard has submitted an application for development assistance; this information will be disseminated by the Dutch shipbuilding association (Vereniging Nederlandse Scheepsbouw Industrie, hereinafter referred to as VNSI), to which virtually all Dutch shipyards belong, as soon as a shipyard has submitted an application to the authorities. VNSI will provide its members with all the important information on the transaction (contract amount, type of vessel and customer). In this way, virtually the entire Dutch shipbuilding sector will be informed.

IV. **Assessment of the aid**

(13) As explained in the decision to initiate the Article 88(2) procedure, the aid for the contract must be tested against the provisions of Article 3(5) of Regulation (EC) No 1540/98, which lays down new rules on development assistance for shipbuilding.

(14) That Article states that such aid may be deemed compatible with the common market if it complies with the terms laid down for that purpose by OECD Working Party 6 in its Agreement concerning the interpretation of Articles 6 to 8 of the OECD Understanding on export credits for ships. The Commission must verify the particular development content of the proposed aid and satisfy itself that it falls within the scope of the OECD Understanding and that the offer of development assistance is open to bids from different yards.

(15) As was also stated in the decision to introduce the procedure, the Commission had already noted that the OECD criteria with which the Member States must comply, as described by the Commission in its letter SG(89) D/311 of 3 January 1989, amended by letter SG(97) D4645 of 10 June 1997, had been fulfilled.

(16) As regards whether the offer of development assistance was open to bids from different yards, the Commission would point out that these are new provisions which have been incorporated into Regulation (EC) No 1540/98. In addition, they do not indicate how the Commission should check whether this criterion is met; it can therefore be interpreted in a number of ways. The Commission considers that the criterion should be strictly applied and that the offer of assistance should have been open to bids from other shipyards.

(17) In the decision to initiate the procedure the Commission took the view that, in the light of the information provided by the Dutch authorities and the fact that the shipyard and the Djibouti authorities had negotiated the contract before the new procedure entered into force, there were no grounds whatsoever for concluding that the contract had been given sufficient publicity in compliance with the principle of open tendering.

(18) The Dutch authorities have since provided information in addition to the comments submitted in the course of the procedure, namely that the authorities in Djibouti asked two other Dutch shipyards to submit a bid for the order in question, but that neither shipyard did so.

(19) The Commission notes that originally the invitation to tender was not confined to Damen alone, given that other shipyards were given the opportunity to submit a bid.

(20) In addition, following notification of the decision to initiate the procedure, information on the contract was widely disseminated between all potential interested parties.

(21) Although the way in which the contract was concluded does not quite fit the best interpretation of open tendering, the Commission is prepared to accept that the procedure followed has been in use for many years and that the Dutch authorities were not fully aware of the scope of Article 3(5) of Regulation (EC) No 1540/98, a position borne out by the Dutch authorities' firm intention to review their procedure in future cases. Accordingly, the Commission would emphasise that the new procedure alone should be followed in all future cases so as to comply with the conditions for open tendering as described in Article 3(5) of Regulation (EC) No 1540/98.

V. **Conclusion**

(22) In the light of the above, the doubts underlying the Commission's decision to initiate the Article 88(2) procedure have been resolved. It can therefore be concluded that the project complies with the conditions laid down in Article 3(5) of Regulation (EC) No 1540/98 and that it is therefore compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The aid with an intensity of 25 % which the Netherlands intends to grant to the Republic of Djibouti in the form of development assistance for the purchase of a dredger from the Damen Shipyards is compatible with the common market.

Implementation of the aid is accordingly authorised.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 19 September 2001.

For the Commission

Mario MONTI

Member of the Commission