COMMISSION DECISION

of 12 March 2002

on the State aid which Germany is planning to implement for Flender Werft AG, Lübeck

(notified under document number C(2002) 913)

(Only the German text is authentic)

(Text with EEA relevance)

(2002/632/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 called on interested parties to submit their comments pursuant to the provisions cited above,

Whereas:

I. PROCEDURE

(1) By letter dated 20 October 2000, Germany notified the Commission of the aid that it intended to grant to Flender Werft, Lübeck. It provided the Commission with further information by letters dated 15 December 2000 and 15 February 2001.

(2) By letter dated 18 April 2001, the Commission informed Germany that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [2]. The Commission called on interested parties to submit their comments.

(4) The Commission received no comments from interested parties.

II. DETAILED DESCRIPTION OF THE AID

(5) Germany plans to grant regional investment aid to Flender Werft AG, Lübeck, under the approved joint Federal Government/*Länder* scheme for improving regional economic structures (Gemeinschaftsaufgabe: Verbesserung der regionalen Wirtschaftsstruktur) [3]. The aid is to be for investment in a new floating dock with a lifting capacity of 20 000 tonnes. The yard would build the dock itself. The cost of the dock would be EUR 16,4 million and the amount of aid, EUR 869 000.

(6) The new dock is to replace the former floating dock, which had a lifting capacity of 16 000 tonnes. The old dock was sold and delivered to the new owner in February 2001. The proceeds of EUR 9,2 million have been used to finance the new dock.

(7) The recipient of the aid is the shipyard Flender Werft AG in Lübeck, Schleswig-Holstein, an area assisted under Article 87(3)(c) of the EC Treaty. The yard builds seagoing ships and currently has 780 employees. Besides shipbuilding, it also carries out ship repair. On the basis of man hours, ship repair represents around 5 % of its work. The yard also builds floating docks.

(8) In its decision initiating the procedure the Commission noted that, under Article 7 of Council Regulation (EC) No 1540/98 of 29 June 1998 establishing new rules on aid to shipbuilding [4] (hereinafter referred to as the 'Shipbuilding Regulation'), aid may be allowed only for investment in upgrading or modernising yards with the objective of improving the productivity of existing installations. It was the Commission's opinion that the scope of Article 7 was restricted to the upgrading of existing installations in order to improve productivity and thereby boost the competitiveness of the yards concerned. The Commission therefore doubted whether replacing the old floating dock with a lifting capacity of 16 000 tonnes by a new one with greater lifting capacity could constitute modernisation or upgrading within the meaning of Article 7 of the Regulation.

III. COMMENTS FROM GERMANY

(9) Germany states that the ever increasing traffic in the Baltic sea makes it necessary to have sufficient capacity for ship repair in Lübeck, Germany's largest Baltic port. Consequently, Flender Werft has concentrated in particular on ship repair and has maintained the necessary

[1] OJ L 202, 18.7.1998, p. 1.
[2] OJ C 191, 7.7.2001, p. 15.
[3] 29th outline plan, State aid E 3/2001; acknowledgement of appropriate measures communicated to Germany by letter D/50559 of 8 February 2001.
[4] See footnote 1.

repair capacity over many years. The old floating dock of 16 000 tonnes has been in use since 1986 but has increasingly proved to be too small for current requirements. When construction of the large ferries which are soon to start operating in the Baltic is complete, there will be at least 16 ships that cannot be repaired by Flender Werft owing to the small size of the old floating dock. Unless it adapts its dock to this development, not only will the yard's activity in this area stagnate but its turnover will also decrease still further, since experience shows that customers go where their requirements are met. This would produce a situation in which the workforce could not be used to full capacity, which in turn would lead to a decrease in the yard's competitiveness and to workers being laid off. The new floating dock would help to reverse this development, maintaining jobs and keeping the yard competitive. By changing to a larger floating dock, Flender Werft will adapt to market development and ensure sufficient repair capacity in accordance with market demand.

(10) Germany states that the old floating dock could not have been made longer or broader or otherwise larger for valid technical reasons. Modernising the dock is therefore technically impossible. In Germany's view, replacing the dock is made necessary by the changed market conditions and is therefore compatible with the provisions of the Shipbuilding Regulation on the granting of investment aid.

(11) Germany also stresses that the Shipbuilding Regulation is intended in particular to reduce building capacity, whereas the purpose of granting the aid in the present case is to support the replacement of a floating dock which in practice would be used exclusively for ship repair, with the exception of the painting of new vessels. It will be possible to obtain repair contracts for the new large ferries operating in the Baltic only with the new dock.

IV. **ASSESSMENT OF THE AID**

(12) Under Article 87(1) of the EC Treaty, any aid granted by a Member State or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market. Pursuant to the established case law of the Court of Justice and Court of First Instance of the European Communities, the criterion of trade being affected is met if the recipient firm carries on an economic activity involving trade between Member States.

(13) The Commission notes that the notified aid involves the financing through state resources of part of the costs that the yard itself would normally have to bear when acquiring a new floating dock. Moreover, shipbuilding is an economic activity involving trade between Member States. The aid therefore falls within the scope of Article 87(1) of the EC Treaty.

(14) Pursuant to Article 87(3)(e) of the EC Treaty, categories of aid specified by a decision of the Council acting by a qualified majority on a proposal from the Commission may be considered compatible with the common market.

(15) The Commission notes that on this basis the Council adopted the Shipbuilding Regulation on 29 June 1998 ([5]). Under Article 2 of this Regulation, aid granted directly or indirectly for shipbuilding, ship repair and ship conversion must comply with its provisions in order to be declared compatible with the common market.

(16) Under Article 10(2)(b) of the Shipbuilding Regulation, any decision by a Member State to apply a generally applicable aid scheme, including generally applicable regional aid schemes, to undertakings covered by the Regulation must be notified to the Commission in advance so that the aid's compatibility with Article 87 of the Treaty can be verified.

(17) The Commission notes that, under the Regulation, 'shipbuilding' means the building, in the Community, of self-propelled seagoing commercial vessels. The Commission further notes that Flender Werft builds such ships and consequently is an undertaking covered by the Regulation. By notifying the aid in question, Germany has thus complied with its notification obligation as laid down in Article 10(2)(b) of the Regulation.

(18) Article 7 of the Shipbuilding Regulation stipulates that aid granted for investment in upgrading or modernising existing yards, not linked to a financial restructuring of the yards concerned, with the objective of improving the productivity of existing installations, may be deemed compatible with the common market provided that in regions meeting the criteria of Article 87(3)(c) of the Treaty, the intensity of the aid does not exceed 12,5 % or the applicable regional ceiling, whichever is the lower.

([5]) See footnote 1.

(19) The yard is located in Lübeck in an area assisted under Article 87(3)(c) with a regional ceiling of 18 % gge. The Commission notes that the new dock is to cost EUR 16,4 million. The old dock has been sold and the proceeds of EUR 9,2 million used to finance the new dock.

(20) The Commission notes that, according to Germany, the replacement of the old dock by a new one with a greater load capacity should be viewed not as a new investment but as an investment in replacing and thus modernising the old one. Accordingly, only the difference between the cost of the new dock and the proceeds from the sale of the old dock should be counted as eligible costs for the purpose of calculating the aid intensity. Assuming eligible costs to be EUR 7,2 million, the intensity of aid worth EUR 869 000 would be 12 %, which would comply with the Regulation.

(21) As to whether the replacement of the old floating dock by a new, larger one can be considered to constitute upgrading or modernising within the meaning of Article 7 of the Shipbuilding Regulation, the Commission takes note of the comments submitted by Germany when the procedure was initiated. The information in the Commission's possession confirms that increasingly larger vessels are now operating in the Baltic Sea ([6]) and that a larger floating dock is clearly necessary if Flender Werft is to remain in the repair market in the years to come. This finding is based not only on information on the docking weight of the vessels, but also on their larger physical size. The width and the lifting capacity of a floating dock are correlated and greater lifting capacity also requires a larger dock. Not only the lower lifting capacity, but also the dimensions of the old floating dock would make the repair of these larger vessels very difficult ([7]).

(22) The Commission notes that replacing the old floating dock by the larger one will help to improve the productivity of repair work at the yard. Considering the development of the market, use of the old floating dock had reached its limits, making optimal usage of the workforce unlikely in the coming years. The larger dock allows repair contracts to be concluded for all sizes of vessels operating in the market. Provided that the yard is competitive and succeeds in getting orders in all market segments, it will be able to make better use of its existing workforce and thereby increase its productivity. The current potential increase in productivity, however, would not be directly attributable to the larger floating dock, but to the overall competitiveness of the yard. The larger floating dock will contribute to this potential development in that it is a precondition for it to happen in the first place.

(23) The information in the Commission's possession also confirms that for technical reasons, the old floating dock could not have been enlarged or modified to a dock with greater lifting capacity. Consequently, the only possibility for upgrading the floating dock is to replace it by a new one.

(24) As regards capacity, the Commission notes that using a floating dock for building new ships increases the shipbuilding capacity of the yard concerned. However, according to its information, 95 % of existing floating docks in the world are currently used for ship repair or conversion, and not for new building.

(25) The old dock was used for ship repair by Flender Werft and was sold to the port authority of Dunkirk, France, where floating docks are used exclusively for repair, since there is no shipbuilding activity in Dunkirk. Germany also confirms that Flender Werft will use the new replacement dock, except for painting new vessels, only for ship repair.

(26) Accordingly, and in particular given the fact that the old floating dock could not have been enlarged for technical reasons and that the larger ships in the Baltic make it necessary for the yard to adapt its repair facilities in order to remain in the business, it is the opinion of the Commission that replacing the old floating dock by a new one with greater breadth and lifting capacity to be used exclusively in ship repair can be considered to constitute the upgrading of an existing facility within the meaning of Article 7 of the Shipbuilding Regulation.

(27) However, the Commission considers that replacing the floating dock can rank as upgrading an existing facility within the meaning of the Shipbuilding Regulation only if the dock is used exclusively for ship repair. A floating dock used for new building could not be viewed in terms of upgrading or modernisation but would constitute a new facility that would increase new building capacity. Consequently, the aid can be considered compatible with the Shipbuilding Regulation and thereby with the common market only if the use of the floating dock is restricted to ship repair and does not include new building, thereby ensuring that there is no increase of capacity in this area.

([6]) The most frequently encountered vessels in the Baltic are the following: passenger ferries, RoRo vessels, feeder container vessels, general cargo vessels and small tankers.

([7]) The internal width of the old dock was 34 m while that of the new dock is 37 m. Panama Canal maximum-sized vessels, like the passenger ferries operating, in the Baltic have a width of some 32 m.

(28) The Commission therefore requires Germany to ensure that the new floating dock is used exclusively for ship repair by Flender Werft. The only exception is the use of the floating dock for painting new vessels. Germany must also ensure that the floating dock with a lifting capacity of 20 000 tonnes used by Flender Werft for ship repair, whenever it may be sold by Flender Werft, will not be sold to any shipyard that might use it for new shipbuilding.

V. **CONCLUSION**

(29) For the above reasons, the Commission considers the replacement of the floating dock with a lifting capacity of 16 000 tonnes by a larger one with a lifting capacity of 20 000 tonnes to constitute the upgrading of an existing facility within the meaning of Article 7 of the Shipbuilding Regulation. However, in order to ensure that the floating dock is not used for new building of ships, thereby contributing to a capacity increase in this sensitive area, Germany must ensure that the floating dock is used exclusively for ship repair. Germany must also ensure that the floating dock is not sold in the future to any yard that might use it for new shipbuilding,

HAS ADOPTED THIS DECISION:

Article 1

The aid amounting to EUR 869 000 which Germany is planning to grant to Flender Werft AG, Lübeck, is compatible with the common market subject to the conditions set out in Article 2.

Article 2

Germany shall ensure that Flender Werft AG uses the floating dock with a lifting capacity of 20 000 tonnes only for ship repair and the painting of new vessels.

Germany shall ensure that the floating dock with a lifting capacity of 20 000 tonnes, whenever it may be sold by Flender Werft AG, will not be sold to any shipyard that might use it for building new vessels.

Article 3

Germany shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 4

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 12 March 2002.

For the Commission

Mario MONTI

Member of the Commission