COMMISSION DECISION

of 20 December 2006

on State aid No C 5/2006 (ex N 230/2005) which Germany is planning to implement for Rolandwerft

(notified under document number C(2006) 5854)

(Only the German version is authentic)

(Text with EEA relevance)

(2007/255/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 called on interested parties to submit their comments pursuant to the provisions cited above and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter of 19 October 2005, registered as received on the same day, Germany, acting in accordance with Article 88(3) of the EC Treaty and with the Framework on state aid to shipbuilding [1] (hereinafter the shipbuilding framework), notified its intention of granting regional aid to the company Detlef Hegemann Rolandwerft GmbH & Co. KG (Rolandwerft). The Commission requested further information by letter of 16 November 2005, to which Germany replied by letter of 23 December 2005, registered as received on the same day. By letter of 18 January 2006, registered as received on the same day, Germany modified the notified aid.

(2) By letter of 22 February 2006, the Commission informed Germany of its decision to initiate in respect of the aid the procedure laid down in Article 88(2) of the EC Treaty. The Commission decision was published in the *Official Journal of the European Union*. The Commission invited Germany and the other interested parties to submit comments. By letter of 28 June 2006, registered as received on the same day, the 'Verband für Schiffbau und Meerestechnik' (German Shipbuilding and Ocean Industries Association) submitted comments. By letter of 30 June 2006, registered as received on 7 July, the beneficiary also submitted comments.

(3) The comments were transmitted to Germany by letter of 17 July 2006. Germany replied to these comments by letter of 11 August 2006, addressed to the Commission and registered as received on the same day.

(4) Germany's response to the initiation of the formal investigation procedure was submitted by letter of 6 April 2006, registered as received on the same day. Annexes were submitted by letter of 11 April 2006, registered as received on 12 April. The Commission requested further information on 17 August 2006 which Germany submitted by letter of 14 September 2006, registered as received on 15 September. Germany submitted further information by letter of 20 November 2006, registered as received on the same day. A meeting with representatives of Germany and the shipyard took place on 22 November 2006. Following the meeting, Germany submitted further information by letter of 24 November 2006, registered as received on the same day.

II. DESCRIPTION

1. The beneficiary

(5) The beneficiary of the aid, Rolandwerft, is a shipyard located in Berne, in the district of Wesermarsch, Lower Saxony (Germany), an assisted area pursuant to Article 87 (3)(c) of the EC Treaty. The yard is located on the shores of the river Weser, which runs into the North Sea. Rolandwerft belongs to the Hegemann group. It is a large undertaking that does not rank as a small or medium-sized enterprise under the Commission Recommendation concerning the definition of micro, small and medium-sized enterprises [2].

(6) Rolandwerft produces sea-going vessels. Its central area of business is the construction of feeder ships, i.e. the smallest sub-category of container ships. In addition, the yard builds specialised ship types such as roro/lolo-vessels or car carriers. In 1999, responding to a change in market demand, it began to produce larger ships measuring up to […] (*) m in length, with a weight of […] tonnes and a cargo capacity of up to 850 TEU. In order to be able to produce these larger ships, Rolandwerft had to carry out an

[1] OJ C 317, 30.12.2003, p. 11.

[2] OJ L 124, 20.5.2003, p. 36.

(*) Business secret.

investment programme for the adaptation of the yard, including expansion of the ship lift. An extension of the fitting-out quay was also planned but had to be postponed for financial reasons. Rolandwerft is also active in the field of ship repair. The repair activities are carried out either on land or in the water.

(7) The ships are produced first in sections in hall 3 and in larger modules on the outside work area. The sections and modules are transferred via the outside work area to hall 1, where they are assembled into ships. The ships are transported to the ship lift and lowered into the water. Further fitting-out takes place on a quay which can take ships of up to 140m in length. It is performed using a 50t quay crane and an 8t construction crane, both operating on the crane track.

(8) Since the early 1990s, Rolandwerft has been able to fit out two ships simultaneously (except at times of low demand). The original quay allowed both ships, which were shorter at the time, to be berthed directly at the quay. In 1999, when Rolandwerft began building larger ships, the quay was too short. For financial reasons, Rolandwerft did not extend the quay immediately but, as a transitional solution, berthed the second ship alongside the ship berthed at the quay (parallel berth). For each ship fitted out on the parallel berth, Rolandwerft had to rent an additional auto crane on some […] occasions for […] each and a smaller swimming crane on […] occasions for […] each.

(9) However, the fitting-out or repair of a ship at the parallel berth was complicated, expensive and not profitable. Moreover, it increased the risks of accidents.

2. **The investment projects**

(10) The objective of the aid is to promote investments in five different areas of the yard's activity, namely halls 1 and 3, quay 1, automatic welding machines and the construction of an additional quay. Most of the investments have already been carried out. The aid application was submitted before the investments were started.

(11) According to the information submitted by Germany, the investments will lead to the creation of 35 jobs at Rolandwerft. The yard previously subcontracted some of the works to a steel company in […] which produces bow sections for Rolandwerft. The investments will enable Rolandwerft to integrate bow-section construction into its own shipbuilding process.

Hall 1

(12) Hall 1 is to be extended by 55m. The Commission was informed that, at the moment, a significant part of the shipbuilding work currently take place outside of hall 1. After the investment, almost all of the work will be carried out indoors.

Hall 3

(13) Hall 3 is where the sections are constructed. It originally had an entrance door that was only 17,4 metres wide, whereas the ships built by Rolandwerft are normally 22,2 m wide. Therefore, the sections had to be produced not in the position necessary for assembly but sideways, in order to be able to pass through the entrance door. This meant that the sections had to be turned through 90° using auto cranes to permit subsequent assembly; this was a time-consuming and expensive process. In addition, the narrow entrance limited the depth of the sections, which obliged Rolandwerft to construct more sections than were actually needed. To remedy this, it was necessary to widen the entrance. This part of the project was carried out in 2004.

(14) Another part of the project which was carried out in 2004 is the extension of the hall in a north-westerly direction. In this part of the hall, sections are welded together into modules. With the extension, the section welding can be carried out indoors, i.e. independently of the weather conditions. The crane tracks were lengthened into the new part of the section-construction hall.

(15) The single sections are constructed on keel blocks, which are also used to transport the sections. Germany explained that, owing to the fact that Rolandwerft has built larger ships since the investments made in 1999, the old keel block system is no longer adequate. Furthermore, to be welded together, the sections must be accurately lined up. Before the investment, the positioning of the sections was done using an auto crane, a time-consuming and cost-intensive process. And so in 2004 the yard invested in modern hydraulic keel blocks, which significantly facilitate the lining-up of the sections.

(16) In an additional investment project started in August 2005, Rolandwerft extended hall 3 in a south-easterly direction, also with a view to the work being carried out indoors.

Extension of the crane track on quay 1

(17) The investment project also provides for a 96m extension of the crane track on the original quay, which is 200m long. Before the extension, only about half of the ship could be equipped using the crane. For the other half, Rolandwerft had to use […] auto cranes. The crane track was extended so that the ship could be fitted out over its full length using the rail crane. This investment was also carried out in 2004.

Purchase of automatic welding machines

(18) Another investment carried out in 2004 was the purchase of modern and faster automatic welding machines.

Construction of additional quay and purchase of new crane

(19) The investment programme for 2005-06 includes the construction of an additional fitting-out quay, with the original quay being extended by about 180m. The construction of this quay requires, among other things, excavation of the ground on the riverside, filling-up of the ground on the land side and a link to the road network. The crane track has to be extended by a further 150m, an additional 35-tonne crane has to be purchased and installed, and the media connection has to be installed. The works were started in August 2005.

(20) This investment is the result of the decision to build larger ships as of 1999. At the time, the yard invested in a further fitting-out of the ship lift to adapt its facilities. According to the beneficiary, the investments in the quay were postponed for two main reasons. First, the financial means available were needed more urgently for Peene-Werft, which was also owned by the Hegemann group and underwent a significant restructuring programme at the time. On account of the downturn on the market that lasted a few years, no additional means were available to complete the investment measures at Rolandwerft. Second, since the fitting-out and repair of two ships in parallel was technically quite feasible (even if not particularly efficient), it was the investment which could best be postponed.

(21) A further benefit arising from the investment is that the new quay will enable the yard to participate in shipbuilding and repair tenders for navy vessels in the future. Given the risks inherent in handling two ships berthed in parallel, Rolandwerft was barred from carrying out shipbuilding or ship-repair activities for the German navy. Because of the risks and despite the fact that Rolandwerft belonged to a group of yards which could, in theory, bid for the award of such contracts, the German navy refused to award contracts to it.

(22) Total project costs amount to EUR 13 million. They can be broken down as follows:

(EUR)

1	Extension of hall 1	[…]
	Hall 3	
2	Prolongation in north-westerly direction, lengthening of crane tracks, widening of entrance door	[…]
3	Modernisation of keel block system in hall 3	[…]
4	Extension in south-easterly direction of hall 3	[…]
5	Lengthening of crane tracks on quay	[…]
6	Purchase of automatic welding machines	[…]
	Construction of additional quay and purchase of new crane	
7	Construction of additional quay	[…]
8	Purchase of new crane	[…]
	Total	**13 000 000**

3. The planned aid

(23) Germany intends to grant Rolandwerft state aid amounting to EUR 1,56 million. Eligible costs are equal to the total project costs of EUR 13 million and the aid intensity is thus 12 %. The aid will be granted under an approved regional aid scheme ([3]). The aid application was submitted before the start of the investment projects.

(24) The granting authority is the Land of Lower Saxony, acting through NBank in Hannover.

III. REASONS FOR INITIATING THE FORMAL INVESTIGATON PROCEDURE

(25) The Commission initiated the formal investigation procedure as it had doubts as to whether the aid was compatible with the shipbuilding framework. It doubted that the investments in the new fitting-out quay could be considered as investments in existing installations.

(26) In addition, the Commission had misgivings as to whether the investments of Rolandwerft might lead to an increase in the yard's shipbuilding capacity that would be incompatible with the shipbuilding framework and the common market.

IV. COMMENTS FROM INTERESTED PART IES

(27) The Commission received comments from the beneficiary Rolandwerft and from the German Shipbuilding and Ocean Industries Association.

4.1. Comments from the beneficiary Rolandwerft

(28) According to the beneficiary, the investment project will not lead to an increase in the yard's shipbuilding capacity. The beneficiary points out that every increase in productivity will lead to an increase in the capacity of the existing installations. This does not, however, necessarily mean that the capacity of the yard as a whole will also increase. In the

([3]) Joint Federal Government/Länder scheme for improving regional economic structures — 34th General Plan.

case of Rolandwerft, the investments will indeed lead to a productivity increase but will not result in a capacity increase of the yard as a whole. Instead, the productivity increase will be absorbed by a higher level of internal production activities formerly outsourced. The volume of production measured in compensated gross tons (CGT) will, therefore, not increase.

(29) The beneficiary submitted an overview of the ships built in recent years and of the yard's order book. In 2004 Rolandwerft built […] ships with a total of around […] CGT. In 2006 the building of […] ships with a capacity of […] CGT is planned. For 2007 and 2008 an annual output of […] CGT is envisaged.

(30) The beneficiary explains that, in the past, the yard occasionally bought sections or entire hulls from third companies. However, the output of Rolandwerft could not be increased further even by buying hulls and sections from outside because the fitting-out of a ship always took a certain amount of time and the existing installations did not allow for an efficient fitting-out of a larger number of ships. For example, it was possible to build only one ship at a time in each of the existing shipbuilding halls. The assembling of a ship in hall 1 took around […] weeks.

(31) The beneficiary provided information on the production flow at the yard. It pointed out that the yard was already being fully utilised and that there was no possibility of producing more ships on completion of the investment project. The installations at the yard limited total capacity to between some […] — […] CGT, which could be achieved before the implementation of the investment project by subcontracting some of the work.

(32) The beneficiary explains that the investment project will allow the yard to participate in tenders for the construction, repair and conversion of navy ships. This has not yet been possible since the works would have had to be carried out at the parallel berth. Consequently, output in CGT would decline from its current level as navy vessels are not regarded as commercial vessels. The beneficiary concludes that, even if the Commission does not share Germany's opinion that the shipbuilding framework does not prohibit investment aid for projects resulting in a capacity increase, this is irrelevant when assessing the compatibility of the aid to Rolandwerft as the capacity will not increase.

(33) The beneficiary also argues that the investments relate solely to existing installations. In particular, the investment in extending the quay so that two ships can be fitted out directly from the quay does not constitute a new installation. The yard already has two fitting-out berths that are in parallel. The beneficiary stresses that the use of the parallel berth involves an increased risk and that the navy refuses, therefore, to award contracts to Rolandwerft. The planned investment measure constitutes a modification of the existing quay aimed at increasing its productivity. The beneficiary provides information on how many weeks per year the parallel berth was used and will be used.

(34) The beneficiary also explains that the lengthening of the crane track and the installation of a crane linked to the quay extension will replace the inefficient and expensive auto and swimming cranes which would at present be used for fitting-out ships in the parallel berth. Fitting out the second ship directly from the quay after completion of the investment project will lead to greater cost effectiveness and productivity.

4.2. Comments from the German Shipbuilding and Ocean Industries Association

(35) The German Shipbuilding and Ocean Industries Association (the 'Association') takes the view that the Commission's concern about a potential increase in capacity cannot be justified on the basis of the shipbuilding framework or by the current market situation and that in particular the planned aid will not lead to distortions of competition.

(36) The Association argues that the stance of EU policy on state aid to shipbuilding has changed over the years. The shipbuilding framework does not contain any provisions that prohibit the granting of investment aid designed to increase capacity. The Association assumes that such provisions were no longer regarded as being appropriate. It also points out that sector-specific rules contained in the shipbuilding framework had, as far as possible, been removed. The capacity issue is mentioned only in the context of closure aid. Other types of aid, such as restructuring aid, are covered by the general state aid rules.

(37) The Association also claims that a restrictive interpretation of the rules would be at variance with the LeaderSHIP 2015 initiative, which is one of the measures for implementing the Lisbon Strategy. The competitiveness and productivity of European industry are to be increased through investments into research, development and innovation, which also entails investment in modern production equipment. If state aid for investment could not go hand-in-hand with capacity increases, this would run counter to the objectives of LeaderSHIP 2015, and in particular the objective of safeguarding and strengthening presence in selected market segments. One of these market segments is that for small and medium-sized container vessels, where Europe is still exceptionally well positioned vis-à-vis Korea and China.

(38) The Association takes the view that the planned investments do not distort competition. There is no overcapacity as the world shipbuilding market is experiencing an upswing. Demand remains healthy, although a slight weakening is expected in 2008-09. With world trade growing steadily, sea transport is also expanding. This is the case in particular with the transport of industrial goods by container ships. As a result, the demand for larger vessels of 5 000 TEU to 8 000 TEU that cannot enter smaller ports is rising. This is leading to an increased demand for smaller feeder ships for the subsequent distribution of the containers. Rolandwerft can build ships of up to 900 TEU.

(39) According to the Association, feeder ships are an important segment in the portfolio of German yards. Nevertheless, the main competitors are Chinese yards, which are the clear market leaders, with 42,5 % of worldwide orders, followed by Germany with 26,8 %.

(40) Again according to the Association, there are very few European competitors for ships of up to 900 TEU. These are located predominantly in Germany and the Netherlands. The Association considers that this segment has good growth potential. Since Chinese yards offer their vessels at low prices, German and European yards will retain their market position only if they can guarantee high quality and steadily increase productivity.

(41) The Association also points out that China and Vietnam will further increase their shipbuilding capacities and hence their market shares. This demonstrates that competition in shipbuilding is worldwide rather than being confined to Europe.

V. COMMENTS FROM GERMANY

(42) In its comments on the initiation of the formal investigation procedure, Germany argues that paragraph 26 of the shipbuilding framework does not contain any provisions relating to capacity. In particular, the paragraph does not stipulate that investment aid for projects resulting in a capacity on the back of a productivity increase would be inadmissible. Germany also stresses that increased productivity in the shipbuilding industry is one of the main objectives of Community policy in this sector. It mentions that the LeaderSHIP 2015 initiative is aimed at improving the competitive situation of European yards and at reducing the disadvantages faced by the European shipbuilding industry following the subsidisation of shipbuilding in Asia. According to Germany, this objective can be achieved only by raising productivity.

(43) Germany also takes the view that it cannot be deduced from paragraph 3 of the shipbuilding framework that the impact of an investment project on capacities has to be taken into account in assessing compatibility with the common market. In addition, the shipbuilding sector is no longer characterised by the factors mentioned in paragraph 3 of the shipbuilding framework but, above all by a healthy order book, high prices and capacity shortages.

(44) In addition, Germany points out that the market share of the European shipbuilding industry has decreased over the last few decades and that Japan, Korea and China have increased their market shares with the help of state subsidies. Such subsidisation is mentioned in paragraph 3 (c) of the shipbuilding framework as one of the factors which has to be taken into account. European shipyards thus have to make every effort to increase productivity.

(45) According to Germany, every increase in productivity automatically leads to an increase in the output of the installation. An increase of productivity as defined for the purposes of the shipbuilding framework cannot, therefore, mean that the same amount is produced but with less input. Germany goes on to stress that the purpose of regional aid should be to contribute to regional development and job creation. And so, with this in mind, a productivity increase should not result in job reduction.

(46) As regards the market situation, Germany observes that freight transport is increasing and that a trend towards larger vessels is discernible in the container ship segment. There are already vessels with a capacity of TEU 5 000 and recent forecasts point to vessels with a capacity of TEU 8 000. As such larger vessels could enter only a few ports, smaller vessels would still be needed for subsequent distribution. There will, therefore, still be a strong demand for feeder ships of 850 TEU, such as the ones built by Rolandwerft.

(47) Germany also provides further details of the investments and photographs illustrating the measures and the situation at the yard.

(48) The extension of hall 1 will allow the yard to build a ship in its entirety in the hall, something which is currently not possible. Covering existing work areas will make for greater productivity and efficiency.

(49) Germany goes on to explain that, at present, a ship berthed at quay 1 occupies only two thirds of the quay. The southern part of the unused quay will be extended. This does not lead to the construction of a new installation for the purposes of the shipbuilding framework. Once the quay has been extended, it will be equipped with a crane as a replacement for the existing auto crane.

(50) Germany points out that the parallel berth was used […] a year in the period 2003-05 (including deliveries). It emphasises once again that the parallel berth will be moved to the new quay. The new quay will be used for approximately the same period of time per year as the parallel berth in recent years. Germany also explains that the fitting-out of a ship in the second berth involved an increased risk as the swimming crane needed would have to be located in the middle of the river Weser. As a result, no ships will, in future, be fitted out at the second berth on quay 1.

(51) According to Germany, the extension of the fitting-out quay to allow two ships to be fitted out at the quay does not constitute the construction of a new installation. It is simply a minor extension of the existing quay. Even before the investment, the quay is longer than a feeder ship and so the yard would, in any case, be able to fit out two shorter ships at the same time.

(52) Germany argues that Rolandwerft thus already has two fitting-out slots although one of them is located in the second 'row'. As the second ship cannot be reached by the crane installed on the quay, auto cranes or swimming cranes have to be used. Fitting-out a ship directly from the quay once it has been extended will make the work much more efficient. Germany also points out that the German navy refused to award contracts to Rolandwerft because it fitted out ships in the second row.

(53) Germany argues that the relocation of the second berth to an extended existing quay does not rank as the construction of a new installation but is instead a measure for increasing the productivity of the two berths by locating them in a row instead of in parallel. The new crane to be installed on the new quay will replace the auto cranes and swimming cranes used at the moment. Using the new crane will enhance productivity.

(54) Germany stresses that the measure is necessary because fitting out a ship in the second row is time-consuming and inefficient. Moreover, the measure will enable Rolandwerft to participate in tenders for ship repair and ship conversion issued by the German navy.

(55) Germany moreover explains that Rolandwerft originally built smaller feeder ships that could both be berthed at the quay at the same time. However, market demand has increasingly shifted towards larger and longer feeder ships and two such ships could no longer be berthed at the quay at the same time. For fitting-out and repair work, therefore, the yard started to berth a second ship in parallel to the ship berthed directly at the quay. The extension of the quay is thus simply an adaptation of the fitting-out facilities to the needs of longer ships.

(56) Germany explains that, in the past, Rolandwerft has occasionally collaborated with Peene-Werft and fitted out prefabricated hulls from that yard. Lately, however, it has delivered only ships which were built in their entirety at its yard. As regards repair work, Germany points out that these activities cannot be extended if the current level of new building is maintained. Part of the repair work is carried out on land, requiring use of the outside work area, which is already being used for new building.

(57) Germany goes on to explain that the new crane will not only be used at the new quay but will also make for optimal utilisation of the lifting process at the original quay by increasing the maximum lifting capacity.

(58) Germany points out that the Association agrees with its assessment. It considers that the Association's comments are important as it represents the political and economic interests of the German maritime industry, German yards and their suppliers. Moreover, the Association, as the representative of various interest groups, possesses up-to-date market information. If it concludes that the planned aid for Rolandwerft will not harm the shipbuilding industry in Germany, the Commission should take this into account. Germany also makes the point that the Commission did not receive any negative comments regarding the aid.

(59) As regards the comments from the beneficiary itself, Germany stresses that the position taken by Rolandwerft is that the investment project will not lead to a capacity increase. Germany reiterates its view that this issue is not relevant for the assessment of the compatibility of the aid.

VI. ASSESSMENT

6.1. Existence of State aid within the meaning of Article 87(1) of the EC Treaty

(60) According to Article 87 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 the Court of First Instance of the European Communities, the criterion of trade being affected is met if the recipient firm carries out an economic activity involving trade between Member States.

(61) The grant is provided by the Land of Lower Saxony and is thus imputable to the State. It confers on Rolandwerft an advantage that the company would not have obtained on the market. Rolandwerft manufactures sea-going vessels. As these products are traded, the measure threatens to distort competition and affects trade between Member States. Consequently, the grant constitutes state aid within the meaning of Article 87(1) of the EC Treaty and has to be assessed accordingly.

6.2. Exemptions under Article 87(2) and (3) of the EC Treaty

(62) Article 87(2) and (3) of the EC Treaty provide for exemptions to the general prohibition of state aid laid down in Article 87(1).

(63) For the assessment of aid to shipbuilding, the Commission has issued the shipbuilding framework. This framework lays down a set of special rules which apply to aid for the industry where and in as far as the specificities of the sector

require special treatment. According to the shipbuilding framework, 'shipbuilding' means the building in the Community of self-propelled seagoing commercial vessels and 'ship repair' the repair or reconditioning in the Community of such vessels. The activities of Rolandwerft are caught by these definitions and so the aid to Rolandwerft has to be assessed in the light of the shipbuilding framework. Rolandwerft does not build Community fishing vessels. According to the Guidelines for the examination of state aid to fisheries and aquaculture, ([4]) no aid may be granted to shipyards for the construction of Community fishing vessels.

(64) Point 26 of the shipbuilding framework lays down that 'Regional aid to shipbuilding, ship repair or ship conversion may be deemed compatible with the common market only if [the aid is] granted for investment in upgrading or modernising existing yards, not linked to a financial restructuring of the yard(s) concerned, with the objective of improving the productivity of existing installations;'.

(65) The aid intensity may not exceed 12,5 % or the applicable ceiling for regional aid under Article 87(3)(c) of the EC Treaty, whichever is the lower. In the present case, the ceiling of 12,5 % is applicable. Moreover, the aid must be limited to eligible expenditure as defined in the applicable guidelines on national regional aid. ([5])

Investments in the extension of halls 1 and 3, in the lengthening of the crane track on quay 1 and in the welding machines

(66) These investment measures are designed to rationalise the production process at Rolandwerft by upgrading equipment and by covering the work area located outside. They can therefore be considered as investment in the modernisation or upgrading of an existing yard.

(67) Part of the project concerns the extension of hall 1 and the extension of hall 3 in a north-westerly as well as a south-easterly direction. The Commission considers that these extensions concern existing installations. The project does not *de facto* lead to the construction of an additional hall. The extension aims merely to provide cover for shipbuilding activities currently taking place outdoors.

(68) The remaining investments in hall 3 aimed at lengthening the crane track, widening the entrance door and upgrading the keel block system also constitute investments in existing installations. Moreover, the Commission considers that the lengthening of the crane track on quay 1 and the investments in the upgrading of the welding machines are investments in existing installations. It had already taken this view in its decision to initiate the formal investigation procedure.

(69) The Commission assumes that the investments have the objective of improving the productivity of the existing installations. The hall extensions will improve productivity by allowing work to be carried out regardless of the weather. The widening of the entrance door of hall 3 will lead to a significant reduction in costs as the sections will no longer need to be turned through 90° and it will be possible to build longer sections. The same applies to (i) the lengthening of the crane track in hall 3 and on quay 1, which will dispense with the need for […] auto cranes, (ii) the acquisition of a hydraulic keel block system, as a result of which manual positioning of sections using auto cranes will no longer be necessary, and (iii) the purchase of automatic welding machines, which will reduce the time and costs associated with manual welding.

(70) While there will be a clear effect on productivity, the impact on capacity will be limited as no new installations are to be set up in the yard and any increase in capacity would simply be the result of the productivity increases of the existing installations. Moreover, the beneficiary pointed out that the productivity increase will not lead to any increase in the capacity of the yard measured in CGT because it will be absorbed by increased performance of activities formerly outsourced. The Commission therefore considers that there is no disproportionate capacity increase.

(71) The Commission thus comes to the conclusion that measures 1 to 6 in the table in paragraph 22 can be considered as investments in the modernisation or upgrading of an existing yard with the objective of improving the productivity of existing installations. The related costs of EUR 8 360 000 can accordingly be considered as eligible costs.

Construction of additional new quay and purchase of new crane

Modernisation

(72) Measures 7 and 8 in the table in paragraph 22 concern the construction of an additional quay and the purchase of a new crane. The Commission considers that, for two reasons, these investments rank as measures to upgrade or modernise Rolandwerft. First, before the investments, Rolandwerft used to fit out and repair two ships at the same time by berthing one ship in parallel to the ship berthed directly at the quay. This process was inefficient and costly. The investments will enable Rolandwerft to berth two ships directly at the quay and will improve the fitting-out of the two ships. Second, the investments are the last in a series of

([4]) OJ C 229, 14.9.2004, p. 5.
([5]) OJ C 74, 10.3.1998, p. 74.

investments started in 1999 with a view to enabling the yard to build larger ships. The yard had adapted its production because demand had shifted from much smaller feeder ships to the feeder ships currently built by Rolandwerft. The Commission considers that an adaptation of production to market demand can be considered as modernisation.

Aim of improving the productivity of existing installations

(73) The investments are also aimed at improving the productivity of existing installations. The fitting-out at the original quay will become more efficient because the ships are no longer berthed alongside one another and there is no longer any need to cross over the ship berthed at the quayside. And so, although it can be assumed that the new quay is not merely a relocated existing installation, the Commission considers that the construction of the new fitting-out quay will lead to a productivity increase at the original quay.

(74) In addition, the second crane to be installed at the extended quay will also lead to a productivity increase at the original quay. The combined lifting capacity of both cranes now amounts to 85 tonnes, compared with the previous figure of 50 tonnes, and permits the lifting of heavy loads for which a rented swimming crane was needed previously. After the investment, a swimming crane will be needed only for lifting the ship's engine. All other lifting activities can be carried out with the two cranes on the extended quay. Second, the original crane will often be used for activities on a smaller outdoor work area located behind the quay. After the investment, the second crane can be used when the first crane is needed for activities on the outdoor work area. Fitting-out will not, therefore, have to be disrupted at such times.

(75) The Commission therefore finds that the aim of the investment is to improve the productivity of the existing installations at the yard.

Effect on capacity

(76) Further, the Commission finds that the investment will not lead to an undue increase in capacity.

(77) The Commission would first emphasise that Rolandwerft has been fitting out two ships at a time for more than fifteen years. Fitting-out in a second row was intended as a transitional solution until the necessary investment in the quay was undertaken. According to the information submitted by Germany, the transitional period was so long because of the specific situation on the market and the special conditions at the yard. The Hegemann group, as the owner of the yard, had decided to invest the available funds as a matter of priority in Peene-Werft. After the completion of the Peene-Werft restructuring project in 2005 and as a consequence of the market upturn, the Hegemann group was able to finalise its modernisation project for Rolandwerft. Given that the yard has regularly fitted out two ships at a time over the past 15 years (with interruptions at times of low demand), the Commission sees no reason to conclude that, before the investment, Rolandwerft had the capacity to fit out only one ship.

(78) From a technical point of view, Rolandwerft will not be able to increase its new building and repair work because of the bottlenecks at preceding stages, namely in the halls and the outside work area. Both operations are already working to their limits, thereby preventing an increase in potential output. With regards to the yard's repair work, Germany explained that about 50 % of each repair job must be carried out on land, i.e. on the outside work area, but that the capacity there was already absorbed by new building activities. Additional repair work is therefore possible only in place of — and not in addition to — new building. The same arguments hold for ship conversion. As the investment does not affect the bottlenecks, the capacity for new building and ship repair/conversion cannot increase. Furthermore, the specific bottlenecks cannot be easily removed because this could be achieved only by duplicating the entire production process.

(79) The Commission also examined whether the new quay would increase the yard's capacity for fitting out prefabricated hulls. But here too, the halls are the bottleneck. While the new ships built by Rolandwerft are pre-fitted out in the yard's halls, this is not the case with prefabricated hulls, which are usually empty and require a significant amount of fitting-out. For this, technical equipment normally used in the halls for the new building would be needed at the quayside. When the halls and their equipment are being fully utilised, the equipment cannot be used at the same time for fitting out the hulls. As a consequence, Rolandwerft cannot expand its fitting-out of hulls built elsewhere while at the same time maintaining its high level of new building and repair work.

(80) Germany also explained that, at present, the fitting-out of hulls is neither being carried out nor planned. At times of peak demand, such activities are highly unlikely because the order books of potential hull suppliers are full for years ahead and Rolandwerft would not, therefore, be able to obtain prefabricated hulls of the required high quality on the market. This is borne out by the actual activities of Rolandwerft in recent years, when Rolandwerft did not, in addition, fit out prefabricated hulls although, in theory, it could have done at the parallel berth. Germany made the point that, after a market downturn when hulls would potentially be available on the market as yards would have

free capacity, it could be assumed that the order books of Rolandwerft too would be slimmer. In such a case, Rolandwerft would, for reasons of profitability, rather use its own capacities to build the hulls than to fit out prefabricated hulls. Even if it did fit out prefabricated hulls, this would be in the place of — and not in addition to — new building.

(81) The Commission notes that, hypothetically, even if a slight increase in capacity for fitting out prefabricated hulls did result from the investment, such an increase could be at most minimal for the technical reasons given above. Since the productivity increase achieved, mainly in the form of lower crane-rental costs, would be significant, a marginal capacity increase resulting from the occasional fitting-out of hulls could not be regarded as disproportionate.

(82) The Commission further notes that, in support of its statement that no capacity increase was being sought, Rolandwerft has offered to undertake not to step up use of the new quay for a period of five years. This commitment, submitted by Germany, provides that the yard limit its activities at the new quay in the field of new building, fitting-out of prefabricated hulls, and ship repair and conversion to […] a year for a period of five years after the completion of the investment in the new quay. The use of the new quay for only […] is in line with the yard's planning for the next few years as submitted to the Commission. Rolandwerft has also undertaken not to build in the second row during that period. The Commission notes that these commitments cannot be regarded as proof that the investments will not lead to any capacity increase, but it welcomes them as further evidence that the technical, practical and economic reasons submitted by the beneficiary are well founded and that the aim of the investment is not to increase capacity but to improve productivity.

(83) The Commission therefore takes the view that the investments in the new quay and the purchase of the new crane constitute upgrading or modernisation of an existing yard with the aim of increasing the productivity of the existing installations. They will not lead to a disproportionate capacity increase. The Commission therefore considers that the construction of the new quay and the purchase of the new crane fulfil the conditions for the granting of regional investment aid laid down in the shipbuilding framework. The investments amounting to EUR 4 640 000 are thus eligible for regional aid.

VII. **CONCLUSION**

(84) The Commission comes to the conclusion that the planned regional aid for Rolandwerft, amounting to 12 % of EUR 13 000 000, i.e. EUR 1 560 000, fulfils the conditions for regional aid laid down in the shipbuilding framework. The planned aid therefore fulfils the necessary conditions to be considered compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The state aid which Germany is planning to implement for Rolandwerft, amounting to 12 % of EUR 13 000 000, i.e. EUR 1 560 000, is compatible with the common market pursuant to Article 87(3)(c) of the EC Treaty.

Article 2

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 20 December 2006.

For the Commission

Neelie KROES

Member of the Commission