COUNCIL DIRECTIVE
of 4 April 1978
on aid to shipbuilding

(78/338/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,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

Whereas the position of shipbuilding has considerably worsened during the last few years ; whereas Community shipyards face a general fall in demand and acute price competition on a contracted world market ; whereas the result of this has been a serious reduction in orders, aggravating the structural problems of the industry and indeed threatening its existence ;

Whereas a sound and 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, and as an employer in a number of Community regions ; whereas this is also true of ship-conversion and ship-repair ;

Whereas if the situation in the industry were normal, the continuation of aid to its operation would not be justified since it would serve only as a protective measure and would not bring about any solid and lasting improvement in the Community shipbuilding industry's competitiveness on the world market ; whereas, however, taking into account the gravity of the crisis in its repercussions on the work-load of shipyards and developments in the market situation, such aid may be permitted in the present crisis provided that it is introduced on a temporary basis, to allow the industry to cope with the new market conditions, and that it is progressively reduced at a rate which takes into account, in particular, the acuteness of the crisis in the Member State concerned, in order to encourage the industry to adapt to these conditions ; whereas such aid should be subject to control to ensure that distortions of competition within the Community contrary to the common interest are avoided and that the measures concerned are linked to the restructuring of the industry ;

Whereas in order to resolve the present difficulties facing the industry, the member countries of the OECD have approved general guidelines providing that, 'in order to remedy the serious structural disequilibrium existing in this industry, efforts are needed in all shipbuilding countries in order that the inevitable reduction in world shipbuilding capacity may be achieved in the least damaging and most equitable way possible' ; whereas the Community, in applying these guidelines, intends to pursue its efforts to ensure that the burden of the crisis is shared more evenly both internally, by defining a sectoral approach on the intra-Community level, and internationally, particularly in the context of the OECD ;

Whereas Council Directive 75/432/EEC of 10 July 1975 on aid to shipbuilding (3) was designed to correct distortions in competition on the world market and has helped to reduce direct aid to shipbuilding during an initial period and to harmonize such aid within the Community ; whereas that Directive expired on 31 December 1977 ;

Whereas even in this difficult situation distortions in competition on the world market have been reduced through a series of understandings concluded by the main shipbuilding countries within the framework of the OECD with the object of restricting export credit conditions for ships ; whereas within the same organization the principal shipbuilding countries have concluded a general arrangement which provides for the progressive removal of obstacles to normal conditions of competition in the shipbuilding industry ; whereas the grounds for this arrangement remain valid although certain countries have made use of the exemption clause ;

(1) OJ No C 36, 13. 2. 1978, p. 34.
(2) Opinion delivered on 1 February 1978 (not yet published in the Official Journal).
(3) OJ No L 192, 24. 7. 1975, p. 27.

Whereas production structures should be adjusted to the new market conditions such that undertakings in the industry may in due course be able to follow general economic developments and to meet competition on the world market without the support of intervention by public authorities, and that the investment efforts of the industry are compatible with the world balance between supply and demand ; whereas, in its appraisal of the aid covered by this Directive, the Commission should also take account of common objectives, which may be defined by the Council, for reorganizing this sector ;

Whereas, furthermoere, effective action requires a solution covering all aid and intervention directly or indirectly affecting competition and trading conditions on the shipbuilding, ship-conversion and ship-repair market ; whereas aid and intervention must not have adverse effects on the competitiveness of other yards ;

Whereas in these circumstances it is necessary to define the aid and intervention intended as a temporary solution for the rescue of a shipbuilding, ship-conversion or ship-repair undertaking, in order to deal with acute social problems ;

Whereas measures in favour of national shipowners should under no circumstances discriminate against shipyards of other Member States,

HAS ADOPTED THIS DIRECTIVE :

Article 1

For the purposes 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 vessels for the carriage of passengers and/or cargo, of not less than 150 gross registered tons ;

— fishing vessels of not less than 150 gross registered tons ;

— dredgers or ships for other work at sea, excluding self-propelled drilling platforms, of not less than 150 gross registered tons ;

— tugs of not less than 500 hp ;

(b) 'ship-conversion' means the conversion of metal-hulled sea-going vessels of not less than 5 000 gross registered tons, apart from the exception mentioned in Article 2, on condition that conversion operations entail radical alterations to the cargo plan, the hull or the propulsion system ;

(c) 'ship-repair' means the repair of the vessels referred to under (a) above ;

(d) sale means all sales of vessels referred to under (a) above ;

(e) 'State aid' means the aid referred to in Articles 92 and 93 of the Treaty ; this concept shall cover not only aid granted by the State itself but also that granted by regional or local authorities.

Article 2

Aid and intervention in the form of credit facilities may be considered compatible with the common market in the following cases :

— for all sales or conversions of vessels ;

— for the conversion of vessels of not less than 1 000 gross registered tons where it is a case of matching terms offered by a shipbuilder from a non-member country.

Without prejudice to the definitions covering the activities mentioned in Article 1, such aid and intervention must comply with the OECD Council resolution of 18 July 1974 or with any agreements which may supersede that resolution.

Article 3

Notwithstanding the specific provisions of this Directive, the general provisions of Articles 92 and 93 of the Treaty shall be fully applicable to the shipbuilding, ship-conversion and ship-repair industry.

Article 4

Investment aid

1. Member States shall not grant sectoral aid for the creation of new shipyards or for investment in existing yards if such aid would be liable to increase the Member State's building capacity.

In applying general or regional investment aid schemes to the shipbuilding sector, Member States shall take all practicable steps to ensure that aided investment does not lead either to increases in the capacity of the sector in a Member State, or to the creation of employment which is not of a stable nature. To this end, plans for such application of general or regional aid schemes leading to increases in shipbuilding capacity in a Member State must be communicated to the Commission not less than three weeks before they are put into effect.

2. The Member States shall inform the Commission of their decisions to grant aid to investments in shipbuilding, ship-conversion or ship-repair yards where the amount of such investment is in excess of five million European units of account. This information shall be provided in the form of a table based on the specimen in Annex I, on 1 March in respect of decisions taken in the second half of the previous calendar year and on 1 September in respect of those taken in the first half of the current calendar year.

Article 5

Aid and intervention to rescue an undertaking

Aid and intervention intended as a temporary solution for the rescue of a shipbuilding, ship-conversion or ship-repair undertaking pending a definitive solution to the problems confronting the undertaking concerned, in order to deal with acute social problems, may be considered compatible with the common market under this Directive. Plans for such aid and intervention shall, pursuant to Article 93 (3) of the Treaty, be notified to the Commission individually and in advance. They may not be put into effect before the Commission has given its agreement. The Commission shall adopt a position on the plans as soon as possible, taking account of the urgency of each individual case.

Article 6

Crisis aid and intervention

1. Production aid and intervention may be considered compatible with the common market under this Directive if they are granted in order to remedy the serious crisis which is causing a substantial reduction in orders on hand in a Member State and consequently a decrease in production.

Such aid and intervention shall be progressively reduced; it shall be granted only if linked to the attainment of industrial restructuring objectives with a view to making the industry competitive and able to operate without aid or intervention.

The rate at which such aid is reduced shall in particular take account of the acuteness of the crisis in the Member State concerned.

When assessing the compatibility of such measures with the common market and in particular the level of aid and intervention, the Commission shall pay particular attention to the situation on the market, the gravity of the crisis on the basis of the balance of the work-load for the shipyards and the need for appropriate adaptation of production capacity to the conditions prevailing on the market.

The Commission shall assess the maximum level of aid and intervention which may be granted for the application of the various aid schemes. Authorization to exceed this level may be given only as an exceptional measure, after the Commission has been notified. Such exceptions may not be put into effect unless the Commission has given its agreement. The Commission shall adopt a position as soon as possible, taking account of the urgency of each individual case.

2. The Commission shall be given prior notification of any proposed individual aid or intervention under the measures referred to in paragraph 1 where the proposal is in competition with a tender from a yard in another Member State. Such proposals may not be implemented before the Commission has given its agreement. The Commission shall verify that such aid does not affect trading conditions to an extent contrary to the common interest.

3. The Member States shall supply the Commission with a table, for the exclusive use of the Commission, based on the specimen in Annex II, setting out the decisions on the aid and intervention referred to in paragraph 1 and an estimate of their effects. They shall also provide a report on the attainment of industrial restructuring objectives.

This information shall be provided on 1 March in respect of decisions taken during the second half of the previous calendar year, and on 1 September in respect of those taken in the first half of the current calendar year.

The Commission shall verify, on the basis of the information referred to in the first and second subparagraphs and of the state of the order books in the Member State concerned, whether efforts to attain the industrial restructuring objectives mentioned in paragraph 1 and the crisis measures which have been applied are contributing genuinely and in an equitable manner to the adaptation of the industry to the new conditions on the world shipbuilding market.

On the basis of the information communicated to it, the Commission shall regularly draw up an overall report to serve as a basis for discussion with national experts. This report shall state *inter alia* the maximum level of aid and intervention obtaining in each Member State during the period in question.

4. Annex III lists the types of aid and intervention which are considered compatible with the common market under paragraph 1 and those considered compatible under Article 7.

The Commission shall modify the list in Annex III on the basis of the decisions it takes regarding proposed aid and intervention, or existing schemes.

Article 7

Intervention in the form of cost-escalation insurance may be considered compatible with the common market under this Directive, subject to the conditions listed in Article 6 (1), first and second subparagraphs, and in paragraphs 3 and 4.

Article 8

Aid granted to shipowners in a Member State for the purchase of ships shall not discriminate against the shipyards of the other Member States.

Member States shall draw up reports when such aid is granted to their own shipowners on a selective basis.

This information shall be provided in the form of a table for the exclusive use of the Commission, based on the specimen in Annex IV. The Member States shall communicate the information required under points 1 and 2 of that Annex half-yearly on 1 March in respect of decisions to grant aid taken in the second half of the previous calendar year and on 1 September in respect of those taken in the first half of the current calendar year. They shall communicate the information required under points 3 and 4 of that Annex annually on 1 March in respect of decisions to grant aid taken during the preceding calendar year. The Commission shall draw up overall reports at regular intervals summarizing the information thus supplied.

These reports shall be discussed with the Member States in order to ensure that there is no discrimination in the shipbuilding industry as a result of such aid. These provisions are entirely without prejudice to any future Community rules on aid to shipowners.

Article 9

In its appraisal of the national aid covered by this Directive, the Commission shall take account of the common interest as defined in common objectives for the reorganization of the industry at Community level. These objectives may be defined by the Council acting on a proposal from the Commission.

Article 10

The Member States shall refrain from any aid and intervention, other than that provided for in Articles 2 to 7 or that considered compatible with the common market under Articles 92 and 93 of the Treaty, to promote within their national territories the building, conversion or repair of ships or the manufacture of products intended to form part thereof.

Article 11

The Council, acting by a qualified majority on a proposal from the Commission, shall amend this Directive as and when appropriate.

Such amendment may follow an improvement in demand or favourable developments in international contacts.

Article 12

This Directive shall apply until 31 December 1980.

Article 13

This Directive is addressed to the Member States.

Done at Luxembourg, 4 April 1978.

For the Council

The President

K. B. ANDERSEN

ANNEX I

Table of investment aid under Article 4

Description of investment	Purpose of investment (1)	Amount of investment	Form of assistance	Net subsidy equivalent as a percentage of the investment	Effect of investment on production capacity

(1) Where applicable, indicate whether part of a development programme for an industry or region.

ANNEX II

Information to be furnished by Member States concerning the aid and intervention referred to in Articles 6 (1) and 7

Serial number	Type of vessel	Gross registered tons	Financial effect, as a percentage of the contract price (1)

(1) Subsidy equivalent is calculated by discounting at a rate of 8 %. Where payment is by instalments, the relevant subsidy equivalents are shown in the table relating to the period in which the payments were made. For cost-escalation insurance systems, the financial effect will be estimated.

ANNEX III

List of types of aid and intervention considered to be compatible with the common market pursuant to Articles 6 (1) and 7

1. System of aid for shipbuilding notified to the Commission on 22 March 1977 which was the subject of the Commission's letter of 1 August 1977 advising the Dutch Government that the Commission had no objections to the system.

2. System of aid for shipbuilding notified to the Commission on 18 February 1977 which was the subject of the Commission's letter of 1 August 1977 advising the United Kingdom Government that the Commission had no objections to the system.

3. System of aid for shipbuilding notified to the Commission on 15 September 1977 which was the subject of the Commission's letter of 9 December 1977 advising the French Government that the Commission had no objections to the system.

ANNEX IV

Information on aid to shipowners to be furnished by the Member States in accordance with Article 8

1. System of aid

2. Volume of contracts receiving aid (twice-yearly communication)

	Total volume		For construction in national shipyards		For construction in other EEC shipyards		For construction in non-member countries	
	Gross registered tons	National currency	Gross registered tons	National currency	Gross registered tons	National currency	Gross registered tons	National currency
Volume of contracts receiving aid								
Volume of contracts refused								
Total volume								

3. Average effect of aid per contract (annual communication)

Total average	For construction in national shipyards	For construction in other EEC shipyards	For construction in non-member countries

4. Number of cases where the effect differs by 10 % or more from that of aid granted for ships to be constructed in national shipyards

4.1. Number of cases where aid granted for a ship to be constructed in another Community country is at least 10 % less than the average level of aid for ships to be constructed by national shipyards

4.2. Number of cases where aid granted for ships to be constructed in national shipyards is at least 10 % more than the average level of aid