I

(Acts whose publication is obligatory)

COUNCIL REGULATION (EC) No 1540/98
of 29 June 1998
establishing new rules on aid to shipbuilding

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 92(3)(e), 94 and 113 thereof,

Having regard to the proposal from the Commission [1],

Having regard to the opinion of the European Parliament [2],

Having regard to the opinion of the Economic and Social Committee [3],

Whereas the agreement respecting normal competitive conditions in the commercial shipbuilding and repair industry concluded between the European Community and certain third countries within the framework of the Organisation for Economic Cooperation and Development (OECD) (hereinafter referred to as 'the OECD Agreement') [4] has still not entered into force because the United States of America has failed to ratify it; whereas, therefore, Council Regulation (EC) No 3094/95 of 22 December 1995 on aid to shipbuilding [5] has not yet entered into force;

Whereas, in accordance with Article 10 of Regulation (EC) No 3094/95, the relevant rules of Council Directive 90/684/EEC on aid to shipbuilding [6] will continue to apply, in the absence of entry into force of the OECD Agreement, until 31 December 1998 at the latest;

Whereas a satisfactory balance between supply and demand in world shipbuilding has still not been fully established, so that prices remain depressed; whereas the competitive pressures on Community shipbuilders are expected to grow further as overall ship demand after the year 2000 is predicted to fall and available world shipbuilding capacity is expected to continue to rise;

Whereas, although Community yards have made progress in improving competitiveness, the rate at which they are improving productivity needs to be increased in order to close the gap with their international competitors, particularly in Japan and Korea;

Whereas a competitive shipbuilding industry is important to the Community and contributes to its economic and social development by providing a substantial market for a range of industries and by maintaining employment in a number of regions, many of which are already suffering a high rate of unemployment;

Whereas a complete abolition of aid to the sector is not yet possible in view of the difficult market situation and the need to encourage yards to make the necessary changes to improve competitiveness; whereas, a tight and selective aid policy should be continued in order to support these efforts and to ensure fair and uniform conditions for intra-Community competition; whereas such a policy constitutes the most appropriate approach in terms of ensuring the maintenance of a sufficient level of activity in European shipyards and, thereby, the survival of an efficient and competitive European shipbuilding industry;

Whereas the Community's aid policy for the shipbuilding sector has remained essentially unchanged since 1987; whereas that policy has generally achieved its objectives but requires adaptations so that it is better able to address the future challenges facing the industry;

Whereas, in particular, operating aid is not the most cost-effective way of encouraging the European shipbuilding industry to improve its competitiveness; whereas, accordingly, operating aid should be phased out

[1] OJ C 114, 15. 4. 1998, p. 14.
[2] OJ C 138, 4. 5. 1998.
[3] OJ C 129, 27. 4. 1998, p. 19.
[4] OJ C 375, 30. 12. 1994, p. 3.
[5] OJ L 332, 31. 12. 1995, p. 1. Regulation as last amended by Regulation (EC) No 2600/97 (OJ L 351, 23. 12. 1997, p. 18).
[6] OJ L 380, 31. 12. 1990, p. 27.

and the focus shifted more towards other forms of support to promote the necessary improvements in competitiveness, such as investment aids for innovation;

Whereas operating aid will therefore end on 31 December 2000;

Whereas operating aid in the form of development assistance to developing countries should continue, subject to stricter conditions;

Whereas a clearer distinction is needed between investment aid and restructuring aid; whereas restructuring aid should be granted only exceptionally and subject to strict rules, such as applying the principle of 'one time/last time', requiring genuine capacity reductions as a counterpart for the aid and tighter monitoring procedures; whereas investment aid should be allowed only to improve the productivity of existing installations in existing yards situated in areas eligible for regional investment aid, subject to certain limitations on aid intensities in order to minimise possible distortions to competition;

Whereas investment aid for innovation should be allowed, provided that it is for genuinely innovative projects that will improve competitiveness; whereas aid for research and development and aid for environmental protection should also be permitted so that the shipbuilding industry is not deprived of these aid possibilities that are available to all other industrial sectors; whereas closure aid should continue to be allowed to facilitate structural adjustment;

Whereas, although it is proposed to continue to treat ship conversion in the same way as shipbuilding to a certain extent, aid to the ship repair sector should continue not to be permitted except for restructuring, closure, investments under regional aid schemes, innovation, research and development, and environmental protection;

Whereas close and transparent monitoring is necessary if the aid policy is to be effective;

Whereas, the Commission is to present to the Council a regular report on the market situation and appraise whether European yards are affected by anti-competitive practices; whereas, if it is established that anti-competitive practices of any kind are causing injury to industry, the Commission is, where appropriate, to propose to the Council measures to address the problem;

Whereas the first such report is to be presented to the Council no later than 31 December 1999;

Whereas this Regulation is without prejudice to any amendments necessary to comply with international commitments of the Community concerning state aid to the shipbuilding industry,

HAS ADOPTED THIS REGULATION:

CHAPTER I

DEFINITIONS AND AID

Article 1

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(a) 'self-propelled seagoing commercial vessels' shall mean:

— vessels of not less than 100 gt used for the transportation of passengers and/or goods,

— vessels of not less than 100 gt for the performance of a specialised service (for example, dredgers and ice breakers),

— tugs of not less than 365 kW,

— fishing vessels of not less than 100 gt for export outside the Community,

— unfinished shells of the abovementioned vessels that are afloat and mobile.

For the purposes of the above, 'self-propelled seagoing vessel' shall mean a vessel that, by means of its permanent propulsion and steering, has all the characteristics of self-navigability on the high seas.

Military vessels (i.e. vessels which according to their basic structural characteristics and capability are specifically intended to be used exclusively for military purposes, such as warships and other vessels for offensive or defensive action) and modifications made or features added to other vessels exclusively for military purposes shall be excluded, provided that any measures or practices applied in respect of such vessels, modifications or features are not disguised actions taken in favour of commercial shipbuilding inconsistent with this Regulation;

(b) 'shipbuilding' shall mean the building, in the Community, of self-propelled seagoing commercial vessels;

(c) 'ship repair' shall mean the repair or reconditioning in the Community of self-propelled seagoing commercial vessels;

(d) 'ship conversion' shall mean the conversion, in the Community, of self-propelled seagoing commercial vessels of not less than 1 000 gt, on condition that conversion operations entail radical alterations to the cargo plan, the shell, the propulsion system or the passenger accommodation;

(e) 'aid' shall mean State aid within the meaning of Articles 92 and 93 of the Treaty. This shall include not only aid granted by the State itself but also that granted by regional or local authorities or other public

bodies and any aid elements contained in financing measures taken directly or indirectly by Member States in respect of shipbuilding, repair or conversion undertakings which cannot be regarded as a genuine provision of risk capital according to standard investment practice in a market economy;

(f) 'contract value before aid' shall mean the price laid down in the contract plus any aid granted directly to the yard;

(g) 'related entity' shall mean any natural or legal person who:

(i) owns or controls an undertaking engaged in shipbuilding, ship repair or ship conversion, or

(ii) is owned or controlled, directly or indirectly, whether through stock ownership or otherwise, by an undertaking engaged in shipbuilding, ship repair or ship conversion.

Control shall be presumed to arise once a person or undertaking engaged in shipbuilding, ship repair or ship conversion owns or controls an interest of more than 25 % in the other or vice versa.

Article 2

Aid

1. Aid granted, whether directly or indirectly, for shipbuilding, ship repair and ship conversion, financed by Member States or their regional or local authorities or through State resources in any form whatsoever, may be considered compatible with the common market only if it complies with the provisions of this Regulation. This provision applies not only to aid granted to undertakings engaged in such activities but also to related entities.

2. For the purposes of this Regulation, aid granted indirectly includes all forms of aid to shipowners or to third parties which are available as aid for the building or conversion of ships such as credit facilities, guarantees and tax concessions. Concerning tax concessions, these provisions shall be without prejudice to the Community guidelines on State aid to maritime transport [1], and in particular point 3.1 thereof, and any amendments thereto.

3. No aid granted pursuant to this Regulation may be conditional upon discriminatory practices against products originating in other Member States. In particular, aid granted by a Member State to its shipowners or to third parties in that State for ship building or ship conversion may not distort, or threaten to distort, competition between shipyards in the Member State and shipyards in other Member States in the placing of orders.

[1] OJ C 205, 5. 7. 1997, p. 5.

CHAPTER II

OPERATING AID

Article 3

Contract-related operating aid

1. Until 31 December 2000, production aid in support of contracts for shipbuilding and ship conversion, but not ship repair, may be considered compatible with the common market provided that the total amount of all forms of aid granted in support of any individual contract (including the grant equivalent of any aid granted to the shipowner or third parties) does not exceed, in grant equivalent, a common maximum aid ceiling expressed as a percentage of the contract value before aid. For shipbuilding contracts with a contract value before aid of more than ECU 10 million, the ceiling shall be 9 %; in all other cases the ceiling shall be 4,5 %.

2. The aid ceiling applicable to a contract shall be that in force at the date of signature of the final contract.

However, the preceding subparagraph shall not apply in respect of any ship delivered more than three years from the date of signing of the final contract. In such cases, the ceiling applicable to that contract shall be that in force three years before the date of delivery of the ship. The Commission may, however, grant an extension of the three-year delivery limit when this is found justified by the technical complexity of the individual shipbuilding project concerned or by delays resulting from unexpected disruptions of a substantial and defensible nature in the working programme of a yard due to exceptional circumstances, unforeseeable and external to the company.

3. The grant of aid in individual cases in application of an approved aid scheme shall not require prior notification to, or authorisation from, the Commission.

However, where there is competition between different Member States for a particular contract, the Commission shall require prior notification of the relevant aid proposals at the request of any Member State. In such cases, the Commission shall adopt a position within 30 days of notification; such proposals may not be implemented before the Commission has given its authorisation. By its decision in such cases, the Commission shall ensure that the planned aid does not affect trading conditions to an extent contrary to the common interest.

4. Aid in the form of state-supported credit facilities granted to national and non-national shipowners or third parties for the building or conversion of vessels may be deemed compatible with the common market and shall not be counted within the ceiling if it complies with the terms of OECD Council Resolution of 3 August 1981 (OECD Understanding on Export Credits for Ships) or with any agreement amending or replacing that Understanding.

5. Aid related to shipbuilding and ship conversion granted as development assistance to a developing country shall not be subject to the ceiling. It 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 or with any later addendum or corrigendum to the said Understanding.

The Commission must be given prior notification of any such individual aid proposal. It shall verify the particular development content of the proposed aid and satisfy itself that it falls within the scope of the Understanding referred to in the first subparagraph and that the offer of development assistance is open to bids from different yards.

CHAPTER III

CLOSURE AND RESTRUCTURING AID

Article 4

Closure aid

1. 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.

2. The costs eligible for the aid referred to in paragraph 1 are:

— payments to workers made redundant or retired before legal retirement age,

— the costs of counselling services to workers made or to be made redundant or retired before legal retirement age, including payments made by shipyards to facilitate the creation of small enterprises which are independent of the shipyards in question and whose activities are not principally shipbuilding, ship repair or ship conversion,

— payments to workers for vocational retraining,

— expenditure incurred for the redevelopment of the yard(s), its buildings, installations and infrastructure for use other than that specified in points (b), (c) and (d) of Article 1.

3. In addition, in the case of undertakings which totally cease shipbuilding, ship repair or ship conversion, the following measures may also be deemed compatible with the common market:

— aid of an amount not exceeding the higher of the following two values, as determined by an independent consultants report: the residual book value of the installations, ignoring that portion of any revaluation since 1 January 1991 that exceeds the national inflation rate, or the discounted value of the contribution to fixed costs obtainable from the installations over a three-year period (less any advantages the aided undertaking derives from their closure);

— aid such as loans or loan guarantees for working capital needed to enable the undertaking to complete unfinished works provided that this is kept to the minimum necessary and a significant proportion of the work has already been done.

4. 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 and, in the case of conversion to other industrial activities, of the Community legislation and rules applicable to those new activities.

5. In order to establish the irreversible nature of aided closures, the Member State concerned shall ensure that the closed shipbuilding, ship repair and ship conversion facilities remain closed for a period of not less than ten years.

Article 5

Restructuring aid

1. Aid for the rescue and restructuring of undertakings in difficulties, including capital injections, debt write-offs, subsidised loans, loss compensation and guarantees, may exceptionally be considered compatible with the common market provided that it complies with the Community guidelines on State aid for rescuing and restructuring firms in difficulty [1].

Furthermore, in cases of restructuring, the following additional specific conditions must also be respected:

[1] OJ C 368, 23. 12. 1994, p. 12.

— the undertaking has not been granted any such aid pursuant to Regulation (EC) No 1013/97 [1],

— the aid is a one-off operation, with clear and unequivocal undertakings from the Member State concerned that no further aid will be granted to the undertaking or its legal successors in the future,

— there is a genuine and irreversible reduction in the shipbuilding, ship repair or ship conversion capacity of the undertaking concerned commensurate with the level of aid involved (in that regard the level of actual production in the preceding five years will be the determining factor in the level of capacity reduction required),

— the closed capacity must have been regularly used for shipbuilding, ship repair or ship conversion up to the date of notification of the particular aid in accordance with Article 10,

— the closed capacity must remain closed to shipbuilding, ship repair or ship conversion for not less than 10 years from the Commission's approval of the aid,

— if the closed capacity is re-used for alternative purposes, these must be independent of the shipyard in question and the activities must not be related principally to shipbuilding, ship repair or ship conversion,

— the Member State concerned must agree to cooperate fully with monitoring arrangements established by the Commission, including on-site inspections, where appropriate by independent experts.

2. In assessing the regularity of production and the capacity reduction involved, the Commission shall base its decision not only on the theoretical capacity of the yard(s) of the undertaking but also on the level of actual production over the preceding five years. No account will be taken of capacity reductions in other undertakings in the same Member State unless capacity reductions in the beneficiary undertaking are impossible without undermining the viability of the restructuring plan.

3. The Commission shall seek the views of Member States on all such cases where the aid is in excess of ECU 10 million before adopting a position on them.

4. In the case of restructuring operations lasting several years and involving large amounts of aid, the Commission may require that aid be disbursed in instalments subject to prior notification and approval by the Commission.

[1] OJ L 148, 6. 6. 1997, p. 1.

CHAPTER IV

OTHER MEASURES

Article 6

Investment aid for innovation

Aid granted for innovation in existing shipbuilding, ship repair and ship conversion yards may be deemed compatible with the common market up to a maximum aid intensity of 10 % gross, provided that it relates to the industrial application of innovative products and processes that are genuinely and substantially new, i.e. are not currently used commercially by other operators in the sector within the Community, and which carry a risk of technological or industrial failure, subject to the following conditions:

— the aid is limited to supporting expenditure on investments and engineering activities directly and exclusively related to the innovative part of the project,

— the amount and intensity of the aid is limited to the minimum necessary taking account of the degree of risk associated with the project.

Article 7

Regional investment aid

Aid 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, may be deemed compatible with the common market provided that:

— in regions meeting the criteria for the option contained in Article 92(3)(a) of the Treaty and complying with the map approved by the Commission for each Member State for the grant of regional aid, the intensity of the aid does not exceed 22,5 %,

— in regions meeting the criteria for the option contained in Article 92(3)(c) of the Treaty and complying with the map approved by the Commission for each Member State for the grant of regional aid, the intensity of the aid does not exceed 12,5 % or the applicable regional aid ceiling, whichever is the lower,

— the aid is limited to support eligible expenditure as defined in the applicable Community guidelines on regional aid.

Article 8

Research and development

Aid granted to defray expenditure by shipbuilding, ship repair or ship conversion undertakings on research and development projects may be considered compatible with the common market if it is in compliance with the rules laid down in the Community framework for State aid for research and development [1], or any successor arrangements.

Article 9

Environmental protection

Aid granted to defray expenditure by shipbuilding, ship repair or ship conversion undertakings for environmental protection may be considered compatible with the common market if it is in compliance with the rules laid down in the Community guidelines on State aid for environmental protection [2], or any successor arrangements.

CHAPTER V

MONITORING PROCEDURES AND ENTRY INTO FORCE

Article 10

Notification

1. Aid to shipbuilding, ship repair and ship conversion undertakings covered by this Regulation shall be subject to, in addition to the provisions of Article 93 of the Treaty, the special notification rules provided for in paragraph 2.

2. The following shall be notified to the Commission in advance by the Member States and authorised by the Commission before they are put into effect:

(a) any aid scheme — new or existing — or any amendment of an existing scheme covered by this Regulation;

(b) any decision to apply a generally applicable aid scheme, including generally applicable regional aid schemes, to the undertakings covered by this Regulation in order to verify compatibility with Article 92 of the Treaty, in particular in cases referred to in Articles 6, 7, 8 and 9 unless the aid is below the *de minimis* threshold of ECU 100 000 over any three-year period;

(c) any individual application of aid schemes in the following cases:

(i) those referred to in the second subparagraph of Article 3(3) and in Article 3(5), Article 4, and Article 5; or

(ii) when specifically provided for by the Commission in its approval of the aid scheme concerned.

Article 11

Monitoring of application of aid rules

1. To enable the Commission to monitor application of the aid rules contained in Chapters II to IV, Member States shall supply it with:

(a) monthly reports on each shipbuilding and ship conversion contract by the end of the third month following the month of signing of each contract, in accordance with the annexed Schedule 1;

(b) completion reports on each shipbuilding and ship conversion contract, including those signed before the entry into force of this Regulation, by the end of the month following the month of completion, in accordance with the annexed Schedule 1;

(c) where requested by the Commission, yearly reports, to be provided by 1 March of the year following the year subject to the report, giving details of the total amount of aid granted to each individual national shipyard during the previous calendar year, in accordance with the annexed Schedule 2;

(d) in the case of shipyards able to build merchant ships over 5 000 gt, yearly reports to be provided not later than two months after the annual general meeting has approved the shipyard's yearly report, giving publicly available information on capacity developments and on the structure of ownership, in accordance with the annexed Schedule 3; such reports shall be submitted biannually after the first annual report has been submitted unless the Commission decides to request yearly reports to continue;

(e) in the case of shipyards which have received restructuring aid in accordance with Article 5, quarterly reports on the attainment of the restructuring objectives, including the following elements: disbursement and use of the aid, investments, productivity performance, employment reductions, viability;

(f) in the case of shipyards benefiting from contracts supported by aid in the form of development assistance, such information as the Commission may require to enable it to ensure that the conditions of Article 3(5) are respected.

[1] OJ C 45, 17. 2. 1996, p. 5.
[2] OJ C 72, 10. 3. 1994, p. 3.

2. In the case of shipyards engaged in both commercial and military shipbuilding, ship repair or ship conversion, the reports referred to in (d) of paragraph 1 shall be accompanied by an attestation by the statutory auditor certifying the apportionment of the overheads to these two fields. In addition, separate information shall be submitted on the turnover in the commercial and military fields.

3. On the basis of the information communicated to it in accordance with Article 10 and paragraph 1 of this Article, the Commission shall draw up an annual overall report to serve as a basis for discussion with national experts and the Council. The report shall also be sent to the European Parliament for information. Separate half-yearly reports will be drawn up on cases involving restructuring aids.

4. If a Member State does not fully comply with its reporting obligations as laid down in paragraph 1, the Commission may, after consultation and after having given due notice, require that that Member State suspend outstanding payments of aid already approved until such time as all due reports have been received by the Commission.

If the reporting by a Member State under paragraph 1 is punctual but incomplete and at the time of reporting that Member State specifies those yards which have not fulfilled their reporting obligations, the Commission shall limit its possible requirement for suspension of outstanding aid payments to such yards only.

Article 12

Commission report

The Commission shall present to the Council a regular report on the market situation and appraise whether European yards are affected by anti-competitive practices. If it is established that industry is being caused injury by anti-competitive practices of any kind, the Commission shall, where appropriate, propose to the Council measures to address the problem.

The first report shall be presented to the Council no later than 31 December 1999.

Article 13

Entry into force

This Regulation shall enter into force on 1 January 1999.

It shall apply until 31 December 2003.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Luxembourg, 29 June 1998.

For the Council

The President

R. COOK

ANNEX

Schedule 1

REPORT OF MERCHANT SHIP ORDERS/COMPLETIONS

(Delete as appropriate)

Section 1: **Contract details**

1. New building/Conversion		
2. Company	3. Yard	4. Yard No
5. Registered owner (name and nationality)		
6. Holding owner (name and nationality)		
7. Vessel's country of registration		
8. Date contract signed	9. Completion/delivery date	

Section 2: **Ship details**

10. Type of vessel (by OECD category)	
11. Dead-weight (dwt)	
12. Gross tonnage (gt)	13. Compensated gross tonnage (cgt)
.....	.....

Section 3: **Financial arrangements**

	Currency	ECU (Prevailing rate)	% of contract price
14. Contract price			
15. Estimated contract loss (if any)			
16. Contract related aid			
A. Granted to yard:			
(a) grants			
(b) credit facilities			
(c) specific fiscal concession			
(d) other support			
B. Granted to customer or ultimate owner:			
(a) grants			
(b) credit facilities			
(c) guarantees			
(d) fiscal concession			
(e) other support			
17. Date aid granted			

Contact for inquiries: .....

..... Date: .....

Position: ..... Signature: .....

Schedule 2

REPORT OF COMPANY FINANCIAL SUPPORT

Name of company .....

Section 1: **Public aid**

Operating aid	1. Contract value 2. Costs/loss	Direct aid received	Indirect aid support	Legal basis (including date of approval by Commission)
1. Contract support: (a) related to contracts concluded before 1 January of the year concerned (b) related to contracts concluded after 1 January of the year concerned, of which: — related to development assistance to developing countries — related to contracts subject to Article 3(3)				
	Costs [1]		Aid received	Legal basis (including date of approval by Commission)
2. Investments 3. Social aids 4. Other cash closure costs 5. Asset disposal costs/receipts 6. Rescue and restructuring costs 7. Research and development costs 8. Environmental protection 9. Other costs				

[1] Including for 3, details of numbers of workers involved.

Contact for inquiries:

..... Date: .....

Position: ..... Signature: .....

Section 2: **Turnover and profit / (loss)** to be completed by all companies in receipt of direct production aid

	Reporting year	Previous year
10. Turnover 11. Of which related to merchant shipbuilding and ship conversion: (a) related to contracts concluded before 1 January of the year concerned (b) related to contracts concluded after 1 January of the year concerned, of which — related to development assistance to developing countries 12. Losses (if any) 13. Of which related to merchant shipbuilding and ship conversion: (a) related to loss on contracts (b) related to movement in provisions (c) related to restructuring expenditures		

Section 3: **Cash flow** (to be filled in for all companies which have registered losses under 12 and have received funding from any public sources)

	Reporting year	Previous year
Expenditures 14. Trading losses before depreciation 15. Investment expenditure 16. Other expenditures 17. Other changes in working capital		
Source of funds 18. Equity receipts: (a) from public shareholders (b) from private shareholders 19. Loans and overdrafts: (a) from public sources (a') of which contract support (b) from private sources (b') of which with state guarantee		

Schedule 3

REPORT ON YARDS ABLE TO BUILD MERCHANT SHIPS OF OVER 5 000 GRT

1. Name of the company (.....)

2. Total available capacity (.....) (cgt)

3. Data on the dock/berth

Dock or berth	Maximum size of ships (grt)
(.....)	(.....)
(.....)	(.....)
(.....)	(.....)

4. Description of any plans for future capacity expansion or reduction

5. Production (expressed in cgt) for the year and production levels in the preceding four years

6. Structure of ownership (capital structure, share of direct and indirect public ownership)

7. Financial statements (balance sheet, profit and loss statement, including, if available, separate accounts covering the shipbuilding activities of holding)

8. Transfer of public resources (including debt guarantees, bond infusions, etc.)

9. Exemptions from financial or other obligations (including tax privileges, etc.)

10. Capital contribution (including equity infusions, withdrawal of capital, dividend, loans and their refunding, etc.)

11. Debt write-off

12. Transfer of losses