

COUNCIL DIRECTIVE**of 28 April 1981****on aid to shipbuilding**

(81/363/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 situation of the shipbuilding industry has continued to be unfavourable during the period of operation of Council Directive 78/338/EEC of 4 April 1978 on aid to shipbuilding ⁽³⁾; whereas this situation has in particular taken the form of an imbalance between the production capacity of the industry and demand, leading to low price levels;

Whereas shipbuilding undertakings in the Community have therefore been obliged to draw frequently on their financial reserves to take orders, thus reducing their chance of implementing the structural adaptations needed to face the prevailing market conditions in the longer term;

Whereas the Council resolution of 19 September 1978 concerning the reorganization of the shipbuilding industry ⁽⁴⁾ stressed the need to maintain within the Community a healthy and competitive shipbuilding industry whose scale of activity should be consistent with the size of the Community's seaborne trade and respect its economic, social and strategic importance;

Whereas a 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; whereas it contributes also to the maintenance of employment in a number of regions, including some which are already suffering a high rate of unemployment; whereas this is also true of ship conversion and ship repair;

Whereas, if the situation in the industry were normal, the continuation of operating aid could not be justified, since, its effect being mainly that of conservation, it is not likely to bring about any lasting improvement in the Community shipbuilding industry's competitiveness;

Whereas, however, the continuation of the crisis has serious consequences for the shipbuilding industry which may make the immediate abolition of such aid impossible; whereas it is necessary to allow adaptation of the structures of the industry to the prevailing market conditions to take place gradually;

Whereas, to this end, production aid should be temporary and diminishing, so as to encourage the undertakings to make the necessary effort to become competitive, at least in time; whereas such aid should be subject to continuous control in order to avoid distortions of competition within the Community; whereas the granting of such aid should be linked to the achievement of restructuring objectives; whereas, in this context, the restructuring effort is not confined to reduction of production, employment and production capacity, but includes all other measures enabling the shipbuilding industry to become competitive; whereas in assessing the reduction of production capacity it is appropriate to take account of the effort already made;

Whereas, in order to deal with the present difficulties facing the industry, and in particular the distortions of competition which are occurring, most member countries of the OECD have helped to remedy the serious structural disequilibrium by reducing world shipbuilding production capacity; whereas this reduction in capacity should be achieved in the least damaging and most equitable way possible; whereas the member countries have adapted certain conditions laid down by the OECD Council resolu-

⁽¹⁾ OJ No C 28, 9. 2. 1981, p. 35.

⁽²⁾ OJ No C 353, 31. 12. 1980, p. 25.

⁽³⁾ OJ No L 98, 11. 4. 1978, p. 19.

⁽⁴⁾ OJ No C 229, 27. 9. 1978, p. 1.

tion on credit facilities, in order to bring the resolution more into line with the current trend of the market;

Whereas Directive 78/338/EEC has helped to reduce distortion of competition between Member States; whereas this Directive has also enabled the Community to adopt a common position in discussions with other shipbuilding countries;

Whereas production structures should be progressively adjusted to the new market conditions in such a way that undertakings in the industry may become capable of following general economic developments and of meeting competition on the world market without the support of intervention by public authorities; whereas this progressive adjustment of production structures should be accompanied by measures to facilitate adjustments in employment and on a social level;

Whereas, furthermore, effective action to eliminate distortions of competition requires a solution covering all aid directly or indirectly affecting competition and trading conditions on the shipbuilding, ship-conversion and ship-repair market;

Whereas it is necessary to define aid 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, in view of the continuing crisis in the shipbuilding industry, it is appropriate to provide for aid to facilitate the conversion or the partial or total cessation of shipbuilding activities under the most equitable social conditions; whereas, to this end, Member States and the Commission will continue to cooperate in order to deal as far as possible with any social problems and regional consequences which may arise from the restructuring of the shipbuilding and ship-repair industries; whereas Member States will endeavour to inform the Commission as soon as possible in particular of plans for the conversion and partial or total cessation of shipbuilding and ship-repair yards;

Whereas aid granted to national shipowners for the acquisition of new ships should not lead to distortions of competition between national shipyards and those of other Member States;

Whereas any aid elements contained in the financing measures taken by Member States in respect of the shipbuilding or ship-repair undertakings which they directly or indirectly control should also meet the requirements laid down under this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of Articles 3 to 10 the following definitions shall apply:

(a) '*shipbuilding*':

means the building in the Community of the following metal-hulled sea-going vessels:

- merchant ships 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, of not less than 150 gross registered tons, excluding drilling platforms,
- tugs of not less than 365 kW;

(b) '*ship conversion*':

means the conversion of metal-hulled sea-going vessels of not less than 1 000 gross registered tons, 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) '*aid*':

means State aid within the meaning of Articles 92 and 93 of the Treaty, including not only aid granted by the State itself but also that granted by regional or local authorities and any aid elements contained in the financing measures taken by Member States in respect of the shipbuilding or ship-repair undertakings which they directly or indirectly control and which do not count as the provision of risk capital according to standard company practice in a market economy.

Such aid may be considered compatible with the common market provided that it complies with the criteria for derogation contained in this Directive.

*Article 2***Credit facilities**

Aid in the form of credit facilities for all sales or conversion of vessels may be considered compatible with the common market provided that it complies with the OECD Council resolution of 30 January 1980 or with any agreements replacing the resolution.

*Article 3***Investment aid**

Member States shall not grant sectorial aid for the creation of new shipyards or for investment in existing yards if such aid would be likely 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 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 30 working days before they are put into effect.

Member States shall inform the Commission of their decisions to grant aid for 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 accordance with the procedure provided for in Article 10.

*Article 4***Aid to rescue an undertaking**

Rescue aid intended to maintain a shipbuilding, ship-conversion or ship-repair undertaking, pending a definitive solution of the problems confronting the undertaking concerned, in order to deal with acute social problems and the regional effects which may arise, may be considered compatible with the common market under this Directive.

The Commission shall verify that the aid does not change the terms of trade in a manner contrary to the common interest and that it does not endanger

the arrangements instituted by the Directive and in particular Article 6 thereof.

*Article 5***Aid to deal with the social and regional consequences of restructuring**

In order to deal in particular with the social and possibly regional consequences of restructuring, aid intended to cover the normal expenditure occasioned by operations for conversion to activities other than those specified in Article 1 (a), (b) and (c) or by partial or total closure of shipbuilding or ship-repair yards may be considered compatible with the common market. In order to enable the Commission to assess the consequences of such conversion operations or closures, Member States shall supply the Commission at its request with any information they have on the matter.

*Article 6***Crisis aid**

1. Production aid in favour of shipbuilding may be considered compatible with the common market if it is granted to deal with the effects of a crisis characterized by a poor order situation leading to substantial under-utilization of the means of production.

Such aid shall be progressively reduced; it shall be granted only if linked to the attainment of industrial restructuring objectives which will make the industry competitive and able ultimately to operate without aid.

2. When assessing the compatibility of such measures with the common market, and in particular the level of aid, the Commission shall pay particular attention to the situation on the market, the gravity of the crisis in terms of the balance of the workload remaining available to shipyards and the need for adaptation of the shipbuilding industry to the conditions and constraints prevailing on the market. In addition, the Commission shall verify that the programme of adaptation of the industry is comparable with those carried out in the other Member States.

This assessment shall take account of all the aids which the Member State concerned provides for the construction, sale and acquisition of ships, in so far as these aids affect the shipbuilding sector. When making this examination, the Commission shall also take account of the budgetary funds allocated to these aids as a whole and in particular crisis aids.

3. The Commission shall assess the maximum level of aid 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, having regard to the urgency of each individual case, and in any case not later than 30 working days after notification.

In determining the manner in which the maximum level of aid is to be progressively reduced, the Commission shall take account of the existing maximum level and of the acuteness of the crisis in the Member State concerned.

4. The Commission shall be given prior notification of any proposed individual aid under the measures referred to in paragraph 1 where such proposal is in competition with a tender from a yard in another Member State and shall adopt a position within 30 days following notification. 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.

Member States shall supply the Commission with a table, for its exclusive use setting out the decisions on the aid referred to in paragraph 1 and an estimate of their effects. This information shall be provided in accordance with the procedure set out in Article 10.

The Commission shall verify, on the basis of the information referred to in this Article and of the state of the order books of the yards 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.

Article 7

Aid and intervention in the form of cost-escalation insurance may be considered compatible with the common market under this Directive, subject to the conditions set out in Article 6.

Article 8

1. Aid granted to shipowners in a Member State linked to the acquisition of new ships may not lead to distortions of competition between national shipyards and shipyards in other Member States in the placing of contracts.

2. Aid to shipowners linked to the acquisition of new ships may not endanger the arrangements established by Article 6 in particular, nor the objectives pursued by the present Directive, especially in regard to the adaptation of the shipbuilding industry to prevailing market conditions.

3. If the Commission observes that one of these situations is likely to arise, it shall examine the whole of the aid provided by a Member State for the building, sale and acquisition of ships.

4. These provisions are entirely without prejudice to any future Community rules on aid to shipowners.

5. When aid is granted to national shipowners on a selective basis, Member States shall draw up a report. This report shall contain information on the total tonnage of orders receiving aid and the share of this total which has been placed in national yards. The volume of aid shall be shown in each case.

This information shall be provided in accordance with the procedure set out in Article 10. The Commission shall at regular intervals draw up overall reports summarizing the information supplied to it.

These reports shall be discussed with Member States in order to ensure that there is no discrimination in the shipbuilding industry as a result of such aid.

Article 9

No aids granted pursuant to this Directive may be conditional upon discriminatory practices as to products originating in other Member States.

Article 10

Subject to the specific provisions of this Directive, Articles 92 and 93 of the EEC Treaty shall be fully applicable to shipbuilding, ship conversion and ship repair.

In accordance with Article 93 (3) of the Treaty, Member States' aid plans, as referred to in this Directive, shall be notified to the Commission before they are put into effect. This aid may not be put into effect before the Commission has given its agreement.

Information to be supplied periodically by Member States under this Directive shall be provided half-yearly on 1 March in respect of decisions taken

during the second half of the previous calendar year and 1 September in respect of decisions taken during the first half of the current calendar year.

On the basis of the information communicated to it, the Commission shall, at regular intervals, 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 obtaining in each Member State during the period in question.

The Member States shall at regular intervals provide the Commission with a report on the attainment of shipbuilding restructuring objectives. The Commission shall indicate the date by which each Member State has to submit the report. The report shall show the results obtained through the application of the aid referred to in this Directive.

Article 11

This Directive shall apply until 31 December 1982.

Article 12

This Directive is addressed to the Member States.

Done at Luxembourg, 28 April 1981.

For the Council

The President

J. de KONING