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COMMISSION OF THE EUROPEAN COMMUNITIES

COM(80) 461 final

Brussels, 18th September 1980



PROPOSAL FOR A COUNCIL DIRECTIVE
ON AID TO SHIPBUILDING

(presented by the Commission to the Council)

COM(80) 461 final

Subject : Proposed 5th Directive on aid to shipbuilding.

1. Background

1.1. The 4th Council Directive on aid to shipbuilding will expire at the end of 1980. This Directive aimed both to define the aids which could be considered compatible with the Common market under Article 92(3) EEC and to exercise a discipline in the grant of such aids and prevent distortion of competition resulting from them.

It also sought to encourage the Community industry to undertake the necessary structural changes to enable it to survive in the current and foreseeable future market conditions. Over recent years considerable restructuring has in fact taken place in the Community merchant shipbuilding industry. There have been reductions in employment and output : between 1975 and the end of 1979 employment fell by 35 % and output by over 40 %. The pace of restructuring has varied in different Member States, and although some are well advanced in their restructuring programmes, others have still a significant way to go (in some cases progress is hindered by political difficulties).

1.2. The situation on the world market remains one of crisis, with demand still depressed, prices low and continuing severe competition for the orders that are available. The slight improvement in orders that was observable in 1979 was probably due to temporary factors and cannot be regarded as the beginning of a permanent upturn in the market. Forecasts of future demand differ, but it seems reasonable to suppose that the volume of new orders won by Community shipyards over the next few years will remain fairly comparable to that achieved in the recent past. There are thus no grounds for hope that an upsurge in orders will bring a speedy end to the crisis in the industry. Further, prices cannot be expected to show any marked improvement for some time to come, since severe price competition, especially from the Far East, is likely to continue and, in addition, the anticipated trade recession will keep freight rates low.

1.3. It is thus clear that the process of adaptation undertaken by Member States, and given a framework by the 4th Directive, will need to be pursued and that the shipbuilding industry in the Community will continue to need aid for a further period, though not necessarily at a uniform rate for the whole of the period.

In these circumstances, the internal discipline in respect of aids must also be continued, to ensure that Member States share the burden of the crisis equitably and do not contribute to the prolongation of the crisis by allowing excessive capacity to exist or prices to be kept artificially depressed by unreasonable levels of subsidy.

1.4. The experts of the Member States are agreed that there is need for a new Directive to come into force on expiry of the present one. They agree also that the recommendations of the Council Resolution of 19.9.1978⁽¹⁾ on the reorganisation of the shipbuilding industry remain valid. The 5th Directive now submitted has been elaborated with the benefit of detailed discussions with the experts on the course of multi-lateral meetings and it broadly follows the lines of the 4th Directive. In some respects, however, it goes further than the 4th Directive and brings within the discipline forms of aid not previously covered. It is proposed to have a duration of 2 years.

2. General Approach of the Directive

2.1. As in the 4th Directive, production aid, which is the type of aid having the most direct and distorting effect on competition and the market, is regarded as acceptable only as a means of dealing with the crisis facing the industry. Its purpose is to enable Community yards to offer prices comparable to those of competition in third countries and it should not result in the displacing of orders from other Community yards. It is a condition of the grant of such aid that it should be linked with a restructuring programme and it should not effect trade to an extent contrary to the common interest. The principle of progressive reduction of the aid is also retained.

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(1) OJ C 229 of 27.9.1978.

2.2. Under the 4th Directive, Member States were required to submit reports on the grant of aid to shipowners. The purpose of this requirement was to enable the Commission to consider whether shipowners aid was having any appreciable effect on the placing of shipbuilding orders. The information received has shown that aid to shipowners tends at least in present circumstances to result almost exclusively in orders for home yards and therefore to have a effect similar to that of aids to shipbuilding. Since it is not equitable that these aids should escape the discipline applied to other aids which have similar effects, the new Directive enables the Commission to examine the position and take action if aids to shipowners are endangering the common discipline or are obstructing the objectives of the Directive, notably as regards restructuring.

2.3. The Directive also contains provisions for the control of aid given in the form of compensation for losses incurred by shipbuilding undertakings. Aid provided by this means lacks transparency, and gives rise to concern among other Member States that, in effect, it may be a means of providing excessive production aid (for example, if a production aid at the maximum rate of 25 % is granted for a particular contract and subsequently an additional loss of 10 % is incurred, then, effectively, a production aid of 35 % has been given). The Commission is also concerned that this practice may weaken the yards' incentive to reduce losses by restructuring and becoming more competitive.

2.4. The new Directive therefore maintains the pressure towards re-organisation and increased efficiency in the Community industry, with a view making it able to exist ultimately without state aid. It retains the two aspects which also characterized the 4th Directive, as an instrument of control and an instrument for stimulation of necessary industrial change.

2.5. The Commission recognises that in some Member States extensive restructuring has taken place and that scope for further reductions in capacity is limited. It is necessary however to retain the restructuring criterion for the granting of aids and these Member States will therefore continue to have to show that aid proposed is linked with restructuring plans. In these circumstances it will be appropriate to interpret the notion of restructuring more flexibly under the 5th Directive and to place the emphasis on modernisation and rationalisation rather than on pure reduction of capacity as in the past.

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3. Elements of the Directive

3.1. Credit Facilities (Article 2)

The Directive provides for Member States to grant credit facilities for the sale or conversion of ships provided they respect the terms of the OECD Understanding. Some differences in definition which existed between the OECD Understanding and the 4th Directive in this respect have been eliminated in the new draft.

3.2. Investment Aid (Article 3)

This Article, identical with Article 4 of the 4th Directive, provides that the Commission be notified in advance of any investment aid which would result in an increase in the production capacity of a Member State. In addition, reports showing all investments in excess of 5 million EUA are to be submitted at 6-month intervals. Although very little investment falling within this Article has taken place during the currency of the 4th Directive, it is necessary to retain the Article as a safeguard and a source of information for the Commission.

3.3. Aids to rescue an undertaking (Article 4)

Under this Article, aid given to rescue a shipbuilding, ship-repair or ship conversion undertaking pending a longer term solution of the undertaking's problems may be considered compatible with the common market. The new draft is more explicit than its predecessor in the 4th Directive in prohibiting cumulation of rescue aid and production aid in the same form. It specifies that rescue aid shall not take the form of grants for production provided for in Article 6. This is intended to deal with a problem which has arisen under the 4th Directive when Member States, proposing to grant a production aid in excess of the normal maximum have argued that the additional amount has the character of a rescue aid and therefore should be authorized under this Article. To accept this would make the concept of a production aid limit practically valueless; hence the revised draft.

3.4. Aid to deal with the social and regional effects of restructuring (Article 5)

This is a new Article. It is prompted by the fact that shipyards are often located in older industrial areas already experiencing severe regional and social problems, which threaten to be seriously aggravated by losses in shipbuilding employment. The Article provides for Member States and the Commission to cooperate in this respect: the underlying thought is that some Regional Aid Fund monies may be specifically allocated to this problem. This is a very positive element of the Directive and is important as an indicator of the Community's concern for the human problems created by the shipbuilding crisis.

3.5. Crisis Aid (Article 6)

This Article continues the general approach of its counterpart in the 4th Directive. It provides that production aid may be considered compatible with the Common market if it is linked to restructuring, is degressive and does not affect trading conditions to an extent contrary to the common interest.

In interpreting the concept of degressivity, the Commission will take special account of the development of the competition situation at world level and of possible worsening of the regional problems in certain parts of the Community.

The new element in this article is that, in assessing a Member State's proposals for such aids, the Commission will take into account other types of aid which benefit shipbuilding in that State. This approach is intended to ensure that accumulation of aids of different types does not build up to unacceptable totals.

3.6. Cost Escalation Insurance (Article 7)

Under this Article aid in the form of insurance against inflationary cost increases may be considered compatible, provided it satisfies the criteria for aids under Article 6.

3.7. Aid to Shipowners (Article 8)

As mentioned above (para 2.2), aid to shipowners has been seen, under the 4th Directive, to operate to some extent as an instrument of support for the shipbuilding industry of certain Member States. This Article therefore proposes to subject these aids to the general discipline, by declaring that they shall not endanger the objectives of the Directive (notably as to restructuring) and shall not discriminate against shipyards in other Member States. If the Commission concludes that these effects are occurring, it may intervene and examine the whole aid system of the Member State for the building, sale and acquisition of ships.

3.8. Other financial measures (Article 9)

This is a new article, intended to deal with the problem outlined in paragraph 2.3 above. Because of the difficulty in identifying the precise effects of certain financial measures (in particular loss compensation, capital reorganisation, non-repayable grants) on individual orders or on progress with restructuring, the Article adopts a broad formulation which leaves the Commission scope for exercise of discretion. It goes without saying that such aid should not obstruct the discipline of Article 6 (see para 3.5 above) or the general objectives of the Directive, notably as regards the necessary restructuring of the sector.

3.9. Non-Discrimination in marine equipment (Article 10)

This Article provides that marine equipment should not be subject to restrictive practices as between Member States.

COUNCIL DIRECTIVE

on aid to shipbuilding

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,

having regard to the opinion of the Economic and Social Committee;

1. Whereas the situation of the shipbuilding industry has continued to be unfavourable during the period of operation of Directive 78/338/EEC on aid to shipbuilding; 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;
2. 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;
3. Whereas the Resolution of the Council of Ministers of 19 September 1978 ^{concerning} the reorganisation of the shipbuilding industry in the Community 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 sea-borne trade and respect its economic, social and strategic importance;
4. 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 shiprepair;

5. 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 ;
6. Whereas, however, the continuation of the crisis for a further period has serious consequences for the shipbuilding industry which 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 ;
7. Whereas, to this end, operating 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 ;
8. Whereas, in order to deal with the present difficulties facing the industry, and in particular the distortions of competition which are occurring, the member countries of the OECD are continuing their efforts to remedy the serious structural disequilibrium existing in this industry by reducing world shipbuilding production capacity ; whereas this reduction in capacity should be achieved in the least damaging and most equitable way possible ; whereas these countries have adapted certain conditions of the OECD Council Resolution on credit facilities, in order to bring it more into line with the current trend of the market;
9. Whereas Council Directive 78/338/EEC of 4 April 1978 on aid to shipbuilding has, during its period of operation, 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 ;

10. 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;
11. 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;
12. 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;
13. Whereas, in view of the continuing crisis in the shipbuilding industry, it is appropriate to provide for aid to facilitate the conversion or closure of shipyards under the most equitable social conditions; whereas this aid may provide for the retraining of the workforce or facilitate early retirement;
14. 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;
15. Whereas any aid included in direct or indirect financing measures taken by Member States, in respect of private or publicly-owned shipyards, should also meet the requirements laid down under this Directive;

Had adopted this Directive :

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Article 1

For the purposes of Articles 3 to 11 of this Directive, the following definitions shall apply :

- (a) Shipbuilding means the construction 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 grt;
 - fishing vessels of not less than 150 grt;
 - dredgers or ships for other work at sea, of not less than 150 grt, 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 grt, 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 ^{meaning} within the /of Articles 92 and 93 of the Treaty, including both aid granted by the State itself and that granted by regional or local authorities.

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 5 February 1980 or with any agreements replacing the Resolution.

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Article 3

Investment aid

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 steps to ensure that aided investment does not lead either to increase 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 repair or shipconversion yards where the amount of such investment is in excess of 5 million European units of account. This information shall be provided in accordance with the procedure provided for in Article 11.

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 the present Directive. Rescue aid may not take the form of production aid more particularly provided for in Article 6.

Article 5

Aid to deal with the social and regional consequences of restructuring

The Member States and the Commission shall cooperate to deal, so far as possible, with the social and regional consequences of the restructuring of the shipbuilding and ship repair industries, and to this end Member States shall inform the Commission as soon as possible of proposals for conversion and closure of shipbuilding and shiprepair undertakings.

Aid intended to cover the normal costs arising from the conversion and the partial or total closure of a shipbuilding or shiprepair yard may be considered compatible with the common market.

Article 6

Crisis aid

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 characterised 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.

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 examine the budgetary resources allocated for crisis aid in order to verify that the programme of adaptation of the industry is comparable with those carried out in the other Member States of the Community.

This examination shall take account of all aid provided by the Member State concerned for the construction, sale and acquisition of ships.

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 thirty working days after notification.

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

The Commission shall be given prior notification of any proposed individual aid under the measures referred to in the first paragraph where such proposal is in competition with a tender from 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.

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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 11.

The Commission shall verify, on the basis of the information referred to in the first and second paragraphs, and of the order situation in the Member State concerned, whether efforts to attain industrial restructuring objectives mentioned in ^{the second} paragraph 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

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.

Aid to shipowners linked to the acquisition of new ships may not endanger the discipline 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.

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

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

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 11. The Commission shall at regular intervals draw up overall reports summarising 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

Any elements of aid included in direct or ^{indirect} financing measures taken by Member States in respect of shipbuilding and ship repair undertakings, whether private or publicly-owned, may be considered compatible with the common market provided that they comply with the criteria for derogation contained in this Directive.

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Article 10

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

Article 11

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

Aids planned by Member States under Articles 2 to 9 shall be notified to the Commission before they are put into effect. They may not be put into effect before the Commission has given its agreement.

Information to be supplied periodically by Member States under Articles 3, 6, 7 and 8 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 of 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 determine the due date of this report for each Member State. The report shall show the results obtained through the application of the aid referred to in Articles 3 to 7.

Article 12

This Directive shall apply until 31 December 1982.