COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL REGULATION (EC)

amending Council Regulation 3094/95

thereby further prolonging the relevant provisions of the Seventh Council Directive on aid to Shipbuilding

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Proposal for a

COUNCIL REGULATION (EC)

establishing new rules on aid to shipbuilding

(presented by the Commission)

Commission proposal for a Council Regulation amending Council Regulation 3094/95 thereby further prolonging the relevant provisions of the Seventh Council Directive on aid to Shipbuilding

97/ 0248(CNS)

Explanatory Memorandum

1. Introduction

1.1 In 1994 an international agreement was concluded within the framework of OECD respecting normal competitive conditions in the commercial shipbuilding and shiprepair industry. The agreement had been due to enter into force on 1 January 1996.

1.2 Council regulation 3094/95 of 22 December 1995 on aid to shipbuilding is intended to give effect to the State aid provisions of the OECD agreement.Article 10 of the regulation provided that the regulation shall apply as from the date of entry into force of the OECD agreement with the relevant provisions of the shipbuilding aid directive (Directive 90/684/EEC, as most recently amended by Directive 94/73/EC) continuing to apply ad interim and until 1 October 1996 at the latest. However because of continuing delays in the entry into force of the OECD agreement due to the failure of the US to ratify, Council Regulation 1904/96 further prolonged the directive until 31 December 1997.

1.3 Having reviewed the situation at its meeting on 24 April 1997, the Industry Council agreed that if the OECD agreement was not going to enter into force a specific new aid regime for shipbuilding should be established. In the meantime the seventh directive should be extended until 31 December 1998 on the understanding that the prolonged directive would lapse automatically as soon as the OECD agreement is ratified by the US or as soon as a new regime on shipbuilding is adopted. The Commission was invited to submit proposals accordingly.

1.4 Since there remain uncertainties over the entry into force of the agreement, this paper reviews the situation and puts forward proposals for an extension of the directive until 31 December 1998. Proposals for a new aid regime to replace the directive are the subject of a separate communication[1] being submitted in parallel with the present proposal.

2. OECD agreement

2.1 Under the OECD agreement, generally all measures of support for shipbuilding are prohibited except for aid for research and development, social aid related to closures; export credits complying with the revised 1994 OECD understanding on export credits for ships; and domestic credits for ships under equivalent terms and conditions.

[1] COM(97) XXX

2.2 Although the European Union, Korea, Norway and Japan have ratified the agreement, the ratification of the USA is still awaited. The prospects of when the US will ratify are uncertain at this stage.

2.3 The early entry into force of the OECD agreement is vitally important if a normalisation of world shipbuilding market is to be achieved. By ratifying, the Community has already signalled its commitment to the agreement. However, so long as other parties to the agreement have not ratified and continue to maintain subsidies and other market-distortive measures, it would be inappropriate for the European Union unilaterally to dismantle its aid arrangements.

3. Proposal

3.1 In the light of the above it is proposed that if necessary the Community should maintain the rules of the directive until 31 December 1998 should there be a continuing delay in the entry into force of the OECD agreement. In that event, since new measures of support are prohibited by the "standstill" provisions of the Final Act of the negotiations concluding the OECD agreement, provisions which the Council has confirmed it considers binding, the rules of the directive would be maintained unchanged. This would include the level of the production aid ceiling.

4. Conclusion

4.1 Accordingly, it is proposed that the Council adopts, after consultation of the European Parliament and the Economic and Social Committee, the attached amendment to Regulation 3094/95 providing for its entry into force as from the date of entry into force of the OECD agreement, with the relevant provisions of the shipbuilding directive continuing to apply ad interim and until 31 December 1998 at the latest.

4.2 In order to avoid any legal vacuum the Council should take a decision before 31 December 1997.

Proposal for a Council Regulation amending Council Regulation 3094/95 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;

Having regard to the opinion of the European Parliament;

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

Whereas, an 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 Co-operation and Development (OECD)[2], has still not yet entered into force.

Whereas, therefore Council Regulation 3094/95 of 22 December 1995[3] on aid to shipbuilding has not yet entered into force.

Whereas, in accordance with Article 10 of Regulation 3094/95, as amended by Council Regulation 1904/96[4] the relevant rules of Council Directive 90/684/EEC on aid to shipbuilding[5] continue to apply ad interim, pending the entry into force of the OECD agreement and until 31 December 1997 at the latest;

Whereas given the continuing uncertainties over entry into force of the OECD agreement, which may be further delayed beyond 31 December 1997, the Council needs to take appropriate steps pending decisions on a possible new aid arrangements;

Whereas Regulation 3094/95 should therefore be modified,

HAS ADOPTED THIS REGULATION

Article 1

The third paragraph of Article 10 of Regulation 3094/95 shall be replaced by the following:

Pending the entry into force of the said Agreement, the relevant provisions of Directive 90/684/EEC shall apply until the Agreement enters into force and until 31 December 1998 at the latest.

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[2] OJ C 375,30.12.1994,p3
[3] OJ L332,31.12.1995,p1
[4] OJ L251,3.10.1996,p5
[5] OJ L380,31.12;1990,p27

Article 2

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

Commission proposal for a Council Regulation establishing new rules on aid to shipbuilding

97/ 0249(CNS)

Explanatory Memorandum

1. Introduction

1.1 In 1994 an international agreement was concluded within the framework of OECD respecting normal competitive conditions in the commercial shipbuilding and shiprepair industry. The agreement had been due to enter into force on 1 January 1996, but has not yet done so due to delays in US ratification of the agreement.

1.2 Council Regulation 3094/95 of 22 December 1995 on aid to shipbuilding is intended to give effect to the state aid provisions of the OECD agreement. Under these provisions generally all measures of support for shipbuilding would be prohibited except for aid for research and development; social aid linked to closures and ship financing credits complying with the revised 1994 Understanding on Export Credits for Ships. Article 10 of the regulation provided that the regulation shall apply as from the date of entry into force of the OECD agreement with the relevant provisions of the shipbuilding aid directive (Directive 90/684/EEC) continuing to apply ad interim and until 1 October 1996 at the latest. However because of the continuing delays in the entry into force of the OECD agreement, Council Regulation 1904/96 further prolonged the directive until 31 December 1997.

1.3 Having reviewed the situation at its meeting on 24 April 1997, the Industry Council agreed that if the OECD agreement was not going to enter into force a specific new aid regime for shipbuilding should be established. In the meantime the seventh directive should be extended until 31 December 1998 on the understanding that the prolonged directive would lapse automatically as soon as the OECD agreement is ratified by the US or as soon as a new regime on shipbuilding is adopted. The Commission was invited to submit proposals accordingly.

1.4 Since there remain uncertainties over the entry into force of the OECD agreement, this paper puts forward proposals for a new aid regime should the need arise. Proposals for an extension of the directive up until 31 December 1998 in the meantime are the subject of a separate communication[6] being submitted at the same time as the present proposal.

1.5 The proposals for a new aid regime should be seen within the context of wider shipbuilding policy and in particular the Commission's parallel communication to the Council outlining new orientations aimed at improving the competitiveness of the sector[7].

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[6] COM(97)XXXX

[7] 'Towards a New Shipbuilding Policy' COM(97)XXXX

2. Existing State Aid Rules

2.1 The seventh Directive maintains the policy established by the sixth Directive, adopted in 1986 against a background of abnormally difficult market conditions, caused by a declining demand for ships and a rapid increase in shipbuilding capacities, particularly in the Far East, leading to a significant imbalance between supply and demand and depressed prices. The main aim of the directive has been:

- to safeguard the Community shipbuilding industry by providing a defensive instrument against perceived unfair competition through injurious pricing below costs, thereby maintaining a sufficient level of Community shipbuilding activity in those market segments where the Community could remain competitive under normal market conditions, such as less labour-intensive, technologically complex specialised ships; and to encourage the necessary structural adjustment of EC shipbuilding toward these directions;

- to provide, in accordance with the aims of the internal market, a level playing field so that intra-Community competition in shipbuilding is carried out on a fair, transparent and equitable basis.

2.2 Under the Directive operating aid for shipbuilding and ship conversions, (but not ship repair) may be granted, up to a common maximum aid ceiling which reflects the difference between the costs of the most competitive Community yards and market prices of their main international competitors, with particular regard to those market segments in which Community shipbuilders remain relatively most competitive. In accordance with the principle of degressivity established by the Directive, the ceiling, which was 28% in 1987, has been progressively reduced to 9% currently (4.5% for smaller vessels and conversions). The only operating aids exempted from the ceiling are credit facilities complying with the 1981 OECD Understanding on Export Credits for Ships and aid granted as development assistance to developing countries.

2.3 The Directive also lays down rules for investment aids within the framework of restructuring which must be linked to a restructuring plan which does not involve any increase in the yard's shipbuilding capacity or which must be directly linked to a corresponding irreversible reduction in capacity of other yards in the Member State concerned; aid for closures on condition that the resulting capacity reduction is of a genuine and irreversible nature (with the facilities having to remain closed for not less than 5 years; and not being reopened within a further 5 years after the 5 years, i.e. for a total of 10 years, without the Commission's prior approval); and aid for research and development In addition the directive imposes notification and reporting obligations on Member States in order that the Commission can monitor compliance with the rules.

2.4 In the Commission's view the Directive has been generally effective and largely achieved its aims, enabling the Community broadly to maintain its world market share in recent years at around 20%. However the industry is still in difficulty, with depressed prices for newbuildings and repairs world-wide. Despite the improvements made in recent years, many EU yards still lack competitiveness, in particular lagging behind their major Far East competitors in terms of productivity. The world shipbuilding market is likely to become even more competitive in the medium term with overall demand starting to soften in the next decade, and Japanese and Korean yards continuing to make further major improvements in their productivity.

2.5 The main pillar of the current aid policy has been operating aid. Initially, through the progressive reduction in the aid ceiling, operating aid encouraged changes towards greater competitiveness. However the necessary impetus has not been sustained in more recent years as the level of the ceiling became static, coupled with the uncertainty over the OECD agreement. Overall the aid has served to cushion yards from the full rigours of the market. Operating aid also results in significant costs for most Member States, many of which face growing budgetary constraints

2.6 Shipbuilding is the only sector of manufacturing industry which systematically benefits from such aids and it is questionable whether the expenditure involved represents a cost-effective use of limited public resources. Furthermore given the extent to which competition is between EU yards the aid has tended to distort competition within the common market, particularly since there has been a wide variations in the actual levels of aid granted by the Member States, undermining the aim of establishing a level playing field.

2.7 Against this background, state aid policy needs to be refocussed to promote and underpin efforts to improve the competitiveness of the industry. This implies shifting away from operating aid to other forms of support, such as investment aid for innovation, better geared towards helping industry achieve the necessary changes and overcome its weaknesses.

3. <u>Proposals for Future Aid Policy</u>

3.1 The attached proposed Council Regulation sets out the Commission's proposals for a new aid regime to replace the seventh directive, by the latest upon its proposed expiry at the end of 1998 but preferably sooner. The following briefly summarises the key elements and the main changes from previous policy.

3.2 So far as <u>operating aid</u> is concerned, there are some arguments for proposing its immediate abolition upon entry into force of the proposed regulation. Industry has already had plenty of time to adjust to the possibility of operating without such aids since it had been expected that the OECD agreement(which prohibits these aids) had been expected to enter into force on 1 January 1996. However since then there has been some uncertainty over the direction of future policy in the light of the delays in the US ratification of the agreement and it therefore seems appropriate to provide a short, and final, transitional period during which contract-related operating aid, at current aid ceilings, should continue. It is proposed that this transitional period expire on 31 December 2000 (Article 3.1 refers). Since the Community still believes that the OECD agreement represents the best option, this will also allow time to facilitate further efforts to bring that agreement into force.

3.3 One year before the abolition of operating aid the Community will monitor the market situation and appraise whether European yards are affected by anti-competitive practices. If it is established at that or a later stage that industry is being caused injury by anti-competitive practices including injurious pricing, the Community will consider introducing appropriate measures

3.4 As from 1 January 2001 the only contract-related aid allowed will be home and export credits in conformity with OECD rules on Export Credits for Ships, which until 31 December 2000 will, as at present, not be counted under the aid ceiling(Article 3.4 refers). Since the 1981 OECD Understanding on Export Credits remains in force at present, the Commission considers itself obliged at this stage to propose that the provisions of that Understanding should continue to apply. However the Commission recognises that certain provisions of the 1994 OECD Understanding on Export Credits for Ships, which has not yet entered into force, more closely reflect market realities and that therefore it might be more appropriate to introduce them in the new regime. The technical and legal issues involved require further examination.

3.5 Other forms of operating aid , ie non-contract-related aid (such as loss compensation, rescue aid etc) shall be subject to specific new rules on restructuring aid (see paragraph 3.8 below).

3.6 It is proposed that contract-related aid granted in the form of development assistance to developing countries should continue to be permitted (Article 3.5 refers), notwithstanding Commission concerns that such aid, used by only a very few Member States, may be used as an operating aid to keep yards in business and thus have undesirable effects on competition within the EU. However since this type of aid is permitted under OECD rules it would unfairly disadvantage EU yards vis à vis their international competitors if their possibilities of such aid were closed off. Nevertheless the Commission proposes stricter rules requiring aid offers to be open to bids from different yards and closer monitoring to ensure that there are no abuses.

3.7 Closure aid (Article 4) continues to be needed to facilitate the further structural adjustment of the sector that will inevitably be necessary, in particular social aids to mitigate the social repercussions of adjustment and aids to cover other normal expenditure occasioned by total or partial closures, both of which can also increase competitiveness of the undertakings concerned when partial closures are involved. However in order to ensure that possible distortions to intra-EU competition are minimised it is essential that the resulting capacity reductions are genuine and irreversible. In that context under the current rules closed facilities must remain closed for a period of 5 years and may not reopen for a further period of another 5 years without the Commission's prior approval. Given the continuing imbalance between supply and demand on the world shipbuilding market and the perspectives for the future it is very difficult to foresee circumstances where it would be appropriate for the Commission to approve the reopening of closed facilities in the second 5 year period. Accordingly it is proposed that closed facilities should not return to shipbuilding for a period of 10 years, with no possibility of review after the first 5 years has elapsed.

3.8 Another form of aid necessary for structural adjustment and improved competitiveness is restructuring aid. The seventh directive has a lacuna in this respect in that its relevant provisions focus on investment aids rather than other forms of restructuring aid like capital injections, debt write-offs, subsidised loans, rescue aid etc. It is proposed that there should be specific rules in the proposed new regime (Article 5 refers) based on the general Community guidelines for such aids.

Furthermore, drawing on experience from past restructuring cases in the shipbuilding sector, the Commission proposes that there should in particular be very strict rules applying the 'one time/last time' principle, with rigorous assessment and monitoring of viability programmes.

3.9 A key element in the Commission's assessment of restructuring aid cases will be the nature and extent of the capacity reductions required as the necessary counterpart for the aid to minimise its distortive effects on the common market. In order to ensure that the capacity reductions are real and genuinely will have an effect on the beneficiary's position on the market, the Commission proposes that the determining factor will be the level of production in the preceding 5 years rather than the notional capacity of the yard.

3.10 So far as investment aid is concerned, the Commission fully recognises the role that investment has to play in helping EU yards make significant improvements in their productivity and thus increase their competitiveness. At the same time it is important that measures of support do not unduly distort competition within the common market. Under the approach proposed there would be a differentiation between investment aids for innovation (Article 6) and regional investment aids for upgrading and modernising yards (Article 7).

3.11 The Commission's general policy towards investment aids has been to adopt a strict attitude towards such aids for modernisation and upgrading facilities since such activities are normally undertaken by companies themselves, financed by their own resources or by commercial loans, as part of normal company operations in a competitive market environment. However the Commission acknowledges that such aids can make a valuable contribution towards overcoming structural handicaps in disadvantaged regions. It is therefore proposed that such aids granted under regional aid schemes may be allowed provided that the aided project is to improve the productivity of existing installations.

3.12 Innovation is a key element in improving competitiveness. To promote greater innovation, which carries a higher degree of industrial and technological risk, the Commission is proposing to allow for incentives to be given provided that the project relates to innovative products and processes that are not currently used commercially by other EU operators in the shipbuilding sector.

3.13 Research and development(R&D) is another valuable way of promoting medium to longer term competitiveness of the industry. Accordingly it is proposed that aid for R&D should continue to be allowed in accordance with the Community framework on aid for research and development(Article 8 refers). In addition, in order that the shipbuilding industry should have the same treatment as all other industrial sectors it is proposed that aid for environmental protection in accordance with Community guidelines should also be allowed(Article 9 refers).

3.14 Finally, in order to ensure the fullest transparency and to enable the Commission closely to control aid, it is proposed that the current strict rules on notification and monitoring arrangements should be maintained subject to certain improvements(Articles 10 and 11).

3.15 As the proposal concerns significant changes to the existing rules, it is proposed that the Regulation should apply for a five year period until the end of 2003 in order to allow sufficient time for the new strategy to produce a structural effect in the sector.

4. Conclusion

4.1 Accordingly, it is proposed that the Council adopts, after consultation of the European Parliament and the Economic and Social Committee, the attached regulation for a new shipbuilding aid regime to replace, by 31 December 1998 at the latest, the proposed prolongation until that date of the seventh directive on aid to shipbuilding, in the event that the OECD agreement has still not entered into force.

Proposal for a Council Regulation 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;

Having regard to the opinion of the European Parliament;

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

Whereas, an 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 Co-operation and development (OECD)[8] has still not entered into force because of the failure of the US to ratify the agreement;

Whereas, therefore Council Regulation 3094/95 of 22 December 1995[9] on aid to shipbuilding has not yet entered into force;

Whereas, in accordance with Article 10 of Regulation 3094/95, as most recently amended by Council Regulation /97[10], the relevant rules of Council Directive 90/684/EEC[11] 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 on the world shipbuilding has still not been fully established so that prices remain depressed; and whereas the competitive pressures on European Union 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 European Union 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 in order 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;

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[8] OJ No C375, 30 December 1994, p3
[9] OJ No L332, 30 December 1995, p1
[10]
[11] OJ No L380, 31 December 1990, p27

Whereas, the European 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 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, one year before that date the Community will monitor the market situation and appraise whether European yards are affected by anti-competitive practices. If it is established at that or a later stage that industry is being caused injury by anti-competitive practices including injurious pricing, the Community will consider introducing appropriate measures;

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 the latter should only be granted 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; and whereas the former should be allowed only under regional aid schemes provided that the project is to improve the productivity of existing installations;

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; and 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 shiprepair 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 provisions of this Regulation are 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

Article 1

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

(a) "self-propelled seagoing commercial vessels" are:

- 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; and
- floating storage and offloading vessels (FSOs), floating production storage and offloading vessels (FPSOs), floating production drilling storage and offloading vessels(FPDSOs), and derivatives thereof, if the completed vessel has a maximum designed speed when under its own power of more than 6 knots in any direction.

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

Military vessels(ie 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, as defined in (a);

(c) "ship repair" shall mean the repair or reconditioning in the Community of self-propelled seagoing commercial vessels, as defined in (a);

(d) "ship conversion" shall mean the conversion, in the Community, of self-propelled seagoing commercial vessels, as defined in (a), of not less than 1000 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, conversion or repair 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 conversion or ship repair; or (ii) is owned or controlled, directly or indirectly, whether through stock ownership or otherwise, by an undertaking engaged in shipbuilding, ship conversion or ship repair.
Control shall be presumed to arise once a person or undertaking engaged in shipbuilding, ship conversion or ship repair owns or controls an interest of more than 25% in the other or vice versa.

Article 2

1. Aid granted, whether directly or indirectly, for shipbuilding, conversion and repair, as defined under this Regulation, 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 aids granted indirectly include 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 and in particular point 3.1 thereof, as currently set out in Official Journal of the European Communities No C 205 of 5 July 1997, 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 the building or conversion of ships 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.

CHAPTER II

CONTRACT - RELATED OPERATING AID

Article 3

1. Until 31 December 2000, production aid in support of contracts for shipbuilding and shipconversion, but not shiprepair, 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, this rule 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 Understanding referred to in paragraph 4 of this Article 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

RESTRUCTURING AND CLOSURE AID

Article 4

Aid for Closures

1. Aid to defray the normal costs resulting from the total or partial closure of shipbuilding, conversion or repair 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, conversion or repair;
- 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 Article 1 (b) - (d).

3. In addition, in the case of undertakings which totally cease shipbuilding, conversion or repair 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 consultant's 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, conversion and repair facilities remain closed for a period of not less than ten years.

Article 5

Restructuring aid

1. Aid for 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 general Community guidelines on state aid for rescuing and restructuring firms in difficulty, as currently set out in Official Journal of the European Communities No C 368 of 23 December 1994, and any amendments thereto, and in particular in relation to restructuring it fulfils the following specific conditions:

- the undertaking has not been granted any such aid pursuant to Council Regulation 1013/97 of 2 June 1997[12];
- the amount and intensity of the aid is limited to the strict minimum necessary;
- there is a viable restructuring plan that will restore the long-term viability of the undertaking within a reasonable time scale;
- 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;
- the aid shall not unduly reduce the undertaking's net financial charges;

[12] OJ No L148, 6 June 1997,p1

- the undertaking or its legal successors shall not claim or be granted tax reduction or relief on the basis of past losses covered by the aid;
- there is a genuine and irreversible reduction in the shipbuilding, conversion or repair capacity of the undertaking concerned commensurate with the level of aid involved(in that regard the level of actual production in the preceding 5 years will be the determining factor in the level of capacity reduction required);
- the closed capacity must have been regularly used for shipbuilding, conversion or repair up to the date of notification of the particular aid in accordance with Article 10;
- the closed capacity must remain closed for not less than 10 years as from the Commission's approval of the aid;
- the Member State concerned must agree to co-operate fully with monitoring arrangements established by the Commission, including on-site inspections.

2. In assessing the regularity of production and the capacity reduction involved, the Commission will 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 5 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 10 mecus before adopting a position on them.

CHAPTER IV

OTHER MEASURES

Article 6

Investment Aid for Innovation

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

- it 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 under general regional aid schemes 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:

- it is limited to supporting eligible expenditure as defined by the applicable regional aid scheme;
-the amount and intensity is within the applicable regional aid ceiling;

Article 8

Research and development

Aid granted to defray expenditure by shipbuilding, conversion or repair undertakings on research and development projects may be considered compatible with the common market if it is in compliance with the rules laid in the Community framework for State aid for research and development, as currently set out in Official Journal of the European Communities No C 45 of 17 February 1996, or any successor arrangements.

Article 9

Environmental protection

Aid granted to defray expenditure by shipbuilding, conversion or repair 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, as currently set out in Official journal of the European communities No C 72 of 10 March 1994, or any successor arrangements.

CHAPTER V

MONITORING PROCEDURES

Article 10

1. Aid to shipbuilding, conversion and repair 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 100000 ecus over any three year period[13];

(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

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 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 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) 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;

(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 benefitting 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.

2. In the case of shipyards engaged in both commercial and military shipbuilding, conversion or repair, the reports referred to at (d) of paragraph 1 of this Article shall include information on these activities separately, including separate accounts with overheads apportioned accordingly.

[13] Commission Notice, OJ No C68, 6 March 1996

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.

Article 12

This Regulation shall enter into force on 1 January 1999 and shall apply until 31 December 2003.

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

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			
© specific fiscal concession			
(d) other support			
B. Granted to customer or ultimate owner :			
(a) grants			
(b) credit facilities[14]			
© guarantees[15]			
(d) fiscal concession			
(e) other support			
17. Date aid granted			

Contact for inquiries: ....Date: ....

[14] for credits granted the following information shall be provided:
- volume
- repayment period
- frequency of payments
- interest rate

[15] for guarantees granted the following information shall be provided:
- volume
- premium paid
- duration
- other terms and conditions

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 Article3 (3)				

	Costs[16]	Aid received	Legal basis (including date of approval by the 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			

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 © 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 contract support		

[16] including for 3, details of numbers of workers involved

Schedule 3

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

1. Name of the company (..)

2. Total available capacity (..) (CGT)

3. Data on the dock/berth

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

4. Description of any plans for future capacity expansion or reduction
5. Structure of ownership (capital structure, share of direct and indirect public ownership)
6. Financial statements (balance sheet, profit and loss statement, including, if available separate accounts covering the shipbuilding activities of holding)
7. Transfer of public resources (including debt guarantees, bond infusions, etc.)
8. Exemptions from financial or other obligations (including tax privileges, etc.)
9. Capital contribution (including equity infusions, withdrawal of capital, dividend, loans and their refunding, etc.)
10. Debt write-off
11. Transfer of losses

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