

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 20 June 1990

Proposal for a
COUNCIL DIRECTIVE
on aid to shipbuilding

(presented by the Commission)

Communication from the Commission to the Council

Subject: Shipbuilding aid after 1990

1. The Sixth Council Directive on Aid to Shipbuilding

1.1. The current Council Directive of 26 January 1987 on Aid to Shipbuilding, the Sixth Directive, expires at the end of 1990.

1.2. The background against which this Community aid framework was adopted by the Council in its meeting of 22 December 1986 was the persistence of a deep crisis in the world market for shipbuilding, caused by a declining demand for ships and a steady increase in shipbuilding capacities, in particular through the efforts of newly industrialized nations to find their place in the market. The resulting significant imbalance between supply and demand caused ship prices to drop far below a cost covering level.

1.3. The objectives of the Sixth Council Directive in this competitive environment characterised by the dominant position of the Japanese shipbuilding industry and the strong surge of South Korean shipbuilding were:

- to protect a vital Community industry against unfair competition conditions on the world market thereby maintaining a sufficient level of activities in those areas of shipbuilding where Community shipbuilders under normal market conditions will remain competitive;

- to intensify and direct the structural adjustment of EC shipbuilding towards innovative specialization and a structural form which would ensure its competitiveness in the long term;
- to ensure that with the progress towards the full achievement of the internal market, intra-Community competition in shipbuilding is carried out on an equal and equitable basis in respect of all Community yards;
- to provide for full aid transparency inside the Community.

1.4.

1.4.1. The main elements of the aid policy of the Sixth Directive, laid down in order to pursue the aforementioned objectives are:

- to allow for production aid for shipbuilding and ship conversion, but not ship repair, up to a common maximum ceiling which reflects the difference between world market prices and the production costs of the most competitive Community yards, with particular regard to the market segments in which Community shipbuilding can be expected to have a future;
- to permit restructuring aid for investments, research and development, and for closure, without any specific maximum limits provided that the restructuring objectives for Community shipbuilding are being pursued.

1.4.2. By requiring that the production aid ceiling must be set at least once every 12 months in order to reflect the differences between prevailing world market prices and the costs of the most efficient Community yards with particular regard to the Community's most relevant ship types, the Directive, on the one hand, ensures that the competitive part of the EC shipbuilding industry can maintain its

activities despite abnormal competition conditions on the world market and on the other hand, pressure is put on less effective parts of Community shipbuilding to embark on the necessary restructuring.

By laying down the principle of degressivity for the ceiling, a general impetus towards restructuring is ensured. The ceiling, which for 1987 and 1988 was set at 28% of the contract value before aid, was in 1989 reduced to 26% and from the beginning of 1990 to 20%.

- 1.4.3. By making all types of aid for shipbuilding subject to the ceiling the Directive ensures aid transparency and fair and equitable competition conditions between Member States.

The rules expressly lay down that all aid given to shipowners for the construction of ships in whichever form granted shall be counted under the ceiling. Operating aid to the yards not linked to an individual contract but granted to cover losses afterwards, through rescue aid, loss compensation etc, is also subject to the ceiling.

The only operating aid exempted from the ceiling is credit facilities complying with standard terms in accordance with the OECD Understanding on Export Credits for ships and aid granted as development assistance to developing countries.

- 1.4.4. By making the ceiling a common one, the aim of attainment of a single uniform Community market for shipbuilding is being pursued.

Moreover, a particular provision has been established as regards cases of competition between Community yards. In such cases the Commission intervenes at the request of a Member State with the view to ensuring that competition is not being distorted by different levels of production aid.

This means in fact that in such cases the Commission will impose the lowest level of aid anticipated, unless a higher level is necessary in order to prevent the order from being taken outside the Community.

As regards inter-European competition the Directive also provides that the Commission shall ensure that aid for the building of small ships costing less than 6 MECU shall be kept as low as possible. With that objective the Commission has decided not to allow contract-related aid for such ships in excess of 20% in 1987 and 1988, 16% in 1989 and 14% in 1990.

- 1.4.5. *An important concession is given in the Sixth Directive to Spain and Portugal, who, for a 4 year transitional period, expiring end 1990, are not subject to the aid ceiling for operating aid but may grant a higher level of operating aid provided the Governments concerned adopt a restructuring plan for their respective shipbuilding industries which will enable them to compete on equal terms with yards in other Member States by the end of that period.*

As permitted under the Directive, Portugal has only made use of this exception in regard to its main yard, Setenave.

Due to delays by the two Member States in submitting their respective restructuring plans, no final decision has so far been taken by the Commission as regards the aid levels acceptable during the transitional period.

2. Achievement of objectives

- 2.1. *By Commission Document SEC(89)518 of 18 April 1989 the Commission submitted a report to the Council and the European Parliament on the implementation during 1987-88 of the Sixth Directive.*

2.2. *It appears from this report that the aforementioned objectives pursued by the aid policy of the Sixth Directive have largely been met. The report stressed the Sixth Directive's success in defending the position of Community shipbuilding on the world market against continuing obstacles to normal competition conditions represented by the price policy of the Far Eastern price leaders on the market.*

It also gave an account of the structural adjustments and specialization efforts within Community shipbuilding which the policy has stimulated, and showed the positive effect of the Directive on intra-Community competition in shipbuilding.

Finally, it reported on the overall acceptance of the call for increased aid transparency and the fairness and equity in treatment obtained through counting aid to shipowners, when linked to the construction or conversion of ships, as shipbuilding aid, regardless of whether or not such aid is legally made dependant on the building at national yards.

2.3. *In the report the Commission also pointed out certain problems which the implementation of the Sixth Directive had raised. Among these problems has been the conflict between fishery policy and shipbuilding policy in connection with aid for fishing vessels for the Community fleet and the excessive use by one Member State of the exemption clause concerning shipbuilding aid granted as development assistance to developing countries.*

Both problems were dealt with by a restrictive interpretation of the rules concerned in the Sixth Directive.

Other problems noted were:

- the substantial delays by certain southern Member States in taking advantage of the rules to tackle urgent structural problems in their shipbuilding industry which caused a widening of the structural differences between the north and the south of the Community within this sector;
- in relation to Commission monitoring lack of compliance by Member States with their reporting obligations under Article 11 of the Directive.

2.4. The policy also seems to enjoy the support of the Community's shipbuilding industry which has asked for a quick decision by the Community institutions to extend the existing aid policy in order to establish the necessary certainty on which to base its future activities.

3. Present situation and prospects for the industry

3.1. Present situation

3.1.1. In general the evaluation made in the Commission report of April 1989 on the implementation of the objectives pursued by the Sixth Directive remains valid today.

3.1.2. In 1989 the market started to recover significantly concurrently with an improved balance between supply and demand. One major reason for this was the fact that during 1987-89 Japan finally joined the Community's substantial structural reduction efforts by achieving through anti-depression measures a reduction of its own shipbuilding capacity by one-third. To this was added the fact that South Korea, after the financial collapse of two of its main yards, has stopped its expansion-at-any-cost policy and started to show restraint in its price policy. At the same time freight rates have risen and the replacement need for a large number of ship types has caused a distinct increase in demand.

- 3.1.3. *The resulting increase in new building prices since autumn 1988 together with the continuing growth in productivity at the most efficient Community yards caused the Commission, at the end of the year, to reduce the maximum aid ceiling for production aid by 6 percentage points from 26% to 20%.*
- 3.1.4. *In spite of this market improvement it is important to underline that while the increase in prices is substantial compared to the 1985/87 period, where it had decreased by around 50% of the level in the early eighties, it only brings prices back to the level of the early eighties, and in the meantime costs have been subject to substantial increases. Against this background it is not surprising that prices are still not sufficient to cover costs for most ship types, which statement is also valid when applied to Japanese shipbuilding.*
- 3.1.5. *As regards the more specific problems raised by the mid term report, there have been improvements in Member States' efforts to provide subsequent reports on aid granted. However, reports on new contracts are still not arriving as promptly as required.*
- 3.1.6. *The other issue, i.e. the delay in progress of carrying-out the necessary restructuring of the shipbuilding industry in the southern Member states, has been the subject of individual cases in which the Commission has initiated the Article 93(2) EEC procedure.*
- 3.1.7. *While the basic principle of full aid transparency, by including in the shipbuilding aid discipline aid granted to shipowners for building of ships, remains generally accepted, certain Member States have, in some recent cases, revived the question of excluding certain elements of such aid, especially related to shipping, from being considered as*

shipbuilding aid. In particular the obligation to operate the new ship under a national flag is often part of such schemes.

3.2. Future prospects

3.2.1. The market upturn for shipbuilding is expected to continue during the coming years. The AWES forecast predicts that the annual average world shipbuilding demand will increase from the 1989 level of newbuilding of around 9.3 million cgt to 12.5 million cgt during the period 1990-95 and then to 16.9 million cgt for 1995-2000. The Japanese Shipbuilders' Association (SAJ) expects a similar gradual increase in shipbuilding demand during the decennium.

3.2.2. Whether the anticipated gradual upturn in demand will allow newbuilding prices to continue to increase and finally reach a level where not only full costs are being covered but also a reasonable return on investment capital is obtained will, however, depend to a large degree on the restraint exercised by the world's major shipbuilding nations in preventing already closed capacities from reopening. The currently available estimate of world shipbuilding capacity is 16 million cgt, i.e. sufficient to cover the predicted doubling of demand in the latter half of the nineties.

A failure to contain the prevailing shortsighted pressure being exerted for a return of closed capacities to the market may lead to the eradication of the market improvement which has occurred.

3.2.3. Another factor of importance to a future restoration of a healthy shipbuilding market will be the outcome of the present US initiative inside the OECD for phasing out all existing obstacles to normal market conditions in shipbuilding.

The initiative, which has suspended temporarily the US procedure under section 301 of the Omnibus Trade Act, already initiated against Germany, Japan, S. Korea and Norway, calls for a progressive elimination of all aid measures as well as all other trade distorting measures inside the shipbuilding sector, such as protective measures, non-cost covering prices and other illegal public and private practices, by the end of 1991.

- 3.2.4. *Accompanying the aid policy of the Sixth Directive by an appropriate external policy aiming at restoring normal competitive conditions on the world market was an explicit Community objective in the adoption of the Directive.*

The Community's efforts through exploratory bilateral talks with Japan and South Korea over the past two years have brought no tangible results.

The Commission services supported by Member States, cooperate fully in the exploratory talks taking place in the OECD at the US' initiative. During the discussions the necessity was underlined that the final result should entail a fair and equitable phasing out of all obstacles to normal trading conditions, not only state aid, and provides clear commitments and full transparency from all parties concerned.

The timetable envisaged by the US, although somewhat optimistic, brings this initiative into close connexion with the present Community efforts to decide the future aid policy for the sector. There seems, however, to be no barrier to pursuing this external effort inside an aid framework similar to that of the present aid policy of the Sixth Directive, which is based on a degressive phasing out of all production aid concurrently with a restoration of normal market conditions for the competitive part of Community shipbuilding.

3.2.5. *The social aspect was also an integral part of the Community's objectives to be pursued in connection with the new aid policy of the Sixth Directive. While the Renaval Programme, involving a budget of 200 MECU, to support reconversion measures in regions most affected by a reduction in shipbuilding activities was adopted by the Council on 26 July 1988, it is regrettable that a Commission proposal concerning social measures with a total budget of 71.5 MECU has still not obtained the Council's approval.*

4. Proposal

4.1. Prolongation of present policy

It seems accepted at present inside the Community that the Sixth Directive has served the industry well. An important factor is also that its basic operative principles are compatible with the current international efforts inside the OECD to phase out all obstacles to normal competition conditions worldwide within the sector.

Accordingly, it is proposed to the Council to prolong this aid policy.

The Commission favours and will give its full assistance to an early settlement of the matter in the Council. The industry has made a legitimate request for the greatest possible certainty in respect of the economic conditions under which it will have to operate during the coming years to be provided as soon as possible.

4.2. Period of validity of a prolongation

While industrial policy considerations by a capital intensive heavy industry such as shipbuilding argue in favour of adopting a long term aid policy, the prevailing upward market trend and the current international efforts to proceed towards a normalization of market conditions by quickly phasing out all

trade distorting obstacles, including state aid, clearly calls for a fairly short prolongation of the Sixth Directive.

Against this background a two year prolongation, which will make the expiry coincide with the completion of the internal market, seems appropriate.

4.3. Modifications

Some modifications to the present provisions would seem to be indicated, partly because they will cease to apply, such as for example the transitory rules for Spain and Portugal, and partly because their application up until now prompts changes.

Taken in numerical order in accordance with of the Articles of the Directive, the following modifications are being proposed:

A. Article 1: unchanged

B. Article 2: unchanged

C. Article 3: a possible change - Article 3(2)

This article represents one of the basic innovations instituted by the Sixth Directive which was introduced as a response to the basic demand by Member States that an equitable and transparent aid system, including both direct and indirect aid to shipbuilding, should be set up.

By providing that all aid granted to shipowners for construction and conversion of ships constitutes another but corresponding way of granting aid to shipbuilding previous ambiguities between Member States were eliminated. The definitive criteria of the past, whether such aid was being legally reserved for national yards or not, was no longer sufficient to establish a sectoral dividing line as practice had shown that such schemes would anyway practically always be used for building at national yards anyway.

Therefore it was decided to count such aid under the shipbuilding production aid ceiling on the same terms as aid granted directly to that sector, regardless of whether legally they might be granted for construction outside national yards.

This point has not been the subject of any disputes by Member States during the implementation of the Directive and the principle should be maintained as a fundamental condition for the proper functioning of an aid system based on a uniform aid ceiling for all shipbuilding aid.

In addition, in the discussions on the US initiative in the OECD, it is a fundamental issue that aid granted under Japanese and South Korean home credit schemes should be a full and integrated part of a possible future international aid discipline for shipbuilding.

However, as will be recalled, even during the preparatory discussion in the Council on the Sixth Directive, the point was raised that access to such newbuilding aid schemes for shipowners often also imposes on them certain obligations, typically the use of national flag, implying cost disadvantage for the operation of the ship. In such cases there would obviously be elements of shipping aid in the schemes. This fact was not contested, but efforts in the Council to reach a common agreement on the reduction to be made from the scheme's grant equivalent for shipbuilding aid proved fruitless.

It was therefore decided always to count such shipbuilding aid schemes for shipowners 100% as shipbuilding aid, even though in several cases they contained certain elements of shipping aid. An allowance was made for that fact by setting the initial production aid ceiling for shipbuilding a couple of points higher than was otherwise intended.

The main argument for that solution was that if Member States wished to compensate shipowners for the increased yearly operating costs of sailing under national flags, there would be no absolute necessity to give this as a one-off payment linked to newbuilding contracts. If nonetheless they did choose to do so, they would be consciously creating a non-transparent mixture of two types of sectoral aid which cannot be separated.

This principle has been applied during the implementation of the Directive but has in some recent case been brought into focus again.

However, the Commission is of the opinion that for the sake of transparency and equity the present rule must be maintained.

D. Article 4(1): unchanged

Article 4(2)

i) In view of the possibilities that the OECD discussions have not been finalized at the time of the Council decision, or that the outcome of these discussions becomes an obligation to phase out operating aid to a greater extent than that which would result from the application of the Article 4(2) criterion, it seems appropriate to add the following new section between the two existing sections of Article 4(2):
"The criteria for setting the ceiling set out in the foregoing sections of this paragraph is without prejudice to future international agreements obliging the Community to fix the aid ceiling at a lower level".

ii) Aid level for small vessels (Article 4(2))

Over the last two years, during the consultation of Member States concerning the aid ceiling, it has been stated that the price level of 6 MECU for small ships, for which competition is mainly inter-European and for which the

Commission ensures that the contract related aid does not exceed a maximum level of, at present, 14%, is too low.

It is a fact that the types of ships for which there is practically only inter-European competition cover a range of values which today considerably exceed 6 MECU. It is therefore proposed to increase this value threshold to 10 MECU.

As there has also been doubt in some cases as to whether the ship value covered is a cost or a price value, a clarification should be made that it is the market price of the ship which is decisive.

Therefore in Article 4(2) second section, fourth line, the words "costing less than 6 million ECU" should be replaced by "of a contract price of less than 10 million ECU".

Article 4(3)

In order to bring the principle of degressivity, which is a basic one, more into focus it is proposed to modify the beginning of the first paragraph as follows:

The ceiling will be progressively reduced. For this reason the ceiling shall be reviewed every 12 months, or sooner if warranted by exceptional circumstances. In its review ...
(etc.)

It is also proposed to add a new section to this paragraph:

"The aid ceiling applicable to a contract is the one in force at the date of signature of the final contract. However, this rule does 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 is the one in force at the date of three years before the date of delivery of the ship".

The inclusion of this section is proposed in order to prevent the evasion of the degressivity principle by the concentration in yards of contracts encompassing a long delivery period.

Article 4(4): unchanged

Article 4(5): unchanged

Article 4(6): unchanged

Article 4(7): (development aid)

The Commission is of the opinion that the abuse of tied aid should be eliminated by requesting prior notification in cases where tied aid is granted. The Commission should then be able to prohibit tied aid where it may have a demonstrably unfavourable effect on competition inside the sector.

Parallel to this, the Commission will endeavour to restrict tied aid within the OECD by proposing to its OECD partners the same list of countries as the Commission now uses for internal purposes and increase the minimum grant element for tied aid to 35%.

Article 5: unchanged

Article 6: unchanged

Article 7: Addendum to Article 7(1) (Closure aid)

Article 7(1) sets out that aid can only be granted in respect of capacity reductions which are genuine and irreversible. In the Minutes of the Council meeting when the Sixth Directive was adopted, the Commission declared that the irreversible nature of closures would be observed through commitments by Member States that the yards concerned would remain closed for a period of not less than 5 years. At that time this period was regarded as sufficiently long to withdraw the yards from the market perspective. The outlook appears different today; concrete examples have shown that in view of the current optimism as regards the future development of demand, there are purchasers today who are willing to acquire closed yards with the main objective of reopening them for shipbuilding after having waited out the 5 year period.

This is against the principle of the irreversible nature of closures and is harmful for the Community's endeavours internationally to prevent an expansion of shipbuilding capacity to the detriment of the possibilities of restoring normal market conditions. It is therefore proposed to add as a second section in Article 7 paragraph 1:

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

Within this 5 year period the closed site may not be used for alternative activities linked to shipbuilding or shipconversion or for activities predicated upon a return to shipbuilding after the expiry of the 5 year period.

If after a period of 5 years a Member State wishes nevertheless to reopen a closed shipbuilding or ship repair facility, it must obtain the Commission's prior approval.

The Commission's decision will be taken with reference both to the currently existing worldwide balance between supply and demand and to whether aids are being granted for reopening the facilities".

Article 8 : unchanged (R&D aid)

Article 9 : to be deleted

The Commission's proposal for the Sixth Directive was based on a five year validity period, allowing for the transitional period for Spain and Portugal to expire one year before the expiry of the Directive. The Council's decision at that time to cut the validity of the Directive by one year meant that the two dates became coincidental.

It was, however, underlined that the transitional arrangement for the two new Member States remained a four year exemption and not something which would be open for rediscussion at the expiry of the Directive.

Article 10 : unchanged

Article 11 : A third paragraph is suggested:

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

In view of the fact that the very important close monitoring system at this stage is still not working to full satisfaction, despite several warnings, and the fact that reports are arriving with an unacceptable delay, it is proposed to introduce the possibility for the Commission to exercise an effective pressure to ensure that this information, so crucial for the implementation of the aid policy, is obtained.

Article 12:

As the proposal concerns a prolongation of existing aid policy rather than a complete change such as when the Sixth Directive replaced the Fifth Directive, there seems to be no reason for the particular transition provision comprising paragraph 1.

Paragraph 2 is to be deleted, due to the brief prolongation period proposed.

Preamble

As the preamble should sum up the reasons for the continuation of the present aid policy for the fairly brief period proposed and as it must contain support for the modifications proposed the following text for the preamble to the prolongation is proposed:

"Whereas Council Directive 87/167/EEC of 26 January 1987 on Aid to Shipbuilding¹ will expire on 31 December 1990;

Whereas the aid policy laid down in that Directive has in general met the objectives set out at its introduction;

Whereas although since 1989 there have been significant improvements in the world market for shipbuilding a satisfactory equilibrium between supply and demand has still not been established and the price improvements which have taken place are still insufficient in the overall context to restore a normal market situation within the

¹ OJ No L 69, 12.3.1987, p. 55.

sector, allowing prices to reflect full production costs and a reasonable return on invested capital;

Whereas, however, according to the forecasts of shipbuilding associations and reputable international market analysts all over the world the positive trend towards a normalisation of the market is likely to continue during the coming years;

Whereas parallel to this market amelioration international efforts are being carried out inside the framework of the OECD to reach a multilateral agreement between the world's most important shipbuilding nations on a rapid phasing out of both all direct and indirect state support measures to shipbuilding, conversion and shiprepair and other obstacles to reestablishing normal and fair competition conditions inside the sector.

Whereas there is every reason for the sake of transparency and equity to continue to include in the present aid policy indirect aid granted to shipbuilding through investment aid to shipowners for the building and conversion of ships.

Whereas the reduced level of aid acceptable for small specialized vessels, for which the competition is mainly inter-European, should be applied based on experience to the largest possible section of this market.

Whereas the principle of aid degressivity is a basic one and therefore should be fully guaranteed.

Whereas it is of vital importance for the restoration of a healthy shipbuilding industry in the long term that the Community together with other main shipbuilding nations effectively ensures that structural contractions obtained inside its territory through the

application of its aid policy remains irreversible as long as a
adequate balance between supply and demand has not been achieved.

Whereas the transitional period accorded to Spain and Portugal will
expire on 31 December 1990.

Whereas the efficiency of and the confidence in the present aid policy
can only be obtained by close and timely monitoring by the Commission
of the implementation by Member States of the aid rules. Therefore
the compliance by Member States with their reporting obligations, on
which such a monitoring system is based, should be secured.

Proposal for a
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,

Whereas Council Directive 87/167/EEC of 26 January 1987 on aid to Shipbuilding⁽¹⁾ will expire on 31 December 1990;

Whereas the aid policy laid down in that Directive has in general met the objectives set out at its introduction;

Whereas although since 1989 there have been significant improvements in the world market for shipbuilding a satisfactory equilibrium between supply and demand has still not been established and the price improvements which have taken place are still insufficient in the overall context to restore a normal market situation within the sector, allowing prices to reflect full production costs and a reasonable return on invested capital;

Whereas, however, according to the forecasts of shipbuilding associations and reputable international market analysts all over the world the positive trend towards a normalisation of the market is likely to continue during the coming years;

(1) OJ No L 69, 12.3.1987, p. 55.

Whereas parallel to this market amelioration international efforts are being carried out inside the framework of the OECD to reach a multilateral agreement between the world's most important shipbuilding nations on a rapid phasing out both of all direct and indirect state support measures to shipbuilding, conversion and shiprepair and of other obstacles to reestablishing normal and fair competition conditions inside the sector.

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, a complete abolition of aid to the sector is still not possible in view of the present market situation and in view of the need to encourage restructuring in many yards; whereas a tight and selective aid policy should be continued in order to support the present trend in production towards more technologically-advanced ships 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;

Whereas the basic aid policy laid down in the prevailing Directive 87/167/EEC, differentiating between on the one hand production aid based on a common maximum aid ceiling and on the other hand restructuring aid supporting the desirable structural changes to be carried out, remains the most appropriate way of assuring long-term competitiveness to the industry;

Whereas, although it is proposed to treat ship conversion in the same way as shipbuilding, aid to the ship-repair sector in view of the continuing overcapacity in this sector should not be permitted, except for investments, closure and research and development aid;

Whereas there is every reason for the sake of transparency and equity to continue to include in the present aid policy indirect aid granted to shipbuilding through investment aid to shipowners for the building and conversion of ships;

Whereas the reduced level of aid acceptable for small specialized vessels, for which the competition is mainly inter-European, should be applied based on experience to the largest possible section of this market;

Whereas, since increased efficiency is a principal objective pursued by this Directive, the principle of aid degressivity is a basic one which should be fully guaranteed;

Whereas it is of vital importance for the restoration of a healthy shipbuilding industry in the long term that the Community together with other main shipbuilding nations effectively ensures that structural contractions obtained inside its territory through the application of its aid policy remains irreversible as long as a adequate balance between supply and demand has not been achieved;

Whereas the transitional period accorded to Spain and Portugal will expire on 31 December 1990;

Whereas the efficiency of and the confidence in the present aid policy can only be obtained by close and timely monitoring by the Commission of the implementation by Member States of the aid rules; whereas therefore the compliance by Member States with their reporting

obligations, on which such a monitoring system is based, should be secured by providing for the suspension of all outstanding payments of aid already approved until all due reports have been received by the Commission; whereas this possibility must also apply to the non-transmission reports relating to aid schemes which have already been authorized,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL

Article 1

For the purpose of this Directive the following definitions shall apply:

(a) '*shipbuilding*':

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

- merchant ships for the carriage of passengers and/or cargo, of not less than 100 grt,
- fishing vessels of not less than 100 grt,
- dredgers or ships for other work at sea of not less than 100 grt excluding drilling platforms,
- tugs of not less than 365 kW;

(b) '*ship conversion*':

means the conversion in the Community of metal-hulled sea-going vessels, as defined in (a), 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 or the passenger accommodation;

(c) '*ship repair*':

means the repair of the vessels referred to in (a);

(d) '*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.

(e) '*contract value before aid*':

means the price laid down in the contract plus any aid granted directly to the shipyard.

Article 2

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

Article 3

Aid to shipowners

1. All forms of aid to shipowners or to third parties which are available as aid for the building or conversion of ships shall be subject to the notification rules in Article 9.

This aid shall include credit facilities, guarantees and tax concessions granted to shipowners or third parties for the purposes referred to in the first subparagraph.

2. The grant equivalent of the aid shall be subject in full to the rules set out in Article 4 and the monitoring procedures laid down in Article 10, where the aid is actually used for the building or conversion of ships in Community shipyards.
3. 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 lead to distortions of competition between national shipyards and shipyards in other Member States in the placing of orders.
4. These provisions shall be without prejudice to any future Community rules on aid to shipowners.

CHAPTER II

OPERATING AID

Article 4

Contract-related production aid

1. Production aid in favour of shipbuilding and ship conversion may be considered compatible with the common market provided that the total amount of aid granted in support of any individual contract does not exceed, in grant equivalent, a common maximum ceiling expressed as a percentage of the contract value before aid, hereinafter referred to as the ceiling.
2. The ceiling shall be fixed by the Commission with reference to the prevailing difference between the cost structures of the most competitive Community yards and the prices charged by their main international competitors with particular regard to the market segments in which the Community yards remain relatively most competitive.

The criteria for setting the ceiling set out in the first subparagraph shall be without prejudice to the amendments necessary to comply with international obligations entered into by the Community.

However, the Commission shall pay particular regard to ensure that the aid for the building of small specialized vessels, a market segment normally served by small yards, in particular small ships of a contract price of less than 10 million ECU, and for which the competition is mainly inter-European, is kept at the lowest possible level, nevertheless allowing for the particular situation in Greece.

3. The ceiling will be progressively reduced. For this reason the ceiling shall be reviewed every 12 months, or sooner if warranted by exceptional circumstances. In its review of the ceiling, the Commission shall also ensure that there are no undue concentrations of shipbuilding activities in specific market segments to an extent contrary to Community interests.

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.

4. The ceiling shall apply not only to all forms of production aid - whether under sectoral, general or regional aid schemes - granted directly to the yards but also to the aid covered by Article 3(2).
5. The combined effect of aid under the various aid schemes applied shall in no case exceed the ceiling fixed according to paragraph 2; the grant of aid in individual cases shall not necessitate prior notification to, or authorization from, the Commission.

However, where there is competition between yards in 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 authorization. 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.

6. Aid in the form of credit facilities for the building or conversion of vessels complying with the OECD Council resolution of 3 August 1981 (Understanding on Export Credits for Ships) or with any agreement replacing the Resolution shall not be counted within the ceiling. Such aid may be considered compatible with the common market provided that it complies with the abovementioned Resolution or any agreements which replace it.

7. 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 No 6 in its Agreement concerning the interpretation of Articles 6 to 8 of the Understanding referred to in paragraph 6 of this Article or with any later addendum or corrigendum to the said Agreement.

Prior notification of any such individual aid proposal must be given to the Commission. The Commission shall verify the particular development content of the proposed aid and satisfy itself that it falls within the scope of the Agreement referred to in the preceding subparagraph.

Article 5

Other operating aid

1. Aid to facilitate the continued operation of shipbuilding and ship conversion companies, including loss compensation, rescue aid and all other type of operating aid not directly supporting particular restructuring measures covered in Chapter III, may be deemed compatible with the common market provided that such aid together

with production aid allocated directly to individual shipbuilding and ship conversion contracts in accordance with Article 4(4) does not exceed the ceiling expressed as a percentage of the aid recipient's annual turnover in shipbuilding and ship conversion.

2. It shall be incumbent on the Member States to furnish evidence of the extent to which the turnover and losses of the recipient of the aid result, on the one hand, from shipbuilding and ship conversion and, on the other, from its other activities, if any, and, if some of the aid is intended to offset losses or expenditure arising from the restructuring measures referred to in Chapter III, to identify and specify those measures.

Chapter III

RESTRUCTURING AID

Article 6

Investment aid

1. Investment aid, whether specific or non-specific, may not be granted for the creation of new shipyards or for investment in existing yards if such aid would be likely to increase the Member States' shipbuilding capacity.

Such aid may not be granted for ship repair unless linked to a restructuring plan which results in an overall reduction in the ship repair capacity of the Member State concerned. In this context the Commission may take into account capacity reductions carried out in the immediately preceding years.

2. Paragraph 1 shall not apply to the opening of a new shipyard in a Member State which otherwise would have no shipbuilding facilities or to investments in a Member State's only existing yard, provided that the effect of the yard in question on the Community market is minimal.
3. In accordance with paragraph 1, investment aid may be deemed compatible with the common market provided that:
 - the amount and intensity of such aid are justified by the extent of the restructuring involved,
 - it is limited to supporting expenditure directly related to the investment.
4. In examining the aid referred to in paragraphs 1 and 3, the Commission shall take account of the extent of the contribution of the investment programme concerned to such Community objectives for the sector as innovation, specialization, working conditions, health, safety and environment.

Article 7

Aid for closures

1. Aid to defray the normal costs resulting from the partial or total closure of shipbuilding or ship repair yards may be considered compatible with the common market provided that the capacity reduction resulting from such aid is of a genuine and irreversible nature.

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

Within this 5 year period the closed site may not be used for activities in anticipation of a return to shipbuilding after the expiry of the 5 year period.

If after a period of 5 years a Member State wishes to reopen a closed shipbuilding or ship repair facility, it must obtain the Commission's prior approval.

The Commission's decision will be taken with reference both to the currently existing worldwide balance between supply and demand and to whether aid is being granted for reopening the facilities.

2. The costs eligible for such aid are, in particular:

- payments to workers made redundant or retired before legal retirement age,
- counselling services to workers made or to be made redundant or retired before legal retirement age including payments made by yards to facilitate the creation of small undertakings,
- payments to workers for vocational retraining,
- expenditure incurred for the redevelopment of the yard, its buildings, installations and infrastructure for use other than that specified in Article 1(a), (b), and (c),
- in the event of total closure of a yard, the residual book value of its installations (ignoring that portion of any revaluation since 1 January 1982 which exceeds the national inflation rate).

3. The amount and intensity of aid must be justified by the extent of the restructuring 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 the new sector concerned.

Article 8

Aid for research and development

1. Aid to defray expenditure by shipbuilding and ship repair undertakings for research and development projects may be considered compatible with the common market.
2. For the purposes of this Directive, the eligible costs shall be only those relating to fundamental research, basic industrial research and applied research and development, all as defined by the Commission in Annex I to the Community framework for State aids for research and development⁽²⁾, excluding those related to industrial application and commercial exploitation of the results.

CHAPTER IV

MONITORING PROCEDURE

Article 9

1. In addition to the provisions of Articles 92 and 93 of the Treaty, aid to shipbuilding, ship conversion and ship repair undertakings covered by this Directive shall be subject to the special notification rules provided for in paragraph 2.

(2) OJ No C 83, 11.4.1986, p. 2.

2. The following shall be notified to the Commission in advance by the Member States and authorized 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 Directive;
 - (b) any decision to apply any general or regional aid scheme to the undertakings covered by this Directive;
 - (c) any individual application of aid schemes in the cases referred to in the second subparagraph of Article 4(5) or when specifically provided for by the Commission in its approval of the aid scheme concerned.

Article 10

1. For the Commission's monitoring of the implementation of the aid rules contained in Chapters II and III, Member States shall supply the Commission for its exclusive use with:
 - current reports on each shipbuilding and ship conversion contract at the time of ordering and completion containing details of the financial contract support, in accordance with the form set out in the annexed schedule 1,
 - six-monthly reports - to be provided by 1 October and 1 April in respect of the preceding half calendar years - on aid granted to shipowners, in accordance with the form set out in the annexed schedule 2,
 - yearly reports giving details of the annual results of, and total financial support granted to, each individual national shipyard which has received aid, in accordance with the form set out in the annexed schedule 3,

- yearly reports on the attainment of the restructuring objectives as regards the undertakings which have received aid according to Articles 6 and 7, in accordance with the form set out in the annexed schedule 4.
- 2. On the basis of the information communicated to it in accordance with Article 9 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. This report shall state inter alia the level of contract-related aid and other operating aid granted in each Member State during the period in question, and both the total volume of restructuring aid awarded and the progress made towards the attainment of the restructuring objectives in each Member State during the same period.
- 3. If a Member State does not fully conform with its reporting obligations as laid down in the first paragraph, the Commission may, after having given due notice, require that that Member State suspends all outstanding payments of already approved aid until such time as all due reports have been received by the Commission.

Article 11

This Directive shall apply from 1 January 1991 to 31 December 1992.

Article 12

This Directive is addressed to the Member States.

Done at Brussels

For the Council

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