

notification or without awaiting the Commission's final decision under the procedure provided for in Article 93 (2) of the EEC Treaty, may have to be recovered from the recipient firms.

Reimbursement of aid in this respect would involve the replacement of the aid credit under consideration by a credit on commercial terms and conditions, with interests and repayments due from the date of the provision of the aid credit.

Furthermore, the Commission would invite the Spanish authorities to inform the aid beneficiary of the aid credit under consideration of the initiation of the present procedure and the consequences of a possible obligation to reimburse the unlawful aid.

The Commission hereby informs the Spanish Government that it will publish a notice in the *Official Journal of the European Communities* giving the other Member States and interested parties concerned notice to submit their comments within one month.'

The Commission hereby gives the other Member States and other parties concerned notice to submit their comments on the measures in question within one month of the date of publication of this notice to:

Commission of the European Communities,
200 rue de la Loi,
B-1049 Brussels.

The comments will be communicated to Spain.

STATE AID

C 64/91 (N 726/91)

Germany

(92/C 36/03)

(Articles 92 to 94 of the Treaty establishing the European Economic Community)

Commission notice pursuant to Article 93 (2) of the EEC Treaty to other Member States and other parties concerned regarding development aid which Germany has decided to grant for a project to build two 1 066 teu container vessels for Indonesia

By means of the letter reproduced below, the Commission informed the German Government of its decision to initiate the Articles 93 (2) procedure.

'By verbal note Wi 33.04.3 of 13 November 1991, received in the Commission on 20 November 1991, the German Government through its Permanent Representation in Brussels notified, pursuant to Article 4 (7) of the Seventh Council Directive of 21 December 1990 on aid to shipbuilding, a development aid project for the building of two 1 066 teu container vessels for the PT Bahana Utama Line (PT BUL), Jakarta.

It appears that the aid credit is related to a transaction between the East German Mathias Thesen Werft, Wismar and the Indonesian PT BUL to build two 1 066 teu container vessels with a joint contract value of DM 161 million. These two vessels will be supported by

development aid. The development aid has the form of a 12 year (including one year grace) credit covering 85 % of the contract price (DM 126,35 million) with an annual interest rate of 4,26 %. The resulting OECD grant element is 25,41 %, which is just over the minimum required threshold in the OECD "Understanding on Export Credits for Ships" of 25 %.

It has been stated by the German Government that the objective of the development aid project is to contribute to the Indonesian Government's policy aim to reduce dependence on foreign shipowners and to generate increased foreign exchange. The project of the private shipping company PT BUL fits in with the Indonesian Government's policy to increase the contribution from efficient, low cost private companies to the country's main economic activities. It has been added that the growth rates in containerized freights in the Indonesian region are among the highest in the world. The notification does not, however, provide information on specific routes on which the vessels will operate, nor has it been stated in the notification that the German

Government will abide by the rules for Member States granting development aid related to shipbuilding, as laid down in the Commission's letter of 3 January 1989.

The aid credit for the Indonesian company PT BUL has to be assessed under the provisions of Article 4 (7) of the Seventh Council Directive of 21 December 1990 on aid to shipbuilding. In this Article it is stated that aid to shipbuilding and ship conversion granted as development assistance to developing countries shall not be subject to the prevailing common maximum aid ceiling of Article 4 (2).

By letter SG(89) D/311 of 3 January 1989 the Commission informed the Member States of the criteria they should adhere to when granting development aid related to shipbuilding. Apart from the need to establish the genuine developmental character of the aid, the grant element should be at least 25 % of the contract value and the recipient country should be on the list of "eligible" countries.

Indonesia is on the list of "eligible" countries for shipbuilding related development aid and the credit conditions for the project are just over the minimum required 25 % grant equivalent. The Commission, however, in the absence of sufficient information under the provisions of Article 4 (7) of the Directive is not in a position to establish the genuine development aid character of the aid project under consideration and its possible distorting effect on maritime transport. As stated above, such information is *inter alia* required under the provisions of the Seventh Directive in order for the aid to be exempted from the provisions as regards the common maximum aid ceiling.

Furthermore, the building yard is the East German Mathias Thesen Werft. The Commission has received an official notification of operating aid schemes in support of the Mecklenburg-Vorpommern shipyards, including the Werftshilfeprogramm allowing for such development aid, but is not likely to be ready to take a position on these schemes until it has received by the end of January 1992 the results of the study it has commissioned in order to establish the DMS yards' ability to compete under equal terms with the other Community yards. Accordingly no operating aid may at this stage be granted to these yards. Suspicions therefore exist that the German development aid intentions for the PT BUL container contract are based only on the necessity of bringing the German prices down to a commercially acceptable level, in which case the development aid would therefore indirectly be an operating aid to the constructing yard Mathias Thesen.

Given the fact that on the basis of the information available there are doubts on the compatibility with the common market of the aid project for PT BUL for the building of two 1 066 teu container vessels in the Mathias Thesen Werft, the Commission has decided to initiate the Article 93 (2) procedure.

The Commission draws the German Government's attention to the fact that Article 93 (3) of the EEC Treaty requires that aid cannot be put into effect until the Commission has adopted its final position.

The other Member States and other parties concerned will be given notice by means of publication of this decision in the *Official Journal of the European Communities* to submit their comments within one month of the date of such publication.

The Commission hereby gives the German Government notice to submit its comments within one month of the date of this letter. In line with the rules set by the Commission for Member States granting development aid related to shipbuilding, as laid down in its letter SG(89) D/311 of 3 January 1989, and the general principles agreed to in the "Helsinki package" on tied aid credit policies of OECD members, these comments should include information as regards the necessity of external resources for the project under consideration, the project's access to market financing, whether the project would have been commercially viable if it were financed on commercial or OECD "Understanding" terms, how best value for money has been ensured, by what means trade distortion has been minimized and what safeguards have been incorporated in order to contribute to developmentally effective use of the resources to be made available. Information on trades and operating lines intended for the two container vessels under consideration as well as on ownership structure of aid recipient PT Bahana Utama Line should also be included in the German Government's comments.

The Commission hereby gives the other Member States and other parties concerned notice to submit their comments on the measures in question within one month of the date of publication of this notice to:

Commission of the European Communities,
200 rue de la Loi,
B-1049 Brussels.

The comments will be communicated to Germany.