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**COUNCIL REGULATION (EC) No 3094/95
of 22 December 1995
on aid to shipbuilding**

(OJ L 332, 30.12.1995, p. 1)

Amended by:

	Official Journal		
	No	page	date
► <u>M1</u> Council Regulation (EC) No 1904/96 of 27 September 1996	L 251	5	3.10.1996
► <u>M2</u> Council Regulation (EC) No 2600/97 of 19 December 1997	L 351	18	23.12.1997



COUNCIL REGULATION (EC) No 3094/95
of 22 December 1995
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⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Whereas Council Directive 90/684/EEC of 21 December 1990 on aid to shipbuilding⁽⁴⁾ expires on 31 December 1995;

Whereas, within the framework of the Organization for Economic Cooperation and Development (OECD), an Agreement has been concluded between the European Community and certain third countries respecting normal competitive conditions in the commercial shipbuilding and repair industry⁽⁵⁾;

Whereas the current rules of the Directive will need to be prolonged ad interim if the OECD Agreement does not enter into force by 1 January 1996;

Whereas that Agreement should enter into force on 1 January 1996, after all parties to the Agreement have deposited their instruments of ratification, acceptance or approval;

Whereas the Agreement provides for the elimination of all direct shipbuilding aids except social aids and authorized aids to research and development within the limit of certain ceilings;

Whereas indirect measures of support to shipbuilding in the form of credit facilities and loan guarantees for ship-owners are permitted by the aforesaid Agreement provided they are in conformity with the OECD Understanding on Export Credits for Ships;

Whereas the OECD Agreement respecting normal competitive conditions in the commercial shipbuilding and repair industry and the Community legislation deriving there from are a matter of signal importance;

Whereas the Commission's powers under Articles 85, 86, 92 and 93 of the Treaty enable it to act in the event of anticompetitive measures or practices and whereas actions initiated by the Commission in connection with such measures and practices by shipyards would form an integral part of the annual report to be submitted to the Member States;

Whereas the abovementioned Agreement can be reviewed three years after it enters into force,

⁽¹⁾ OJ No C 304, 15. 11. 1995, p. 21.

⁽²⁾ OJ No C 339, 18. 12. 1995.

⁽³⁾ Opinion delivered on 23 November 1995 (not yet published in the Official Journal).

⁽⁴⁾ OJ No L 380, 31. 12. 1990, p. 27. Directive as last amended by Directive 94/73/EC (OJ No L 351, 31. 12. 1994, p. 10).

⁽⁵⁾ OJ No C 375, 30. 12. 1994, p. 3.

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HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL*Article 1*

For the purposes of this Regulation:

- (a) ‘shipbuilding’ shall mean the building, in the Community, of self-propelled seagoing commercial vessels, namely:
- 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 specialized service (for example dredgers and ice-breakers, excluding floating docks and mobile offshore units);
 - tugs of not less than 365 kW;
 - fishing vessels of not less than 100 gt for export outside the Community; and
 - unfinished shells of the abovementioned vessels that are afloat and mobile.
- Military vessels 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) ‘ship repair’ shall mean the repair or reconditioning in the Community of self-propelled seagoing commercial vessels, as defined in (a);
- (c) ‘ship conversion’ shall mean, subject to the provisions of Article 5, the conversion, in the Community, of self-propelled seagoing commercial vessels, as defined in (a), on condition that conversion operations entail radical alterations to the cargo plan, the shell, the propulsion system or the passenger reception infrastructure;
- (d) ‘self-propelled seagoing vessel’ shall mean a vessel that, by means of its permanent propulsion and steering, has all the characteristics of self-navigability on the high seas;
- (e) ‘OECD Agreement’ shall mean the Agreement respecting normal competitive conditions in the commercial shipbuilding and repair industry;
- (f) ‘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;
- (g) ‘related entity’ shall mean any natural or legal person who:
- (i) owns or controls a shipbuilder; or
 - (ii) is owned or controlled by a shipbuilder, directly or indirectly, whether through stock ownership or otherwise. Control shall be presumed to arise once a person or a shipbuilder owns or controls an interest of more than 25 % in the other.

Article 2

1. Aid granted specifically, 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 provi-

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sions of this Regulation. This applies not only to undertakings engaged in such activities but also to related entities.

2. No aid granted pursuant to this Regulation may be conditional upon discriminatory practices against products originating in other Member States.

CHAPTER II

COMPATIBLE MEASURES*Article 3***Social assistance**

1. Aid to cover the cost of measures for the exclusive benefit of workers who lose retirement benefits or who are made redundant or otherwise separated permanently from employment in the respective shipbuilding, conversion or repair enterprise, when such assistance is related to the discontinuance or curtailment of shipyard activities, bankruptcy, or changes in activities other than shipbuilding, conversion or repair may be considered compatible with the common market.

2. The costs eligible for the aid referred to in this Article are, in particular:

- 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 repairs,
- payments to workers for vocational retraining.

*Article 4***Research and development aid**

1. Public aid for research and development to the shipbuilding, conversion and repair industry may be considered compatible with the common market where this public assistance relates to:

- (i) fundamental research;
- (ii) basic industrial research, provided that the aid intensity is limited to 50 % of eligible costs;
- (iii) applied research, provided that the aid intensity is limited to 35 % of eligible costs;
- (iv) development, provided that the aid intensity is limited to 25 % of eligible costs.

2. The maximum permissible aid intensity for research and development carried out by small and medium-sized enterprises⁽¹⁾ shall be 20 points higher than the percentages specified in paragraph 1 (ii), (iii) and (iv).

3. For the purposes of this Article, the following definitions shall apply to research and development aid:

- (a) eligible costs shall be only those relating to:
 - (i) the costs of instruments, material, land and buildings to the extent that they are used for specific research and development projects;

⁽¹⁾ For the purposes of this Regulation 'small and medium-sized enterprises' shall mean enterprises which employ fewer than 300 employees, the yearly turnover of which does not exceed ECU 20 million, and the capital of which is not more than 25 % owned by a large company.

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- (ii) the costs of researchers, technicians and other staff to the extent that they are engaged in the specific research and development projects;
 - (iii) consultancy and equivalent services including research bought, technical knowledge, patents, etc.;
 - (iv) overhead costs (infrastructure and support services) to the extent that they are related to the research and development projects, on condition that they do not exceed 45 % of the total costs of the project for basic industrial research, 20 % for applied research and 10 % for development;
- (b) 'fundamental research' shall mean research activities independently conducted by higher education or research establishments for the enlargement of general scientific and technical knowledge, not linked to industrial or commercial objectives;
 - (c) 'basic industrial research' shall mean original theoretical and experimental work whose objective is to achieve better understanding of the laws of science and engineering in general and which might apply to an industrial sector or to the activities of a particular undertaking;
 - (d) 'applied research' shall mean investigation or experimental work on the basis of the results of basic research with a view to facilitating the attainment of specific practical objectives such as the creation of new products, production processes or services. It normally ends with the creation of a first prototype and does not include efforts whose principal aim is the design, development or testing of products or services to be considered for sale;
 - (e) 'development' shall mean the systematic use of scientific and technical knowledge in the design, development, testing or evaluation of new products, production processes or services or in the improvement of an existing product or service to meet specific performance requirements and objectives. This stage normally includes pre-production models such as pilot and demonstration projects but does not include industrial application and commercial exploitation;
 - (f) aid for research and development specifically provided to the shipbuilding, conversion or repair industry shall include, but not be limited to, the following:
 - (i) research and development projects carried out by the shipbuilding, conversion or repair industry or by research institutes controlled or financed by that industry;
 - (ii) research and development projects carried out by the shipping industry or by research institutes controlled or financed by that industry where these projects are directly related to the shipbuilding, conversion or repair industry;
 - (iii) research and development projects carried out by universities, public and/or independent private research institutes and other industrial sectors in collaboration with the shipbuilding, conversion or repair industry;
 - (iv) research and development projects carried out by universities, public and/or independent private research institutes and other industrial sectors, when, at the time the project is carried out, it can reasonably be expected that the results will be of substantial specific importance for the shipbuilding, conversion or repair industry.

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4. Information on the results of research and development shall be published promptly, at least once a year.

*Article 5***Indirect aid**

1. Aid for shipbuilding and ship conversion, excluding repair, granted to shipowners or third parties in the form of State loans and guarantees may be considered compatible with the common market if it complies with the OECD Understanding on Export Credits for Ships⁽¹⁾ or with any agreement amending or replacing that Understanding.

2. Aid for shipbuilding and ship conversion granted for genuine reasons as development assistance to a developing country may be deemed compatible with the common market if it complies with the relevant terms of the OECD Understanding or with any agreement amending or replacing that Understanding, as referred to in paragraph 1.

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 distort or threaten to distort competition between shipyards in that Member State and shipyards in other Member States in the placing of orders.

4. For the purpose of this Article, 'ship conversion' shall mean the conversion, in the Community, of self-propelled seagoing commercial vessels, as defined in Article 1 (a), of not less than 1 000 gt on condition that conversion operations entail radical alterations to the cargo plan, the shell, the propulsion system or the passenger reception infrastructure.

*Article 6***Spain, Portugal, Belgium**

Reconstruction aid granted in Spain, Portugal and Belgium in the form of investment assistance and any assistance for social measures not covered under Article 3 and paid after 1 January 1996 may be considered compatible with the common market. This aid must be subject to individual notification and prior approval by the Commission by 31 December 1996 at the latest and be subject to the following maximum limits and payments deadlines:

	<i>Amount of aid</i>	<i>Payment deadline</i>
Spain:	Pta 10 billion	31 December 1998
Portugal:	Esc 5,2 billion	31 December 1998
Belgium:	Bfrs 1 320 million	31 December 1997

*Article 7***Other measures**

1. In exceptional cases, and subject to Article 92 of the Treaty, other aids may be deemed compatible with the Common market. If the Commission considers that this is the case, it shall be empowered, after consulting the special committee set up under Article 113 of the Treaty, to request a derogation from the Parties Group pursuant to Article 5 (5) of the OECD Agreement.

2. For research and development projects related to safety and the environment, and subject to compliance with the conditions set out in Article 92 of the Treaty, a higher aid intensity than provided for in Article 4 (1) (ii), (iii) and (iv) may be deemed compatible with the common market. If the Commission considers that this is the case, it

⁽¹⁾ OJ No C 375, 30. 12. 1994, p. 38.

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shall be empowered to request the Parties Group to approve the project pursuant to Annex I B 3 (2) to the OECD Agreement.

3. Where aid granted pursuant to this Regulation is the subject of Dispute Panel Proceedings under Article 8 of the OECD Agreement or, in the case of export credits, the subject of consultation mechanisms as laid down in the OECD Understanding on Export credits for Ships, the Community position shall be adopted by the Commission after consultation of the special Committee set up under Article 113 of the Treaty.

CHAPTER III

MONITORING PROCEDURE*Article 8*

1. Aid to shipbuilding 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 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 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;
 - (c) any individual application of aid schemes in the case referred to in Article 5 (2) or when specifically provided for by the Commission in its approval of the aid scheme concerned.

Article 9

1. To enable the Commission to monitor application of the aid rules contained in Chapter II, Member States shall supply it with:
 - (a) monthly reports on officially supported credit facilities granted for each shipbuilding and conversion contract by the end of the month following the month of signing of each contract, in accordance with the annexed Schedule 1;
 - (b) where Member States have schemes providing for official guarantees and insurance for ships, reports to be submitted by 1 April of the year following the year under review, including the results of the schemes, claims paid, income from premiums and fees, income from recoveries and any other appropriate information requested by the Commission;
 - (c) completion reports on each shipbuilding and conversion contract 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 2;
 - (d) 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 3;
 - (e) 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 4.
2. On the basis of the information communicated to it in accordance with Article 8 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.

▼B*Article 10*

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities*.

It shall apply as from the date of entry into force of the OECD Agreement⁽¹⁾.

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

⁽¹⁾ The date of entry into force of the OECD Agreement will be published in the *Official Journal of the European Communities* by the General Secretariat of the Council.

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Schedule 2

EUROPEAN COMMUNITY

REPORT OF MERCHANT SHIP COMPLETIONS

Section 1: Contract details

1. New building/conversion			
2. Company	3. Yard	4. Yard No	
5. Registered owner			
6. Holding owner			
7. Vessel's country of registration			
8. Date contract signed		9. Completion/delivery date	

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			
(c) specific fiscal concession			
(d) other support			
B. Granted to customer or ultimate owners:			
(a) grants			
(b) credit facilities			
(c) fiscal concessions			
(d) other aid			

Section 2: Ship details

10. Type of vessels (by OECD category)
11. Deadweight (DWT)
12. Gross tonnage (GT)
13. Compensated gross tonnage (CGT)

Contact for enquiries: Date:

Position held: Signature:

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Schedule 3

EUROPEAN COMMUNITY

REPORT OF EMPLOYEES' OR ENTERPRISE' FINANCIAL SUPPORT

Name of enterprise:

	Eligible costs (including for (1) details of numbers of workers involved)	Aid received		Legal basis (including date of approval by Commission)
		Form	Amount	
1. Social aid: (a) Redundancy payments (b) Early-retirement payments (c) Reconversion payments (d) Vocational retraining				
2. Research and development aid (a) Fundamental research (b) Basic industrial research (c) Applied research (d) Development				
3. General aid schemes (please specify nature of support)				

Contact for enquiries: Date:

Position held: Signature:

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Schedule 4

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