

COMMISSION DECISION

of 6 September 2005

on State aid

Portugal — Extension of the three-year delivery limit for two chemical tankers built by Estaleiros Navais de Viana do Castelo, S.A.

(notified under document number C(2005) 3268)

(Only the Portuguese version is authentic)

(Text with EEA relevance)

(2006/946/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having regard to Council Regulation (EC) No 1540/98 establishing new rules on aid to shipbuilding⁽¹⁾ (hereafter the 'Shipbuilding Regulation') and in particular Article 3.2 thereof,

Having called on interested parties to submit their comments pursuant to those provision(s)⁽²⁾ and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) By letter dated 21 January 2004, registered in the Commission on 29 January 2004, Portugal notified the Commission of its request to extend the three year delivery limit for two chemical tankers built by Estaleiros Navais de Viana do Castelo. It provided the Commission with further information by letters dated 1 April 2004 (registered 2 April 2004), 11 June 2004 (registered 15 June 2004) and 24 August 2004 (registered 31 August 2004).
- (2) By letter dated 20 October 2004, the Commission informed Portugal that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.
- (3) By letter dated 23 November 2004 (registered 1 December 2004), the Portuguese authorities presented their comments in the context of the above-mentioned procedure.

- (4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union*⁽³⁾. The Commission called on interested parties to submit their comments.
- (5) The Commission received comments from interested parties. It forwarded them to Portugal, which was given the opportunity to react; its comments were received by letter dated 3 March 2005 (registered 7 March 2005). A meeting between the Commission services and the Portuguese authorities was held on 22 April 2005. By letter dated 23 May 2005 (registered 27 May 2005) Portugal submitted further comments.

II. DETAILED DESCRIPTION OF THE AID

- (6) The notified measure consists of the award of contract-related operating aid to Estaleiros Navais de Viana do Castelo S.A., in relation to the construction of two product/chemical tankers designated C 224 and C 225. The aid amounts to 2 675 275 Euro per vessel.
- (7) Portugal notified the measure under the Shipbuilding Regulation⁽⁴⁾. Article 3 of this Regulation allows operating aid to be granted for ships contracted until 31 December 2000 and delivered within a maximum limit of three years from the signing of the contract. No contract related operating aid can therefore be granted for ships delivered after the three year limit, unless an extension of this deadline is authorized by the Commission pursuant to Article 3 (2) subparagraph 2 of Regulation No 1540/98.
- (8) Portugal requested an extension of the three-year delivery deadline for the two product chemical tankers built by Estaleiros Navais de Viana do Castelo, S.A. Portugal claimed that this request is justified by the technical complexity of the project associated with unforeseeable events as explained below.

⁽¹⁾ OJ L 202, of 18.7.1998, p. 1.⁽²⁾ OJ C 308, of 14.12.2004, p. 6.⁽³⁾ Cf. footnote 2 above⁽⁴⁾ Cf. footnote 1 above

- (9) Portugal stated, in this context, that the shipbuilding contracts for both vessels were signed on 22 December 2000 between Estaleiros Navais de Viana do Castelo, S.A. and Alpha Navigation Ltd (the 'original contracts'). On 14 May 2001, Alpha Navigation transferred its position as a buyer to a company based in Finland, ABB Credit OY, via 'assignment agreements' that were signed by the three parties involved: Alpha Navigation, ABB Credit OY and Estaleiros Navais de Viana do Castelo S.A. The new owner requested new specifications, namely the upgrading of the vessels to 'Class I-A Super' for navigation in the ice and to that effect signed with Estaleiros Navais de Viana do Castelo, S.A., also on 14 May 2001, 'Amended and Restated contracts' for the vessels.
- (10) According to Portugal, the new specifications requested by the new ship owner had implications on several features and materials of the vessels and required the yard to use new techniques, which in turn delayed production. Portugal highlighted, in particular, the following main difficulties in relation to the project:
- Adaptation of the initial projects to class IA Super related to the conditions for navigation in the ice.
 - Application of a new standard, ISO 8501-3, concerning the grade of preparation of the steel surface before painting. This standard was still in the process of adoption when the contracts were signed ⁽⁵⁾. Portugal claims it required a training period for the workers of the yard.
 - Application of a special paint, called 'Marineline', which requires a longer application cycle than traditional paint.
 - Additional changes requested by the ship owner at several instances during production.
 - Supply of steel plates with serious default that had to be corrected.
- (11) In Portugal's view, the difficulties relating in particular to the implementation of the new standard and the supply of steel plates with default were unforeseeable circumstances.
- (12) Under the terms agreed with ABB Credit OY, the yard had foreseen to deliver vessel C 224 on 30 October 2003 and vessel C 225, on 15 November 2003, i.e. within the three-year delivery deadline. However, due to the above factors,

the ships were effectively delivered on 29 October 2004 and 4 February 2005, respectively ⁽⁶⁾.

Grounds for initiating the procedure

- (13) The Commission initiated the procedure for the following main reasons:
- (14) The Commission had doubts, at the outset, whether the amended and restated contracts signed with ABB Credit OY on 21 May 2001, could be considered the same as the original contracts signed with Alpha Navigation. The amended and restated contracts signed with ABB Credit OY changed several characteristics of the vessels, the type of paint used on the cargo tanks, the identity of the buyer and the vessels' prices. It was therefore questionable whether the object of these contracts was still the same as that in the original ones and whether the contracts signed with ABB Credit OY could qualify for aid.
- (15) Also, regarding Portugal's claim that the extended deadline was justified by the technical complexity of the project, the Commission had doubts that the type of product/chemical tankers built by Estaleiros Navais de Viana do Castelo, S.A. could qualify for an extended deadline on these grounds. The Commission tends to interpret the argument on technical complexity in a restrictive and objective way ⁽⁷⁾ and the evidence supplied by Portugal was insufficient to reach a conclusion.
- (16) The Commission further doubted whether the elements raised by Portugal could qualify as 'exceptional circumstances, unforeseeable and external to the shipyard', within the meaning of Article 3(2) of the Shipbuilding Regulation. The Commission noted, in this respect, that most of the difficulties encountered by the shipyard resulted from the changes requested by the new owner and in so far as the shipyard had accepted these changes it was questionable that they could qualify as 'external and unforeseeable'.

III. COMMENTS FROM INTERESTED PARTIES

- (17) The Community of European Shipyards' Association (CESA) commented that in the shipbuilding business, the assignment of a construction contract from one buyer to another may happen with certain frequency and that a shipyard faced with this situation has limited leverage for refusing the assignment. In particular in Europe, shipyards frequently adapt to changing requirements of the buyers. However, in the view of CESA, this would not imply that

⁽⁵⁾ Standard ISO 8501-3 only came into effect on 22 December 2001

⁽⁶⁾ Portugal initially notified an extension request up to July 2004 for vessel C 224 and November 2004, for vessel C 225 and later extended this request up to the actual delivery dates of October 2004 and February 2005.

⁽⁷⁾ See case N 731/01 where the Commission considered that a liquefied gas tanker is a particularly complex ship, (OJ C 238, 3.10.2002, p. 1).

the changed contracts are new contracts given that the product type — product/chemical tanker — and range of the overall capacity or weight of the vessels remained the same.

- (18) One party requested the Commission to verify the correct classification of the ships (product/chemical tankers, as opposed to pure chemical tankers as initially indicated in the decision to initiate the procedure).

IV. COMMENTS FROM PORTUGAL

- (19) Portugal noted that the shipyard had programmed to complete the vessels within the three-year limit imposed by the Shipbuilding Regulation. At the time the assignment of the contracts to ABB was concluded, the shipyard's order book was virtually full, which left the yard with little flexibility for eventually advancing production of the vessels in the face of the new requirements of the ship owner. In addition, Portugal considered that the technical difficulties incurred by the shipyard were not foreseeable when it signed the contracts. Regarding the special coating used, the ship owner requested that this be extended to a larger number of tanks at an advanced stage of the project, which further delayed production.
- (20) In support of its arguments, Portugal submitted statements by the ship owner and by the classification society for the vessels in question, Det Norske Veritas, certifying that these new buildings should be considered of 'high technical complexity on their segment'. The classification society noted in particular that the new tanks comply with the highest ice strengthening requirements, high electronic technology for nautical safety, as well as high demanding building contract specifications for steel preparation and finishing as well as coating.
- (21) Portugal also noted that there had been no known competition for these particular contracts from shipyards in the EU, which limited any distorting effects of the aid vis-à-vis EU shipyards.

V. ASSESSMENT OF THE AID

Presence of aid within the meaning of Article 87(1) of the EC Treaty

- (22) Under Article 87(1) any aid granted to a Member State or through state resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market.

- (23) The operating aid in question concerns financing from State resources of part of the costs the yard concerned would normally have to bear when building a vessel, thus benefiting the yard. Moreover, shipbuilding is an economic activity involving trade between Member States. Therefore, the aid in question falls within the scope of Article 87(1) of the EC Treaty.

Compatibility of the aid with the EC Treaty

- (24) According to the Shipbuilding Regulation ⁽⁸⁾, 'shipbuilding' means building of self-propelled seagoing commercial vessels. Estaleiros Navais de Viana do Castelo S.A. builds these ships and consequently the aid to this shipyard falls under the scope of this Regulation.
- (25) Article 3(1) of the Shipbuilding Regulation states that a maximum ceiling of 9 % (for contract values bigger than EUR 10 million) of contract related operating aid for ships is allowed until 31 December 2000. According to Article 3 (2) of the same Regulation, the aid ceiling applicable to the contract is the one in force at the date of the signature of the final contract. However, this does not apply to ships delivered more than three years from the signing of the 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. Consequently, the final delivery date for a vessel still qualifying for operating aid is 31 December 2003.
- (26) Article 3(2) of the Regulation stipulates, however, that the Commission may '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'.
- (27) It is noted that Portugal based its request on the technical complexity of the project associated with unforeseeable events, thereby addressing both types of exceptions.
- (28) As regards the issue of technical complexity of the project, the Commission services requested the opinion of an outside expert. The following examines the Commission's conclusions in the light of the comments submitted by the expert, as well as those submitted by Portugal and interested parties.

⁽⁸⁾ Cf. Footnote 1. The Shipbuilding Regulation expired on 31 December 2003. However, it must still be used to assess requests for the extension of the delivery time limit, since the issue is related to aid granted under this Regulation and since the Shipbuilding Framework, effective since 1 January 2004, does not provide any guidance for such requests.

Eligibility of the contracts for aid

- (29) It is noted that further to the transfer of ownership from Alpha Navigation to ABB Credit OY, the product type of the contracts remained the same — product/chemical tanker. The weight of the vessels did not vary significantly when considering the range of variation for this product type⁽⁹⁾. Furthermore, according to the information submitted by Portugal, ABB Credit Oy took over all rights and obligations that were those of Alpha Navigation in the original contracts and reimbursed the latter payments already made to ENVC. On the basis of the foregoing it can be concluded that the transfer of ownership did not in itself change the nature of the contracts and thereby their eligibility for aid.

This led to halts in production and required perfection of work.

Technical complexity of the project

- (30) The comments submitted further to the initiation of the procedure confirm that there were elements of complexity of the project which can justify the extension of the delivery deadline requested by Portugal.
- (31) The Class I-A Super applied to these vessels is the more demanding in a scale of four, according to the thickness of the ice the vessel will have to overcome. It prepares vessels to navigate in ice thickness of one metre and places specific demands on the structure. Such requirements have a major impact on the design of the project (hull, propulsion, networks) which must be adapted accordingly.
- (32) The requirements concerning the preparation of the steel surface and the application of paint can be particularly demanding in the case of product/chemical tankers, in view of the risk associated with the type of products they are designed to transport. It appears that in the case of vessels of Class I-A Super, the quality of the steel itself must be of a special grade, to ensure structural integrity at low temperatures.
- (33) In the present case, the shipyard was faced at the outset with difficulties linked to the quality of the steel supplied, which had defaults that had to be corrected. In addition, the level of difficulty concerning the preparation of the steel surface was apparently magnified by the ship owner's own standards. Portugal explained that the steel surface was prepared according to the specifications of a new standard⁽¹⁰⁾ that requires the steel to be 'free of all visible imperfections' and that the shipyard had difficulties in matching the ship owner's interpretation of this standard.

- (34) The 'Marineline' paint used in the constructions is of a special nature designed to create high resistance to corrosion. It requires rounding of corners and very clean surfaces. The cure of the paint is performed at very high temperatures (80 to 122 °C) which requires adjacent spaces to remain unpainted if they cannot withhold these temperatures. It presents high risks of defects and rejection with the necessary repair and touch-up that can have major implications on the scheduling of works.

- (35) The Commission accepted in the decision to open proceedings that the supply of steel plates with default, which had to be repaired by the yard, had contributed to delay the project by some 2 months.

- (36) It appears, further to the information received subsequent to the initiation of procedure, that the above elements had major implications on the scheduling of the project. The degree of perfection of the steel surface was an essential element in this project which in turn conditioned the application of the special coating. Further, it is noted that such elements of complexity could not have been anticipated by the shipyard in so far as they depended on third parties (plate defects, quality level requirements of the ship owner) and the yard had no experience with the particular type of coating used.

VI. CONCLUSION

- (37) In the light of the foregoing, the Commission considers that in accordance with Article 3(2) subparagraph 2 of Regulation No 1540/98 an extension of the three year delivery limit can be approved for the two product/chemical tankers built by Estaleiros Navais de Viana do Castelo, S.A based on the technical complexity of the project. The Commission also notes that in the light of this conclusion, it does not consider necessary to further examine whether the reasons invoked by Portugal could qualify as exceptional circumstances, unforeseeable and external to the company within the meaning of the above Article. .

- (38) The extension of the delivery deadline is authorized up to the actual delivery dates of the vessels (29 October 2004 and 5 February 2005).

⁽⁹⁾ The original contracts concerned product/chemical tankers of 15 500 tonnes deadweight (tdw). This was modified to 14 000 tdw in the amended contracts. On the basis of the information available product and chemical carriers may typically start from below 4 000 tdw and go up to more than 40 000 tdw.

⁽¹⁰⁾ ISO 8501-3, concerning the grade of preparation of the steel surface before paint.

HAS ADOPTED THIS DECISION:

Article 2

This Decision is addressed to Portugal.

Article 1

The three-year delivery limit foreseen in Article 3(2) of Council Regulation(EC) No 1540/98 is extended for two product-chemical tankers built at Estaleiros Navais de Viana do Castelo, to 29 October 2004 for ship C 224 and 5 February 2005 for ship C 225.

Done at Brussels, 6 September 2005.

For the Commission

Neelie KROES

Member of the Commission
