

## FRAMEWORK ON STATE AID TO SHIPBUILDING

(2011/C 364/06)

### 1. INTRODUCTION

1. Since the early 1970s, State aid to shipbuilding has been subject to a series of specific State aid regimes, which have been gradually aligned with the horizontal State aid provisions. The current Framework on State aid to shipbuilding<sup>(1)</sup> will expire on 31 December 2011. In line with its policy to ensure enhanced transparency and simplification of State aid rules, the Commission aims, to the greatest extent possible, to eliminate the differences between the rules applicable to the shipbuilding industry and to other industrial sectors, by extending general horizontal provisions to the shipbuilding sector<sup>(2)</sup>.

2. Nevertheless, the Commission acknowledges that certain features distinguish shipbuilding from other industries, such as the short production series, the size, value and complexity of the units produced and the fact that prototypes are generally used commercially.

3. In the light of those special characteristics, the Commission considers it appropriate to continue to apply specific provisions in respect of innovation aid for the shipbuilding sector while ensuring that such aid does not adversely affect trading conditions and competition to an extent contrary to the common interest.

4. State aid for innovation must lead to the recipient of aid changing its behaviour so that it increases its level of innovation activity and innovation projects or activities take place which would not otherwise be carried out, or which would be carried out in a more restricted manner. Incentive effect is identified by counterfactual analysis, comparing the levels of intended activity with aid and without aid. Therefore, this Framework identifies specific requirements which will enable Member States to ensure the presence of an incentive effect.

5. An informal set of rules concerning innovation aid for shipbuilding regarding, in particular, the eligible costs and the confirmation of the innovative character of the project, has been developed in conjunction with the industry and is applied by the Commission in its decision-making practice. In the interests of transparency, those rules should be formally integrated into the rules on innovation aid.

<sup>(1)</sup> OJ C 317, 30.12.2003, p. 11.

<sup>(2)</sup> See State aid action plan COM(2005) 107 final, pt. 65: 'the Commission will decide whether a Framework for State aid to shipbuilding is still needed or if the sector should simply be governed by horizontal rules'.

6. As regards regional aid, the Commission will review the horizontal Guidelines on national regional aid for 2007-2013<sup>(3)</sup> in 2013. Therefore, the Commission will continue to apply the same specific rules for regional aid in the shipbuilding sector that are currently foreseen in the 2003 Framework until that time. It will reassess the situation in the context of the revision of the Guidelines on national regional aid.

7. With regard to export credits, the objective of this Framework is to respect applicable international obligations.

8. This Framework therefore contains specific provisions in relation to innovation aid and regional aid for shipbuilding, as well as provisions on export credits. In addition, aid to the shipbuilding sector can be deemed compatible with the internal market under the Treaty on the Functioning of the European Union and under the horizontal State aid instruments<sup>(4)</sup>, unless otherwise provided for in those instruments.

9. In accordance with Article 346 of the Treaty and subject to the provisions of Article 348 of the Treaty, any Member State may take such measures as it considers necessary for the protection of the essential interests of its security with respect to funding for military vessels.

10. The Commission intends to apply the principles set out in this Framework from 1 January 2012 to 31 December 2013. After that date the Commission envisages including the provisions on innovation aid in the Community framework for State aid for research and development and innovation<sup>(5)</sup> and integrating regional aid for shipbuilding into the Guidelines on national regional aid.

### 2. SCOPE AND DEFINITIONS

11. Under this Framework, the Commission may authorise aid to shipyards or, in the case of export credits, aid to ship owners, which is granted for building, repair or conversion of ships, as well as innovation aid granted for the construction of floating and moving offshore structures.

<sup>(3)</sup> OJ C 54, 4.3.2006, p. 13.

<sup>(4)</sup> For instance, the Community Guidelines on State aid for environmental protection (OJ C 82, 1.4.2008, p. 1) lay down the conditions under which aid to shipyards for more environmentally friendly production may be authorised. Moreover, aid for the acquisition of new transport vehicles which go beyond Union standards or which increase the level of environmental protection in the absence of Union standards can be granted to ship owners, thus contributing overall to cleaner maritime transport.

<sup>(5)</sup> OJ C 323, 30.12.2006, p. 1.

12. For the purposes of this Framework, the following definitions shall apply:

- (a) 'shipbuilding' means the building, in the Union, of self-propelled commercial vessels;
- (b) 'ship repair' means the repair or reconditioning, in the Union, of self-propelled commercial vessels;
- (c) 'ship conversion' means the conversion, in the Union, of self-propelled commercial vessels of not less than 1 000 gt<sup>(1)</sup>, on condition that conversion operations entail radical alterations to the cargo plan, the shell, the propulsion system or the passenger accommodation;
- (d) 'self-propelled commercial vessel' means a vessel that, by means of its permanent propulsion and steering, has all the characteristics of self-navigability on the high seas or on inland waterways and belongs to one of the following categories:
  - (i) seagoing vessels of not less than 100 gt and inland waterway vessels of equivalent size used for the transportation of passengers and/or goods;
  - (ii) seagoing vessels of not less than 100 gt and inland waterway vessels of equivalent size used for the performance of a specialised service (for example, dredgers and ice breakers);
  - (iii) tugs of not less than 365 kW;
  - (iv) unfinished shells of the vessels referred to in points (i), (ii) and (iii) that are afloat and mobile;
- (e) 'floating and moving offshore structures' means structures for the exploration, exploitation or generation of oil, gas or renewable energy that have the characteristics of a commercial vessel except that they are not self-propelled and are intended to be moved several times during their operation.
  - (a) the aid must be granted for investment in upgrading or modernising existing yard(s), not linked to a financial restructuring of the yard(s) concerned, with the objective of improving the productivity of existing installations;
  - (b) in regions referred to in point (a) of Article 107(3) of the Treaty and complying with the map approved by the Commission for each Member State for the grant of regional aid, the intensity of the aid must not exceed 22,5 % gross grant equivalent;
  - (c) in regions referred to in point (c) of Article 107(3) of the Treaty and complying with the map approved by the Commission for each Member State for the grant of regional aid, the intensity of the aid must not exceed 12,5 % gross grant equivalent or the applicable regional aid ceiling, whichever is the lower;
  - (d) the aid must be limited to support eligible expenditure as defined in the Guidelines on national regional aid for 2007-2013.

### 3.2. Innovation aid

#### 3.2.1. Eligible applications

14. Aid granted for innovation for shipbuilding, ship repair or ship conversion may be deemed compatible with the internal market up to a maximum aid intensity of 20 % gross provided that it relates to the industrial application of innovative products and processes, that is to say, technologically new or substantially improved products and processes when compared to the state of the art that exists in the shipbuilding industry within the Union, which carry a risk of technological or industrial failure. Innovation aid for the equipment and the modernisation of fishing vessels will not be deemed compatible with the internal market, unless the conditions laid down in Article 25(2) and (6) of Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund<sup>(2)</sup>, or in its successor provisions, are fulfilled. No aid can be granted to a shipyard if aid from the European Fisheries Fund, or from its successor instrument, or other public aid, is granted in respect of the same vessel.

15. Innovative products and processes within the meaning of point 14 include improvements in the environmental field related to quality and performance, such as optimising fuel consumption, emissions from engines, waste and safety.

## 3. SPECIFIC MEASURES

### 3.1. Regional aid

13. Regional aid to shipbuilding, ship repair or ship conversion may be deemed compatible with the internal market if it fulfils, in particular, the following conditions:

<sup>(1)</sup> Gross tons.

<sup>(2)</sup> OJ L 223, 15.8.2006, p. 1.

16. Where the innovation has the objective of increasing environmental protection and leads to compliance with adopted Union standards at least one year before those standards enter into force or increases the level of environmental protection in the absence of Union standards or makes it possible to go beyond Union standards, the maximum aid intensity can be increased to 30 % gross. The expressions 'Union standards' and 'environmental protection' have the meaning set out in the Community guidelines on State aid for environmental protection.

17. Provided that they comply with the criteria in point 14, innovative products will refer either to a new class of vessel as defined by the first vessel of a potential series of ships (prototype) or to innovative parts of a vessel, which can be isolated from the vessel as a separate element.

18. Provided that they comply with the criteria in point 14, innovative processes will refer to the development and implementation of new processes regarding production, management, logistic or engineering areas.

19. Innovation aid can only be deemed compatible with the internal market if it is granted for the first industrial application of innovative products and processes.

### 3.2.2. Eligible costs

20. Innovation aid for products and processes must be limited to supporting expenditure on investments, design, engineering and testing activities directly and exclusively related to the innovative part of the project and incurred after the date of the application for innovation aid <sup>(1)</sup>.

21. Eligible costs include costs of the shipyard as well as costs for the procurement of goods and services from third parties (for example, system suppliers, turnkey suppliers and subcontractor companies), to the extent that those goods and services are strictly related to the innovation. The eligible costs are defined in more detail in the Annex.

22. The relevant national authority, designated by the Member State for the purposes of the application of innovation aid, must examine the eligible costs on the basis of the estimations provided and substantiated by the applicant. Where the application includes costs for the procurement of goods and services from suppliers, the supplier must not have received State aid for the same objectives in respect of those goods or services.

<sup>(1)</sup> Except for costs for feasibility studies undertaken within 12 months prior to the aid application for an innovative process.

### 3.2.3. Confirmation of the innovative character of the project

23. In order for innovation aid to be deemed compatible with the internal market under this Framework, an application for innovation aid must be submitted to the relevant national authority prior to the applicant entering into a binding agreement to implement the specific project for which innovation aid is sought. The application must include a description of the innovation, in both qualitative and quantitative terms.

24. The relevant national authority must seek confirmation from an independent and technically competent expert that the aid is sought for a project that represents a technologically new or substantially improved product or process compared to the state of the art that exists in the shipbuilding industry within the Union (qualitative appraisal). The aid may only be deemed compatible with the internal market if the independent and technically competent expert confirms to the relevant national authority that the eligible costs for the project have been calculated to cover exclusively the innovative parts of the relevant project (quantitative appraisal).

### 3.2.4. Incentive effect

25. Innovation aid within the meaning of this Framework must have an incentive effect, that is to say, it must result in the recipient changing its behaviour so that it increases its level of innovation activity. As a result of the aid, the innovation activity must be increased in terms of size, scope, amount spent or speed.

26. In line with point 25, the Commission considers that aid does not present an incentive for the beneficiary where the project <sup>(2)</sup> has already commenced before the beneficiary submits an application for aid to the national authorities.

27. In order to verify that the aid would induce the aid beneficiary to change its behaviour so that it increases its level of innovation activity, the Member States must provide an *ex ante* evaluation of the increased innovation activity on the basis of an analysis comparing a situation without aid and a situation with aid. The criteria to be used may include the increase in innovation activities in terms of size, scope amount spent or speed, together with other relevant quantitative and/or qualitative factors submitted by the Member State in its notification under Article 108(3) of the Treaty.

28. If a significant effect on at least one of those elements can be demonstrated, taking account of the normal behaviour of an undertaking in the respective sector, the Commission will normally conclude that the aid has an incentive effect.

<sup>(2)</sup> This does not exclude that the potential beneficiary may have already carried out feasibility studies which are not covered by the request for State aid.

29. When assessing an aid scheme, the conditions relating to the incentive effect will be deemed to be satisfied if the Member State has committed itself to grant individual aid under the approved aid scheme only after it has verified that an incentive effect is present and to submit annual reports on the implementation of the approved aid scheme.

30. The approval of the aid application must be subject to the condition that the beneficiary enters into a binding agreement to implement the specific shipbuilding, ship repair or ship conversion project or process for which the innovation aid is sought. Payments can only be made after the relevant contract is signed. If the contract is cancelled or the project is abandoned, all aid disbursed must be reimbursed with interest from the date the aid was paid out. Equally, if the project is not completed, aid that has not been used for the eligible innovation expenditure must be reimbursed with interest. The rate of interest must be at least equal to the reference rates adopted by the Commission.

### 3.3. Export credits

31. Aid to shipbuilding in the form of State-supported credit facilities granted to national and non-national shipowners or third parties for the building or conversion of vessels may be deemed compatible with the internal market if it complies with the terms of the 1998 OECD Arrangement on Guidelines for Officially Supported Export Credits and with its Sector Understanding on Export Credits for Ships or any successive terms laid down in such an arrangement or replacing the Arrangement.

## 4. MONITORING AND REPORTING

32. Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty<sup>(1)</sup> and Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty<sup>(2)</sup> require the

Member States to submit annual reports to the Commission on all existing aid schemes. When adopting a decision under this Framework for all innovation aid granted under an approved scheme to large undertakings, the Commission may request Member States to report on how the requirement for an incentive effect has been respected in relation to aid given to large undertakings, notably using the criteria mentioned in point 3.2.4.

## 5. CUMULATION

33. The aid ceilings stipulated in this Framework are applicable irrespective of whether the aid in question is financed wholly or in part from State resources or from Union resources. Aid authorised under this Framework may not be combined with other forms of State aid within the meaning of Article 107(1) of the Treaty or with other forms of Union financing, the cumulation of which produces an aid intensity higher than that laid down in this Framework.

34. Where aid serves different purposes and involves the same eligible costs, the most favourable aid ceiling will apply.

## 6. APPLICATION OF THIS FRAMEWORK

35. The Commission will apply the principles set out in this Framework from 1 January 2012 until 31 December 2013. The Commission will apply those principles to all notified aid measures in respect of which it is called upon to take a decision after 31 December 2011, even where the projects were notified prior to that date.

36. In accordance with the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid<sup>(3)</sup>, the Commission will apply the principles set out in this Framework to non-notified aid granted after 31 December 2011.

<sup>(1)</sup> OJ L 83, 27.3.1999, p. 1.

<sup>(2)</sup> OJ L 140, 30.4.2004, p. 1.

<sup>(3)</sup> OJ C 119, 22.5.2002, p. 22.

## ANNEX

**Eligible costs for innovation aid for shipbuilding**

## 1. NEW CLASS OF VESSEL

For the construction of a new class of vessel that is eligible for innovation aid, the following costs are eligible:

- (a) costs for the concept development;
- (b) costs for the concept design;
- (c) costs for the functional design;
- (d) costs for the detailed design;
- (e) costs for studies, testing, mock-ups; and similar costs related to the development and design of the vessel;
- (f) costs for the planning of the implementation of the design;
- (g) costs for tests and trials of the product;
- (h) incremental labour and overhead costs for a new class of vessel (learning curve).

For the purposes of points (a) to (g), costs related to standard engineering design equivalent to a previous class of vessel are excluded.

For the purposes of point (h), additional production costs that are strictly necessary to validate the technological innovation can be eligible to the extent that they are limited to the minimum necessary amount. Due to the technical challenges associated with constructing a prototype, production costs of the first vessel normally exceed production costs of the subsequent sister ships. Additional production costs are defined as the difference between the labour costs and associated overhead costs for the first in a new class of vessel and the production costs of the subsequent vessels of the same series (sister ships). Labour costs include wages and social costs.

Accordingly, in exceptional and duly justified cases, a maximum of 10 % of the production costs associated with the construction of a new class of vessel can be considered as eligible costs: if those costs are necessary to validate the technical innovation. A case is considered to be duly justified if the additional production costs are estimated to exceed 3 % of the production costs of the subsequent sister ships.

## 2. NEW COMPONENTS OR SYSTEMS OF A VESSEL

For new components or systems that are eligible for innovation aid, the following costs are eligible to the extent that they are strictly related to the innovation:

- (a) design and development costs;
- (b) costs for the testing of the innovation part, mock-ups;
- (c) costs for material and equipment;
- (d) in exceptional cases, the costs of construction and installation of a new component or system that are necessary to validate the innovation, to the extent that they are limited to the minimum necessary amount.

## 3. NEW PROCESSES

For new processes that are eligible for innovation aid, the following costs are eligible to the extent that they are strictly related to the innovative process:

- (a) design and development costs;
  - (b) costs for material and equipment;
  - (c) costs for the testing of the new process, where applicable;
  - (d) costs for feasibility studies undertaken within 12 months prior to the aid application.
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