



EUROPEAN COMMISSION

Brussels, 10.7.2012

C(2012) 4823 final

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**Subject: Germany – State aid SA.34364 (2012/N) – Innovation aid scheme for shipbuilding**

Sir,

## **1. PROCEDURE**

- (1) Following the adoption of the European Commission's Framework on State aid to shipbuilding<sup>1</sup> (hereinafter "*the 2011 Framework*")<sup>2</sup>, Germany notified, on 15 February 2012, a new innovation aid scheme for the period from 1 January 2012 to 31 December 2013, called *the Directive of the Federal Ministry of Economic Affairs and technology on the aid scheme "Innovative shipbuilding safeguards competitive jobs"*.
- (2) On 20 March 2012, the Commission requested further information to which Germany replied on 20 April 2012. A second request was sent on 7 and 10 May 2012. The German authorities replied on 10 and 14 May 2012. Following a telephone conversation on 29 May 2012, the German authorities submitted additional information by e-mail dated the same day. A last e-mail was sent on 4 June 2012 by the Commission. The German authorities replied on 5, 12 and 21 June 2012.

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<sup>1</sup> OJ C 364 of 14.12.2011, p.9.

<sup>2</sup> This Framework replaces the 2003 Framework on State aid to Shipbuilding, OJ C 317 of 30.12.2003, p. 11.

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## 2. THE NOTIFIED MEASURES

- (3) The scheme now notified by Germany aims to promote innovative shipbuilding, in conformity with the new provisions on innovation aid of the 2011 Framework. This scheme also replaces the former innovation aid scheme (the "original decision") that was approved by the Commission on 3 March 2005<sup>3</sup> and subsequently modified by Commission decision of 6 May 2008<sup>4</sup> and applied, in its last version (cf Commission decision of 10 June 2010<sup>5</sup>), until 31 December 2011.
- (4) Germany intends to apply the notified scheme from the date of its approval by the Commission, until 31 December 2013.

### *Scope of the scheme*

- (5) The 2011 Framework has extended the scope of state aid to shipbuilding to inland waterway vessels as defined in paragraph 12(d) indents (i) and (ii). Moreover, on the basis of paragraph 11 of the 2011 Framework, the Commission may also authorise innovation aid granted for the construction of floating and moving offshore structures, as defined in paragraph 12(e). The new German innovation aid scheme integrates these changes.
- (6) Thus, under the notified scheme, innovation aid may be granted to shipyards for building, repair or conversion of self-propelled commercial vessels, i.e. including sea-going vessels as well as inland waterway vessels, as well as the construction of floating and moving offshore structures, as defined in paragraph 12 of the 2011 Framework.
- (7) As regards inland waterway vessels, Germany proposes to limit the scope of the scheme to inland waterway vessels of a deadweight capacity of at least 200 tons<sup>6</sup> for vessels used for the transportation of goods and a displacement of at least 40 tons<sup>7</sup> for vessels used for the transportation of passengers and for the performance of a specialised service (for example dredgers and ice-breakers).

### *Eligible applications*

- (8) In line with the definition included under paragraph 14 of the 2011 Framework, under the notified scheme aid granted for innovation for shipbuilding, ship repair or ship conversion, may be deemed compatible with the internal market 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 in the Union, which carry a risk of technological or industrial failure. In addition, in conformity with

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<sup>3</sup> OJ C 235 of 23.9.2005.

<sup>4</sup> OJ C 177 of 12.7.2008.

<sup>5</sup> OJ C 143 of 2.6.2010.

<sup>6</sup> For inland vessels used for the transportation of goods, Germany assumes a conversion ratio between gross tonnage (GT) and deadweight tonnage (DWT) of  $GT / DWT = 0.5$ .

<sup>7</sup> For inland vessels used for the transportation of passengers, Germany assumes a conversion ratio between gross tonnage (GT) and displacement ( $\Delta$ ) of  $GT / \Delta = 2.5$ .

sentences 2 and 3 of paragraph 14 of the 2011 Framework, Germany acknowledges that innovation aid for the equipment and the modernisation of fishing vessels will not be applied, 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, or its successor provisions, are fulfilled and that 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.

- (9) According to the notification, provided they comply with the criteria in paragraph 14 of the 2011 Framework (i.e. that these are 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) the following products and processes can be found eligible for innovation aid:

-innovative products, which 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;

-innovation processes, which will refer to the development and implementation of new processes regarding production, management, logistics or engineering.

- (10) In addition, Germany has confirmed that innovation aid will only be granted for the first industrial application of innovative products and processes.

*Aid intensity*

- (11) Under the notified scheme, innovation aid for the products and processes defined in point (9) above may be granted up to a maximum aid intensity of 20% gross of the eligible costs defined in point (12) below. In addition, 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<sup>8</sup>, the aid intensity can be increased to 30% gross.

*Eligible costs*

- (12) Germany has committed itself to limiting the eligible costs to the expenditure on investments, design engineering and testing activities directly and exclusively related to the innovative part of the project and incurred after the date for application of innovation aid (except for feasibility studies undertaken within 12 months prior to the aid application for an innovative process), as defined in more detail in the Annex of the 2011 Framework

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<sup>8</sup> The expressions "Union standards" and "environmental protection" have the meaning set out in the Community guidelines on State aid for environmental protection, OJ C 82, p. 1 of 1.4.2008

concerning a new class of vessel, new components or systems of a vessel and new processes.

Eligible costs include the costs of the shipyard as well as costs for the procurement of goods and services from third parties. The relevant national authority, designated by Germany for the purposes of application of innovation aid, will examine the costs on the basis of 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 these goods or services.

#### *Incentive effect*

- (13) The 2011 Framework (section 3.2.4) has introduced new criteria relating to incentive effect which means that the innovation aid 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.
- (14) In line with the previous paragraph, innovation aid within the meaning of the German notification is only granted provided there is an incentive effect in accordance with section 3.2.4 of the 2011 Framework. The granting of innovation aid must alter the behaviour of the beneficiary so that it is induced to increase its innovative activities. To that end, the Member States must undertake an *ex ante* evaluation of the increased innovation aid activity by comparing the activity expected with the aid with the corresponding activity without aid. Provided the applicant demonstrates at least one significant increase in relation to scope, extent, funds spent or speed of innovative activity, it can be generally assumed that the aid has an incentive effect.
- (15) The incentive effect of the innovation aid does not exist if the beneficiary began the innovative project before the aid application was filed with the national authorities.

#### *Application of the scheme and application procedure*

- (16) The aid scheme does not apply to projects for which the total aid amount would exceed EUR 150 per cgt<sup>9</sup> for a ship or EUR 5 million for new processes. If these limits are exceeded, the Federal Ministry of Economic Affairs and Technology (*Bundesministerium für Wirtschaft und Technologie*) will seek the approval of the Commission by way of an individual notification prior to granting funding.
- (17) Applications for innovation aid should be sent to the Federal Office of Economics and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle, BAFA*) by the applicants. The Federal Office of Economics and Exports Control must inform the Ministry of Economics and Technology and the *Land* involved through co-financing of the application and, prior to a

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<sup>9</sup> Compensated gross tonnage

subsidy being granted, must also obtain the consent of the relevant Land for the overall consent and approval.

- (18) In addition to the applicant's letter applying for the aid, the application must include a description of the innovation, in both qualitative and quantitative terms, as well as evidence of the incentive effect. The German authorities also require additional information from the applicant, such as the envisaged timetable for the preparation and execution of the shipbuilding project, evidence that financing is adequately secured, confirmation that the beneficiary is not subject to insolvency proceedings and other documents to avoid fraudulent applications. A further form for the ex-post monitoring must also be filed, describing the characteristics of the project in quantitative and qualitative terms.
- (19) Concerning the confirmation of the innovative character of the project, the scheme provides that an independent and technically competent expert shall confirm 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, and that falls into one of the categories set out above under paragraphs 10 and 11 (qualitative appraisal). The expert shall also confirm to the relevant national authority that the eligible costs have been calculated to cover only the innovative parts of the relevant project (quantitative appraisal).
- (20) The expertise is only carried out after approval by the *BAFA* which verifies the technical skills and the independence of the expert. In this regard, the expert must formally declare his economic independence of the shipyard and his knowledge of the subject. The *BAFA* may refuse the submissions of the expert.
- (21) In the case of a new class of vessel or the use of new components and systems, the applications for innovation aid must be filed before the appropriate shipbuilding contracts are signed or, in the case of innovative processes, before the start of innovative project.
- (22) In addition, the aid application can only be approved on condition that the applicant subsequently enters into a binding agreement to implement the specific innovative project for which the aid is sought. Payments may not be granted before the shipbuilding contract has been signed or the process innovation project has begun. If the contract is cancelled or the project is abandoned or not completed, all aid disbursed must be reimbursed with interest from the date the aid was paid out. The rate of interest must correspond to at least the reference interest rates fixed by the Commission<sup>10</sup>.
- (23) Germany also states that two thirds of the total aid amount may be paid out after the signature of the contract or the start of the shipbuilding process if this is required to cover the costs incurred by the shipyard. The remaining one-third of the total aid amount can only be paid out once the shipbuilding contract has been executed or the project completed and after evidence of the costs has been submitted and examined.

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<sup>10</sup> OJ C 14, p.6 of 19.1.2008

### *Ex-post monitoring*

- (24) The German authorities will provide the Commission with an annual report on the implementation of the notified scheme in accordance with points 29 and 32 of the 2011 Framework whenever aid for innovation is granted in pursuance of this aid scheme.
- (25) Germany has also notified that the scheme will respect the provisions on cumulation as defined in paragraphs 33 to 34 of the 2011 Framework.

### **3. ASSESSMENT**

#### *Existence of aid*

- (26) Article 107(1) TFEU declares that any aid granted by 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, in so far as it affects trade between Member States, be incompatible with the internal market. Measures falling within the scope of Article 107(1) TFEU that do not constitute existing aid are generally incompatible with the common market unless they fall within the scope of the derogation of either Article 107(2) or Article 107(3) TFEU.
- (27) The measure to be assessed consists of a scheme under which Germany plans to grant innovation aid to shipyards for shipbuilding, ship repair and ship conversion and for the construction of floating and moving offshore structures.
- (28) Such measures involve economic benefits for specific undertakings, and by their nature are likely to distort competition. Given the existence of inter-state trade within the internal market in the sector in which the recipients are active, the measures fall within the scope of Article 107(1) TFEU.
- (29) By having informed the Commission about the aid scheme and not having put it into effect before approval by the Commission, Germany has respected the standstill obligation under Art 108(3) TFEU.

#### *Compatibility*

- (30) In its 2011 Framework the Commission has set out the conditions under which it will consider innovation aid to the shipbuilding industry compatible with the common market.
- (31) It therefore needs to be determined whether the German scheme for innovation aid complies with the provisions laid down in the 2011 Framework.
- (32) As regards the scope of the scheme, it applies to the building, repair and conversion of self-propelled commercial vessels, as well as to the

construction of floating and moving offshore structures, as explained in recital (5) above.

- (33) Under the 2011 Framework, "*self-propelled commercial vessels*" means a vessel (...) that belongs to one of the following categories:
- (a) *-seagoing vessels of not less than 100 gt and inland waterway vessels of equivalent size used for the transportation of passengers and/or goods (...) or for the performance of a specialised service. (...)* (see paragraph 12 (d) indents (i) and (ii).
- (34) In this regard, the Commission finds that the definitions proposed by Germany concerning the size of inland waterway vessels covered by the scheme and described in point (7) above, can be considered as an acceptable proxy when compared to seagoing vessels of not less than 100 gt<sup>11</sup>. The scope of the scheme is, thus, in line with section 2, paragraphs 11 and 12 of the 2011 Framework.
- (35) The notified scheme (points (6) to (15) above) closely follows the provisions on innovation aid laid down in section 3.2 of the 2011 Framework as regards the eligible applications (3.2.1.), the eligible costs (3.2.2), the confirmation of the innovative character of the project (3.2.3) and the incentive effect (3.2.4).
- (36) The German authorities also gave an undertaking as regards the provision of annual reports, in conformity with paragraphs 29 and 32 of the 2011 Framework, and the respect of the provisions on cumulation of aid, defined in paragraphs 33 to 34 of the 2011 Framework.
- (37) In addition, the German authorities have decided to limit the application of the innovation aid part of the scheme to those projects in which the amount of the aid does not exceed EUR 150 per cgt for vessels or EUR 5 million for new processes. If the aid exceeds these amounts, it will be notified individually to the Commission.
- (38) Since the aid scheme "Innovative shipbuilding safeguards competitive jobs" notified by Germany respects all requirements on innovation aid laid down in section 3.2 of the 2011 Framework, as well as the horizontal provisions on the scope, cumulation, monitoring and reporting of the 2011 Framework, the Commission concludes that it is compatible with the internal market.

#### **4. CONCLUSION**

On the basis of the foregoing assessment, the Commission concludes that the notified aid scheme is compatible with the internal market, pursuant to Article 107(3) (c) TFEU read in conjunction with the 2011 Framework.

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<sup>11</sup> See foot notes 6 and 7

The Commission has accordingly decided not to raise objections to the aid scheme for shipbuilding, "Innovative shipbuilding safeguards competitive jobs".

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Your request should be sent by registered letter or fax to:

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Yours faithfully,  
For the Commission

*Joaquín ALMUNIA*  
Vice-president of the Commission