



EUROPEAN COMMISSION

Brussels, 11.7.2012

C(2012) 4646 final

PUBLIC VERSION

WORKING LANGUAGE

**This document is made available for
information purposes only.**

**Subject: State aid SA.34920 (2012/NN) – Germany
Rescue Aid to P+S Werften GmbH**

Sir,

1. PROCEDURE

(1) Following pre-notification contacts, Germany notified rescue aid to *P+S Werften GmbH* ("*P+S Werften*") on 2 June 2012. The Commission requested further information from Germany by letter dated 6 June 2012, to which the German authorities replied by letter dated 8 June 2012.

2. DESCRIPTION

2.1 The beneficiary

(2) The beneficiary, *P+S Werften*, was founded only in 2010 by a merger of two old shipyards, *Peene-Werft GmbH* (established in 1948) and *Volkswerft Stralsund GmbH* (established in 1945). Both yards had been completely restructured after German reunification. *P+S Werften* currently operates two shipyards at the Baltic Sea in Wolgast and Stralsund, both situated in the German region of Mecklenburg-Vorpommern. Mecklenburg-Vorpommern is a region eligible for regional aid under Article 107(3)(a) TFEU. *P+S Werften* currently employs approximately 1,800 people.

Seiner Exzellenz Herrn Dr Guido WESTERWELLE
Bundesminister des Auswärtigen
Werderscher Markt 1
D - 10117 Berlin

- (3) *P+S Werften* is formally part of a larger business group, the *Hegemann Group*. However, following financial difficulties of the *Hegemann Group*, 93% of the shares are held by a trustee, *HSW Treuhand- und Beteiligungsgesellschaft mbH*, but are still owned by *Hegemann Group* at present.

Seiner Exzellenz Herrn Dr Guido WESTERWELLE
Bundesminister des Auswärtigen
Werderscher Markt 1
D - 10117 Berlin

Commission européenne, B-1049 Bruxelles/Europese Commissie, B-1049 Brussel – Belgium
Telephone: 00- 32 (0) 2 299.11.11.

- (4) Despite the fact that its capacities are currently well utilised, *P+S Werften* is facing severe financial difficulties caused by high debts stemming from past developments and the specific liquidity constraints of shipbuilding. The liquidity situation worsened in the last months due to significant delay in advance payments from two purchasers and delay in construction progress for several projects, especially concerning two ferries for the ferry company Scanlines. According to the German authorities, *P+S Werften* fulfills the criteria under German law for being the subject of collective insolvency proceedings.

2.2 The measure

2.2.1 Rescue loan

- (5) The measure consists of a 100% state guarantee of the Land Mecklenburg-Vorpommern (50% counter-guaranteed by the Federal State) backing a loan which amounts to EUR 152.4 million provided by the *Landesförderinstitut Mecklenburg-Vorpommern* (LFI). The loan will be disbursed successively according to the liquidity needs. The first disbursement of EUR 19 million was carried out on 4 June 2012. The loan has to be reimbursed until 3 December 2012. The interest rate for this first tranche was fixed at 11.67%. According to the loan agreement it can be reduced retroactively. The German authorities confirm that the interest rate will not fall below the reference rate plus 100 basis points.

2.2.2 "One time, last time" principle

- (6) The German authorities have informed the Commission that neither *P+S Werften* nor *Peene-Werft GmbH* or *Volkswerft Stralsund GmbH* received any rescue or restructuring aid in the last ten years.

3. ASSESSMENT

3.1 Existence of state aid

- (7) Article 107(1) TFEU stipulates 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 and affects trade among Member States is incompatible with the Internal Market. It follows that, for a state measure to be qualified as state aid within the meaning of Article 107(1) TFEU, four cumulative criteria must be met: use of state resources; selective advantage to the beneficiary; and (potential) distorting effects on competition as well as intra-EU trade.

State resources

- (8) To be state aid, a measure must stem from state resources and be imputable to the State. In principle, "state resources" are the resources of a Member State and of its public authorities as well as the resources of public undertakings on which the public authorities can exercise, directly or indirectly, a controlling influence.¹
- (9) The loan of EUR 152.4 million will be granted by LFI. The LFI is part of the *Norddeutsche Landesbank Girozentrale* (NORD/LB). The Nord/LB is a German 'Landesbank'. It is a public corporation owned by the federal states of Niedersachsen and Sachsen-Anhalt and acts as a central bank for savings banks in the federal states of Niedersachsen, Sachsen-Anhalt and Mecklenburg-Vorpommern. The bank's activities include the development business, carried out inter alia by the LFI which acts on behalf of the Land Mecklenburg-Vorpommern and is thereby entrusted with the execution of sovereign tasks and entitled to issue administrative acts. Those factors are sufficient to conclude that the LFI belongs to the public sector. Furthermore, the guarantee is directly provided by the Land Mecklenburg-Vorpommern. Therefore, the measure stems from state resources and is imputable to the State.

Selective advantage to the beneficiary

- (10) To be considered state aid, a measure must be specific or selective in that it favours only certain undertakings or the production of certain goods. The measure will be granted to one specific undertaking and will allow the beneficiary to keep access to liquidity that it would otherwise not have had. Therefore, it is concluded that the measure provides a selective advantage to *P+S Werften*.

Distortion of competition and effect on trade

- (11) The Commission has analysed whether the measure distorts or threatens to distort competition and affects inter-state trade. When aid granted by a Member State strengthens the position of an undertaking compared to other undertakings competing in intra-Union trade, the latter must be regarded as affected by that aid.² Indeed, there is trade between Member States in the market for ships. The measure is apt to improve the competitive position of the beneficiary in relation to its competitors in the internal market and consequently distorts or threatens to distort competition and affect trade between the Member States.

Conclusion on the existence of aid

- (12) In light of the above, the Commission considers that the measure constitutes state aid pursuant to Article 107(1) TFEU.

¹ Case C-482/99 *France/Commission ("Stardust Marine")* [2002] ECR I-4397, paras. 34 et seq.

² See, in particular, Case 730/79 *Philip Morris v Commission* [1980] ECR 2671, para. 11; Case C-53/00 *Ferring* [2001] ECR I-9067, para. 21; Case C-372/97 *Italy v Commission* [2004] ECR I-3679, para. 44 .

3.2 Compatibility of the aid

- (13) The Commission can authorise rescue aid as compatible with the internal market according to Article 107(3)(c) TFEU, if it complies with the criteria under the Rescue and Restructuring Guidelines³ ("Guidelines"), which set out the rules as to the eligibility of the firm for the aid, its form, interest rate, and other conditions pursuant to chapter 3.1 of the Guidelines.

Eligibility for rescue aid

- (14) According to Point 12(a) and 14 of the Guidelines, only firms in difficulty are eligible for rescue aid.
- (15) According to Point 9 of the Guidelines, the Commission considers a firm to be in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholder or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to go out of business in the short or medium term.
- (16) Under Point 10 of the Guidelines, a firm is considered to be in difficulty:
- (a) If more than half of the registered capital of a limited liability company has disappeared and more than one quarter of that capital has been lost over the preceding 12 months.
 - (b) If more than half of the capital of a company, of which at least some members have unlimited liability for the debt of the company, as shown in the company accounts has disappeared and more than one quarter has been lost in the preceding 12 months.
 - (c) If whatever type of company fulfils the criteria under its domestic law for being the subject of collective insolvency proceedings.
- (17) The beneficiary is a company with limited liability. The Commission examined whether it qualifies as a firm in difficulty under point 10 of R&R Guidelines. *P+S Werften* does not meet the conditions of Point 10(a) of the Guidelines.
- (18) Germany has informed the Commission that the beneficiary does fulfill the criteria under German law for being the subject of collective insolvency proceedings according to §§ 17 and 18 of the Insolvenzordnung (German Insolvency Code) and therefore meets the conditions of point 10(c) of the Guidelines. Without the rescue aid, *P+S Werften* would be insolvent in terms of the German insolvency law. Based on the relevant German case law⁴, this conclusion results from the firm's liquidity status at the time of granting the

³ Community guidelines on State aid for rescuing and restructuring firms in difficulty, OJ C 244, 1.10.2004, p. 2, prolonged in 2009, OJ C 156, 9.7.2009, p. 3.

⁴ See Judgment of the *Bundesgerichtshof* (Federal High Court of Justice) of 24 May 2005, IX ZR 123/04 (<http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=33452&pos=0&anz=1>).

rescue aid. The liquidity plan shows a significant funding gap between due payment obligations and liquid funds as of May 2012 which exceeds 10% of due total liabilities, the relevant benchmark as stipulated by the German case law.

- (19) A newly created firm is not eligible for rescue aid according to Point 12 of the Guidelines. A firm will in principle be considered as newly created for the first three years following the start of operations in the relevant field of activity. Although *P+S Werften* was founded only in 2010, the company is not a 'newly created firm' in terms of Point 12 of the Guidelines since *Peene-Werft GmbH* and *Volkswerft Stralsund GmbH* started operation in shipbuilding already in the 1940s. *P+S Werften* did not emerge from the liquidation of previous firms or merely take over the firm's assets but the *Hegemann Group* acquired *Peene-Werft GmbH* in 1992 in a privatization procedure and *Volkswerft Stralsund GmbH* in 2007 as going concern. Germany confirmed that neither *Peene-Werft GmbH* nor *Volkswerft Stralsund GmbH* had received any rescue or restructuring aid in the last ten years (see point (6) above).
- (20) According to Point 13 of the Guidelines, a firm belonging to or being taken over by a larger business group is not normally eligible for rescue or restructuring aid, except where it can be demonstrated that the firm's difficulties are intrinsic and are not the result of an arbitrary allocation of costs within the group, and that the difficulties are too serious to be dealt with by the group itself.
- (21) *P+S Werften* is formally part of a larger business group, the *Hegemann Group*. However, the company's difficulties are intrinsically caused by financial burdens stemming from past developments and the specific liquidity constraints of shipbuilding. The Commission further notes that 93% in *P+S Werften* are currently held by *HSW Treuhand- und Beteiligungsgesellschaft mbH*, a trust which has been initiated by the company's banks and guarantors in 2009. This construction shields the major part of the company's equity from further liabilities of the *Hegemann Group* and therefore avoids any arbitrary allocation of costs within the *Hegemann Group*. In addition, the *Hegemann Group* is not in an economic position to deal with the difficulties of *P+S Werften*.
- (22) On the basis of the above, the Commission finds that *P+S Werften* is a company in difficulty and is eligible for rescue aid.

Conditions according to Point 25 of the Guidelines

- (23) Rescue aid must meet the conditions set out in Point 25 of the Guidelines in order to be declared compatible with the internal market.
- (24) According to Point 25(a) of the Guidelines, the rescue aid must consist of liquidity support in form of a loan or a guarantee; in both cases it must be granted at an interest rate at least comparable to that observed for loans for healthy firms. Any loan must be reimbursed and any guarantee must come to an end within a period of not more than six months after the disbursement of the first installment to the firm.

- (25) The measure consists in a 100% guarantee provided by the Land Mecklenburg-Vorpommern backing a loan of EUR 152.4 million from a public development bank. The loan has to be reimbursed until 3 December 2012. Given that the disbursement took already place on 4 June 2012, the loan and therefore the guarantee will have a maximum maturity of not more than 6 months.
- (26) The interest rate has to be 100 basis points above the reference rate adopted by the Commission for Germany.⁵ As of 1 June 2012, the reference rate plus 100 basis points is 2.67%. The German authorities have confirmed that the interest rate charged will respect the requirements laid down in the rescue and restructuring guidelines. The interest rate for the first tranche of the loan, disbursed on 4 June 2012, was fixed at 11.67%. According to the loan agreement it can be reduced retroactively. The German authorities confirmed that the interest rate will not fall below the reference rate plus 100 basis points. In light of this, the capital remuneration of the rescue loan is in line with Point 25(a) of the Guidelines.
- (27) The Commission regrets that the Land Mecklenburg-Vorpommern did not respect the stand-still obligation and notes that the first disbursement of the loan amounting to EUR 19 million was already carried out on 4 June 2012.
- (28) According to Point 25(b) of the Guidelines rescue aid must be warranted on the grounds of serious social difficulties and have no undue spill-over effects on other Member States.
- (29) In the present case, if the company ceased its operations, this would have consequences in terms of employment in a region which is an assisted area in the meaning of Article 107(3)(a) TFEU. This region is already suffering from high unemployment.⁶ *P+S Werften* employs 1,800 employees in the region of Mecklenburg-Vorpommern. In light of the high unemployment rate, the employees set free in this region would not easily find a new job in their region. In the light of these considerations, the Commission considers that the aid is warranted on grounds of serious social difficulties.
- (30) In addition, the shipbuilding market is currently in a severe global crisis. Competition is dominated by very large shipbuilding companies in Asia. The German authorities stated that *P+S Werften* has a market share of 9% in the German and of only 1% in the European shipbuilding market. In view of the short term nature of the loan which will serve financing of existing contracts, the Commission finds that the aid will not create undue adverse spill-over effects on other Member States. On the basis of the above, it can be concluded that the aid is in line with point 25(b) of the Guidelines.
- (31) Point 25(c) of the Guidelines stipulates that rescue aid must be accompanied by the undertaking of the Member State that, not later than six months after the rescue aid is authorised, a restructuring, liquidation plan or proof that the loan has been reimbursed in full and/or that the guarantee has been terminated is to be communicated to the Commission.

⁵ http://ec.europa.eu/comm/competition/state_aid/legislation/reference_rates.html.

⁶ The unemployment rate in Mecklenburg-Vorpommern of 11.7% is significant higher than the average rate in Germany of 6.7% (May 2012 figures by the German Federal Employment Agency, <http://statistik.arbeitsagentur.de>).

- (32) In the case at hand, the measures will expire on 3 December 2012 at the latest. Germany has undertaken to communicate to the Commission a restructuring plan, a liquidation plan or proof that the measures have been repaid in full, not later than six months after disbursing the first installment of the rescue aid. Consequently, the rescue aid is in line with point 25(c) of the Guidelines.
- (33) According to Point 25(d) of the Guidelines rescue aid must be restricted to the amount needed to keep the firm in business for the period during which the aid is authorised. The amount necessary should be based on the liquidity needs of the company stemming from losses. In determining that amount regard will be had to the outcome of the application of the formula set out in the Annex of the Guidelines.
- (34) The German authorities did not apply the formula set out in the Annex of the Guidelines. The result of the formula would lead to a maximum amount of only EUR 23.8 million. However, the calculation of the formula based on data as per period end does not reflect the liquidity needs of a shipyard depending on advance payments by the purchasers of the ships. This deviation from the formula is justified by Germany on the basis of the specifics of the shipbuilding business, where the liquidity need is characterised by high peaks resulting from the need to pre-finance a small number of individual high volume projects.
- (35) Germany provided a concrete detailed liquidity plan on a weekly basis. The liquidity plan covers the relevant timeframe from June 2012 to December 2012. This liquidity plan can be accepted as a proper basis for determining the aid amount. The liquidity planning took into account the funds stemming from the rescue aid measure. The plan is based on sensitized data [...]. The Commission notes that these assumptions seem to be realistic in view of the company's current situation. The Commission therefore concludes that Germany has duly justified why the amount of the rescue aid exceeds the amount resulting from the application of the formula by 128.6 EUR.
- (36) The liquidity need is expected to [...] reach a level of EUR 152.4 million, but to decrease subsequently [...]. [...]. Given the expected peak [...], the guarantee covering up to EUR 152.4 million can be regarded as being restricted to the amount needed to keep the firm in business for the period during which the aid is authorized according to Point 25(d) of the Guidelines.

[...]

- (37) According to Point 25(e) of the Guidelines the aid must be granted in compliance with the "one time, last time" principle as stipulated in point 72 et seq. of the Guidelines. Germany confirmed that neither *P+S Werften* nor *Peene-Werft GmbH* or *Volkswerft Stralsund GmbH* had received any rescue or restructuring aid in the last ten years (see point (6) above). Therefore, the notified aid complies with Point 25(e) of the Guidelines.

3. CONCLUSION

- (38) In view of the above, the Commission concludes that the rescue aid to *P+S Werften* consisting of a guarantee backing a loan of EUR 152.4 million is compatible with the internal market under Article 107(3)(c) TFEU pursuant to the Guidelines.
- (39) The German authorities undertook that no later than six months after disbursing the first installment of the rescue aid, they will provide a restructuring plan, a liquidation plan or proof that the loan has been reimbursed in its entirety.

If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of receipt. If the Commission does not receive a reasoned request within that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>

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

European Commission
Directorate-General for Competition
Directorate for State Aid
State Aid Greffe
B - 1049 Brussels
Fax No: +32 2 296 12 42

Yours faithfully,

For the Commission

Joaquin Almunia
Vice-president of the Commission