Subject: State aid SA.34829 (2012/N) – The Netherlands
Innovation aid scheme for shipbuilding

Sir,

I. Procedure

(1) Following the adoption of the European Commission's Framework on State aid to shipbuilding\(^1\) (hereinafter: the 2011 Framework)\(^2\) on 7 December 2011, and following pre notifications contacts, the Netherlands notified on 31 July 2012 a new Innovation aid scheme for shipbuilding. Further to an e-mail from the Commission on 23 August 2012, the Dutch authorities submitted additional information by e-mail to complete their notification on 29 August 2012.

II. **DESCRIPTION**

(2) The notified aid scheme for innovative shipbuilding under the 2011 Framework replaces the scheme approved by decisions N 719/2006\(^3\) and N 692/2009\(^4\) which expired on 31 December 2011.

**Scope**

(3) 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 Dutch innovation aid scheme integrates these changes and applies to the following categories:

- **Ships:** self-propelled commercial seagoing vessels and inland waterway vessels as referred to in Article 12(d)(i) to (iii) of the 2011 Framework. The notification interprets these provisions as including inland waterway vessels used to transport freight with a deadweight capacity of at least 200 tonnes and inland waterway vessels used to transport passengers or to perform specialised services with a displacement tonnage of at least 40 tonnes.

- **Floating and moving offshore structures:** structure for the exploration, exploitation or generation of oil, gas or renewable energy that has the characteristics of a commercial ship except that it is not self-propelled and is intended to be moved several times during its operation as referred to in Article 12(e) of the 2011 Framework.

**Eligible applications**

(4) In line with Articles 11 and 14 of the 2011 Framework, aid granted under the notified scheme 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.

(5) The criteria under Article 14, first sentence, of the 2011 Framework will apply to the construction of floating and moving offshore structures.

(6) In addition, in conformity with sentences 2 and 3 of Article 14 of the 2011 Framework, the Netherlands acknowledge that 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

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\(^3\) Approved by Commission decision on 1 February 2007.
\(^4\) Approved by Commission decision on 9 February 2010 (prolongation of N 719/2006).
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.

(7) 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.

(8) Eligible costs include costs of the shipyard as well as costs for the procurement of goods and services from third parties, to the extent that those goods and services are strictly related to the innovation. Where the application for aid includes costs for the procurement of goods and services from suppliers, the latter must not have received state aid for the same objectives in respect of those goods or services.

Eligible costs

(9) For the development and design of a new class of vessel being the first vessel of a potential series of vessels, provided that they comply with the criteria mentioned under recital 4 above (i.e. that they relate to the industrial application of innovative products that is to say, technologically new or substantially improved products 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) the following costs shall be eligible:

a) the concept development;
b) the concept design;
c) the functional design;
d) the detailed design;
e) cost of 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) costs for incremental labour and overhead costs for a new class of vessel.

These categories of costs also apply to the construction of floating and moving offshore structures.

(10) For innovative parts of vessels which can be isolated from the vessel as a separate element, provided that they comply with the criteria mentioned under recital 4 above (i.e. that they relate to the industrial application of innovative products that is to say, technologically new or substantially improved products 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) the following costs shall be eligible:

a) design and development costs;
b) costs for the testing of the innovation part and mock-ups;
(11) For the development and implementation of an innovative process relating to the production, management, logistics or engineering of vessels, provided that they comply with the criteria mentioned under recital 4 above (i.e. that they relate to the industrial application of innovative processes that is to say, technologically new or substantially improved 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) the following costs shall be eligible:

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

(12) In addition, the Netherlands have confirmed that innovation aid will only be granted for the first industrial application of innovative products and processes.

Application procedure

(13) The application for innovation aid for shipbuilding, ship repair, and ship conversion or the construction of floating and moving offshore structures must be submitted to the Minister for Economic Affairs, Agriculture and Innovation (hereafter: the Minister) prior to the applicant entering into a binding agreement to implement the project for which aid is sought. The Minister receives advice about the project from the "Adviescommissie Innovatieve Zeescheepsbouw" which is composed of three to five independent experts for a period of five years. The Adviescommissie assesses if the project represents a technologically new or substantially improved product or process compared to the state of art that exists in the shipbuilding industry within the EU. Moreover, the Adviescommissie will have to confirm that the eligible costs for the project have been calculated to cover exclusively the innovative parts of the relevant project.

(14) Once the aid is approved the payments can only be done after the signing of the binding agreement to implement the specific shipbuilding project concerning ship repair, ship conversion or the construction of floating and moving offshore structures. The applicant has a period of 13 weeks following the approval of the aid within which to sign the agreement. This period can be extended up to a maximum of 1 year. In the event that an extension of the initial 13 week period is necessary, the granting authorities shall ensure that the project continues to fulfil the requirements of the Framework as regards the innovative character of the project. However, only in cases where justified by a significant evolution in the market will a new assessment by the Adviescommissie be required. The payments will be done in instalments i.e. 80% of the maximum aid amount during the design and construction phase and the
remaining 20% after the completion of the project and on the basis of the actual costs incurred, proved by the applicant.

(15) If the contract is cancelled or the project is abandoned, all aid disbursed has to 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 has to be reimbursed with interest. The rate of interest to be applied would be the reference rate referred to on the European Commission’s website\(^5\).

**Incentive effect**

(16) The 2011 Framework has introduced criteria relating to the incentive effect of the aid 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.

(17) In accordance with section 3.2.4 of the 2011 Framework, the Dutch aid scheme requires that the aid for innovation must have an incentive effect. The granting of innovation aid must alter the behaviour of the beneficiary so that it is induced to increase its innovative activities.

(18) To that end, the Netherlands will undertake pursuant to Article 27 of the 2011 Framework 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 the innovative activity, it can generally be concluded that the aid has an incentive effect.

(19) 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.

**2.1 Legal basis**

(20) The legal basis is the *Kaderwet EZ-subsidies* and the *Subsidieregeling sterktes in innovaties*.

**2.2 Budget and aid intensity**

(21) The overall budget is EUR 4 000 000.

(22) Innovation aid for the products and processes may be granted up to a maximum aid intensity of 20% gross of the eligible costs as defined above. 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.

(23) The aid scheme does not apply to projects for which the total aid amount would exceed EUR 150 per cgt for a vessel, whether self-propelled or a floating and moving offshore structure, or EUR 5 million for new processes. If these limits are exceeded, the Dutch authorities will seek the approval of the Commission by way of an individual notification prior to granting funding.

2.3 Cumulation

(24) The authorities have confirmed that aid authorised under the notified scheme may not be combined with other forms of state aid within the meaning of Article 107(1) TFEU or with other forms of Union financing, the cumulation of which produces an aid intensity higher than that laid down in the 2011 Framework. Moreover, where aid serves different purposes and involves the same eligible costs, the most favourable aid ceiling will apply.

2.4 Duration

(25) The aid scheme will enter into force after the date of its approval by the Commission and will apply until 31 December 2013, inclusive.

2.5 Ex-post monitoring

(26) In order to ensure transparency and effective monitoring, the Dutch authorities will in conformity with Articles 29 and 32 of the 2011 Framework provide the European Commission with annual reports on all existing aid schemes.

III. ASSESSMENT

Existence of aid

(27) 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.

(28) The measures to be assessed consist of a scheme under which the Netherlands plan to grant innovation aid to shipyards for shipbuilding, ship repair and ship conversion and for the construction of floating and moving offshore structures.

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Such state support involves economic benefits for specific undertakings, and by its nature is 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.

Legality of the aid measure

The Dutch authorities have fulfilled their obligation according to Article 108(3) TFEU by notifying the aid scheme before putting it into effect. The Commission takes note of the fact that the scheme will enter into force only after its approval by the Commission.

Compatibility of the aid scheme

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 internal market.

It therefore needs to be determined whether the Dutch scheme for innovation aid complies with the 2011 Framework.

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 point 4 above.

Under the 2011 Framework, "self-propelled commercial vessels" means a vessel that (…) belongs to one of the following categories: seagoing vessels of not less than 100 gt and inland waterway vessels of equivalent size used (i) for the transportation of passengers and/or goods (…) or (ii) for the performance of a specialised service. (…) (see Article 12 (d) indents (i) and (ii)).

The Commission notes that the Netherlands has defined what it understands by 'equivalent size' in relation to inland waterway vessels whether for the transportation of goods (vessels with a deadweight capacity of at least 200 tonnes) or for the transportation of passengers or the performance of a specialised service (vessels with a displacement capacity of at least 40 tonnes). The Commission also notes that these figures are the same as those retained by Germany under its innovation aid scheme for shipbuilding.7

The notified scheme (as described in recitals 4-18 and 21 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).

The Dutch authorities have undertaken to provide annual reports to the Commission, in conformity with Articles 29 and 32 of the 2011 Framework, as regards existing aid

7 Commission decision of 10.7.2012, SA.34364 German Innovation aid scheme for Shipbuilding.
schemes, and to respect the provisions on cumulation as defined in Articles 33 to 34 of the 2011 Framework.

(38) In addition, the Dutch authorities have decided to limit the application of the scheme to those projects for which the amount of the aid does not exceed EUR 150 per cgt for vessels, whether self-propelled or a floating and moving offshore structure, or EUR 5 000 000 for new processes. If the aid exceeds these amounts, it will be notified individually to the Commission.

(39) The notified aid scheme "Innovation aid scheme for shipbuilding" 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.

CONCLUSION

(40) 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.

(41) The Commission has accordingly decided not to raise objections to the aid scheme "Innovation aid scheme for shipbuilding".

(42) If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by 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:

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-president