



EUROPEAN COMMISSION

Brussels, 20.03.2013
C(2013) 1524 final

PUBLIC VERSION

This document is made available for
information purposes only.

Subject: **State aid SA.36142 (2013/HR) – Pre-accession Croatia
Restructuring of the shipbuilding company Brodotrogir d.d.**

Excellency,

- (1) On 12 and 21 February 2013, Croatia submitted an Amendment to the restructuring plan and a privatisation contract for Brodotrogir d.d. (hereinafter Brodotrogir) for acceptance by the Commission, as required in Annex VIII to the Act of Accession of Croatia to the EU, "Commitments undertaken by the Republic of Croatia on the restructuring of the Croatian shipbuilding industry (referred to in Article 36(1), third subparagraph, of the Act of Accession)". Croatia accepted that the present decision is adopted in the English language.

1. LEGAL BACKGROUND

- (2) The Act of Accession¹ provides that Croatia should carry out the restructuring of five of its shipyards through their privatisation on the basis of a competitive tendering process. Restructuring plans for these companies had been submitted by the bidders and accepted by the Croatian Competition Agency (hereinafter "CCA") and the European Commission prior to the signing of the Act of Accession. These

¹ OJ L 112, 24.4.2012, p.21.

Ms Vesna PUSIĆ
Minister of Foreign and European Affairs
Trg N. Š. Zrinskog 7-8
10000 Zagreb

plans specified a number of key conditions to be respected in the privatisation and restructuring process. These conditions are also listed in the Act of Accession: the ratio of restructuring aid to own contribution, an overall capacity reduction and an annual production limitation for a ten year period.

- (3) Annex VIII to the Act of Accession stipulates that "*any subsequent change to these plans shall comply with the key conditions in the restructuring process [...] and shall be submitted to the Commission for acceptance. [...] The privatisation contracts shall be submitted to the Commission for acceptance and shall be signed before Croatia's accession.*"
- (4) No bid for Brodotrogir complied with the conditions of the public competition published on 1 August 2009 in the first round. After a second round of privatisation, negotiations were continued with Jadranska ulaganja d.o.o. company. Its restructuring plan for Brodotrogir was accepted by the CCA and the Commission in June 2011. In July 2012, the undertaking Kermas Energija d.o.o., Zagreb, (hereinafter "Kermas") took over the restructuring programme from Jadranska ulaganja d.o.o. by mutual agreement. On 19 July 2012, Croatia accepted the offer of Kermas for purchasing the shares of Brodotrogir.

2. DESCRIPTION OF THE AMENDED PLAN AND THE PRIVATISATION AGREEMENT

2.1. Amended restructuring period and costs

- (5) The amendment to the restructuring plan of Brodotrogir is due to the fact that following several unsuccessful tenders Kermas took over the restructuring programme from Jadranska ulaganja d.o.o. and to the resulting delays in the sale of the yard and in the implementation of the planned restructuring measures. Indeed, it has been over 18 months since the restructuring plan was originally accepted by the Commission and the CCA.
- (6) The beginning and the end of the restructuring period is to be moved forward to take account of the delays in the process, although the overall duration of the restructuring remains unaltered, i.e. 5 years from the date of signing of the privatisation contract. In order to avoid further delays, Croatia undertakes to sign the privatisation contract with Kermas two weeks from the receipt of this decision at the latest.
- (7) As a result of the continued activity of the non-restructured shipyard Brodotrogir, losses which had not been taken into account at the time of the submission of the bid have been accumulated. The overall restructuring costs are therefore higher than originally calculated. They increased by HRK 416 million to HRK 5 100 million².
- (8) The increase in restructuring costs is due to (i) increased cost of financing liabilities for long-term and short-term credit liabilities covered by state guarantees (HRK 93 million); (ii) increased expenses during the transition period³ (HRK 130 million); (iii) increased costs related to the surplus workers (HRK 30 million); (iv) increased commercial loans for shipbuilding in the period of restructuring (HRK 98 million);

² All figures are rounded.

³ The calculation of the loss of the transition period is based on expected losses due to the slow-down of the production process and lack of new assignments as well as losses due to the postponement in contracting new jobs, overhead expense losses, free capacities, losses due to the difference between the calculated expenses and the market price of the contracted ships and ships planned to be contracted as well as a lack of total restructuring measures.

and (v) commercial loans for settling VAT from investments (HRK 65 million).

- (9) Kermas offers an own contribution of HRK 2 040 million⁴ which represents an increase by HRK 163 million as opposed to the original restructuring plan.
- (10) Croatia increases the state aid to Brodotrogir by HRK 254 million to HRK 3 060 million.

| (Amounts in HRK) | On 30/9/2011 | On 31/12/2012 | Difference |
|-------------------------------------|---------------|---------------|-------------|
| Total costs of restructuring | 4 683 551 271 | 5 100 546 898 | 416 995 627 |
| State contribution | 2 806 150 438 | 3 060 328 139 | 254 177 701 |
| Own contribution by Kermas | 1 877 400 833 | 2 040 218 759 | 162 817 926 |

2.2. Reduction of capacity and limitation of production

- (11) Annex VIII to the Act of Accession foresaw an overall capacity reduction from 471 324 CGT⁵ to 372 346 CGT for all the shipbuilding companies concerned (a reduction by 21%). For Brodotrogir a reduction of capacity by 15 101 CGT within twelve months from the signing of the privatisation contract was foreseen. Annex VIII to the Act of Accession allowed for flexibility in the reduction of the overall production capacity, since it explicitly says that if "*the reduction of the overall production capacity has not been implemented within twelve months from the signing of the privatisation contract [...] the recovery of the aid shall only be required from those companies that have not achieved their individual reductions of capacity.*"
- (12) In order to achieve this reduction, Croatia and Brodotrogir committed to closing one slipway (slipway no. 2) with realised maximum capacity of 13 713 CGT per year and to reduce the area of land used for shipbuilding activities by 40% (equivalent to 4 675 CGT per year). These commitments remain unaltered in the amended restructuring plan.
- (13) Annex VIII to the Act of Accession also foresaw a production limitation for Brodotrogir of 54 955 CGT per year until 31 December 2020. Croatia and Brodotrogir continue to commit to this production limitation.
- (14) Annex VIII to the Act of Accession also includes a total annual production limitation to 323 600 CGT for a ten year period for all the companies concerned. At the same time, flexibility in the allocation of production output among the companies concerned was foreseen, since it explicitly says that "*The companies may agree to review their individual production limits [...] they can expressly establish which portion of their individual production quota (expressed in CGT) they cede to each other*". In the amended restructuring plan and the privatisation contract, Croatia and Kermas undertook not to avail themselves of this right to flexibility.

⁴ The own contribution includes HRK 634 million obtained as compensation for the expropriation of Brodotrogir maritime domain as initially foreseen.

⁵ Compensated Gross Tonnage (CGT) is a unit of measurement intended to provide a common yardstick to reflect the relative output of merchant shipbuilding activity (in this case calculated according to applicable OECD rules).

3. ASSESSMENT OF THE AMENDED PLAN AND THE PRIVATISATION CONTRACT

- (15) The Commission notes that the amended restructuring plan respects all of the key conditions foreseen in Annex VIII to the Act of Accession, namely:
- All state aid received by Brodotrogir since 1 March 2006 is counted as restructuring aid.
 - The own contribution of the buyer of Brodotrogir to the restructuring plan is real, free of state aid and represents at least 40% of the total restructuring costs.
 - Brodotrogir contributes to the total capacity reduction for the five shipyards by closing one slipway and by reducing the area of land used for shipbuilding activities by 40%. This will reduce its production capacity by 18 388 CGT per year. This reduction of capacity will be done within twelve months from the signing of the privatisation contract.
 - Additionally, Croatia and Kermas undertake not to make use of the flexibility foreseen in Annex VIII to the Act of Accession (see paragraph 14) and will thus respect the individual production limitation.
 - The restructuring plan also specifies a number of other measures which Brodotrogir will implement to ensure a return to long term viability.
- (16) The main change relevant for the assessment consists of the increased aid amount of HRK 254 million. The Commission notes that the increased aid amount is accompanied by a commitment from Croatia and Kermas to respect the individual ceilings imposed by Annex VIII to the Act of Accession with respect to the capacity reduction and the production limitation as described in paragraphs (11) and (13) above.
- (17) The Commission considers that the fact that Brodotrogir will not be able to benefit from any flexibility in relation to the individual limits recorded in Annex VIII to the Act of Accession constitutes a sufficient additional compensatory measure with respect to the increased aid amount requested for the Brodotrogir restructuring.
- (18) Indeed, given that one of the companies mentioned in the Act of Accession, Brodogradiliste Kraljevica (hereinafter "Kraljevica"), has been put into liquidation, the possibility that the total capacity reduction be achieved without respecting the individual limits is very real.
- (19) The Commission, therefore, welcomes the commitment by Croatia to the effect that the flexibility allowed by the Act of Accession will not be used to the benefit of Brodotrogir, i.e. that Brodotrogir will be strictly required to respect the individual ceilings both for the capacity reduction and the production limitation. The Commission considers that, in this specific case, this commitment is an acceptable compensatory measure for the increased aid amount.

- (20) The Commission notes that the privatisation agreement between Croatia and Kermas respects all of the conditions laid down by Annex VIII to the Act of Accession and reflects the fact that Brodotrogir committed to (i) respect its individual production cap of 54 955 CGT per year until 31 December 2020 and (ii) reducing its overall production capacity by at least 15 101 CGT through the commitments described in paragraph (12) of this decision within twelve months from the date of the signing of the privatisation contract.
- (21) Finally, the Commission notes that Croatia undertakes to sign the privatisation contract with Kermas within two weeks from the receipt of this decision, allowing for the completion of the privatisation process by the date of accession.

4. CONCLUSION

The Commission has accordingly decided to accept the amended restructuring plan and the privatisation agreement for Brodotrogir on the basis of Annex VIII to the Act of Accession of Croatia to the EU, "Commitments undertaken by the Republic of Croatia on the restructuring of the Croatian shipbuilding industry (referred to in Article 36(1), third subparagraph, of the Act of Accession)".

Finally, the Commission notes that Croatia accepts that the decision is adopted in English.

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 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
State Aid Greffe
Place Madou
1049 Brussels
Belgium

Fax No: +32 2 29 61242

Yours faithfully,

For the Commission

Joaquín ALMUNIA
Vice-President