Subject: State aid No N 26/08 – Denmark – Changes to financing scheme for the export of ships

Sir/Madam,

1. PROCEDURE

(1) By e-mail of 15 January 2008, registered with the Commission the same day, Denmark notified the measure in reference using the simplified notification procedure under 4 of Commission Regulation (EC) No 794/2004.

(2) By letter of 2 February 2008 (D/50488) the Commission informed Denmark that it did not consider that the measures notified were of a nature to allow for the use of the simplified notification procedure, and that consequently the matter would be handled as an ordinary notification of new aid within the meaning of Regulation 659/1999.

---


2. THE NOTIFIED STATE AID

2.1. The existing aid scheme

(3) Denmark applies a scheme ("the CIRR scheme") which allows ship owners (irrespective of nationality or Member State of establishment) to receive financing at the so-called Commercial Interest Reference Rate ("CIRR") when having ships built or converted in a Danish shipyard.

(4) Under the CIRR scheme, the Danish state provides a credit facility which allows the Danish Ship Finance Fund (Danmarks Skibskreditfund, an entity entrusted with the operation of the CIRR scheme) to borrow up to DKK 18 billion at an interest rate equivalent to the rate applying to Denmark's sovereign debt. From these funds, the Fund will provide fixed rate credits to ship owners at a rate of interest corresponding to the appropriate CIRR (a reference rate which is set regularly) plus a margin established in view of the risk profile of the individual borrower.3

(5) The CIRR scheme was notified to the Commission under article 88.3 of the treaty in 2003 and registered as case N 286/03. The Commission based its assessment of the CIRR scheme on regulation 1540/984 ("the shipbuilding regulation") which provided in its article 3(4) that "aid in the form of state-supported credit facilities granted to national and non-national ship owners or third parties for the building or conversion of vessels may be deemed compatible with the common market [...] if it complies with the terms of OECD Council Resolution of 3 August 1981 (OECD Understanding on Export Credits for Ships) or with any agreement amending or replacing that Understanding."

(6) In the light of the shipbuilding regulation and the OECD provision to which it referred, the Commission concluded that the CIRR scheme is compatible with the common market on the basis of article 87.3.c of the treaty.5

(7) The CIRR scheme has been translated into Danish law through Bekendtgørelse nr 1027 af 8. december 2003 ("the Bekendtgørelse").

2.2. The notified measures

(8) Denmark has notified two planned changes to the CIRR scheme.

2.2.1. Alternative repayment method for lease transactions

(9) Under the CIRR scheme as it presently applies, the principal of CIRR loans shall be repaid in equal installments at regular intervals of six months.

3 Facts regarding the scheme are only given as far as required for the purposes of this decision. Details are provided in the Commission's decision in case N 286/03, see footnote 5 below.


Denmark wants to provide for an alternative repayment method for credits provided in support of lease transactions. In such cases, repayment would also be allowed in the form of equal repayments of principal and interest combined, at regular intervals of six months. To this end, Denmark would add the following wording to § 3 of the Bekendtgørelse: “I leasingtransaktioner kan tilbagebetalning ske som en annuitet med intervaller på 6 måneder.”

Denmark has pointed out that this alternative repayment method was recently introduced in the OECD Sector Understanding on Export Credits for Ships.

2.2.2. Elimination of the three-year delivery period

Under the CIRR scheme, ships built or converted with CIRR credits must be delivered within three years after the conclusion of the final construction (or conversion) contract.

Denmark argues that this requirement was copied on similar delivery limits in the shipbuilding regulation as well as in Regulation No 1177/2002 on a temporary defensive mechanism⁶ ("the TDM regulation") which applied when the scheme was introduced, and introduced in the CIRR scheme without a proper rationale. Denmark considers that this limit serves no useful purpose in the CIRR scheme and wishes to eliminate this requirement. This would be done by deleting § 2, subparagraphs 3 and 4 of the Bekendtgørelse.

3. ASSESSMENT

3.1. Legal basis

As the Commission found in case N 286/03, the CIRR scheme concerns state aid granted for the building or conversion of ships. It thus constitutes aid to shipbuilding within the meaning of section 3.1 of the Framework on state aid to shipbuilding⁷ ("the Framework") which has replaced the shipbuilding regulation.

The measure notified by Denmark shall consequently be assessed in the light of the provisions of the Framework.

As was the case in the shipbuilding regulation, the Framework contains specific provisions on "Export credits". Section 3.3.4 of the Framework, essentially identical to the corresponding provision in the shipbuilding regulation, provides that "aid to shipbuilding in the form of State-supported credit facilities granted to national and non-national shipowners and third parties for the building or conversion of vessels may be deemed compatible with the common 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".

---


A revised OECD Arrangement on Officially Supported Export Credits (2008 revision), incorporating an amended Sector Understanding on Export Credits for Ships, came into effect on 1 January 2008.

3.2. Measure 1: Alternative repayment method for lease transactions

As indicated by Denmark, the proposed new repayment method for CIRR loans in support of lease transactions corresponds to an alternative repayment method introduced in the revised OECD Sector Understanding on Export Credits for Ships and which did not exist in the corresponding OECD provisions that applied when the scheme was adopted.

The notified measure consequently complies with the OECD provision to which section 3.3.4 of the Framework refers. The measure does not appear to give rise to any additional distortion of trade between Member States. It therefore can be considered to be compatible with the common market.

3.3. Measure 2: Removal of the delivery limit

It should first be noted that the OECD Sector Understanding on Export Credits for Ships does not require that ships benefiting from CIRR financing be delivered within a certain time (neither did any such requirement exist at the time when the scheme was approved).

Denmark indicates that it included a delivery deadline in the CIRR simply because such a requirement existed, at that time, in the EC instruments on state aid to the shipbuilding sector (i.e. the shipbuilding and TDM regulations) but that no closer consideration was given to the rationale for such a requirement within the CIRR scheme.

The Commission notes that the delivery limits were included in the shipbuilding regulation to avoid that the phasing-out of contract-related operating aid (see article 3 of the shipbuilding regulation) was undermined by shipyards signing a multitude of contracts for ships to be delivered in a distant future but which would nevertheless benefit from the less strict state aid possibilities that applied when the contract was signed. In the case of the TDM regulation, the maximum delivery period served a similar purpose, i.e. to avoid that a subsidy that was intended as an extraordinary and temporary trade defense measure be applied beyond the period that was justified by the distortion in international trade.

A similar safeguard does not appear necessary within a scheme with a clear end date and a definite budget. Indeed, under the CIRR scheme, credits can only be granted for contracts signed up until 31 December 2012. Applications for credits must be submitted at least 30 days before the delivery of the ship and no such financing can be granted after the expiry of the Bekendtgørelse on 31 December 2016, which means that no ship benefiting from financing under the scheme can be delivered later than 31 December 2016. In other words, the CIRR scheme, as

---


9 Unless delivery is delayed by the technical complexity of the individual shipbuilding project concerned or by delays resulting from unexpected disruptions of a substantial and defensible nature in the working programme of the yard due to exceptional circumstances, unforeseeable and external to
approved by the Commission, already has a firm end date and this will not be
affected by the notified measure.

(24) The Commission does not consider that this measure will give rise to any
additional distortion of trade between Member States. It thus can be considered to
be compatible with the common market.

4. CONCLUSION

The Commission has accordingly decided to consider the aid to be compatible with the
EC Treaty.

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/community_law/state_aids/index.htm

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

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

Yours faithfully
For the Commission

Neelie Kroes
Member of the Commission

the company, in which case the scheme allows the Danish authorities to grant a derogation from the
delivery requirement.