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**WORKING LANGUAGE**

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**Subject: State aid N 116/2010 Alteration of the innovation aid scheme for shipbuilding – Germany**

Sir,

**I. PROCEDURE**

(1) On 24 March 2010, Germany notified under the simplified procedure laid down in Article 4 of the Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty a number of changes to the "Innovation aid scheme for shipbuilding", which was approved by Commission decision of 3 March 2005 (N 452/2004, hereafter "the original decision"))<sup>1</sup> and subsequently modified by Commission Decision of 6 May 2008( N 174/2008)<sup>2</sup>. On 24 March 2010, the Commission requested further information to which Germany replied on 31 March 2010.

**II. DESCRIPTION**

**1. The approved Innovation aid scheme for Shipbuilding N 452/2004**

(2) The existing aid scheme N 452/2004 aims to promote innovative shipbuilding, in conformity with the provisions of the Framework on State aid for Shipbuilding<sup>3</sup>

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<sup>1</sup> OJ C/235/2005 of 23 September 2005

<sup>2</sup> OJ C/177/2008 of 12 July 2008

<sup>3</sup> OJ C/317/2003 of 30.12.2003, and the Communication from the Commission concerning the prolongation of the Framework on State aid to shipbuilding, Official Journal C 173 of 8.7.2008

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(hereinafter "Shipbuilding framework") and in line with other innovation aid schemes approved by the Commission so far.

- (3) Article 15 of the Shipbuilding framework provides that innovation aid may be granted for the industrial application of innovative products and processes, i.e. technologically new or substantially improved products and processes compared to the state of the art existing in this industry in the European Community, which carry a risk of technological or industrial failure. Innovation aid concerns new classes of vessel, new components and systems of a ship and new processes. It may be granted to shipbuilding companies, ship repair companies and ship conversion companies. The maximum aid intensity is 20% of the eligible innovation costs.
- (4) Under the original decision, the duration of the scheme was limited both by the expiry of the Shipbuilding framework on 31 December 2006 and a maximum duration of six years after its approval by the Commission, if the provision on innovation aid of the Shipbuilding framework were prolonged. The Commission approved the original scheme by decision of 2 March 2005. The Commission notes that by decision of 28 October 2006,<sup>4</sup> the Commission decided to continue to apply the shipbuilding framework until 31 December 2008, thus also extending the duration of the German innovation aid scheme until 31 December 2008.
- (5) A detailed description of the original scheme is to be found in the Commission decision N 452/2004 of 3 March 2005.<sup>5</sup>
- (6) On 1 April 2008 Germany notified a prolongation of the scheme, together with one amendment. This notification was approved by Commission decision in case N 174/2008, of 6 May 2008. The duration of the amended scheme was, extended until 31 December 2008 or 31 December 2011, if the period of application of the Shipbuilding framework was prolonged until that date. The Commission notes that, by decision of 8 July 2008 it prolonged the shipbuilding framework until 31 December 2011.<sup>6</sup>

## **2. Modifications proposed**

- (7) Germany is now seeking approval of an amended scheme to be applied from 1 May 2010 until 31 December 2011.
- (8) The following modifications are proposed:

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<sup>4</sup> OJ C 260, of 28.10.2006, p.7

<sup>5</sup> [http://ec.europa.eu/community\\_law/state\\_aids/comp-2004/n452-04.pdf](http://ec.europa.eu/community_law/state_aids/comp-2004/n452-04.pdf)

<sup>6</sup> Communication from the Commission concerning the prolongation of the Framework on State aid to shipbuilding, OJ C/173/2008 of 8 July 2008

- (a) Repayment clause: Under the original decision, subject to certain conditions, the beneficiary had to reimburse the granted innovation aid. Reimbursement should start as soon as the benefit or objective, which was the target of the aid, has been achieved. Such benefit is considered to be achieved if the applicant uses the innovation, for which state aid was granted, a second time. The present notification contains an amendment to the repayment clause. An innovation aid granted under the amended scheme is henceforth no longer repayable.
- (b) Increase in Budget: The overall budget of the scheme will increase from EUR 43 million to EUR 45 million (plus 4.4%); with an annual budget of EUR 22 million.
- (c) Several procedural amendments:
- Concerning the required expert evaluation of the innovation: the expert has to formally declare his economic independence and his knowledge of the subject. Moreover, the scope and the content of the required expert evaluation is stated more precisely;
  - In case of a process innovation, the amended scheme foresees that the applicant has the obligation to state a period of time during which all material/equipment developed or acquired with the innovation aid is applied only for purposes of the innovation project thus earmarking this material/equipment. In case this material/equipment is not used according to the purpose for which the innovation aid is granted during the earmarked or appropriation time ("Zweckbindungsfrist"), the granting authority can demand a reimbursement. After the end of the appropriation time, the beneficiary is free to decide on the further usage of these objects;
  - Concerning the eligibility of a potential beneficiary, the amendment takes into account the usage of the innovation in case of a company split-up or an affiliation. In such cases, the applicant has to submit to the German authorities a commitment of the parent company to enable it to use the innovation without any conditions during the appropriation phase ("Zweckbindungsfrist");
  - The amendment introduces a deadline of 6 months for the applicant to complete his application. Moreover, the applicant's deadline to fulfil his reporting obligation to the German authority after having finished the innovation project is extended from originally one to now three months;
  - The amendment specifies that imputed costs (e.g. opportunity costs, imputed entrepreneurial profit, risk costs, etc) are not eligible to be covered by the innovation aid;
  - The German authority will convey its commitment to grant the aid in the form a formal notice to the beneficiary;

- The applicant for aid has to provide full information and cooperate in the procedure. The amendment specifies in greater detail subsidy relevant issues as required by German law;<sup>7</sup>
- Finally, the beneficiary is obliged in all its presentations of the innovation project to the public to mention the fact that it was supported by the German State.

### **III. ASSESSMENT OF THE MODIFICATIONS**

(9) Germany has notified the amendment of the German scheme pursuant to Article 4 of Regulation 794/2004.<sup>8</sup> In its assessment, the Commission came to the conclusion that, although some of the procedural changes, such as more precise criteria as regards the independence of the expert, could be seen as a tightening of criteria, this is not the case regarding the deletion of the repayment clause. Therefore, the Commission concluded that, overall, the notification falls outside the scope of the simplified notification procedure. Germany did not contest this position of the Commission.

#### **1. Existence of State aid**

(10) The notified measure constitutes State aid for the reasons explained in the decision of the Commission authorising the original scheme in case N 452/2004<sup>9</sup>.

#### **2. Compatibility of the Aid Measures with the Internal Market**

(11) By notifying the modifications that they intend to make to an existing scheme, the German authorities have fulfilled their obligations under Article 108(3) of the Treaty on the Functioning of the European Union (TFEU)<sup>10</sup>.

(12) The present decision assesses only the notified amendments to the original scheme N 452/204, as modified by the Commission decision in case N 174/2008.

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<sup>7</sup> cf. § 2 des Gesetzes gegen die mißbräuliche Inanspruchnahme von Subventionen (Subventionsgesetz), <http://www.gesetze-im-internet.de/bundesrecht/subvg/gesamt.pdf>

<sup>8</sup> The simplified notification procedure applies to alterations of an existing aid measures which entail either an increase in budget by more than 20%, the prolongation by up to 6 years of the scheme, or a tightening of eligibility criteria, a reduction of aid intensity or a reduction of eligible expenses, c.f. Commission Regulation (EC) No 794/2004 of 21 April 2004, OJ L/140/2004 of 30 April 2004

<sup>9</sup> See footnotes 1 and 5 above

<sup>10</sup> With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the Treaty on the Functioning of the European Union ("TFEU"). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88, respectively, of the EC Treaty where appropriate.

- (13) The relevant legal basis for assessment is point 15 of the Shipbuilding framework. The scheme is further assessed against other innovation aid schemes approved by the Commission so far.
- (a) Repayment clause: the intended amendment to eliminate the repayment clause from the innovation aid scheme, although being less strict than the existing situation, can be accepted, as such repayment clause was initially introduced by Germany at its own discretion and is not required by point 15 of the shipbuilding framework. Moreover, all other innovation aid schemes approved by the Commission so far do not provide for such repayment at all.<sup>11</sup>
  - (b) The increase in Budget: The Commission considers that this limited increase in the budget remains reasonable given the size of the German shipbuilding industry<sup>12</sup> (the annual budget representing less 0.01% of the annual sales of ca. EUR 6.2 billion per year<sup>13</sup>).
  - (c) Several procedural amendments: The Commission finds that the procedural amendments now notified by Germany are of limited scope and aim essentially to increase the efficiency of handling the applications under the innovation aid scheme. Moreover, these amendments appear to be in line with the general objectives of making the procedure transparent, while limiting the administrative burden to the minimum necessary<sup>14</sup>. Hence the Commission can accept the envisaged procedural amendments.
- (14) The Commission takes note that the modified German innovation aid scheme will apply from the date of the Commission decision until the 31 December 2011. The latter date is also the end of the period of validity of the Shipbuilding framework. The amended German scheme does not entail an automatic prolongation in case of a prolongation of the Shipbuilding framework.
- (15) The Commission considers that the notified amendments to the existing innovation aid scheme do not change its favourable assessment as laid out in the previous decisions N 452/2004 and N 174/2008. On this basis, the Commission considers the notified State aid scheme N 116/2010 "Innovation aid scheme for shipbuilding" to be in line with the Shipbuilding framework and thus compatible with the Internal Market.

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<sup>11</sup> See for example Commission Decision N 719/2009 Innovation Aid Scheme for Shipbuilding, the Netherlands, OJ C/67/2007 of 23 March 2007 or Commission Decision N 28/2008 Innovation aid scheme for the Finnish shipbuilding industry, OJ C/177/2008 of 12 July 2008.

<sup>12</sup> See also point 4 of the original decision (N 452/2004)

<sup>13</sup> <http://www.bmvbs.de/en/Transport/Waterborne-transport-,2080/Maritime-industry.htm>

<sup>14</sup> See in this sense paragraph 23 of the original decision N 452/2004, footnotes 1 and 5 above.

## V. DECISION

(16) In view of the above, the Commission concludes that the notified amended German innovation aid scheme complies with the conditions set out in the Framework on State aid to shipbuilding and is thus compatible with the Internal Market pursuant to Article 107(3)(c) TFEU.

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European Commission  
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State Aid Registry  
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Belgium  
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We would ask you to state the case name and number in all correspondence.

Yours faithfully,  
For the Commission

Joaquín Almunia  
Vice President of the Commission