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**Subject: Spain – State aid SA.34583 (N/2012) – Prolongation of financing scheme for the export of ships, and SA.34584 (N/2012) – Prolongation of horizontal aid scheme for shipbuilding**

Sir,

## **1. PROCEDURE**

- (1) On 1 August 2002, Spain notified a financing scheme for the export of ships. This scheme was authorised until 31 December 2006 by Commission decision of 3 March 2004 (N 811/a/2002).<sup>1</sup> This scheme was prolonged until 31 December 2008 by Commission decision of 8 March 2007 (case N 760/2006)<sup>2</sup> and until 31 December 2011 by Commission decision of 3 September 2008 (N 393/2008).<sup>3</sup>
- (2) On 5 October 2004, Spain notified a horizontal aid scheme for shipbuilding (including research, development and innovation aid and regional investment aid). This scheme was authorised until 31 December 2006 by Commission decision of 16 March 2005 (N 423/2004).<sup>4</sup> This scheme was prolonged until 31 December 2008 by Commission decision of 8 June 2007 (case N

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<sup>1</sup> OJ C 115 of 30.4.2004, p.16.

<sup>2</sup> OJ C 77 of 5.4.2007, p.3.

<sup>3</sup> OJ C 261 of 14.10.2008, p.3.

<sup>4</sup> OJ C 250 of 8.10.2005, p.10.

Excmo. Sr. D. José Manuel García-Margallo y Marfil  
Ministro de Asuntos Exteriores y de Cooperación  
Plaza de la Provincia 1  
E-28012 MADRID

159/2007)<sup>5</sup> and until 31 December 2011 by Commission decision of 3 September 2008 (N 392/2008).<sup>6</sup>

- (3) On 30 March 2012, Spain notified the prolongation of the financing scheme for the export of ships and of the horizontal aid scheme for shipbuilding subject to this decision.

## **2. THE NOTIFIED MEASURES**

- (4) The notification in case SA.34583 refers to the prolongation of the financing scheme for the export of ships established in Article 11 of Royal Decree 442/1994.<sup>7</sup> The notification in case SA.34584 refers to the prolongation of the horizontal aid scheme for shipbuilding established in Article 10 of Royal Decree 442/1994 and its application rules.<sup>8</sup>
- (5) In relation to the scope of the prolongations, the Spanish authorities have clarified in their notification that the prolongations of both schemes will apply to self-propelled commercial vessels, including inland waterway vessels. However, the prolongation of the innovation aid part of the horizontal aid scheme for shipbuilding will not apply to floating and moving offshore structures.
- (6) Regarding the financing scheme for the export of ships (SA.34583), Spain intends to prolong the scheme from 1 January 2012 to 31 December 2013. In addition, the scheme – as authorised by Commission decision N 393/2008 – will be modified in two aspects: (i) the global budget of the scheme will be of EUR 76 million for the period 2012-2013, with a maximum annual budget of EUR 38 million, and (ii) its scope will be extended to fishing vessels of 100 gross tons ("gt") or more. Given that the rest of the elements of this regime do not change, the Commission refers to its previous decisions mentioned above in recital (1) for a more detailed description of the scheme.
- (7) Regarding the horizontal aid scheme for shipbuilding (SA.34584), Spain intends to prolong the scheme from 1 January 2012 to 31 December 2013. The scheme in question consists of three parts: the first part concerns aid for research and development ("R&D"), the second regional investment aid and the third aid for innovation. All three types of aid are intended for shipbuilding as defined in section 2 of the 2011 Framework on state aid to shipbuilding<sup>9</sup> ("the 2011 Framework").
- (8) The horizontal aid scheme for shipbuilding – as authorised by Commission decision N 392/2008 – will be modified in three main aspects:

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<sup>5</sup> OJ C 157 of 10.7.2007, p.9.

<sup>6</sup> OJ C 261 of 14.10.2008, p.3.

<sup>7</sup> Real Decreto 442/1994, de 11 de marzo, sobre primas y financiación a la construcción naval.

<sup>8</sup> Normas de aplicación de las ayudas horizontales a la construcción naval con cargo al fondo de restructuración.

<sup>9</sup> OJ C 364 of 14.12.2011, p.9.

- (i) the global budget of the scheme will be of EUR 40 million for the period 2012-2013, with a maximum annual budget of EUR 20 million;
  - (ii) the scheme will be adapted to the new provisions on innovation aid of the 2011 Framework, including a maximum aid intensity of 20% gross, eligible applications (i.e., aid relating to the industrial application of innovative products and processes as defined in paragraphs 14 to 19 of the 2011 Framework, except for the provisions on innovation with the objective of increasing environmental standards), eligible costs (as defined in paragraphs 20 to 22 of the 2011 Framework), the confirmation of the innovative character of the project (as defined in paragraphs 23 to 24 of the 2011 Framework) and the necessity of innovation aid having an incentive effect (as defined in paragraphs 25 to 30 of the 2011 Framework, including the commitment of Spain to grant individual aid under the scheme only after it has verified that an incentive effect is present and to submit annual reports of the approved aid scheme). In line with paragraph 14, sentences 2 and 3, of the 2011 Framework, Spain acknowledges 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 Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund,<sup>10</sup> 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;
  - (iii) Spain has excluded the research category "fundamental research" from the scope of application of the R&D part of the scheme for the period 2012-2013. Spain has also excluded from its scope of application the possibility of collaboration of undertakings and research organisations.
- (9) The remaining elements of horizontal aid scheme for shipbuilding, including the commitments of the Spanish authorities expressed in cases N 423/2004, N 159/2007 and N 392/2008, remain unchanged and the Commission refers to its previous decisions mentioned above in recital (2) for a more detailed description of the scheme.
  - (10) Spain has notified that both schemes will respect the horizontal provisions on cumulation, monitoring and reporting of the 2011 Framework.
  - (11) Although the notified prolongations cover the period 1 January 2012 until 31 December 2013, the Spanish authorities have committed not to grant aid under any of the schemes until the Commission has taken a decision.
  - (12) Finally, the Spanish authorities have committed to suspending the payment of any aid under the notified aid schemes to any undertaking that has benefited from earlier unlawful aid declared incompatible by a Commission Decision, until that undertaking has reimbursed or paid into a blocked account the total

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<sup>10</sup> OJ L 223, 15.8.2006, p.1.

amount of unlawful and incompatible aid and the corresponding recovery interest.

### **3. ASSESSMENT**

#### **Scope of the prolongations**

- (13) The 2011 Framework has extended the scope of state aid to shipbuilding to inland waterway vessels [see paragraph 12(d)]. 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).
- (14) As described in recital (5) above, the Spanish authorities have extended the scope of the prolongations of both the horizontal aid scheme for shipbuilding and the financing scheme for the export of ships to inland waterway vessels, in line with paragraph 12(d) of the 2011 Framework. However, the Spanish authorities have decided to exclude floating and moving offshore structures from the scope of the prolongation of the innovation aid part of the horizontal aid scheme for shipbuilding.

#### **Legality of the measures**

- (15) The Commission recalls the commitment of the Spanish authorities not to grant aid under any of the schemes until the Commission has taken a decision authorising the notified measures. The Spanish authorities therefore complied with their obligations under Article 108(3) TFEU.

#### **The prolongation of the financing scheme for the export of ships (SA.34583)**

##### *Existence of aid*

- (16) As the Commission found in cases N 811/a/2002, N 760/2006 and N 393/2008, the financing scheme for the export of ships entails state aid within the meaning of Article 107(1) TFEU for the reasons detailed therein.

##### *Compatibility*

- (17) In cases N 811/a/2002, N 760/2006 and N 393/2008, the Commission assessed the compatibility of the scheme under the 2003 Framework on state aid to shipbuilding<sup>11</sup> ("the 2003 Framework"). However, on 7 December 2011 the Commission adopted the 2011 Framework, which is applicable between 1 January 2012 and 31 December 2013.

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<sup>11</sup> OJ C 317 of 30.12.2003, p.11. The 2003 Framework was originally applicable from 1 January 2004 to 31 December 2006. Its validity was subsequently extended until 31 December 2008 by Commission Communication adopted on 24 October 2006 (OJ C 260 of 28.10.2006, p.7) and until 31 December 2011 by Commission Communication adopted on 3 July 2008 (OJ C 173 of 8.7.2008, p.3).

- (18) The 2011 Framework contains specific provisions on export credits. Section 3.3 of the 2011 Framework establishes that "*[a]id to shipbuilding in the form of State-supported credit facilities granted to national and non-national shipowners or third parties for the building or conversion of vessels may be deemed compatible with the internal 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*".
- (19) There have been no changes of the relevant provision on export credits between the 2003 Framework (section 3.3.4) and the 2011 Framework (section 3.3). Thus, the applicable state aid provision regarding export credits remains the same.
- (20) In its decision of 3 March 2004 (N 811/a/2002) authorising the original financing scheme for the export of ships, the Commission found that the scheme complied with section 3.3.4 of the 2003 Framework and with the OECD provisions referred to therein. The Commission therefore concluded that the scheme was compatible with the internal market.
- (21) In its decisions of 8 March 2007 (N 760/2006) and of 3 September 2008 (N 393/2008) authorising the prolongation of the original scheme, the Commission arrived to the same conclusion.
- (22) For the purposes of the present prolongation, the Commission has assessed whether the applicable OECD provisions have undergone any relevant changes since its last decision on the scheme of 3 September 2008 (N 393/2008).
- (23) The Commission notes that on 1 September 2011 a revised OECD Arrangement on Officially Supported Export Credits, incorporating an amended Sector Understanding on Export Credits for Ships,<sup>12</sup> ("the 2011 OECD Arrangement") came into effect. The 2011 OECD Arrangement however does not contain any new provisions which could impact on the assessment of the present scheme.
- (24) Regarding the extension of the scheme to fishing vessels of 100 gt or more, the Commission notes that this possibility is specifically foreseen in Article 2 of the Sector Understanding on Export Credits for Ships annexed to the 2011 OECD Arrangement.
- (25) The Commission therefore concludes that the prolongation of the scheme is in line with the relevant OECD rules and that it complies with section 3.3 of the 2011 Framework, as well as with the horizontal provisions on cumulation, monitoring and reporting as follows from recital (10) above.

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<sup>12</sup> See Arrangement on Officially Supported Export Credits TAD/PG(2011)13, available at [http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=tad/pg\(2011\)13&doclanguage=en](http://www.oecd.org/officialdocuments/displaydocumentpdf/?cote=tad/pg(2011)13&doclanguage=en).

- (26) In view of the above considerations, the prolongation of the financing scheme for the export of ships is thus compatible with the internal market.

### **The prolongation of the horizontal aid scheme for shipbuilding (SA.34584)**

#### *Existence of aid*

- (27) As the Commission found in cases N 423/2004, N 159/2007 and N 392/2008, the horizontal aid scheme for shipbuilding entails state aid within the meaning of Article 107(1) TFEU for the reasons detailed therein.

#### *Compatibility*

##### *a. R&D aid*

- (28) Concerning the **R&D aid part of the scheme**, the Commission recalls that it is based on the 2006 Community framework for state aid for research and development and innovation<sup>13</sup> ("the 2006 R&D&I Framework"). In its decisions in cases N 159/2007 and N 392/2008, the Commission already assessed the R&D aid part of the scheme under the 2006 R&D&I Framework and concluded that it respected its requirements.
- (29) As described in recital (8)(iii) above, Spain has excluded the research category "fundamental research" from the scope of application of the R&D part of the scheme for the period 2012-2013. Spain has also excluded from its scope of application the possibility of collaboration of undertakings and research organisations. The rest of elements of the scheme and the commitments of the Spanish authorities expressed in cases N 423/2004, N 159/2007 and N 392/2008 remain unchanged.
- (30) As a result, bearing in mind the modifications referred to in paragraph (29), the Commission concludes that the R&D part of the scheme continues to respect the maximum aid intensities, eligible costs and the other requirements of the 2006 R&D&I Framework, including the provisions on incentive effect. Moreover, the Spanish authorities have clarified that there will be no cumulation of R&D aid with other types of aid – in particular innovation aid – for the same eligible costs, and that the horizontal provisions on cumulation, monitoring and reporting of the 2011 Framework will be respected. The R&D aid part of the prolongation of the horizontal aid scheme for shipbuilding is thus compatible with the internal market.

##### *b. Regional investment aid*

- (31) Concerning the **regional investment aid part of the scheme**, the Commission recalls that it is based on the 2011 Framework and the Guidelines on national regional aid for 2007-2013<sup>14</sup> ("the RAG Guidelines"). In its decisions in cases N 159/2007 and N 392/2008, the Commission already assessed the regional investment aid part of the scheme under the 2003 Framework (section 3.3.6 on

<sup>13</sup> OJ C 323 of 30.12.2006, p.1.

<sup>14</sup> OJ C 54 of 4.3.2006, p.13.

regional aid) and the RAG Guidelines and concluded that it respected its requirements.

- (32) Since the prolongation notified by Spain does not modify this part of the scheme and the provisions concerning regional investment aid to shipbuilding have not changed since the last assessment of this part of the scheme in its decisions in cases N 159/2007 and N 392/2008,<sup>15</sup> the Commission concludes that it continues to respect the maximum aid intensities, eligible costs and rest of requirements of the RAG Guidelines. It also respects the provisions of section 3.1 of the 2011 Framework, as well as the horizontal provisions on cumulation, monitoring and reporting. The regional investment aid part of the prolongation of the horizontal aid scheme for shipbuilding is thus compatible with the internal market.

*c. Innovation aid*

- (33) Concerning the **innovation aid part of the scheme**, the Commission must first note that the 2011 Framework provides refined rules on innovation aid, in particular clarifying the process for establishing the innovative character of projects to be subsidised and establishing precise instructions on incentive effect.
- (34) The modification to the applicable legal basis (in particular the application rules of Royal Decree 442/1994) notified by the Spanish authorities closely follow the provisions on innovation aid of the 2011 Framework (section 3.2) as explained in recital (8)(ii) above, except for aid concerning innovation with the objective of increasing environmental standards, which Spain has expressly excluded from the scope of application of the scheme. The Spanish authorities also committed to grant individual aid under this scheme only after it has verified that an incentive effect is present and will include the relevant information in the annual reports on this scheme, as required by paragraph 29 of the 2011 Framework.
- (35) In addition, the Spanish authorities have decided to limit the application of the innovation aid part of the scheme to those cases in which the amount of the aid does not exceed EUR 150 per cgt for vessels or EUR 5 million for new processes. If the aid exceeds these amounts, it would need to be notified individually to the Commission.
- (36) Since the prolongation notified by Spain respects all requirements on innovation aid laid down in section 3.2 of the 2011 Framework, as well as the horizontal provisions on cumulation, monitoring and reporting of the 2011 Framework, the Commission concludes that the innovation aid part of the prolongation of the horizontal aid scheme for shipbuilding is also compatible with the internal market.

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<sup>15</sup> The specific provisions on regional investment aid of the 2011 Framework (section 3.1) have not changed compared to those of the 2003 Framework (section 3.3.6).

#### 4. CONCLUSION

(37) On the basis of the foregoing assessment and taking into account the commitments of the Spanish authorities, the Commission considers that the notified aid measures continue to be compatible with the internal market.

#### 5. DECISION

The Commission has accordingly decided to consider the prolongation of the financing scheme for the export of ships – SA.34583 (N/2012) – and the prolongation of the horizontal aid scheme for shipbuilding – SA.34584 (N/2012) – to be compatible with the Treaty on the Functioning of the European Union.

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State aid Greffe  
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Yours faithfully,  
For the Commission

*Joaquín ALMUNIA*  
Vice-president of the Commission