

EUROPEAN COMMISSION PUBLISHES CONSULTATION ON STATE AID RULES FOR SHIPBUILDING

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On 5 October 2010 the European Commission published a consultation paper on the framework for State aid for shipbuilding (the "Framework"). The consultation will inform the Commission's decision on whether to continue to apply the Framework following its expiry on 31 December 2011, whether to amend the Framework, or allow it to expire. The consultation will run until 6 December 2010.

Background

The Framework provides the rules for the Commission to assess whether State support for shipbuilding is compatible with the EU internal market. The current Framework came into effect on 1 January 2004, was prolonged in 2006 and 2008 and is currently applicable until 31 December 2011. The Commission has adopted around 35 decisions under the Framework, including aid schemes and aid that falls outside a notified scheme. The provisions relating to innovative aid are used more frequently than the other provisions of the Framework.

Current Framework

The general principle of the Framework is that State support for shipbuilding may be granted under the general EU State aid rules except where the specific provisions of the Framework apply. It is one of the few sectors still subject to a specific State aid regime which derogates from the rules, the explanation being that this derogation is justified by historical features of the industry and certain features of the markets: in particular, shipbuilding is a global market by nature and is recognised as suffering from cyclical overcapacity.

The Framework sets out definitions of shipbuilding and different categories of vessel that are eligible for aid under the Framework. It contains specific provisions on innovation aid, regional aid, closure aid, export credits, development aid and employment aid.

General Purpose of Consultation

The Commission Vice President in charge of competition policy, Joaquín Almunia, has said that the Commission will carry out an open-minded assessment to measure the impact which the Framework has had to date. This will allow the Commission to determine whether it is justifiable to maintain specific rules to safeguard competition and continue to foster innovation in the sector.

The purpose of the consultation is to invite local and regional public authorities, shipyards and their associations, ship owners and their associations, maritime suppliers, social partners and any other stakeholders or interested parties to provide feedback on the application of the Framework.

The consultation will help determine whether specific provisions of the Framework are still justified when shipbuilding is also eligible for aid under general State aid provisions. In its questionnaire to industry and the government the European Commission's Directorate General for Competition ("DG Competition") pointed out that innovation aid to shipbuilding is unique and has been justified by the yard industry's short production series, vessel size, value, complexity and the fact that prototypes are generally used commercially.

The consultation will also assess the effectiveness of the Framework rules and their impact on the innovation and competitiveness of EU shipyards and the EU shipbuilding industry as a whole. Innovation aid is significant: indeed, in Germany alone, it has been

worth €22m (\$30.6m) to the sector this year. The Commission is seeking feedback to establish whether the provisions relating to this innovation aid are used more frequently than the other provisions of the Framework. Another question the Commission is considering is that of the direction of innovation aid and, in particular, whether it is still necessary for prototypes or whether it should be redirected to the construction of "greener ships". Examples of questions on innovation aid include: "Are there situations where the innovative project can/could be completed without State aid?" and "would you prefer to exclude from the eligibility for innovation aid other types of innovation and only keep innovation if linked to 'greener ships'?"

Closure aid has not been used since the Framework came into force in 2004 and the consultation will be questioning whether the provisions relating to closure aid and employment aid continue to be necessary. As for the specific regional aid regime, the Commission may consider whether cyclical overcapacity remains a feature of the EU shipbuilding industry when deciding whether it should be maintained.

Specific questions of the consultation paper

The Commission seeks to establish the amount of State aid granted for shipbuilding. In particular, it asks public authorities and aid recipients about the amount of State aid granted under the Framework, and the provisions of the Framework relied on in relation to the grant of aid. The impact of the aid granted is


also addressed, as the Commission requests information about any positive or negative impact of aid granted under the Framework.

The amount of State aid granted under other State aid provisions for shipbuilding is also of interest to the Commission. Examples of these other categories of State aids include rescue and restructuring aid, environmental aid, aid for R&D and innovation and the aid granted under the Temporary Framework for access to finance specific to the financial and economic crisis.

The Commission has issued a set of industry led questions and requests for information from shipbuilding stakeholders. Information requested relates to market developments over the past ten years and details as to how the industry is financed. The questions seek to assess whether there is overcapacity in the market, how employment in the industry has developed and whether there are any significant distortions in the world market.

Considering the definitions used in and the scope of the current Framework, the Commission questions whether these accurately reflect the activities of the EU shipbuilding industry. Third parties are asked whether they agree with the current definitions and scope, or whether they feel that it should be modified and, if so, how these modifications should take place.

Details of the aid granted under the specific provisions have also been requested. These specific provisions are aid for research, development and innovation, closure aid, regional aid, employment aid and export



credit and development aid. The Commission asks whether there have been any problems in the application of the rules set out in the Framework.

Stakeholders are also asked for their views on the future developments of the shipbuilding State aid rules. These questions concern whether the Framework should be maintained as it is, whether it should be modified, or whether it should be allowed to expire in December 2011 meaning that shipbuilding would become subject to the common rules on state aid.

HFW tips

For the Framework to be retained, it will probably be important for the industry to submit a strong justification. DG Competition does not favour sector-specific guidelines. The Commission states that it would like to assess, in particular, to what extent the current innovation aid rules are appropriate for promoting greater efficiency and competitiveness of EU shipyards. It asks whether innovation aid is necessary for the construction of prototypes and whether it should be redirected to the construction of “greener ships”. Irregular implementation by government and the diversity of shipyard portfolios has meant that the success of innovation aid in the sector has been mixed.

The need to ensure a level playing field with Asian shipbuilders should also be a prominent consideration.

We would be pleased to assist with responses to the Commission’s consultation. For more information, please contact **Anthony Woolich**, Partner, on +44 (0)20 7264 8033 or anthony.woolich@hfw.com, or your usual contact at HFW.

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