

PART IV: SECTOR SPECIFIC RULES

State aid guidelines for shipbuilding¹

1. INTRODUCTION

- (1) State aid to shipbuilding has been subject to a series of specific regimes, which have been gradually aligned with the horizontal state aid provisions. Compared to industrial sectors that have not been subject to specific rules, the regimes applicable to the shipbuilding sector have contained a mixture of both stricter and more lenient provisions. These guidelines provide for new rules for the assessment of state aid to shipbuilding following the expiry of the current Guidelines on state aid to shipbuilding on 31 December 2011².
- (2) Certain features distinguish shipbuilding from other industries, such as the short production series, the size, value and complexity of the units produced and the fact that prototypes are generally used commercially.
- (3) In the light of those special characteristics, the Authority considers it appropriate to continue to apply specific provisions in respect of innovation aid for the shipbuilding sector while ensuring that such aid does not adversely affect trading conditions and competition to an extent contrary to the common interest.
- (4) State aid for innovation must lead to the recipient of aid changing its behaviour so that it increases its level of innovation activity and innovation projects or activities take place which would not otherwise be carried out, or which would be carried out in a more restricted manner. Incentive effect is identified by counterfactual analysis, comparing the levels of intended activity with aid and without aid. Therefore, these Guidelines identify specific requirements which will enable the EFTA states to ensure the presence of an incentive effect.
- (5) An informal set of rules concerning innovation aid for shipbuilding regarding, in particular, the eligible costs and the confirmation of the innovative character of the project has been developed in conjunction with the industry and is applied by the Authority in its decision-making practice. In the interests of transparency, those rules should be formally integrated into the rules on innovation aid.
- (6) As regards regional aid, the Authority will review the horizontal Guidelines on national regional aid for 2007 – 2013³ in 2013. Therefore, the Authority will not make any changes to the specific rules for regional aid in the shipbuilding sector at this point. The specific rules on regional aid to shipbuilding, found in this chapter, are therefore the same as were found in the former Chapter of State Aid to Shipbuilding. The Authority will reassess the situation in the context of the revision of the Guidelines on National Regional Aid.
- (7) With regard to export credits, the objective of these guidelines is to respect applicable international obligations.

¹ These Guidelines correspond to the Commissions Framework on State Aid to Shipbuilding, OJ C 364, 14.12.2011, p. 9-13

² OJ C 221, 14.9.2006, p. 10.

³ OJ L 54, 28.2.2008, p. 1.

- (8) These guidelines therefore contain specific provisions in relation to innovation aid and regional aid for shipbuilding as well as provisions on export credits. In addition, aid to the shipbuilding sector can be deemed compatible with the internal market under the EEA Agreement and under the horizontal state aid instruments⁴, unless otherwise provided for in those instruments.
- (9) In accordance with Article 123 of the EEA Agreement any EFTA State may take such measures as it considers necessary for the protection of the essential interests of its security with respect to funding for military vessels.
- (10) The Authority intends to apply the principles set out in these guidelines until 31 December 2013. After that date the Authority envisages including the provisions on innovation aid in the guidelines for state aid for research and development and innovation⁵ and integrating regional aid for shipbuilding into the Guidelines on national regional aid.

2. SCOPE AND DEFINITIONS

- (11) Under these guidelines, the Authority may authorise aid to shipyards or, in the case of export credits, aid to ship owners, which is granted for building, repair or conversion of ships, as well as innovation aid granted for the construction of floating and moving offshore structures.
- (12) For the purposes of these guidelines, the following definitions shall apply:
 - (a) “shipbuilding” means the building, in the EEA, of self-propelled commercial vessels;
 - (b) “ship repair” means the repair or reconditioning, in the EEA, of self-propelled commercial vessels;
 - (c) “ship conversion” means the conversion, in the EEA, of self-propelled commercial vessels of not less than 1 000 gt⁶, on condition that conversion operations entail radical alterations to the cargo plan, the shell, the propulsion system or the passenger accommodation;
 - (d) “self-propelled commercial vessel” means a vessel that, by means of its permanent propulsion and steering, has all the characteristics of self-navigability on the high seas or on inland waterways and belongs to one of the following categories:
 - (i) seagoing vessels of not less than 100 gt and inland waterway vessels of equivalent size used for the transportation of passengers and/or goods;
 - (ii) seagoing vessels of not less than 100 gt and inland waterway vessels of equivalent size used for the performance of a specialised service (for example, dredgers and ice breakers);
 - (iii) tugs of not less than 365 kW;

⁴ For instance, the Guidelines on state aid for environmental protection (OJ L 144, 10.6.2010., p. 1) lay down the conditions under which aid to shipyards for more environmentally friendly production may be authorised. Moreover, aid for the acquisition of new transport vehicles which go beyond Community standards or which increase the level of environmental protection in the absence of Community standards can be granted to ship owners, thus contributing overall to cleaner maritime transport.

⁵ OJ L 305, 19.11.2009, p. 1.

⁶ Gross tons.

- (iv) unfinished shells of the vessels referred to in points (i), (ii) and (iii) that are afloat and mobile;
- (e) “floating and moving offshore structures” means structures for the exploration, exploitation or generation of oil, gas or renewable energy that have the characteristics of a commercial vessel except that they are not self-propelled and are intended to be moved several times during their operation.

3. SPECIFIC MEASURES

3.1. Regional aid

- (13) Regional aid to shipbuilding, ship repair or ship conversion may be deemed compatible with the internal market if it fulfils, in particular, the following conditions:
- (a) the aid must be granted for investment in upgrading or modernising existing yard(s), not linked to a financial restructuring of the yard(s) concerned, with the objective of improving the productivity of existing installations;
 - (b) in regions referred to in point (a) of Article 61(3) of the EEA Agreement and complying with the map approved by the Authority for each EFTA State for the grant of regional aid⁷, the intensity of the aid must not exceed 22,5 % gross grant equivalent;
 - (c) in regions referred to in point (c) of Article 61(3) of the EEA Agreement and complying with the map approved by the Authority for each EFTA State for the grant of regional aid, the intensity of the aid must not exceed 12,5 % gross grant equivalent or the applicable regional aid ceiling, whichever is the lower;
 - (d) the aid must be limited to support eligible expenditure as defined in the Guidelines on national regional aid for 2007–2013.

3.2. Innovation aid

3.2.1 Eligible applications

- (14) Aid granted for innovation for shipbuilding, ship repair or ship conversion may be deemed compatible with the internal market up to a maximum aid intensity of 20 % gross provided that it relates to the industrial application of innovative products and processes, that is to say, technologically new or substantially improved products and processes when compared to the state of the art that exists in the shipbuilding industry within the EEA, which carry a risk of technological or industrial failure.
- (15) Innovative products and processes within the meaning of point 14 include improvements in the environmental field related to quality and performance, such as optimising fuel consumption, emissions from engines, waste and safety.
- (16) Where the innovation has the objective of increasing environmental protection and leads to compliance with adopted EEA standards at least one year before those standards enter into force or increases the level of environmental protection in the absence of EEA standards or makes it possible to go beyond EEA standards, the maximum aid intensity can be increased to 30 % gross. The expressions “EEA

⁷ Reference is made to point 15 of the Guidelines on national regional aid 2007-2013 according to which currently, “no region in the EFTA States qualifies for the Article 61(3)(a) derogation.”

standards” and “environmental protection” have the meaning set out in the Authority’s Guidelines on state aid for environmental protection⁸.

- (17) Provided that they comply with the criteria in point 14, innovative products will refer either to a new class of vessel as defined by the first vessel of a potential series of ships (prototype) or to innovative parts of a vessel, which can be isolated from the vessel as a separate element.
- (18) Provided that they comply with the criteria in point 14, innovative processes will refer to the development and implementation of new processes regarding production, management, logistic or engineering areas.
- (19) Innovation aid can only be deemed compatible with the internal market if it is granted for the first industrial application of innovative products and processes.

3.2.2 *Eligible costs*

- (20) Innovation aid for products and processes must be limited to supporting expenditure on investments, design, engineering and testing activities directly and exclusively related to the innovative part of the project and incurred after the date of the application for innovation aid⁹.
- (21) Eligible costs include costs of the shipyard as well as costs for the procurement of goods and services from third parties (for example, system suppliers, turnkey suppliers and subcontractor companies), to the extent that those goods and services are strictly related to the innovation. The eligible costs are defined in more detail in the Annex.
- (22) The relevant national authority, designated by the EFTA State for the purposes of the application of innovation aid, must examine the eligible costs on the basis of the estimations provided and substantiated by the applicant. Where the application includes costs for the procurement of goods and services from suppliers, the supplier must not have received state aid for the same objectives in respect of those goods or services.

3.2.3 *Confirmation of the innovative character of the project*

- (23) In order for innovation aid to be deemed compatible with the functioning of the EEA Agreement under these guidelines, an application for innovation aid must be submitted to the relevant national authority prior to the applicant entering into a binding agreement to implement the specific project for which innovation aid is sought. The application must include a description of the innovation, in both qualitative and quantitative terms.
- (24) The relevant national authority must seek confirmation from an independent, and technically competent expert that the aid is sought for a project that represents a technologically new or substantially improved product or process compared to the state of the art that exists in the shipbuilding industry within the EEA (qualitative appraisal). The aid may only be deemed compatible with the internal market if the independent and technically competent expert confirms to the relevant national authority that the eligible costs for the project have been calculated to cover exclusively the innovative parts of the relevant project (quantitative appraisal).

⁸ The environmental aid guidelines adopted in July 2008 refer to the expression “Community standards”.

⁹ Except for costs for feasibility studies undertaken within 12 months prior to the aid application for an innovative process.

3.2.4 *Incentive effect*

- (25) Innovation aid within the meaning of these guidelines must have an incentive effect, that is to say, it must result in the recipient changing its behaviour so that it increases its level of innovation activity. As a result of the aid, the innovation activity must be increased in terms of size, scope, amount spent or speed.
- (26) In line with point 25, the Authority considers that aid does not present an incentive for the beneficiary where the project¹⁰ has already commenced before the beneficiary submits an application for aid to the national authorities.
- (27) In order to verify that the aid would induce the aid beneficiary to change its behaviour so that it increases its level of innovation activity, the EFTA States must provide an *ex ante* evaluation of the increased innovation activity on the basis of an analysis comparing a situation without aid and a situation with aid. The criteria to be used may include the increase in innovation activities in terms of size, scope amount spent or speed, together with other relevant quantitative and/or qualitative factors submitted by the EFTA State in its notification under Article 1(3) in Part I of Protocol 3 to the Surveillance and Court Agreement.
- (28) If a significant effect on at least one of those elements can be demonstrated, taking account of the normal behaviour of an undertaking in the respective sector, the Authority will normally conclude that the aid has an incentive effect.
- (29) When assessing an aid scheme, the conditions relating to the incentive effect will be deemed to be satisfied if the EFTA State has committed itself to grant individual aid under the approved aid scheme only after it has verified that an incentive effect is present and to submit annual reports on the implementation of the approved aid scheme.
- (30) The approval of the aid application must be subject to the condition that the beneficiary enters into a binding agreement to implement the specific shipbuilding, ship repair or ship conversion project or process for which the innovation aid is sought. Payments can only be made after the relevant contract is signed. If the contract is cancelled or the project is abandoned, all aid disbursed must be reimbursed with interest from the date the aid was paid out. Equally, if the project is not completed, aid that has not been used for the eligible innovation expenditure must be reimbursed with interest. The rate of interest must be at least equal to the reference rates adopted by the Authority.

3.3. **Export credits**

- (31) Aid 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.

¹⁰ This does not exclude that the potential beneficiary may have already carried out feasibility studies which are not covered by the request for State aid.

4. MONITORING AND REPORTING

- (32) The Authority's Decision No 195/04/COL, as amended, on the implementing provisions referred to under Article 27 in Part II of Protocol 3 to the Agreement between the EFTA States on the establishment of a Surveillance Authority and a Court of Justice¹¹ requires EFTA States to submit to the Authority annual reports on all existing aid schemes pursuant to the rules set forth in Part II of Protocol 3 to the Surveillance and Court Agreement and in its implementing provisions. When adopting a decision under these guidelines for all innovation aid granted under an approved scheme to large undertakings, the Authority may request EFTA States to report on how the requirement for an incentive effect has been respected in relation to aid given to large undertakings, notably using the criteria mentioned in point 3.2.4.

5. CUMULATION

- (33) The aid ceilings stipulated in these guidelines are applicable irrespective of whether the aid in question is financed wholly or in part from state resources. Aid authorised under these guidelines may not be combined with other forms of State aid within the meaning of Article 61(1) of the EEA Agreement, the cumulation of which produces an aid intensity higher than that laid down in these guidelines.
- (34) Where aid serves different purposes and involves the same eligible costs, the most favourable aid ceiling will apply.

6. APPLICATION OF THESE GUIDELINES

- (35) The Authority will apply the principles set out in these guidelines until 31 December 2013. The Authority will apply those principles to all notified aid measures in respect of which it is called upon to take a decision after 1 February 2012, even where the projects were notified prior to that date.
- (36) In accordance with the Authority's notice on the determination of the applicable rules for the assessment of unlawful state aid, the Authority will apply the principles set out in these guidelines to non-notified aid granted after 31 December 2011.

¹¹ OJ L 340, 22.12.2010, p. 1.

ANNEX

Eligible costs for innovation aid for shipbuilding

(1) New class of vessel

For the construction of a new class of vessel that is eligible for innovation aid, the following costs are eligible:

- (a) costs for the concept development;
- (b) costs for the concept design;
- (c) costs for the functional design;
- (d) costs for the detailed design;
- (e) costs for studies, testing, mock-ups; and similar costs related to the development and design of the vessel;
- (f) costs for the planning of the implementation of the design;
- (g) costs for tests and trials of the product;
- (h) incremental labour and overhead costs for a new class of vessel (learning curve).

For the purposes of points (a) to (g), costs related to standard engineering design equivalent to a previous class of vessel are excluded.

For the purposes of point (h), additional production costs that are strictly necessary to validate the technological innovation can be eligible to the extent that they are limited to the minimum necessary amount. Due to the technical challenges associated with constructing a prototype, production costs of the first vessel normally exceed production costs of the subsequent sister ships. Additional production costs are defined as the difference between the labour costs and associated overhead costs for the first in a new class of vessel and the production costs of the subsequent vessels of the same series (sister ships). Labour costs include wages and social costs.

Accordingly, in exceptional and duly justified cases, a maximum of 10 % of the production costs associated with the construction of a new class of vessel can be considered as eligible costs: if those costs are necessary to validate the technical innovation. A case is considered to be duly justified if the additional production costs are estimated to exceed 3 % of the production costs of the subsequent sister ships.

(2) New components or systems of a vessel

For new components or systems that are eligible for innovation aid, the following costs are eligible to the extent that they are strictly related to the innovation:

- (a) design and development costs;
- (b) costs for the testing of the innovation part, mock-ups;
- (c) costs for material and equipment;
- (d) in exceptional cases, the costs of construction and installation of a new component or system that are necessary to validate the innovation, to the extent that they are limited to the minimum necessary amount.

(3) New processes

For new processes that are eligible for innovation aid, the following costs are eligible to the extent that they are strictly related to the innovative process:

- (a) design and development costs;
- (b) costs for material and equipment;
- (c) costs for the testing of the new process, where applicable;
- (d) costs for feasibility studies undertaken within 12 months prior to the aid application.