

## Case T-72/98

Astilleros Zamacona SA

v

Commission of the European Communities

(State aid — Shipbuilding — Article 4(3) of Council Directive 90/684/EEC —  
Determination of the ceiling for production aid)

Judgment of the Court of First Instance (Second Chamber, Extended Com-  
position), 16 March 2000 . . . . . II - 1686

### Summary of the Judgment

1. *State aid — Prohibition — Derogations — Aid to shipbuilding — Directive 90/684 — Principle of progressive reduction of the aid ceiling — System in derogation established by Article 4(3) — Restrictive interpretation*  
(Council Directive No 90/684, Art 4(3), second para.)
2. *State aid — Prohibition — Derogations — Duty of the Member State seeking a derogation to cooperate — Duty of the Commission to use independent experts — None*  
(EC Treaty, Art. 92(2) (now, after amendment, Art. 87(2) EC), and Art. 93(2) (now Art. 88(2) EC))

3. *State aid — Prohibition — Derogations — Aid to shipbuilding — Directive 90/684 — Time-limit for delivery exceeded — Reduction in the aid ceiling — Breach of the principle of proportionality — None*  
(Council Directive No 90/684, Art. 4(3), first para.)

1. The second paragraph of Article 4(3) of Directive 90/684 on aid to shipbuilding, which permits a departure from the principle of progressive reduction in the level of aid where ships are not built within the three-year period, must be given a restrictive interpretation. The directive establishes, *inter alia*, the conditions in which operating aid in the shipbuilding industry may, exceptionally, be regarded as compatible with the common market. Moreover, the second subparagraph of Article 4(3) of the directive itself establishes a system that is in derogation from the principles set out in the first subparagraph of that provision. Moreover, the very wording of that provision, with the cumulation of conditions, shows that the legislature intended to reserve its application for very specific situations.

(see paras 52-53)

2. A Member State which seeks to be allowed to grant aid by way of derogation from the Treaty rules has a duty to cooperate with the Commission in the context of the procedure in which it participates. In pursuance of that duty,

it must in particular provide all the information necessary to enable the Commission to verify that the conditions for the derogation sought are fulfilled.

A complaint that the Commission failed to seek assistance from an independent expert in order to draft a decision in a State aid case is therefore without foundation. Moreover, no provision in the Treaty or in Community legislation imposes such an obligation.

(see paras 54-55)

3. In order to establish whether a provision of Community law complies with the principle of proportionality, it is necessary to ascertain whether the means which that provision applies to achieve its aim correspond to the importance of that aim and whether they are necessary in order to achieve it. The establishment of an imperative time-limit entailing the outright lapse of a right may be regarded as compatible with the principle of proportionality, bearing in mind the purpose of the provision in question.

Concerning the application of the first subparagraph of Article 4(3) of Directive 90/684 on aid to shipbuilding, which provides for a different aid ceiling according to whether or not the vessel is delivered within three years from the signature of the final contract, it has not been shown that, bearing in mind the aims of the directive, a reduction of the authorised aid

ceiling from 9 to 4.5% on account of delays of between seven and more than fifteen months breaches the principle of proportionality.

(see paras 89-91, 93-94)