

ORDER OF THE COURT OF FIRST INSTANCE
(First Chamber, Extended Composition)

16 June 1998 *

In Case T-238/97,

Comunidad Autónoma de Cantabria, represented by Juan Ignacio Sáez Bereciantu, of the Cantabria Bar,

applicant,

v

Council of the European Union, represented by Diego Canga Fano and Stephan Marquardt, Legal Advisers, acting as Agents, with an address for service in Luxembourg at the office of Alessandro Morbilli, Manager of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

APPLICATION for the partial annulment of Council Regulation (EC) No 1013/97 of 2 June 1997 on aid to certain shipyards under restructuring (OJ 1997 L 148, p. 1),

* Language of the case: Spanish.

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(First Chamber, Extended Composition),

composed of: B. Vesterdorf, President, C. W. Bellamy, R. M. Moura Ramos,
J. Pirrung and P. Mengozzi, Judges,

Registrar: H. Jung,

makes the following

Order

The relevant provisions

- 1 On 21 December 1990, on the basis of Article 92(3)(d) of the EEC Treaty (which later became Article 92(3)(e) of the EC Treaty) and Article 113 of the EEC Treaty, the Council adopted Directive 90/684/EEC of 21 December 1990 on aid to ship-building (OJ 1990 L 380, p. 27, hereinafter 'the Seventh Directive'), which laid down specific provisions concerning the compatibility of State aid in the ship-building sector with the common market. The Seventh Directive was amended most recently by Council Directive 94/73/EEC of 19 December 1994 (OJ 1994 L 351, p. 10).
- 2 On 22 December 1995, in view of the entry into force of an agreement on normal competitive conditions in the commercial shipbuilding and repair industry entered

into within the framework of the Organisation for Economic Cooperation and Development (OECD), the Council adopted Council Regulation (EC) No 3094/95 on aid to shipbuilding (OJ 1995 L 332, p. 1).

- 3 Article 10 of Regulation No 3094/95 provides that the regulation shall apply as from the date of entry into force of the OECD agreement. The third paragraph of that article, as amended most recently by Council Regulation (EC) No 2600/97 of 19 December 1997 (OJ 1997 L 351, p. 18), provides that 'pending the entry into force [of the OECD agreement], the relevant provisions of Directive 90/684/EEC shall apply until the Agreement enters into force and until 31 December 1998 at the latest'.
- 4 On 19 March 1997, the Commission presented to the Council a proposal for a regulation the object of which was to lay down a transitional arrangement and rules derogating from the provisions of Regulation No 3094/95 for the benefit of German, Greek and Spanish shipyards.
- 5 In response to this proposal, on 2 June 1997, the Council adopted Council Regulation (EC) No 1013/97 on aid to certain shipyards under restructuring (OJ 1997 L 148, p. 1, 'the contested Regulation').
- 6 Article 1(4) thereof provides:

'Aid for the restructuring of the publicly-owned yards in Spain may be considered compatible with the common market up to an amount of PTA 135 028 million

All other provisions of Directive 90/684/EEC shall apply to these yards.

The Spanish Government agrees to carry out, according to a timetable approved by the Commission and in any case before 31 December 1997, a genuine and irreversible reduction of capacity of 30 000 cgrt [compensated gross registered tonnes]’.

- 7 It appears from the 11th recital in the preamble to the contested Regulation that ‘under [the] restructuring plan there will be a capacity reduction in [the publicly owned yards in Spain] from 240 000 compensated gross registered tonnes (cgrt) to 210 000 cgrt’ and that ‘this reduction will be supplemented by the non-reopening to shipbuilding of the public yard at Astano (135 000 cgrt capacity), by additional capacity reductions elsewhere in Spain amounting to a further 17 500 cgrt and by not carrying out ship conversions in the shipyard at Astander as long as it remains in public ownership’.
- 8 The shipyard at Astander carries on the major part of its activities in the Comunidad Autónoma de Cantabria.

Procedure and submissions of the parties

- 9 The applicant commenced the present action by way of an application lodged at the Registry of the Court of First Instance on 14 August 1997.

- 10 By a document lodged at the Registry on 21 October 1997, the Council raised an objection of inadmissibility under Article 114(1) of the Rules of Procedure of the Court of First Instance.
- 11 By way of an application lodged at the Registry on 30 October 1997, the Commission applied for leave to intervene in support of the Council's submissions.
- 12 On 10 December 1997, the applicant lodged its observations on the objection of inadmissibility.
- 13 By way of an application lodged at the Registry on 26 January 1998, the United Kingdom of Great Britain and Northern Ireland applied to intervene in support of the Council's submissions.
- 14 In its application, the applicant claimed that the Court of First Instance should:
- annul the reference to the shipyard at Astander in the 11th recital in the preamble to the contested Regulation;
 - annul the condition which makes the grant of aid which is provided for in Articles 1 and 2 of the contested Regulation subject to the limitation on ship conversion activities in the yard in question.

15 In its objection of inadmissibility, the Council claimed that the Court of First Instance should:

— dismiss the action as inadmissible;

— order the applicant to pay the costs.

16 In its observations upon the objection of inadmissibility, the applicant claimed that the Court of First Instance should:

— dismiss the objection of inadmissibility;

— declare the application admissible and well founded;

— order the Council to pay the costs.

Admissibility

17 Under Article 114 of the Rules of Procedure, where a party requests the Court of First Instance to rule upon admissibility as a preliminary issue, the procedure thereafter on the objection of admissibility is oral, unless the Court of First Instance takes a decision to the contrary. In the present case, the Court of First Instance is of the opinion that it has sufficient information from the documents on file, and is consequently of the view that it should rule upon the application without initiating the oral procedure.

Arguments of the parties

- 18 The Council makes three pleas in law in support of its objection of inadmissibility.
- 19 First, it maintains that the applicant, being a regional authority within a Member State, does not have standing to bring proceedings as provided for in Article 173 of the EC Treaty.
- 20 The Council first of all contends that the applicant cannot rely on the second paragraph of Article 173 of the Treaty (orders of 21 March 1997 in Case C-95/97 *Région Wallone v Commission* [1997] ECR I-1787, paragraph 6, and 1 October 1997 in Case C-180/97 *Regione Toscana v Commission* [1997] ECR I-5245, paragraph 8).
- 21 If, however, the applicant is a legal person such that it may bring proceedings under Article 173(4), the Council expresses doubt as to the admissibility of an action brought by a regional authority against a legislative measure adopted by the Council which concerns State aid. The Council maintains that it is apparent from the contested Regulation that it only concerns three Member States, namely the Federal Republic of Germany, the Hellenic Republic and the Kingdom of Spain.
- 22 Only these three Member States, the Council maintains, owe a duty to the Commission to apply the contested Regulation (see to that effect Joined Cases 205/82 to 215/82 *Deutsche Milchkontor v Germany* [1983] ECR 2633). In particular, only the Spanish Government is under a duty to reduce the capacity of Spanish shipyards (the last subparagraph of Article 1(4) of the contested Regulation).

- 23 To accept as admissible an action brought by a regional authority against a Council regulation concerning State aid could, the Council argues, undermine the exclusive duty of the Member States to apply the regulation in question.
- 24 Secondly, the Council argues that the applicant has no legal interest in bringing proceedings. For an applicant to have such an interest the action must be likely, if successful, to procure an advantage to the party bringing it (Case C-19/93 P *Rendo and Others v Commission* [1995] ECR I-3319, paragraph 13). That is not the case here, however.
- 25 As to the first head of claim, which seeks the annulment of that part of the 11th recital in the preamble to the contested Regulation which refers to the shipyard at Astander, the Council maintains that that reference has no legal consequences for the applicant. The reference, the Council maintains, merely reflects a unilateral undertaking given by the Spanish Government within the Council. Consequently, it may not be considered to be a 'measure' which produces legal effects.
- 26 Moreover, the recitals in the preamble to a legislative measure have no legislative force and do not, therefore, constitute measures or decisions which are capable of being the subject-matter of an action for annulment (order of 9 June 1997 in Case T-9/97 *Elf Atochem v Commission* [1997] ECR II-909, paragraph 19).
- 27 As to the second head of claim, which seeks the annulment of the alleged condition which makes the grant of State aid provided for in Articles 1 and 2 of the contested Regulation subject to the limitation on ship conversion activities in the shipyard at Astander, the Council maintains that the reference to that yard does not constitute a material condition for the payment of aid, but merely a condition on the basis of which the Council reached an agreement for the adoption of the said regulation.

- 28 The applicant, the Council maintains, is in essence either asking the Commission not to enforce the condition imposed upon the Kingdom of Spain in its authorisation, or asking the Spanish Government to withdraw the undertaking it gave at the time of the Council's deliberations. The Council maintains that it is not for the Court of First Instance to rule upon these matters.
- 29 Thirdly, the Council maintains that the applicant is concerned neither directly nor individually, within the meaning of the fourth paragraph of Article 173 of the Treaty, by the provisions of the contested Regulation or by the 11th recital of the preamble.
- 30 The applicant observes as a preliminary matter that, in bringing its action, it is in no way challenging the principle that Member States are solely answerable to the Commission in the field of State aid. On the contrary, the action assumes the existence of such a principle. By means of its action the applicant seeks to avoid the unwanted effects which would result from the Member State concerned faithfully applying the provisions of the contested Regulation.
- 31 Contrary to what the Council alleges, to accord a regional authority *locus standi* to challenge a regulation on State aid is not, the applicant maintains, tantamount to placing such an authority on the same level as the Member States. Nor would it confer upon such an authority the status of privileged applicant which Article 173 of the Treaty confers upon the Member States.
- 32 On the other hand, the applicant is of the view that, as a legal person, it may not be deprived of the means of obtaining redress afforded by the fourth paragraph of Article 173 of the Treaty to natural and legal persons, as if a new, objective criterion of inadmissibility for an action had been established preventing them from contesting regulations adopted in the field in question.

- 33 According to the applicant, there is no possibility of confusing the status of the person to whom the regulation is addressed for the purposes of enforcing and monitoring it (for which activities the Member States are solely responsible in the field under consideration) with that of the person to whom it is directed as far as the effects which the regulation as such produces are concerned.
- 34 The applicant alleges that although the Council used the form of a regulation, it made its effects contingent upon compliance with a decision, which is also mandatory, and which, in contrast to the regulation, is addressed to specific persons, including the Comunidad Autónoma de Cantabria.
- 35 According to the applicant, where it is directly or individually affected by a regulation, as it is here, it must be able to challenge that regulation in accordance with the fourth paragraph of Article 173 of the Treaty.
- 36 As regards *locus standi*, the applicant contends that, although the recitals of a preamble are generally no more than a statement of the reasons on which a legal measure is based, that is not the case in the present instance.
- 37 In the 11th recital of the preamble to the contested Regulation, the Council inserted a pre-condition into a general provision. In fact the recital makes the normative content of the contested Regulation, which authorises the Commission to approve certain State aid in favour of Spanish shipyards, subject to compliance, in particular, with a limitation on the activities of the shipyard at Astander.
- 38 Even if, originally, it was a question of a unilateral undertaking given by the Spanish Government within the Council, the applicant maintains that it became more than that once it was incorporated in the contested Regulation: from then on the undertaking produced legal effects such that it made the actual result of the regu-

lation's provisions subject to compliance with that undertaking. Consequently, the undertaking may be the subject-matter of an action, since it produces specific and direct effects for the applicant.

- 39 Lastly, the applicant contests the validity of the Council's argument that the applicant is neither directly nor individually affected by the contested Regulation. The 11th recital of the preamble to the contested Regulation clearly has socio-economic repercussions for the Comunidad Autónoma de Cantabria, where the shipyard at Astander is situated.
- 40 The effects which the contested Regulation aims to produce cannot, according to the applicant, be regarded as indirect, because limiting the activities of the shipyard directly affects the region where the shipyard carries on its activities, and thus directly affects the applicant. The geographical situation of the shipyard concerned, it is alleged, also makes it possible to distinguish the applicant from other bodies of a similar nature.
- 41 The applicant maintains that, as a regional authority, it has *locus standi*, just as the shipyard in question and the municipality where it is situated do.

Findings of the Court

- 42 The applicant cannot, in its capacity as a self-governing community, rely on the second paragraph of Article 173 of the Treaty. It is manifestly clear from the general scheme of the Treaty that the concept of Member State, within the meaning of the provisions relating to remedies, only applies to the government authorities of the Member States of the European Communities and cannot be extended to regional governments or self-governing communities, regardless of the extent of

their powers (*Regione Toscana v Commission*, cited above, paragraph 8, Case T-214/95 *Vlaams Gewest v Commission* [1998] ECR II-717, paragraph 28).

- 43 On the other hand, since the applicant is a legal person under Spanish national law — a point which is not contested by the Council — it may, in principle, bring an action for annulment under the fourth paragraph of Article 173 of the Treaty, pursuant to which any natural or legal person may institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.
- 44 By means of the contested Regulation, the Council gave the Commission power to adopt decisions addressed to the German, Greek and Spanish Governments, authorising the payment of new aid to certain shipyards situated in their respective territories. However, it is clear that none of the provisions of the contested Regulation is directed at the applicant, in the sense of conferring rights or imposing duties on it.
- 45 The admissibility of the present action therefore depends on whether the contested Regulation concerns the applicant directly and individually within the meaning of the fourth paragraph of Article 173 of the Treaty.
- 46 The applicant claims that the contested Regulation does concern it because implementation of the undertaking contained in the 11th recital of the preamble entails a limitation on the activities of the shipyard at Astander and, consequently, would have serious socio-economic implications within its territorial jurisdiction.
- 47 The contested Regulation relates to a procedure for the application of provisions concerning State aid, the purpose of which is, among others, to ensure that there is

genuine competition in the shipbuilding sector. It is therefore the shipyards which, as the economic agents to whom the contested Regulation is directed, are principally concerned by its provisions.

- 48 As to the question whether the regulation may be considered to be 'of concern' to other natural or legal persons within the meaning of the fourth paragraph of Article 173 of the Treaty, settled case-law shows that an association set up to promote the collective interests of a category of persons cannot be considered to be individually concerned by a measure which affects the general interests of that category of persons and, consequently, is not entitled to bring an action for annulment where its members cannot individually do so (see, for example, Case T-122/96 *Federolio v Commission* [1997] ECR II-1559, paragraph 69).
- 49 In the light of this case-law, the Court of First Instance considers that any general interest the applicant may have, as a third person, in obtaining a result which will favour the economic prosperity of a given business and, as a result, the level of employment in the geographical region where it carries on its activities, is insufficient, on its own, to enable the applicant to be regarded as 'concerned' within the meaning of the fourth paragraph of Article 173 of the Treaty, by the provisions of the contested Regulation, nor, *a fortiori*, as being individually concerned (see to that effect Case C-295/92 *Landbouwschap v Commission* [1992] ECR I-5003, paragraph 12, and Case 197/80, 198/80, 199/80, 200/80, 243/80, 245/80 and 247/80 *Ludwigshafener Walzmühle Erling and Others v Council and Commission* [1981] ECR 1041, paragraphs 8 and 9).
- 50 Reliance by a regional authority of a Member State on the fact that the application or implementation of a Community measure is capable generally of affecting socio-economic conditions within its territorial jurisdiction is not sufficient to render an action brought by that authority admissible.

- 51 In any event, even if the statement relating to the shipyard at Astander, which is contained in the 11th recital of the preamble to the contested Regulation, had to be considered as a condition to which a subsequent decision of the Commission authorising the grant of aid provided for in Article 1(4) of that regulation is subject, the applicant is not directly affected by such a 'condition'.
- 52 Indeed, the simple fact of adopting the contested Regulation cannot alone entail the consequences for employment in the region and the socio-economic repercussions which the applicant alleges.
- 53 The creation of such consequences necessarily supposes, first, the adoption of a decision by the Commission authorising the payment of aid on condition that no ship conversions are undertaken in the shipyard at Astander, and, secondly, the adoption by the shipyard of autonomous measures connected with that decision, namely making employees redundant. The possibility that such measures would not in fact be taken is, however, not merely hypothetical. That circumstance is enough, according to case-law, to establish that the applicant is not directly concerned by the provisions of the contested Regulation (see, in this connection, Case 11/82 *Piraiiki-Patraiki and Others v Commission* [1985] ECR 207, paragraph 7, Case T-12/93 *CCE de Vittel and Others v Commission* [1995] ECR II-1247, paragraph 53, and Case T-189/97 *CE de la Société Française de Production and Others v Commission* [1998] ECR II-335, paragraph 47).
- 54 It follows from all those considerations that the application must be declared inadmissible. Consequently, there is no need to rule on the requests to intervene in support of the Council's arguments presented by the Commission and the United Kingdom.

Costs

- 55 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been asked for in the successful party's pleadings. Since the applicant has been unsuccessful, it must, having regard to the form of order sought by the Council, be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE
(First Chamber, Extended Composition)

hereby orders:

1. The application is dismissed as inadmissible.
2. The applicant is ordered to pay the costs.

Luxembourg, 16 June 1998.

H. Jung

B. Vesterdorf

Registrar

President