II

*(Acts whose publication is not obligatory)*

# COMMISSION

## COMMISSION DECISION

## of 20 October 2004

## on the State Aid C 38/03 implemented by Spain (further restructuring aid to the public Spanish shipyards)

*(notified under document number C(2004) 3918)*

**(Only the Spanish version is authentic)**

**(Text with EEA relevance)**

(2005/652/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having regard to Council Regulation (EC) No 1013/97 of 2 June 1997 on aid to certain shipyards under restructuring [1],

Having regard to Council Regulation (EC) No 1540/98 of 29 June 1998 establishing new rules on aid to shipbuilding [2],

Having called on interested parties to submit their comments pursuant to the provisions cited above [3] and having regard to their comments,

Whereas:

### I. THE PROCEDURE

(1) Based on Regulation (EC) No 1013/97, the Commission in a decision of 6 August 1997 [4] authorised restructuring aid for Spanish public shipyards amounting to approximately EUR 1,9 billion. According to both the decision and Council Regulation (EC) No 1013/97 the condition for the approval of the aid was that no more aid for restructuring purposes should be provided.

(2) In the years 2000, 2001 and 2002, the state holding company Sociedad Estatal de Participationes Industriales (hereafter SEPI) provided IZAR Construcciones navales (hereafter IZAR) with capital injections for a total sum of EUR 1 477 million. By letters dated 8 November 2002 and 14 January 2003, the Commission requested information on this matter.

(3) By decision of 27 May 2003 the Commission initiated the procedure laid down in Article 88(2) of the EC Treaty (hereafter the opening) concerning the transactions whereby SEPI injected EUR 1 477 million in IZAR. The Spanish authorities were informed of the decision in a letter from the Commission dated 28 May 2003.

(4) Spain, by letters dated 11 July 2003, 29 July 2003, 11 August 2003, 19 January 2004, 23 February 2004, 14 April 2004 and 26 July 2004 submitted its comments on the opening of the procedure.

(5) Following the opening of the procedure, the Commission received comments from Royal Van Lent Shipyard by letter dated 24 September 2003, from a party requesting anonymity by letter dated 24 September 2003 and from IZAR by letter dated 6 October 2003. These comments were forwarded to Spain by letter of 13 October 2003. Spain provided comments by letter dated 10 November 2003. IZAR on 17 November 2003 brought an action [5] against the Commission before the Court of First Instance, requesting an annulment of the opening of the procedure.

[1] OJ L 148, 6.6.1997, p. 1.
[2] OJ L 202, 18.7.1998, p. 1.
[3] OJ C 201, 26.8.2003, p. 3.
[4] OJ C 354, 21.11.1997, p. 2.
[5] OJ C 21, 24.1.2004, p. 42, Case T-382/03.

## II. DETAILED DESCRIPTION OF THE AID

*THE BENEFICIARIES*

(6) SEPI in July 2000 decided to merge all the publicly owned, military and civil shipyards and related activities, which at that time operated as companies, into one group. All the civil shipyards and related activities were therefore bought, on 20 July 2000, by BAZAN and then merged into BAZAN which subsequently changed name to IZAR.

(7) IZAR's civil activities mainly take place at Astilleros de Cadiz (Cadiz), Astilleros de Puerto Real (Puerto Real), Astilleros de Sestao (Sestao), Astilleros de Sevilla (Sevilla), Juliana Constructora Gijonesa (Juliana), Fábrica de Manises (Manises), Astilleros de Fene (Fene). IZAR also have three mainly military shipbuilding sites, Ferrol, Cartagena and San Fernando.

*THE AID*

(8) The investigation covers the following capital injections from SEPI: EUR 1 322,227 million (ESP 220 billion), provided to BAZAN on 28 July 2000, EUR 105,171 million provided to IZAR in 2001 and EUR 50,000 million provided to IZAR in 2002.

(9) In the opening decision the Commission noted that the capital provided by SEPI to IZAR may confer economic benefits to civil shipbuilding which they were unlikely to have received from commercial sources. The measures therefore were likely to constitute aid. By its nature such aid is likely to distort competition.

(10) Based on the recent history of the civil yards, the Commission therefore suspected that the civil yards had received financial support through the capital injections given to IZAR and had doubts that such support would be in compliance with the rules on state aid for shipbuilding. The objective of this state aid procedure is therefore to clarify if any of the capital provided to IZAR has benefited the civil shipyards or other civil activities.

## III. COMMENTS FROM INTERESTED PARTIES

*COMMENTS TO THE OPENING OF THE PROCEDURE*

(11) The Commission received comments from three parties. A party requesting anonymity made a joint comment for this case and State aid case C-40/00 [1]. It underlines that the investigated aid has created a serious distortion in the market of recreational ships. Another joint comment for this case and case C-40/00 was received from Royal van Lent Shipyard B.V. The company claims that aids granted by the Spanish government during the past years has been extremely prejudicial for many of the competitors in the market for mega yachts.

(12) The Commission also received comments from IZAR. IZAR claims that the concerned capital injections fall under Article 296 of the EC Treaty, and that any problems concerning distortion of trade should be treated within the context of the cooperation procedure of Article 298 of the EC Treaty. IZAR also claims that the capital injected by SEPI is not State resources and in any case falls under the market investor principle. IZAR finally claims that the possibility of recovery of any aid provided to the public Spanish shipyards in 1997 is unacceptable since it is existing aid.

## IV. COMMENTS FROM SPAIN

*COMMENTS FOLLOWING THE OPENING*

(13) In the procedure, Spain provided the Commission with the following arguments on why, in its view, no State aid was involved in the concerned capital injections.

(14) Firstly, Spain claims that SEPI acted as a private investor in a market economy, that aims at maximizing profits, and that the Commission did not prove that SEPI's resources comes from the State or are imputable to the State.

(15) Furthermore, the capital was injected in the context of a plan for the company BAZAN, which used to be a military company. The capital was injected in order to cover a number of costs linked to this plan, developed in 1998. In particular, EUR […] (*) million related to so-called externalisation of social costs linked to pre-pensions by former BAZAN employees. This amount was paid to insurance companies in the years 2000 to 2002, which pay out the pensions. The increased costs for these commitments explains, according to Spain, the additional capital injections from SEPI to IZAR in 2001 and 2002.

(16) In addition, a further approximately EUR […] million had been paid for such social costs directly from BAZAN to some pre-retired employees.

(17) The rest of the capital injected was, according to Spain, needed to cover investments in the military areas of the new company IZAR, amounting to EUR […] million, and for an increased need for working capital for military constructions.

(18) Spain also stated that these measures should be analysed within the context of Article 296 of the EC Treaty, since the capital was provided to BAZAN, which according to Spain was a purely military company at the time of the injection of the capital.

(19) Spain furthermore argued against the possibility that some of the aid authorised in 1997 would become incompatible in case the Commission would declare that further illegal aid has been provided to the public Spanish shipyards.

[1] OJ C 199, 23.8.2003, p. 9.

(*) Confidential information.

(20) In reaction to the comments provided by third parties Spain fully agrees with all that was stated by IZAR, and denies that IZAR has an important activity in the luxury yacht sector.

(21) Spain at a later stage of the procedure provided further information requested by the Commission, i.e. the estimated losses of the civil activities of IZAR, from 1 July 2000 to 31 December 2003 and information on the overhead costs of IZAR during this period.

## V. **ASSESSMENT**

### *LEGAL BASE*

(22) According to Article 87(1) of the EC Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market. Pursuant to the established case-law of the European Courts, the criterion of trade being affected is met if the recipient firm carries out an economic activity involving trade between Member States.

(23) According to Article 87(3)(e) of the EC Treaty, categories of aid specified by a decision of the Council acting by a qualified majority on a proposal from the Commission may be considered compatible with the common market. The Commission notes that the Council adopted on this basis Regulation (EC) No 1540/98 (hereafter the Shipbuilding Regulation), which was in force from 1 January 1999 to 31 December 2003. Although Regulation (EC) No 1540/98 expired on 31 December 2003, and is not concerned by the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid [1], in the interest of a consistent practice the Commission — using its broad margin of appreciation — intends to apply that Regulation in the present case.

(24) Shipbuilding is an economic activity involving trade between Member States. Therefore, aid to shipbuilding falls within the scope of Article 87(1) of the EC Treaty.

(25) The Commission notes that according to the Shipbuilding Regulation, 'shipbuilding' means building of self-propelled seagoing commercial vessels. The Commission further notes that IZAR builds these ships and that consequently it is an undertaking covered by the Regulation. The Commission further notes that Article 2 of the said Regulation states that aid granted for shipbuilding, ship repair and ship conversion may be compatible with the common market only if it complies with the provisions of the Regulation. This provision applies not only to aid granted to undertakings engaged in such activities but also to related entities.

(26) In August 1997, pursuant to Regulation (EC) No 1013/97, the Commission exceptionally approved a package of restructuring aids for the Spanish public civil shipyards in order for them to return to viability by the end of 1998. Including aids previously approved, the total package was ESP 318 billion (EUR 1,9 billion).

(27) In giving its agreement, the Council stressed the 'one time, last time' nature of the aid package. The Spanish government had undertaken the commitment that the yards would not receive any further aid for restructuring, rescue, loss compensation or privatisation. This was reflected in the conditions attached to the Commission's decision approving the aid. It was also underlined in the first indent of the second subparagraph of Article 5(1) of the Shipbuilding Regulation. This provision states that no rescue or restructuring aid may be granted to an undertaking that has been granted such aid pursuant to Regulation (EC) No 1013/97.

(28) As a consequence, aid in excess of the aid that was authorised by the initial Commission decision of August 1997 would have to be considered as incompatible with the common market, unless approved under another legal base.

(29) The Commission notes that the shipyards Sestao, Puerto Real, Sevilla, Cadiz, and Juliana were undertakings covered by Regulation (EC) No 1013/97 and the 1997 Commission decision referred to above. Manises and Fene (ex Astano) are related entities since they were owned by the shipbuilding company IZAR during the period under investigation, and therefore also covered by the Shipbuilding Regulation, pursuant to its Article 1(g).

### *ASSESSMENT OF AID*

#### 1. THE ROLE OF SEPI

(30) In its decision to open the formal procedure the Commission considered that SEPI acted on behalf of the State, i.e. that its behaviour in the different transactions is imputable to the State. Spain has contested this, and claimed that SEPI functions independently from the State and that therefore its behaviour is not imputable to the State. In any way, in Spain's view, SEPI acted as a market investor and therefore the funds provided from SEPI in this case could not be considered as State aid.

[1] OJ C 119, 22.5.2002, p. 22 (see the last sentence: 'The present notice is without prejudice to the interpretation of Council and Commission regulations in the field of State aid.')

(31) The Commission notes that SEPI is a public holding company which is directly depending on the Ministry of Finance. As such it is considered as a public undertaking in the sense of Commission Directive 2000/52/EC of 26 July 2000 amending Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings [1], since due to its ownership or its financial participation, the public authorities can directly or indirectly exercise a dominant influence on SEPI.

(32) The Court has defined when funds are considered to be state resources. It has e.g. stated that even if the sums corresponding to the measure in question are not permanently held by the Treasury, the fact that they constantly remain under public control, and therefore available to the competent national authorities, is sufficient for them to be categorised as State resources (Court judgment in Case C-83/98 P, France v Ladbroke Racing and Commission [2]). This clearly applies to SEPI's resources.

(33) The Court has further taken a decision (Court judgment C-482/99, Stardust marine [3]), outlining the criteria for imputability to the State of an aid measure taken by a public undertaking. This may, according to the Court, be inferred from a set of indicators arising from the circumstances of the case and the context in which that measure was taken.

(34) Examples of indicators provided by the Court are the integration of the public company into the structures of the public administration, the nature of its activities and the exercise of the latter on the market in normal conditions of competition with private operators, the legal status of the undertaking (in the sense of its being subject to public law or ordinary company law), the intensity of the supervision exercised by the public authorities over the management of the undertaking, or any other indicator showing, in the particular case, an involvement by the public authorities in the adoption of a measure or the unlikelihood of their not being involved, having regard also to the compass of the measure, its content or the conditions which it contains.

(35) SEPI is a company with a particular legal status, with e.g. its annual reports not accessible in the public Spanish registry. The supervision of the company is exercised by its board of directors constituting to a large extent of State secretaries and other persons directly linked to the government. The nature of its activities include privatisation of state owned companies, which is an activity that is closely linked to public policy. Furthermore, SEPI has a history of behaviour towards the shipyards which has been carried out in a manner that can be considered imputable to the State, such as providing part of the authorised restructuring aid in 1997 and unlawful aid in 1998 [4]. It can also be noted that SEPI in other circumstances provides State aid, such as to the Spanish coal industry [5].

(36) It derives from points 31 and 32 above that SEPI's funds are state resources. Furthermore, it derives from points 33 to 35 above that the provision of its funds under investigation in this case, to shipbuilding companies, must be considered imputable to the State in so far as they are provided on terms not in conformity with market economy principles.

(37) The general principle that applies for financial transactions between the state and public companies, is the so called market economy investor principle. Given that SEPI's funds are State resources, it is essential that SEPI, in its economic transactions with its shipbuilding subsidiaries (whether the subsidiaries are companies with economic activities or holding companies to such companies) acts fully in line with the market economy investor principle.

(38) The market economy investor principle is explained in detail in the Commission communication to the Member States [6] on the Application of Articles 92 and 93 of the EEC Treaty and of Article 5 of Commission Directive 80/723/EEC of 25 June 1980 on the transparency of financial relations between Member States and public undertakings to public undertakings in the manufacturing sector [7]. The Court has also, e.g. in Case C-40/85 [8] stated that the appropriate ways of establishing whether the measure is State aid is to apply the criterion to what extent the undertaking would be able to obtain the sums in question on the private capital markets at the same conditions. It continues, 'in particular, whether in similar circumstances a private shareholder, having regard to the forseeability of obtaining a return and leaving aside all social, regional policy and sectoral considerations, would have subscribed the capital in question'.

(39) The Commission does not exclude that funds provided by SEPI may be free of aid as long as SEPI's actions comply with the market investor principle. The Commission will therefore, for the capital injection under scrutiny, assess whether SEPI acted according to the market investor principle.

[1] OJ L 193, 29.7.2000, p. 75.
[2] [2000] ECR I-03271, paragraph 50.
[3] [2002] ECR I-04397, paragraphs 55 to 56.
[4] OJ L 37, 12.2.2000, p. 22.
[5] OJ L 296, 30.10.2002, p. 73.
[6] OJ C 307, 13.11.1993, p. 3.
[7] OJ L 195, 29.7.1980, p. 35.
[8] [1986] ECR 2321.

2. AID CONTAINED IN THE CAPITAL INJECTIONS FROM SEPI TO BAZAN/IZAR

(a) ***Aid to a purely military company***

(40) Spain claims that on 28 July 2000, when BAZAN received the main capital injection, it was a purely military company since it had not yet merged with the civil shipyard companies it recently had acquired. Therefore Spain argues that any aid provided to BAZAN would enjoy the derogation provided for in Article 296 of the EC Treaty.

(41) The Commission does not agree with this and notes that when the capital was provided, BAZAN owned all the concerned civil shipyards and related activities. Whether BAZAN owned the civil activities in the form of 100 % owned subsidiaries or as assets can not be relevant. It can also be noted that the civil subsidiaries were merged into BAZAN two months later. It is the final use of the funds by the beneficiary that is relevant for whether the aid potentially distorts competition among civil shipyards in the common market.

(b) ***Use of the funds for social costs***

(42) In the opening of the procedure the Commission had doubts as to whether the social costs linked to BAZAN's past (before July 2000) were linked exclusively to military production, due to the fact that BAZAN in the past appears to have produced some civil ships. The Commission therefore doubted that the funds provided to cover these costs would fall under Article 296 of the EC Treaty.

(43) The Commission notes that the social costs linked to BAZAN's past indeed cover a part of the total capital provided. Spain has been able to demonstrate that EUR […] million was provided to external insurance companies to cover costs for pre-pensions of the former military shipyards. This amount covers part of the capital provided in 2000, and all capital provided in 2001 and 2002. The additional capital injections in 2001 and 2002 were motivated by unexpected increased costs for these pre-pensions. Spain has also argued that a further EUR […] million was paid directly by BAZAN to certain pre-retired BAZAN employees.

(44) However, the social costs linked to BAZAN's military past do not cover the entire amount of capital provided by SEPI. The Commission has furthermore not been provided with convincing information about the need for more working capital for the military yards, nor a convincing argument why investments in military shipbuilding should be financed entirely with own capital, instead of with mostly loans, which would be a normal market behaviour. Therefore, Spain did not demonstrate that the full use of the funds provided by SEPI to IZAR was for military purposes.

(c) ***Loss coverage for civil activities***

(45) Spain has provided the Commission with estimated financial results of the civil activities of IZAR for the years 2000 to 2003. This information indicates a total loss for the civil activities within IZAR of EUR 290 million, as specified in Table 1.

*Table 1*

**Estimated results of IZAR's civil activities 2000 to 2003** [1]

*(EUR million)*

| | Gijon | Sestao | Pto Real | Sevilla | Cadiz | Fene | Manises | Total |
|---|---|---|---|---|---|---|---|---|
| 2000 | […] | […] | […] | […] | […] | […] | […] | – 80,2 |
| 2001 | […] | […] | […] | […] | […] | […] | […] | – 103,6 |
| 2002 | […] | […] | […] | […] | […] | […] | […] | – 59,9 |
| 2003 | […] | […] | […] | […] | […] | […] | […] | – 46,4 |
| Total | […] | […] | […] | […] | […] | […] | […] | – 290,1 |

[1] The results in this table do not take into account losses incurred by Sestao, Puerto Real and Sevilla covered by the extraordinary gains referred to in paragraphs 46 and 51 below.

(46) The results are provided after extraordinary gains, which in particular affected Puerto Real, Sestao and Sevilla due to the fact that these companies had positive book values at the time they were bought by BAZAN for a symbolic price. From the table it can be concluded that IZAR has covered losses generated in its civil activities for a total sum of EUR 290 million during the period 1 July 2000 to 31 December 2003.

(47) Furthermore, Spain has provided information concerning the central costs of IZAR, which have not been allocated to the civil activities in the calculation of the results in Table 1. The total amount of central costs for the period 2000 to 2003 were EUR […] million. The civil activities' share of the turnover of IZAR was […] % during this period. Using this as a key to distribute the central costs would imply an additional loss of the civil activities of EUR 74 million over the concerned period.

(48) In total, the civil activities of IZAR thus made an estimated loss of EUR 364 million over the period 2000 to 2003.

(49) When BAZAN acquired the civil activities, it had limited financial resources (own capital EUR 100 million by the end of 1999). It furthermore appears to have made losses (based on IZAR's annual reports) in it military activities in 2000 to 2002 of approximately EUR […] million. It can therefore be established that the losses of IZAR's civil activities had to be covered by the capital injection provided in year 2000.

**Market economy investor principle**

(50) The next issue to be assessed is whether in similar circumstances a private shareholder, having regard to the foreseeability of obtaining a return and leaving aside all social, regional policy and sectoral considerations would have provided the capital for use in question. The Court has stated that an appropriate way of establishing whether a capital injection is state aid is to apply the criterion of determining to what extent the undertaking would be able to obtain the sums in question on the private capital markets, the so called private investor test ([1]).

(51) From the information provided by Spain it is clear that the civil companies bought by BAZAN in July 2000 were in economic difficulties (see Table 2).

*Table 2*

**Book values and financial risks (estimated by Spain) in July 2000**

*(EUR million)*

| Company | Book value | Estimated Risks | Estimated net value |
|---|---|---|---|
| Companies sold by AESA to BAZAN/IZAR: | | | |
| Puerto Real | […] | […] | […] |
| Sestao | […] | […] | […] |
| Sevilla | […] | […] | […] |
| Companies sold by SEPI to BAZAN/IZAR: | | | |
| Cadiz | […] | […] | […] |
| Juliana | […] | […] | […] |
| Manises | […] | […] | […] |
| Fene | […] | […] | […] |
| Total sum | 130,5 | 192,6 | – 62,1 |

(52) There were furthermore no signs that the difficult financial situation for the civil activities, which had been loss-making for several years, would improve. It can therefore be excluded that the civil activities, under the ownership of BAZAN/IZAR would generate an acceptable rate of return, due to their past performance and the lack of any restructuring measures foreseen. This is also confirmed by the information provided by Spain, which states that each of IZAR's civil activities made operating losses in each year since 2000, with some minor exceptions.

(53) For these reasons, it can be established that IZAR would not have been able to obtain loans or capital on the private capital markets to cover the losses of its civil activities. Therefore, the provision of capital to these activities did not comply with the private investor test. For the same reasons SEPI could not have expected a return on this capital. Therefore the provision of these resources from SEPI to IZAR did not comply with the market economy investor principle. Therefore the capital injected for the use of the civil activities constitutes State aid to IZAR. This State aid was illegal, given that it was not notified to the Commission.

(54) It can furthermore be concluded that this aid was not compatible with the common market as it cannot be authorised as restructuring aid, since for the shipyards this was not allowed, due to the reasons invoked above. It can neither be authorised for the other concerned activities, Fene and Manises, since no restructuring plan has been presented by Spain. The aid can neither be approved under any other provision of the shipbuilding Regulation. Furthermore, based on the information available, the aid could not be authorised based on any other of the derogations foreseen in Article 87(2) and (3) of the EC Treaty.

([1]) Case C-342/96 Spain v Commission [1999] ECR I-2459, paragraphs 41 and 42, and Case C-256/97 DMT [1999] ECR I-3913, paragraphs 22 to 24 and the opinion of AG Jacobs in that case, paragraphs 34 to 36.

**Loans repaid by IZAR on behalf of three activities**

(55) As was established in State aid decision on case C-40/00, loans amounting to EUR 192,1 million were on 12 September 2000 repaid to SEPI, with interest, by IZAR. The funds had been provided in 1999 to the companies Juliana, Cadiz and Manises, which subsequently were taken over by BAZAN/IZAR in July 2000. As stated in the decision on case C-40/00, information linked to this loan repayment would be used in the present investigation.

(56) According to information received from Spain, the reported losses for the civil activities for the year 2000, in Table 1 above, do not include the repayment of the above-mentioned loans.

(57) It is evident that funds provided by SEPI in 1999 benefited the civil companies Juliana, Cadiz and Manises. However, since the repayment of these loans was made from the general accounts of IZAR, the effect is that the three companies, later dissolved into business units, benefited from not having to repay the concerned loans. It is thus clear that it was IZAR, which through the payment from its own resources, alleviated Juliana, Cadiz and Manises from the financial burden to repay the loans.

(58) The Commission has assessed whether the loans repaid by IZAR could have been financed with funds received through a new loan taken by IZAR on market conditions. Concerning this aspect the Commission considers that without the capital injection in the year 2000, which has been shown above to have been used to support the civil activities of IZAR, IZAR's financial situation would have been much worse than it was. For this reason it can be excluded that IZAR could have received a loan on market condition if it had not received the illegal and incompatible aid in the form of EUR 364 million of the capital injection.

(59) The repayment of EUR 192,1 million by IZAR to SEPI should therefore be considered as a further use of the capital injection under investigation to the benefit of IZAR's civil activities. For the same reasons as outlined above for the loss coverage, this use of funds for the civil activities did not comply with the market economy investor principle and the corresponding amount used from the capital injected to IZAR constitutes incompatible State aid to IZAR.

**Summary**

(60) Based on the above assessment the Commission concludes that IZAR's civil activities have benefited from the capital injection provided from SEPI to IZAR in year 2000, by receiving loss coverage of EUR 364 million as outlined in paragraph 48 above, plus the aid repayment of EUR 192,1 million as outlined in paragraph 51 above. The total aid amount is thus EUR 556,1 million. The additional capital injections in 2001 and 2002 from SEPI to IZAR were used to cover unexpected increased costs for pre-pensions in the former military shipyards and do not constitute aid.

*RECOVERY OF RESTRUCTURING AID ALREADY GRANTED AND APPROVED IN 1997*

(61) Since the doubts of further incompatible State aid to the public Spanish civil shipyards have been confirmed, the Commission must assess, as noted in the opening of the procedure, whether some of the restructuring aid granted in 1997 will be considered to be incompatible and be recovered.

(62) On this issue, the Commission considers that, taking into consideration the comments made by Spain and IZAR in the context of this procedure, there is no grounds to consider part of the restructuring aid authorised in 1997 to be incompatible. The reason is that, according to the decision [1] authorising the aid, the Commission's right to request recovery of the aid authorised in 1997 expired with the last monitoring report [2], dated 13 October 1999. Therefore, the aid approved in 1997 became existing aid once the monitoring period expired.

*ARTICLE 296*

(63) Spain claims that the capital injection would fall under Article 296 and thus outside the scope of the state aid rules, since BAZAN was a military company at the time of the acquisition of the yards.

(64) It cannot be disputed that the civil activities needed financial aid in order to continue operations after July 2000. The mere fact that they were part of a shipbuilding company, which was involved in military construction, does not alter the nature of these shipyards and related activities. Therefore aid to such activities falls under Article 87 of the Treaty.

VI. **CONCLUSION**

(65) The Commission concludes that Spain has unlawfully implemented aid of a sum of 556 million euro in breach of Article 88(3) of the Treaty. This has been provided in the form of: Capital injection of 1 322 million euro from SEPI to IZAR, in year 2000, out of which 556,1 million euro benefited the civil activities of IZAR.

(66) The aid should be recovered in their totality from the current owners of these activities, IZAR,

[1] OJ C 354, 21.11.1997, p. 2, see the penultimate paragraph on page 7.
[2] COM(1999) 480 final.

HAS ADOPTED THIS DECISION:

*Article 1*

The State aid amounting to EUR 556,1 million euro unlawfully granted by Spain, in breach of Article 88(3) of the Treaty, in favour of IZAR is incompatible with the common market.

*Article 2*

1. Spain shall take all necessary measures to recover from IZAR the aid referred to in Article 1 and unlawfully made available to the beneficiary.

2. Recovery shall be effected without delay and in accordance with the procedures under national law, provided these allow the immediate and effective implementation of this Decision. The sums to be recovered shall bear interest throughout the period running from the date on which they were put at the disposal of the beneficiary until their actual recovery. The interest rate to be applied will be the reference rate used for calculating the grant equivalent of regional aid. The interest rate referred to in paragraph 4 will be applied on a compound basis throughout the entire period referred to in paragraph 3.

*Article 3*

Spain shall inform the Commission, within two months following notification of this Decision, of the measures already taken and planned to comply with it. It will provide this information using the questionnaire attached in the Annex of this Decision.

*Article 4*

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 20 October 2004.

*For the Commission*

Mario MONTI

*Member of the Commission*

*ANNEX*

**INFORMATION REGARDING THE IMPLEMENTATION OF THE COMMISSION DECISION C(2004) 3918**

1. **Calculation of the amount to be recovered**

1.1. Please provide the following details on the amount of unlawful State aid that has been put at the disposal of the beneficiary:

| Date(s) of payment (*) | Amount of aid (**) | Currency | Identity of beneficiary |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

(*) Date(s) on which (individual instalments of) the aid has been put at the disposal of the beneficiary (in so far as a measure consists of several instalments and reimbursements, use separate rows).
(**) Amount of aid put at the disposal of the beneficiary (in gross aid equivalents).

*Comments:*

1.2. Please explain in detail how the interests to be paid on the amount of aid to be recovered will be calculated?

2. **Measures planned and already taken to recover the aid**

2.1. Please describe in detail what measures have already been taken and what measures are planned to effect an immediate and effective recovery of the aid. Please also explain what alternative measures are available under national law to effect recovery? Please also indicate where relevant the legal basis for the measures taken/planned.

2.2. By what date will the recovery of the aid be completed?

3. **Recovery already effected**

3.1. Please provide the following details on the amounts of aid that have been recovered from the beneficiary:

| Date(s) (*) | Amount of aid repaid | Currency | Identity of beneficiary |
|---|---|---|---|
| | | | |
| | | | |
| | | | |

(*) Date(s) on which the aid has been repaid.

3.2. Please attach information documenting the repayment of the aid amounts specified in the table under point 3.1 above.