



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 22/13**

Luxembourg, 28 February 2013

Judgment in Case C-246/12 P  
Ellinika Nafpigia AE v European Commission

**The Court of Justice confirms the validity of the Commission's decision according to which Greece was required to recover the aid, granted to the Skaramangkas shipyards, which was incompatible with the common market**

*While the Treaty provides Member States with the means of safeguarding their essential security interests, it does not allow them to adversely affect competition with regard to products which are not intended for specifically military purposes*

Ellinika Nafpigia AE (Hellenic Shipyards, 'EN') is a large shipyard in Greece which, in 1985, was purchased by the State-owned Hellenic Bank of Industrial Development (Elliniki Trapeza Viomikhanikis Anaptixeos AE; 'ETVA').

In the context of EN's privatisation, in 2001, its shares were sold to the consortium of German companies Howaldtswerke-Deutsche Werft GmbH (HDW) and Ferrostaal GmbH, which, with a view to managing their holdings in EN, set up Elliniki NafpigoKataskevastiki AE Khartofilakiou (Greek Naval Shipyard Holding; GNSH). In 2005, ThyssenKrupp AG acquired HDW and GNSH and has therefore 100% ownership and control of the shipyards. At present, the shipyards produce essentially military vessels.

As from 1992, the Greek Government granted the shipyards several amounts of aid, some of which, pursuant to a directive concerning operating aid to shipbuilding<sup>1</sup>, were approved by the Commission<sup>2</sup>.

By contrast, in 2006<sup>3</sup>, the Commission required Greece to recover from EN, within four months, sixteen amounts of aid<sup>4</sup>, together with interest. In addition, Greece was required to notify, within two months, the amount to be recovered, a detailed description of the measures already taken, and also proof that the beneficiary had been ordered to repay the aid. The Greek Government was also required to keep the Commission informed of the progress of the national measures taken to implement the decision<sup>5</sup>.

The shipyards challenged that decision before the General Court of the European Union, which, by a judgment delivered in 2012<sup>6</sup>, rejected all of the arguments put forward<sup>7</sup>.

In the present appeal, EN has challenged that judgment, submitting before the Court of Justice that the General Court erred in law in holding that the aid had benefited the production of civil material,

<sup>1</sup> Council Directive 90/684/EEC of 21 December 1990 (OJ 1990 L 380, p. 27).

<sup>2</sup> The amounts of aid approved correspond to a total estimated value of €343 million.

<sup>3</sup> Commission Decision C(2008) 3118 final (2009/610/EK E(2010) 8274).

<sup>4</sup> The amounts of aid incompatible with the common market, and therefore to be recovered, correspond to a total estimated value of €310 million.

<sup>5</sup> The Court has already confirmed Greece's failure to fulfil its obligations with regard to the implementation of that decision in Case [C-485/10](#).

<sup>6</sup> Case [T-391/08 Ellinika Nafpigia AE v Commission](#).

<sup>7</sup> In addition, in 2008, GNSH, HDW and ThyssenKrupp Marine Systems AG applied to the General Court for the annulment of the article of the decision concerning the aid measure granted to HDW/Ferrostaal that consists in the guarantee to indemnify any obligation to reimburse aid unlawfully obtained by EN (Article 16 of Decision 3118). By its judgment in Case [T-384/08](#), the General Court dismissed that application. No appeal has been brought against that judgment.

without examining the aid on a case-by-case basis in order to ascertain what was necessary for operating a shipyard for military purposes. EN has submitted that shipyards are a complex undertaking and that civil activity is necessary for the viability of the main, military activity. Consequently, a total stoppage of the civil activity of the shipyards would endanger the continuation of military production.

In its judgment delivered today, the Court of Justice notes that the Treaty<sup>8</sup> allows Member States to take measures that are necessary for the protection of the essential interests of their security which are connected with the production of or trade in arms, munitions and war material. The recognition of that protection must not, however, adversely affect competition in relation to products which are not intended for specifically military purposes. The Treaty draws a strict distinction between the production of or trade in war material and all other economic activity, which also applies in the case where the same undertaking carries out activities in both military and civil spheres.

The Court finds that the General Court was fully entitled, therefore, to reject EN's argument that, when a civil activity is a 'necessary corollary' to the activity of military production, all aid measures should be excluded from the scope of the Treaty. Similarly, the General Court acted correctly in concluding that only aid measures covering military activity must be assessed under the special procedure laid down by the Treaty<sup>9</sup>.

In addition, the division between military and civil activities (75% and 25% respectively), established by the Commission, was confirmed by the Greek authorities; in any event, the General Court's assessments are factual in nature and therefore excluded from review by the Court in the context of the present appeal<sup>10</sup>.

Lastly, the Court goes on to say that the General Court was fully entitled to hold that, in the context of the administrative procedure conducted by the Commission, EN did not enjoy rights of defence (like a Member State), but merely the right to be involved (which is what actually occurred).

For all those reasons, the Court dismisses EN's appeal in its entirety and thus confirms the validity of the Commission's decision.

---

**NOTE:** An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

---

*Unofficial document for media use, not binding on the Court of Justice.*

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106

---

<sup>8</sup> Article 346(1)(b) TFEU.

<sup>9</sup> Article 348 TFEU.

<sup>10</sup> In Case [T-466/11](#), EN and Hoern Beteiligungs Gesellschaft GmbH – which, since October 2010, has been EN's principal shareholder – invoked, in relation to Commission Decision 2009/610/EC, the exception provided for in Article 346 TFEU. By order of 19 October 2012, the General Court dismissed the action as inadmissible. That order is at present the subject of an appeal before the Court (Case [C-616/12 P](#)).