

The Commission considers that the assessment of the aid in question on the basis of Regulation (EC) No 1370/2007 did not entail a retroactive application of that Regulation but is consistent with the principle of immediate application under which a provision of Union law applies from the time it enters into force to the future effects of a situation which arose under the old rule.

The case-law of the Court of Justice distinguishes, with regards to retroactivity, between a definitively-established legal situation (to which the new rule does not apply) and temporary situations which arose under the old rule, but are still on-going (to which the new rule applies).

The Commission considers that the General Court has erred in law by considering that State aid granted by a Member State in violation of the notification and standstill obligation constitutes a definitively established legal situation, rather than a temporary situation. It follows from the rules and case law on recovery of unlawful aid that the recipient of such aid cannot be considered to have definitively acquired the aid until such time as the Commission approves it and the approval decision has become final. In view of the mandatory nature of the supervision of State aid by the Commission under Article 108 TFEU, undertakings to which aid has been granted may not, in principle, entertain a legitimate expectation that the aid is lawful unless it has been granted in compliance with the procedure laid down in that article.

Finally, the Commission also observes that the judgment under appeal is in open and direct conflict with earlier rulings of the Court of Justice on the same question.

⁽¹⁾ OJ L 7, p. 1

⁽²⁾ Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) No 1191/69 and No 1107/70
OJ L 315, p. 1.

Request for a preliminary ruling from the Rechtbank van eerste aanleg te Brussel (Belgium) lodged on 4 June 2013 — LVP NV v Belgische Staat

(Case C-306/13)

(2013/C 252/30)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Brussel

Parties to the main proceedings

Applicant: LVP NV

Defendant: Belgische Staat

Question referred

Does Council Regulation (EC) No 1964/2005 of 29 November 2005 on the tariff rates for bananas (OJ 2002 L 316, p. 1), as applied by the European Union in the period from 1 January 2006 to 15 December 2009, infringe Article I; Article XIII(1); Article XIII(2)(d); Article XXVIII; and/or any other applicable article of the GATT 1994, individually or collectively, by introducing a tariff rate of EUR 176/tonne for bananas (GN Code 0803 00 19), contrary to the concessions for bananas negotiated by the EC, before a new negotiated agreement in that regard was concluded within the framework of the WTO?

Request for a preliminary ruling from the Centrale Raad van Beroep (Netherlands) lodged on 7 June 2013 — O. Tümer v Raad van Bestuur van het Uitvoeringsinstituut werknemersverzekeringen

(Case C-311/13)

(2013/C 252/31)

Language of the case: Dutch

Referring court

Centrale Raad van Beroep

Parties to the main proceedings

Applicant: O. Tümer

Defendant: Raad van Bestuur van het Uitvoeringsinstituut werknemersverzekeringen

Question referred

Should the Insolvency Directive,⁽¹⁾ in particular Articles 2, 3 and 4 of that Directive, given its basis in Article 137(2) of the EC Treaty (now Article 153(2) of the TFEU), be interpreted as meaning that a national rule such as Article 3(3) and Article 61 of the [Werkloosheidswet], under which a foreign national who is a national of a third country and who does not hold a valid residence permit in the Netherlands within the meaning of Article 8(a) to (e) and (l) of the Vreemdelingenwet 2000 is not regarded as an employee, is incompatible with it, even in a case such as that of the appellant, who has applied for an insolvency benefit, who under civil law must be regarded as an employee and who meets the other conditions for it to be granted?

⁽¹⁾ Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (Codified version) (OJ 2008 L 283, p. 36).