Case T-288/06

Regionalny Fundusz Gospodarczy S.A.
v
Commission of the European Communities

(State aid — Scheme for restructuring aid granted by the Republic of Poland to a steel producer — Decision declaring the aid to be in part incompatible with the common market and ordering its recovery — Protocol No 8 on the restructuring of the Polish steel industry — Rate of interest to be applied for the repayment of incompatible aid — Duty to cooperate closely with the Member State — Articles 9(4) and 11(2) of Regulation (EC) No 794/2004)

Summary of the Judgment

1. *Procedure — Application initiating proceedings — Formal requirements — Brief summary of the pleas in law on which the application is based*

   (Statute of the Court of Justice, Art. 21, para. 1; Rules of Procedure of the Court of First Instance, Art. 44(1)(c))

2. *State aid — Provisions of the Treaty — Scope ratione temporis*

   (Arts 87 EC and 88 EC; Act of Accession 2003, Protocol No 8)

3. *State aid — Recovery of unlawful aid — Fixing the interest rate*

   (Art. 88(2) EC; Commission Regulation No 794/2004, Arts 9(4) and 11(2))

4. *State aid — Commission decision declaring an aid scheme incompatible with the common market — Obligation to indicate the interest rate for recovery of the aid — None*

   (Art. 88(2) EC)

1. If it sets out the grounds for annulment with sufficient clarity and precision to enable the defendant to defend itself effectively and for the Community Courts to exercise their judicial review, an application initiating proceedings satisfies the minimum requirements laid down by the first paragraph of Article 21 of the Statute of the Court of Justice and by Article 44(1)(c) of the Rules of Procedure of the Court of First Instance.

   Consequently, there is no reason to hold an action inadmissible for failure to comply with Article 44(1)(c) of the Court's Rules of Procedure in circumstances where the application sets out briefly the pleas in question and neither the defendant, which replied in its defence to the arguments set out in the complaint, nor the Community Courts have been prevented from understanding the arguments on the point in question.

   (see paras 25, 26)

2. Protocol No 8 on the restructuring of the Polish steel industry, annexed to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, is a *lex specialis* in relation to Articles 87 EC and 88 EC. It extends the review of State aid carried out by the Commission pursuant to the EC Treaty to aid granted in favour of the reorganisation of the Polish steel industry prior to the accession of the Republic of Poland to the European Union. It follows from the actual wording of Protocol No 8 that it applies to aid granted before accession. The purpose of Protocol No 8 was to establish a comprehensive system for the authorisation of aid intended for the restructuring of the Polish steel industry and not merely to avoid the aggregation of aid by benefiting companies.

   (see paras 43, 44)

3. Article 9(4) of Regulation No 794/2004 implementing Regulation No 659/1999, concerning the application of Article 88 EC provides that the fixing of the interest rate applicable to the recovery of State aid must be effected in 'close cooperation' with the Member State concerned, but does not require an 'agreement'. In determining the rate applicable, the Commission enjoys a measure of discretion. Under Article 11(2) of Regulation No 794/2004, the interest rate is to be applied on a compound basis until the date of the recovery of the aid. The interest accruing in the previous year is to be subject to interest in each subsequent year.

(see paras 52, 54, 55)

4. In a decision declaring State aid to be incompatible with the common market, the Commission is not obliged to indicate in the Decision the interest rate for recovery of the aid in question, given that it is not even required to identify precisely the principal amount of the recoverable aid and that it may limit itself to indicating merely the methods permitting the Member State to calculate the aid.

(see para. 57)