

Case T-358/94

Compagnie Nationale Air France **v** **Commission of the European Communities**

(State aid — Air transport — Airline company in a critical financial situation)

Judgment of the Court of First Instance (Second Chamber, Extended Composition), 12 December 1996 II - 2112

Summary of the Judgment

1. *State aid — Meaning — Aid granted through a public body set up by the State — Criteria for appraising whether it forms part of the public sector*
(EC Treaty, Art. 92(1))
2. *State aid — Meaning — Aid from State resources — Investment made by means of repayable funds from private sources that are managed by a public body — Included — Conditions*
(EC Treaty, Art. 92(1))

3. *State aid — Commission decision finding a national measure incompatible with Article 92(1) of the Treaty — Complex economic appraisal — Judicial review — Limits*
(EC Treaty, Art. 92(1))
4. *State aid — Meaning — Financial assistance granted by a Member State to an undertaking — Criteria for appraisal — Reasonableness of the transaction for a prudent private investor — Not reasonable in the case of subscription for almost all the securities issued by an undertaking experiencing a sharp deterioration in its financial situation that is not capable of improvement, even in the long term*
(EC Treaty, Art. 92(1))
5. *Acts of the institutions — Statement of reasons — Obligation — Scope — Decisions*
(EC Treaty, Art. 190)

1. All subsidies from the public sector threatening the play of competition are caught by Article 92 of the Treaty, whether or not they are granted by the government or a central administrative authority of a Member State.

The legislative power to which that body is subject is one of the constitutional powers of a State, and Community law cannot permit the rules on State aid to be circumvented merely through the creation of autonomous institutions charged with allocating aid.

A body forms part of the public sector when it has been established by the legislation of a Member State as a special body under the supervision and guarantee of the legislature, its tasks governed by statutory and regulatory rules, and its director general and other directors appointed by the head of State and the government of that Member State respectively; its public nature cannot be called into question by arrangements that are part of the internal organization of the public sector, such as the existence of rules to ensure that that body remains independent of other public authorities.

2. In order for an investment to be regarded as State aid, it must amount to an advantage granted directly or indirectly through State resources, which presupposes that the resources from which the aid is granted came from the Member State concerned. Article 92(1) of the Treaty covers all the financial means by which the public sector may actually support undertakings, whether or not those means are permanent assets of the public sector.

An investment made by a body belonging to the public sector, by means of repayable funds from a private source may therefore be regarded as State aid where deposits and withdrawals of funds produce a constant balance which the body in question is able to use, at its own risk, as if the funds represented by the balance were permanently at its disposal.

3. Judicial review of a measure involving a complex economic appraisal, by which the Commission finds that a national measure is incompatible with Article 92(1) of the Treaty must be restricted to determining whether the Commission complied with the rules governing procedure and the statement of reasons, whether the facts on which the contested finding was based are accurate and whether there was any manifest error of assessment of those facts or any misuse of powers.
4. Capital placed directly or indirectly at the disposal of an undertaking by the State in circumstances corresponding to normal market conditions cannot be regarded as State aid.
- On the other hand, there is State aid within the meaning of Article 92(1) of the Treaty when a State makes a large investment, through a limited company which is a wholly-owned subsidiary of a public body of that State, consisting of the subscription for almost all the securities issued by an undertaking in a grave financial situation for the purposes of its restructuring, where the restructuring envisaged is clearly incapable of improving, even in the long term, the undertaking's situation, characterized by a crushing volume of indebtedness and overwhelming losses. In such circumstances, a hypothetical private investor would not have been induced by signs and prospects of improvement which are insignificant in comparison with the undertaking's situation to inject the capital in question, since he would have hardly any prospect of the undertaking returning the funds invested.
5. The Community institutions' obligation under Article 190 of the Treaty to state the reasons on which a decision is based is intended to allow the Community judiciary to exercise its power to review the legality of the decision and to allow the person concerned to know the reasons for the measure adopted, so that he can defend his rights and ascertain whether or not the decision is well founded.