

Case T-268/06

Olympiaki Aeroporia Ypiresies AE

v

Commission of the European Communities

(State aid — Aid for airlines on account of losses caused by the terrorist attacks of 11 September 2001 — Decision declaring the aid scheme incompatible, in part, with the common market and ordering recovery of aid paid — Article 87(2)(b) EC — Communication from the Commission of 10 October 2001 on the repercussions of the terrorist attacks of 11 September — Causal connection between the exceptional occurrence and the damage — Obligation to state the reasons on which the decision is based)

Judgment of the Court of First Instance (Eighth Chamber), 25 June 2008 II - 1093

Summary of the Judgment

1. *State aid — Prohibition — Exceptions — Scope — Restrictive interpretation — Economic disadvantages caused directly by natural disasters or other exceptional occurrences*
(Art. 87(2)(b) EC)
2. *State aid — Commission decision — Judicial review — Limits*
(Arts 88(3) EC and 230 EC)

1. Since Article 87(2)(b) EC is an exception to the general principle, stated in Article 87(1) EC, that State aid is incompatible with the common market, it must be interpreted narrowly. Therefore, only damage caused by natural disasters or exceptional occurrences may be compensated for under that provision. There must be a direct link between the damage caused by the exceptional occurrence and the State aid and as precise an assessment as possible must be made of the damage suffered. It therefore follows that where an aid measure satisfies those conditions it must be declared compatible with the common market, even if the Commission adopted a different position in the context of an earlier notice concerning the measure in question. Accordingly, even if, in accordance with that communication, any compensation paid under Article 87(2)(b) EC must concern costs incurred during a defined period, aid compensating loss which arose after that period but having a direct causal connection with the exceptional occurrence concerned and being accurately evaluated must be held to be compatible with the common market.

(see paras 52-53)
2. The lawfulness of a decision concerning State aid is to be assessed in the light of the information available to the Commission when the decision was adopted. No one, therefore, can rely before the Community judicature on matters of fact which were not put forward in the course of the pre-litigation procedure laid down in Article 88 EC.

(see para. 55)