

Case C-319/07 P

3F, formerly Specialarbejderforbundet i Danmark (SID)

v

Commission of the European Communities

(Appeals — Tax relief measures for seafarers employed on board vessels registered in the Danish International Register — Commission decision not to raise objections — Action for annulment — Concept of party concerned — Trade union — Admissibility of the action)

Opinion of Advocate General Sharpston delivered on 5 March 2009. I - 5967
Judgment of the Court (Third Chamber), 9 July 2009. I - 5991

Summary of the Judgment

- 1. Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Commission decision finding State aid compatible with the common market without initiating the formal review procedure — Party concerned within the meaning of Article 88(2) EC — Trade union — Conditions
(Arts. 88(2) and (3) EC and 230, fourth para., EC)*
- 2. Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Commission decision finding State aid compatible with the common market without initiating the formal review procedure — Party concerned within the meaning of Article 88(2) EC — Action brought by a trade union established to promote the collective interests of its members, relying on the effect of the grant of the aid on its competitive position in relation to other trade unions
(Arts 88(2) and (3) EC, 136, first para., EC and 230, fourth para., EC)*

3. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Commission decision finding State aid compatible with the common market without initiating the formal review procedure — Party concerned within the meaning of Article 88(2) EC — Action brought by a trade union in the maritime sector established to promote the collective interests of its members — Examination of the social aspects (Arts 88(2) and (3) EC and 230, fourth para., EC)*

1. Under the fourth paragraph of Article 230 EC, a natural or legal person may institute proceedings against a decision addressed to another person only if that decision is of direct and individual concern to the former. Persons other than those to whom a decision is addressed may claim to be individually concerned only if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of those factors distinguishes them individually just as in the case of the person addressed by such a decision.

In the case of a Commission decision on State aid, in the context of the procedure for reviewing State aid provided for in Article 88 EC, the preliminary stage of the procedure for reviewing aid under Article 88(3) EC, which is intended merely to allow the Commission to form a *prima facie* opinion on the partial or complete conformity of the aid in question, must be distinguished from the stage of the review under Article 88(2) EC. It is only at the latter stage, which is designed to enable

the Commission to be fully informed of all the facts of the case, that the Treaty imposes an obligation on the Commission to give the parties concerned notice to submit their comments.

Where, without initiating the formal review procedure under Article 88(2) EC, the Commission finds, on the basis of Article 88(3) EC, that aid is compatible with the common market, the persons intended to benefit from those procedural guarantees may secure compliance therewith only if they are able to challenge that decision before the Community judicature. For those reasons, an action for the annulment of such a decision brought by a person who is concerned within the meaning of Article 88(2) EC is declared to be admissible where that person seeks, by instituting proceedings, to safeguard the procedural rights available to him under the latter provision. Such parties concerned are any persons, undertakings or associations whose interests might be affected by the granting of aid, that is, in particular, undertakings competing with the recipients of the aid and trade associations.

It is not excluded that a trade union may be regarded as 'concerned' within the meaning of Article 88(2) EC if it shows that its interests or those of its members might be affected by the granting of aid. The trade union must, however, show to the requisite legal standard that the aid is likely to have a real effect on its situation or that of the members it represents.

Treaty rules on State aid, or that an action for annulment which might be brought by those parties would, almost automatically, be regarded as inadmissible because of their involvement in those negotiations.

(see paras 28-33)

2. As regards an action seeking the annulment of a Commission decision finding State aid compatible with the common market without initiating the formal review procedure, a trade union, which is by definition established to promote the collective interests of its members, may attempt to show that it has standing to bring proceedings because its interests might be affected by the granting of aid, by reason of the effect of the measures on its competitive position in relation to other trade unions.

To exclude a priori the possibility that a trade union could show that it is a party concerned within the meaning of Article 88(2) EC, by relying on its role in collective negotiations and the effects on that role of national tax measures regarded by the Commission as aid compatible with the common market, would be liable to undermine the social policy objectives referred to *inter alia* in the first paragraph of Article 136 EC and Article 138(1)-EC. That conclusion is supported by the fact that, since the Community has not only an economic but also a social purpose, the rights under the provisions of the Treaty on State aid and competition must be balanced, where appropriate, against the objectives pursued by social policy, which include, as is clear from the first paragraph of Article 136 EC, *inter alia* improved living and working conditions, so as to make possible their harmonisation while improvement is being maintained, proper social protection and dialogue between management and labour.

It cannot be deduced from the fact that an agreement could be excluded, by reason of its nature and purpose and the social policy objectives pursued by it, from the scope of the provisions of Article 81(1) EC that collective negotiations or the parties involved in them are likewise, entirely and automatically, excluded from the

(see paras 46, 49, 55, 57-58)

3. When assessing the compatibility of State aid in the maritime transport sector, the social aspects of the Community guidelines may be taken into account by the Commission as part of an overall assessment which includes a large number of considerations of various kinds, linked in particular to the protection of competition, the Community's maritime policy, the promotion of Community maritime transport, or the promotion of employment.

Article 88(2) EC, submit observations to the Commission on considerations of a social nature which it can take into account if appropriate, the Community judicature must, in order to assess whether the applicant's arguments based on the Community guidelines suffice to establish its status of a party concerned within the meaning of Article 88(2) EC, examine the social aspects of the measure at issue with regard to those guidelines, which contain the legal conditions for assessing the compatibility of the State aid in question.

Since it cannot be ruled out that organisations representing the workers of the undertakings benefiting from aid may, as parties concerned within the meaning of

(see paras 64, 69-70)