

Case C-334/07 P

Commission of the European Communities

v

Freistaat Sachsen

(Appeal — State aid — Proposed scheme for aid to small and medium-sized enterprises — Compatibility with the common market — Criteria for assessing State aid — Application *ratione temporis* — Proposed scheme notified before the entry into force of Regulation (EC) No 70/2001 — Decision subsequent to entry into force thereof — Legitimate expectations — Legal certainty — Complete notification)

Judgment of the Court (Second Chamber), 11 December 2008 I - 9467

Summary of the Judgment

State aid — Planned aid — Examination by the Commission — Assessment on the date of the Commission's decision

(Art. 88(3) EC; Council Regulation No 659/1999, Art. 4(1) and (5))

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Article 4(1) of Regulation No 659/1999 laying down detailed rules for the application of Article [88] of the EC Treaty, which provides that the Commission must examine a notification of a proposed aid scheme 'as soon as it is received', imposes merely an obligation of particular diligence on the Commission, and therefore is not a rule of application *ratione temporis* of the criteria for assessment of the compatibility of the notified proposed aid with the common market. Nor may such a rule be inferred from the second sentence of Article 4(5) of that regulation, which provides that the two-month period during which the Commission undertakes the preliminary examination of the notification begins on the day following the receipt of a complete notification.

By contrast, the question whether aid is State aid within the meaning of the Treaty must be determined on the basis of objective elements, which must be appraised on the date on which the Commission takes its decision. Accordingly, it is the appraisal of the situation carried out by the Commission on that date which is to be reviewed by the Community Courts.

Consequently, if the notification of proposed aid is an essential requirement of the control of that aid, it is nevertheless only a procedural obligation, intended to allow the Commission

to ensure both preventive and effective control of the aid which Member States intend to grant to undertakings. It cannot therefore have the effect of setting the legal framework applicable to the aid notified. Thus, the notification by a Member State of aid or a proposed aid scheme does not give rise to a definitively-established legal situation which requires the Commission to rule on their compatibility with the common market by applying the rules in force at the date on which that notification took place. On the contrary, it is for the Commission to apply the rules in force at the time when it gives its decision, the only rules on the basis of which the lawfulness of the decision it takes in that regard falls to be assessed.

Where the legal rules under which a Member State notified proposed aid change before the Commission takes its decision, the Commission must, with a view to giving its decision, as it is obliged to do, on the basis of the new rules, ask the interested parties to express their views on the compatibility of that aid with those rules. The situation is different only if the new legal rules do not contain any substantial amendments in relation to those previously in force.

(see paras 49, 50, 52, 53, 56)