

Case C-537/08 P

Kahla Thüringen Porzellan GmbH

v

European Commission

(Appeal — State aid — Commission decision finding aid to be incompatible with the common market and ordering its recovery — Principles of legal certainty and of the protection of legitimate expectations)

Judgment of the Court (First Chamber), 16 December 2010 I - 12919

Summary of the Judgment

1. *State aid — Commission decision not to raise objections with regard to an aid scheme — Scope — Elements to be taken into consideration*
(Arts 87 EC and 88 EC)
2. *State aid — General aid scheme approved by the Commission — Scheme excluding firms in difficulty and private firms — No explicit restrictions concerning those firms in the actual decision authorising the scheme — Legitimate expectation on the part of firms having unlawfully benefited from that aid — No such expectation*
(Arts 87 EC and 88 EC)

1. The scope of a decision by which the Commission raises no objections to an aid scheme notified by a Member State must be determined not only by reference to the actual wording of that decision, only a summary of which is published in the *Official Journal of the European Communities*, but also by taking account of the aid scheme notified by the Member State concerned.

A request for additional information, by which the Commission requests further information on the scope of an aid scheme notified by a Member State, as well as the reply by the national authorities to that request, must be considered to be an indivisible part of the notified aid scheme. This is, *a fortiori*, the position when it is precisely on the basis of that information that the Commission decided not to raise objections to the aid scheme in question.

(see paras 44-45)

2. The right to rely on the principle of the protection of legitimate expectations applies to any individual in a situation in which an institution of the Union, by

giving that person precise assurances, has led him to entertain well-founded expectations. Such assurances, in whatever form they are given, are constituted by precise, unconditional and consistent information.

In the context of an authorised aid scheme, the fact that a Commission decision not to raise objections against the scheme contains no explicit restrictions as regards firms in difficulty and private undertakings cannot, by definition, be deemed to constitute precise, unconditional and consistent information provided by the Commission to the interested person with regard to the fact that that scheme allowed the award of grants to such firms and undertakings and cannot therefore give rise to any legitimate expectation on the part of that person that the grants which were awarded to it were lawful. Quite the contrary, given that it was at the very least uncertain that aid could be granted to those firms, the lack of any explicit restriction could not thus be the source of precise assurances capable of giving rise to any legitimate expectation on the part of the interested person.

(see paras 63-66)