

Case C-47/10P

Republic of Austria

v

Scheucher-Fleisch GmbH and Others

(Appeal — State aid — Articles 87 EC and 88(2) and (3) EC — Regulation (EC) No 659/1999 — Decision not to raise any objections — Action for annulment — Conditions for admissibility — Pleas in law that may be relied upon in an action for annulment — Notion of ‘interested party’ — Statement of reasons for judgments — Burden of proof — Measures of organisation of procedure before the General Court — Articles 64 and 81 of the Rules of Procedure of the General Court)

Opinion of Advocate General Bot delivered on 9 June 2011 I - 10712

Judgment of the Court (Third Chamber), 27 October 2011 I - 10749

Summary of the Judgment

1. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Commission decision declaring State aid to be compatible with the common market without initiating the formal investigation procedure — Actions of interested parties within the meaning of Article 88(2) EC — Admissibility — Conditions (Arts 88(2) EC and 230, fourth para., EC; Council Regulation No 659/1999, Arts 1(h), 4(3), and 6(1))*

2. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Commission decision declaring State aid to be compatible with the common market without initiating the formal investigation procedure — Actions of interested parties within the meaning of Article 88(2) EC — Identification of the subject-matter of the action*
(Arts 88(2) EC and 230, fourth para., EC; Rules of Procedure of the General Court, Art. 44(1)(c); Council Regulation No 659/1999, Arts 1(h), 4(3) and 6(1))
 3. *Appeals — Grounds of appeal — Review by the Court of Justice of the assessment of the facts and evidence — Possible only where the clear sense of the evidence has been distorted*
(Art. 225 EC; Statute of the Court of Justice, Art. 58, first para.)
 4. *State aid — Planned aid — Examination by the Commission — Preliminary review and main review — Compatibility of the aid with the common market — Difficulties of assessment — Commission's duty to initiate the main review procedure*
(Art. 88(2) and (3) EC)
 5. *Actions for annulment — Natural or legal persons — Measures not of direct and individual concern to them — Absolute bar to proceeding*
(Art. 230, fourth para., EC)
 6. *Appeals — Grounds of appeal — Review by the Court of Justice of the assessment by the General Court of the need to supplement the information before it — Possible only where the clear sense of the evidence has been distorted*
 7. *Appeals — Grounds of appeal — Inadequate statement of reasons — Reliance by the General Court on implied reasoning — Whether permissible — Conditions*
(Art. 225 EC; Statute of the Court of Justice, Arts 36 and 53, first para.)
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1. In the field of State aid, when the Commission adopts a decision not to raise objections under Article 4(3) of Regulation No 659/1999, concerning the application of Article 88 EC, it declares not only that the measure is compatible with the common market, but also, by implication, that it refuses to initiate the formal investigation procedure laid down in Article 88(2) EC and Article 6(1) of Regulation No 659/1999.

The lawfulness of a decision not to raise objections, adopted under Article 4(3) of Regulation No 659/1999, depends on whether there are doubts as to the compatibility of the aid with the common market. Since such doubts must trigger the initiation of a formal investigation procedure in which the interested parties referred to in Article 1(h) of Regulation No 659/1999 can participate, it must be held that any interested party within the meaning of the latter provision is directly and individually concerned by such a decision. The beneficiaries of the procedural guarantees provided for in Article 88(2) EC and Article 6(1) of Regulation No 659/1999 cannot ensure that those guarantees are respected, unless it is possible for them to challenge before the Union judicature the decision not to raise objections.

Consequently, in the context of an action for annulment, the specific status of 'interested party' within the meaning of Article 1(h) of Regulation No 659/1999, in conjunction with the specific subject-matter of the action, is sufficient to distinguish individually, for the purposes of the fourth paragraph of Article 230 EC, the applicant contesting a decision not to raise objections.

Under Article 1(h) of Regulation No 659/1999, 'interested party' means *inter alia*, any person, undertaking or association of undertakings whose interests might be affected by the granting of aid, that is to say, in particular competing undertakings of the beneficiary of

that aid. In other words, that term covers an indeterminate group of addressees, which does not make it impossible for an indirect competitor of the beneficiary of the aid to be categorised as an interested party, provided that it demonstrates that its interests could be adversely affected by the grant of the aid, and that that undertaking establishes, to the requisite legal standard, that the aid is likely to have a specific effect on its situation.

(see paras 42-44, 132)

2. In the field of State aid, when an applicant seeks the annulment of a decision not to raise objections, it essentially contests the fact that the Commission adopted the decision in relation to the aid at issue without initiating the formal investigation procedure, thereby infringing the applicant's procedural rights. In order to have its action for annulment upheld, the applicant may invoke any plea to show that the assessment of the information and evidence which the Commission had at its disposal during the preliminary examination phase of the measure notified ought to have raised doubts as to the compatibility of that measure with the common market. The use of such arguments cannot, however, have the consequence of changing the subject-matter of the application or altering the conditions of its admissibility. On the contrary, the existence of doubts concerning that compatibility is precisely the evidence which must be adduced in order to show that the Commission was required to initiate the formal investigation procedure under

Article 88(2) EC and Article 6(1) of Regulation No 659/1999, concerning the application of Article 88 EC.

file, without any need to carry out a new assessment of the facts and the evidence.

(see paras 58-59)

(see para. 50)

3. In the context of an appeal, the Court of Justice has no jurisdiction to establish the facts or, in principle, to examine the evidence which the General Court accepted in support of those facts. Provided that the evidence has been properly obtained and the general principles of law and the rules of procedure in relation to the burden of proof and the taking of evidence have been observed, it is for the General Court alone to assess the value to be attached to the evidence produced to it. That appraisal does not therefore constitute, save where the clear sense of that evidence has been distorted, a point of law subject, as such, to review by the Court of Justice. Distortion must be obvious from the documents in the Court's

4. In the field of State aid, when the preliminary examination under Article 88(3) EC does not enable it to resolve all the difficulties involved in determining whether the aid is compatible with the common market, the Commission is under a duty to carry out all the requisite consultations and for that purpose to initiate the procedure under Article 88(2) EC. The concept of serious difficulties being objective, their existence must be looked for not only in the circumstances in which the contested measure was adopted but also in the assessments upon which the Commission relied.

When the compatibility or incompatibility of the aid at issue is capable of being directly affected by a discrepancy between two pieces of legislation at the level of national law, that discrepancy may objectively raise doubts as to the compatibility of the aid at issue with the common market.

The Commission is required to take account of any discrepancies appearing between two pieces of national legislation, namely, a law and administrative directives, in particular if it appears that

a scheme for aid includes, at the level of the law which established it, a restriction which raises serious doubts regarding its compatibility with the common market.

(see paras 70-71, 79-80, 85)

5. The rule laid down in the fourth paragraph of Article 230 EC that proceedings brought by a natural or legal person against a decision not addressed to that person are admissible only if the decision is of direct and individual concern to that person raises an absolute bar to proceedings which the Community judicature may examine at any time, even of its own motion, including by taking measures to be more completely informed.

(see paras 97-98)

6. The General Court is the sole judge of any need to supplement the information available to it in respect of the cases before it. Whether or not the evidence before it is sufficient is a matter to be appraised by it alone and is not subject to review by the Court of Justice on appeal, except where that evidence has been distorted or the inaccuracy of the findings of the General Court is apparent from the documents in the case-file.

Therefore, the General Court cannot be criticised for putting, before and at the

hearing, a series of detailed questions to the parties in order to supplement the information already available to it and for drawing certain conclusions from the replies given by the parties to those questions in the context of pleas in law validly raised by those parties.

Similarly, the General Court cannot be criticised, at the appeal stage, for not having adopted other measures of organisation which the parties had not asked it to adopt in the proceedings before it and which they do not describe precisely in the appeal proceedings.

(see paras 99-100)

7. The General Court's duty under Article 36 and the first paragraph of Article 53 of the Statute of the Court of Justice to state reasons for its judgments does not require that court to provide an account that follows exhaustively and one by one all the arguments articulated by the parties to the case. The reasoning may therefore be implicit, on condition that it enables the persons concerned to know why the measures in question were taken and provides the Court of Justice with sufficient material for it to exercise its powers of review.

(see para. 104)