



Reports of Cases

Case C-117/10

European Commission
v
Council of the European Union

(Action for annulment — State aid — Article 88(1) and (2) EC — Aid granted by the Republic of Poland for the purchase of agricultural land — Competence of the Council of the European Union — Existing aid scheme — Accession of the Republic of Poland to the European Union — Aid granted before accession — Appropriate measures — Two indissolubly connected aid schemes — Change of circumstances — Exceptional circumstances — Economic crisis — Manifest error of assessment — Principle of proportionality)

Summary — Judgment of the Court (Grand Chamber), 4 December 2013

1. *State aid — Power of the Council to authorise aid by way of derogation in the light of exceptional circumstances — Conditions of exercise — Referral to the Council by the Member State concerned before the occurrence of the Commission decision declaring the aid incompatible with the common market and decision taken within a period of three months — Limit — Thwarting an earlier Commission decision*

(Art. 88(2) EC (now Art. 108(2) TFEU))

2. *State aid — Power of the Council to authorise aid by way of derogation in the light of exceptional circumstances — Conditions of exercise — Aid indissolubly linked to aid whose incompatibility with the internal market had previously been found by the Commission — Aid granted before the accession of the Republic of Poland to the European Union — Respect of the principle of legal certainty — Limits — Substantial change in economic and financial circumstances*

(Arts 87 EC, 88 EC and 89 EC (now Arts 107 TFEU, 108 TFEU and 109 TFEU); 2003 Act of Accession, Annex IV, Chapter 4)

3. *Action for annulment — Pleas in law — Misuse of powers — Concept*

(Art. 230 EC)

4. *Agriculture — Competition rules — Aid — Authorisation of aid by way of derogation by the Council — Judicial review — Limits — Council decision authorising aid granted by the Polish State in the light of the purchase of agricultural land belonging to it following an economic and financial crisis — No manifest error of assessment*

(Art. 88(2), third para., EC (now Art. 108(2), third para., TFEU))

5. *State aid — Power of the Council to authorise aid by way of derogation in the light of exceptional circumstances — Conditions of exercise — Breach of principle of proportionality — None — Elements to be taken into consideration*

(Art. 88(2), third para., EC (now Art. 108(2), third para., TFEU)]

1. While the fourth subparagraph of Article 88(2) EC provides that the Commission is to decide where the Council has not made its attitude known within three months of the application being made by a Member State for the aid be considered to be compatible with the common market, that rule applies only where the Commission has already initiated the procedure under the first subparagraph of Article 88(2) EC, without yet having adopted a decision declaring the aid incompatible with the common market. It follows from the wording of the third and fourth subparagraphs of Article 88(2) EC that that temporal limitation on the power of the Council is intended only to avoid the suspension of the procedure initiated by the Commission — caused by the application to the Council — from being prolonged indefinitely, thereby threatening to paralyse action by the Commission and thus weaken the central role reserved to it under Articles 87 EC and 88 EC in determining whether aid is incompatible.

Furthermore, with regard to that central role which the TFEU reserves for the Commission in determining whether aid is incompatible with the internal market, that the third subparagraph of Article 88(2) EC covers an exceptional and specific case, meaning that the power conferred upon the Council by that provision is clearly exceptional in character. Accordingly, that provision must necessarily be interpreted strictly.

As regards the third and fourth subparagraphs of Article 88(2) EC, pursuant to which, on the one hand, an application to the Council by a Member State suspends the examination in progress at the Commission for a period of three months and, on the other, in the absence of a decision by the Council within that period, the Commission is to give a ruling, those provisions must be interpreted as meaning that, where that period has expired, the Council is no longer competent to adopt a decision under that third subparagraph in relation to the aid concerned. Therefore, if the Member State concerned has not made an application to the Council under the third subparagraph of Article 88(2) EC, the Council is no longer authorised to exercise the exceptional power conferred upon it by that provision in order to declare such aid compatible with the internal market.

That interpretation makes it possible to avoid the taking of decisions the operative parts of which might prove contradictory and, accordingly, contributes to legal certainty.

The Council is not permitted to thwart the effectiveness of a Commission decision which declares aid to be illegal by declaring compatible with the internal market, in accordance with the third subparagraph of Article 88(2) EC, aid designed to compensate the beneficiaries of aid granted unlawful for the repayments they are required to make pursuant to that decision.

(see paras 34, 35, 51-54, 57)

2. For the purposes of the application of Article 88(2) EC, the respective powers of the Council and the Commission are allocated in such a way that, first, the primary competence to act lies with the Commission, the Council having power to act only in exceptional circumstances. Second, the Council's competence, which enables it to derogate, in its decision, from certain Treaty provisions on State aid, must be exercised within a specific time frame. Third, as soon as the Commission or the Council has adopted a final ruling on the compatibility of the aid in question, the other of those two institutions may no longer adopt a contrary decision.

In that context, it does not matter whether the Council decision relates to existing aid or to new aid. The effectiveness of the Commission's decision is undermined not only where the Council adopts a decision declaring compatible with the internal market aid on which the Commission has already ruled but also where the aid which is the subject of the Council decision aims to compensate the beneficiaries of the unlawful aid declared incompatible with the internal market for the repayments they are required to make pursuant to the decision of the Commission. In such circumstances, the second aid is so indissolubly linked to that previously found by the Commission to be incompatible with the internal market that it appears largely artificial to claim to make a distinction between those aids for the purposes of applying Article 88(2) EC.

In those circumstances, where the Commission, in the exercise of the powers conferred on it by Articles 87 EC and 88 EC, adopts guidelines to indicate how it intends, under those articles, to exercise its discretion in regard to new or existing aid, and proposes to Member States any appropriate measures required by the progressive development or by the functioning of the common market and where those measures are accepted by a Member State, and accordingly they are binding upon that State, the obligations on a Member State following such an acceptance of those proposals relate only to existing aid schemes and do not apply to a new aid scheme which may correspondingly be regarded as compatible with the internal market by the Council.

However, the Council cannot rely on the mere fact that the aid scheme is a new one in order to reassess a situation in respect of which the Commission has already made a final assessment, thereby contradicting that assessment. The Council does not therefore have the power to decide that a new aid scheme must be regarded as compatible with the internal market where it is so indissolubly linked to an existing aid scheme, which a Member State has undertaken to modify or abolish in the framework of Article 88(1) EC, that it appears largely artificial to claim to make a distinction between those two schemes for the purposes of applying Article 88(2) EC.

Nevertheless, the assessment by the Commission of that aid scheme cannot be considered as prejudicing the assessment which must be applied in economic circumstances radically different from those which the Commission took into account. That is the case in the event of a substantial change such as an economic and financial crisis. It follows that the compatibility with the internal market of the new aid scheme which was the subject of an application addressed to the Council by the Member State under the third subparagraph of Article 88(2) EC must be evaluated following an individual assessment distinct from that of the scheme which was evaluated by the Commission, which takes into consideration the relevant economic circumstances at the time when the aid was granted.

(cf. points 58, 60, 62, 63, 75, 76, 82, 89)

3. See the text of the decision.

(see para. 96)

4. In the application of the third subparagraph of Article 88(2) EC, the Council enjoys wide discretion, the exercise of which involves complex economic and social assessments which must be made in a European Union context. In that context, judicial review of the manner in which that discretion is exercised is confined to establishing that the rules of procedure and the rules relating to the duty to give reasons have been complied with and to verifying the accuracy of the facts relied on and ascertaining that there has been no error of law, manifest error in the assessment of the facts or misuse of powers. In the light of its unusual and unforeseeable character and the extent of the effects of the economic and financial crisis on Polish agriculture, the Council cannot be regarded as having made a manifest error of assessment by considering that those effects constituted exceptional circumstances within the meaning of the third subparagraph of Article 88(2) EC. The fact that the

economic and financial crisis also gave rise to considerable effects in other Member States is not decisive, in so far as that fact does not affect the exceptional character of the effects of that crisis on the development of the economic situation of Polish farmers.

(see paras 113-115)

5. With regard to compliance with the principle of proportionality, the lawfulness of a measure adopted under the third subparagraph of Article 88(2) EC can be affected only if the measure is manifestly inappropriate, having regard to the objective which the Council is seeking to pursue. Thus, with regard to the extent of the discretion enjoyed by the Council, a decision by it authorising State aid in the light of the purchase of agricultural land cannot be regarded as breaching the principle of proportionality by the mere fact that it would have been possible for the Member State at issue to pursue objectives related to limiting rural poverty in Poland by means of another type of aid scheme. None the less, the broad discretion which the Council enjoys does not relieve it of the obligation to take into consideration, in its assessment, the pre-existing measures specifically aimed at overcoming the exceptional circumstances which it relied on to justify the authorisation of the aid scheme in question.

(see paras 130, 131, 138, 139)