

Case T-237/99 R

BP Nederland vof and Others

v

Commission of the European Communities

(Procedure for interim relief — Suspension of operation —
State aid — Prima facie case — Urgency)

Order of the President of the Court of First Instance, 8 December 2000 . . . II-3852

Summary of the Order

1. *Applications for interim measures — Suspension of operation — Conditions for granting — Serious and irreparable damage — Burden of proof — Commission decision ordering recovery of State aid — Financial loss — Excluded — Rights of recipients adversely affected — Scope*
(Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))

2. *Applications for interim measures — Suspension of operation — Suspension of operation of a decision ordering recovery of State aid — Conditions for granting — Urgency — Possibility that if that decision is annulled the State will not reimburse the aid recovered*

(Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))

3. *Applications for interim measures — Suspension of operation — Suspension of operation of a decision ordering recovery of State aid — Complex and very specific nature of the decision — Irrelevant — Unprecedented aspects — Irrelevant*

(Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))

1. The urgency of an application for interim relief must be assessed in relation to the necessity for an order granting interim relief in order to prevent serious and irreparable damage to the party requesting the interim measure.

An adverse effect on the rights of the persons considered to be the recipients of State aid which is incompatible with the common market forms an integral part of any Commission decision requiring the recovery of such aid and cannot be regarded as constituting in itself serious and irreparable damage, whether or not a specific assessment is made of the seriousness and irreparability of the precise prejudice alleged in each case considered.

It is for the party who pleads serious and irreparable damage to prove its existence. It need not be established with absolute certainty that the harm is imminent, but it is sufficient that it should be foreseeable, particularly when it depends on the occurrence of a number of factors.

(see paras 48-50, 52)

Damage of a pecuniary nature cannot be regarded as irreparable, otherwise than in exceptional circumstances, since as a general rule pecuniary compensation is capable of restoring the aggrieved person to the situation that obtained before he suffered the damage.

2. The mere possibility that a Member State may not reimburse recovered aid if the decision ordering such recovery is annulled does not constitute the urgency required under Article 104(2) of the Rules of Procedure.

(see para. 56)

3. The alleged legal uncertainty resulting from the complex and very specific nature of a Commission decision on State aid, in that it does not order the reimbursement of the aid by the direct beneficiaries but by the *de facto* beneficiaries cannot justify suspending the operation of such a decision.

decision, regarding the need to ensure that aid is recovered from the actual beneficiaries, has aspects which have no precedent, it is not for the judge hearing an application for interim relief to rule as to whether it is well-founded or not. It follows such an aspect of the decision is not sufficient to constitute an exceptional circumstance which would justify a finely tuned assessment of urgency.

Even if it is true that the argument on which the Commission bases such a

(see paras 62, 64)