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Judgment of the Court of Justice in Case C-110/02

Commission of the European Communities v Council of the European Union

**THE COURT OF JUSTICE ANNULS THE DECISION OF THE COUNCIL
AUTHORISING PORTUGAL TO GRANT AID TO PORTUGUESE PIG
FARMERS WHO WERE BENEFICIARIES OF UNLAWFUL AID GRANTED
IN 1994 AND 1998 AND DECLARED INCOMPATIBLE WITH THE
COMMON MARKET BY THE COMMISSION**

The Council cannot authorise either an aid measure which the Commission has already declared incompatible with the common market or a new aid measure which allocates to the beneficiaries of that aid an amount intended to compensate for the repayments which they have had to make pursuant to the Commission's decision

The EC Treaty accords a central role to the European Commission in the monitoring of State aids, so that the procedure for determining whether an aid measure is compatible with the common market falls within its responsibility.

However, the Council, on the application of a Member State, may decide that a measure of State aid is to be regarded as compatible with the common market when exceptional circumstances justify such a decision. In that case, if the Commission has already opened the procedure envisaged by the Treaty, it must suspend it until the decision of the Council, which has three months to take its decision. If the Council does not decide within the prescribed time-limit, the Commission decides.

In 1994 and 1998, Portugal granted aid measures to pig farmers. The 1994 aid measures were not notified to the Commission, whereas those of 1998 were put into effect before the Commission expressed its view as to their compatibility with the common market.

The Commission adopted two decisions in 2000 and 2001 whereby it established that most of the aid measures thus granted were incompatible with the common market and ordered their repayment.

In 2002 - following an application by Portugal and fifteen months after the last decision of the Commission - the Council adopted a decision authorising aid to Portuguese pig farmers who had to repay the aid granted in 1994 and 1998 and declaring that aid compatible with the common market.

The Commission brought an annulment action against that decision, arguing *inter alia* that the Council lacked the power to adopt it.

The Court of Justice finds that the Council's power to declare a measure of State aid compatible with the common market is exceptional in character, and rules that **where the Commission has already initiated the procedure laid down by the Treaty and the three-month time-limit laid down by the latter has expired, the Council no longer has the power to adopt such a decision following the application of a Member State.** It also rules that the Council has no power to adopt such a decision where the Commission has already declared the aid in question incompatible with the common market.

That interpretation avoids the same State aid measure becoming the subject of conflicting decisions of the Commission and the Council. It **contributes to legal certainty by conferring a definitive character on the Commission decision.**

The Court holds that the aim of the obligation on a Member State to withdraw an aid measure regarded by the Commission as incompatible with the common market is to restore the previous situation, and that objective is attained once the aid in question, increased where appropriate by default interest, has been repaid by the recipient. By repaying the aid, the recipient forfeits the advantage which it had enjoyed over its competitors on the market, and the situation prior to payment of the aid is restored.

Therefore, **to allow a Member State to grant to beneficiaries of unlawful aid, which has previously been declared incompatible with the common market by a Commission decision, new aid in an amount equivalent to that of the unlawful aid, intended to neutralise the impact of the repayments which the beneficiaries are obliged to make pursuant to that decision, would thwart the effectiveness of decisions taken by the Commission on State aids.**

Such aid, which is indissolubly linked to that previously found by the Commission to be incompatible with the common market, cannot therefore be declared compatible with that market by the Council.

In those circumstances, the Court of Justice has annulled the Council's decision authorising aid from Portugal to Portuguese pig farmers who were beneficiaries of aid granted in 1994 and 1998.

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Languages available: English, French and Portuguese.

For the full text of the Judgment please consult our Internet page at

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In principle it will be available from midday CET on the day of delivery.

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*Pictures of the reading of the judgment are available from EBS "Europe by Satellite"
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