

**Joined Cases T-228/00, T-229/00, T-242/00, T-243/00, T-245/00 to
T-248/00, T-250/00, T-252/00, T-256/00 to T-259/00, T-265/00,
T-267/00, T-268/00, T-271/00, T-274/00 to T-276/00, T-281/00,
T-287/00 and T-296/00**

**Gruppo ormeggiatori del porto di Venezia
Soc. coop. rl and Others**

v

Commission of the European Communities

(State aid — Commission decision declaring unlawful aid schemes incompatible
with the common market and requiring recovery of the incompatible aid —
Exclusion from the national procedure for recovery — Action for annulment —
No legal interest in bringing proceedings — Inadmissibility)

Order of the Court of First Instance (Second Chamber, Extended Composition), 10 March 2005 II - 791

Summary of the Order

- 1. *Actions for annulment — Conditions of admissibility — Interest in bringing proceedings — To be considered of the Court's own motion*
(Art. 230 EC; Rules of Procedure of the Court of First Instance, Art. 113)

2. *Actions for annulment — Interest in bringing proceedings — Need for a vested and present interest — Commission decision declaring aid incompatible with the common market and ordering its recovery — Beneficiaries of aid not affected by national recovery measures — Interest based on a future and uncertain decision of the Commission — No vested and present interest*
(Art. 230 EC)
3. *State aid — Commission decision declaring aid schemes incompatible with the common market and ordering recovery of the aid — Decision not challenged under Article 230 EC by the beneficiaries of the aid schemes — Condition of a challenge to the validity of the decision before the national court in an action brought against the national measures taken to implement it — Manifestly no legal interest in bringing proceedings before the Community judicature*
(Arts 88(2) EC and 230, para. 4, EC)
4. *Community law — Principles — Right to effective judicial protection — Beneficiaries of an aid scheme declared unlawful not the subject of national recovery decisions and consequently unable, for want of a legal interest in bringing proceedings, to bring proceedings before the Community judicature for annulment of the Commission's decision — Right of their own to contest the validity of the Commission's decision before the national court in the event of any recovery measures concerning them, notwithstanding the Community judicature's examination of actions for annulment brought by other beneficiaries with a legal interest in bringing proceedings*
(Art. 234 CE)
5. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Commission decision declaring an aid scheme incompatible with the common market — Actions by undertakings brought solely in their capacity of potential beneficiaries of that aid scheme — Inadmissibility*
(Art. 230, para., 4, EC)

1. Since the conditions of admissibility of an action, in particular whether there is a legal interest in bringing proceedings, concern an absolute bar to proceedings, it is for the Court to consider of its own motion whether the applicant has an

interest in obtaining annulment of the decision contested by him.

(see para. 22)

2. For an action for annulment brought by a natural or legal person to be admissible, that person must have a vested and present interest in the annulment of the contested act. That interest must be determined at the time when the application is lodged. It cannot be assessed in the light of a future and uncertain occurrence. In particular, if the interest which an applicant claims concerns a future legal situation, he must demonstrate that the prejudice to that situation is already certain.
3. The fact that a Commission decision which finds that a State aid scheme is incompatible with the common market and orders recovery of the aid paid out is no longer open to challenge must only be raised, under the principle of legal certainty, by the national court against beneficiaries of that aid who plead, as a defence, the unlawfulness of that decision if those beneficiaries were unquestionably entitled and had been informed that they were entitled to challenge the Commission decision under the fourth paragraph of Article 230 EC and had failed to exercise that right within the time-limit provided for in that article. In that regard, in accordance with the principle of the sound administration of justice, beneficiaries of an aid scheme who have not directly challenged the Commission decision within the time-limit laid down cannot, for that reason, be declared out of time for pleading, as a defence, the unlawfulness of that decision before the national court, if, having regard to the particular circumstances of the case or to the complexity of the criteria which the Commission decision applied to the obligation of recovery, the question of whether those beneficiaries would be required to repay the aid in question, in implementation of the Commission decision, could reasonably have given rise to doubt initially, so that their interest in bringing proceedings against that decision was not obvious.

Undertakings do not have a vested and present interest in the annulment of a Commission decision declaring unlawful aid schemes incompatible with the common market and requiring recovery of the incompatible aid if the Member State concerned has decided, on the basis of the operative part of the contested decision and of the guidelines for its implementation provided by the Commission, not to recover the alleged aid from them. Only a future and uncertain decision by the Commission calling in question the implementing decision taken by that Member State could affect their legal position.

(see paras 23, 25-26, 29)

(see para. 31)

4. The fact that a Commission decision declaring an aid scheme incompatible and ordering, under certain conditions, recovery of the aid granted has been the subject of actions for annulment brought by beneficiaries who have a legal interest in contesting it does not limit effective judicial protection for other beneficiaries of that aid who do not have such an interest owing to the national authorities' decision to exclude them from the recovery procedure on the basis of the operative part of the contested decision and of the guidelines for its implementation provided by the Commission. If the latter beneficiaries were nevertheless the subject of a decision of the national authorities requiring them to repay the aid received, particularly following a review by the Commission, they could, depending on the circumstances, bring an action for annulment before the national court against that national decision and raise, as a defence, the unlawfulness of the aforementioned Commission decision.

In that event the national court could stay the proceedings in order to refer a question to the Court of Justice under Article 234 EC for a preliminary ruling on the validity of the Commission's decision or, in the interest of the proper

administration of justice, until disposal of the case on the merits before the Community Court. If the national court were to find that certain serious pleas put forward by the applicants in support of their objection of inadmissibility had not been raised before the Court of First Instance in support of the aforementioned actions for annulment, it would be open to it at any time to refer a question to the Court of Justice for a preliminary ruling determining validity, in relation to those pleas, so that the applicants would, in any event, have full and complete judicial protection.

(see paras 32-33)

5. The potential beneficiaries of an aid scheme cannot, solely by virtue of that capacity, be regarded as individually concerned by the Commission decision declaring that scheme incompatible with the common market.

(see para. 34)