

Case C-278/00

Hellenic Republic

v

Commission of the European Communities

(State aid — Settlements of debts of agricultural  
cooperatives by public authorities)

Opinion of Advocate General Geelhoed delivered on 25 September 2003 I - 4001  
Judgment of the Court (Fifth Chamber), 29 April 2004 . . . . . I - 4053

Summary of the Judgment

1. *State aid — Examination by the Commission — Examination of an aid scheme taken in its entirety — Whether permissible — Aid scheme no longer in force — Irrelevant*  
(Art. 87 EC)
2. *State aid — Definition — Aid from State resources*  
(Art. 87(1) EC)
3. *State aid — Effect on trade between Member States — Adverse effect on competition — Aid relatively small in amount*  
(Art. 87 EC)
4. *State aid — Prohibition — Derogations — Scope of the derogation — Strict interpretation — Economic disadvantages directly caused by natural disasters or exceptional occurrences*  
(Art. 87(1) and (2)(b) EC)
5. *State aid — Prohibition — Derogations — Commission's discretion — Judicial review — Limits — Possibility of adopting guidelines*  
(Art. 87(3) EC)
6. *State aid — Recovery of unlawful aid — Breach of the principle of proportionality — None*  
(Art. 88(2), first subpara., EC)
7. *State aid — Recovery of unlawful aid — Possible legitimate expectation on the part of the recipient — Protection — Conditions and limits*  
(Art. 88 EC)
8. *State aid — Commission decision finding aid to be incompatible with the common market — Difficulties in implementation — Obligation on the Commission and the Member State to cooperate in seeking a solution consistent with the Treaty*  
(Arts 10 EC and 88(2), first subpara., EC)

1. In the case of an aid scheme, the Commission may confine itself to examining the general characteristics of the scheme in question without being required to examine each particular case in which it applies. That power cannot be altered by the fact that the aid scheme in question has ceased to apply.

may be decisive when assessing the effect of aid on trade, such as whether the aid is cumulative and whether the undertakings that receive it are operating in a sector that is particularly exposed to competition.

(see paras 69, 70)

(see para. 24)

2. Article 87(1) EC includes all the financial resources which the State may indeed use to support undertakings. The fact that those resources constantly remain under public control, and therefore available to the competent national authorities, is sufficient for them to be categorised as State resources and for any measure that they finance to fall within the scope of Article 87(1) EC.

4. Since it constitutes a derogation from the general principle laid down in Article 87(1) EC that State aid is incompatible with the common market, Article 87(2)(b) EC must be construed narrowly. Consequently, only economic disadvantages directly caused by natural disasters or by exceptional occurrences qualify for compensation as provided for in that provision.

(see paras 81, 82)

(see para. 52)

3. The relatively small amount of a State aid or the relatively small size of the undertaking which receives it does not prima facie exclude the possibility that intra-Community trade may be affected or competition distorted. Other factors

5. When applying Article 87(3) EC, the Commission has a wide discretion the exercise of which involves economic and social assessments which must be made in a Community context. The Court of Justice, when reviewing the legality of the exercise of that freedom, cannot substitute its own assessment

for that of the competent authority but must confine itself to examining whether the latter assessment is vitiated by a manifest error or by a misuse of powers.

The Commission may, however, adopt a policy as to how it will exercise its discretion in the form of measures such as guidelines, in so far as those measures contain rules indicating the approach which the institution is to take and in so far as they do not depart from the rules of the Treaty.

(see paras 97, 98)

6. Removing unlawful aid by means of recovery is the logical consequence of a finding that it is unlawful. Consequently, the recovery of State aid unlawfully granted, for the purpose of restoring the status quo ante, cannot in principle be regarded as disproportionate to the objectives of the Treaty in regard to State aid.

(see para. 103)

7. In view of the mandatory nature of the supervision of State aid by the Commission under Article 88 EC, undertakings to which aid has been granted may not, in principle, entertain a legitimate expectation that the aid is lawful unless it has been granted in compliance with the procedure laid down in that article.

(see para. 104)

8. A Member State which encounters unforeseen and unforeseeable difficulties in implementing a Commission decision on State aid, or becomes aware of consequences not envisaged by the Commission, must submit those problems for consideration by the Commission and suggest appropriate amendments to the decision in question. In such a case the Commission and the Member State concerned must, in accordance with the duty of genuine cooperation between the Member States and the Community institutions stated in particular in Article 10 EC, work together in good faith with a view to overcoming the difficulties whilst fully observing the Treaty provisions, in particular the provisions on aid.

(see para. 114)