

## Case T-34/02 R

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v

### Commission of the European Communities

(Proceedings for interim measures — State aid — Aid in respect of shipbuilding or ship repair granted in the form of development assistance — Recovery — Legitimate expectations — *Prima facie* case — Urgency)

Order of the President of the Court of First Instance, 25 June 2002 . . . . II-2806

#### Summary of the Order

1. *State aid — Recovery of unlawful aid — Aid granted in breach of the procedural rules in Article 88 EC — Possibility of legitimate expectation on the part of recipients — Protection — Conditions and limits*  
(Art. 88 EC)

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2. *Applications for interim measures — Suspension of operation of a measure — Conditions for granting — Serious and irreparable damage — Standard of proof (Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))*
  3. *Applications for interim measures — Suspension of operation of a measure — Conditions for granting — Serious and irreparable damage — Commission decision ordering recovery of State aid — National implementing measures — Domestic legal remedies — Effect (Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))*
  4. *Applications for interim measures — Suspension of operation of a measure — Conditions for granting — Serious and irreparable damage — Commission decision ordering recovery of State aid — Financial damage — Exclusion — Adverse effect on the rights of the beneficiaries — Scope (Art. 242 EC; Rules of Procedure of the Court of First Instance, Art. 104(2))*
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1. 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.
  2. The urgency of an application for interim measures 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. It is for the party seeking interim relief to prove that it cannot wait for the outcome of the main proceedings without suffering damage.

However, the possibility cannot be precluded that the recipients of illegal aid may, in order to challenge its repayment, plead exceptional circumstances which legitimately give rise to a legitimate expectation that the aid was lawful.

(see paras 75-76)

It is not necessary for the imminence of the damage to be demonstrated with absolute certainty, it being sufficient to show that damage — especially if its occurrence depends on a series of factors — is foreseeable with a sufficient degree of probability. However, the party seeking suspension of operation of a measure is required to prove the facts forming the basis of its claim

that serious and irreparable damage is likely.

him to avoid serious and irreparable damage.

(see paras 85-86)

(see paras 90-93)

3. In the course of a national procedure to recover State aid, the recipient of the aid will not be prevented from pleading, in support of an action challenging the implementing measures taken by the national authorities, the illegality of the decision ordering recovery of the aid, if the recipient has challenged the decision under Article 230 EC. In such a case the national court is not bound by the definitive nature of that decision, with the result that it may stay proceedings in order to refer a question to the Court of Justice under Article 234 EC for a preliminary ruling on its validity. In the interest of the proper administration of justice, the national court could also stay proceedings pending disposal of the case on the merits before the Court of First Instance.
4. The case-law by virtue of which the judge hearing an application for interim measures examines, where there are several applicants, whether proof of pecuniary damage is adduced in respect of each of them, whether they are natural or legal persons, is based on the duty of the judge hearing the application to examine, where there is pecuniary damage, the circumstances peculiar to each case. More specifically in cases involving the recovery of State aid from the beneficiaries, 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.

Therefore, in an application for interim relief, it is for the applicant to establish that the domestic remedies available to him under national law to oppose recovery of State aid do not enable

(see para. 97)