

Mitteldeutsche Erdöl-Raffinerie GmbH

v

Commission of the European Communities

(State aid — Extension of the period for completion of investment projects qualifying for a premium — General aid scheme — Action for annulment — Admissibility — Act of direct and individual concern to the applicant — Interest in bringing proceedings — Additional aid — Investment aid or operating aid — Principle of proportionality)

Judgment of the Court of First Instance (Fifth Chamber, Extended Composition), 22 November 2001 . . . . . II-3370

Summary of the Judgment

1. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Whether directly affected — Criteria — Examination of aid granted by States — Commission decision declaring the extension of the period for completion of investment projects qualifying for a premium incompatible with the common market — Undertakings entitled to the premium are directly affected (EC Treaty, Art. 93(2) (now Art. 88(2) EC), and Art. 173, fourth para. (now, after amendment, Art. 230, fourth para., EC))*

2. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Commission decision, addressed to a Member State, finding that State aid is incompatible with the common market — Decision which, as regards the potential beneficiaries of the aid, has the appearance of a measure of general application — Recipient undertaking placed in a factual situation which distinguishes it from all other traders — Whether admissible*  
(EC Treaty, Art. 93(2) (now Art. 88(2) EC), and Art. 173, fourth para. (now, after amendment, Art. 230, fourth para., EC))
3. *State aid — Prohibition — Derogations — Commission's discretion — Differentiation between the beneficiaries of the notified aid scheme*  
(EC Treaty, Art. 92 (now, after amendment, Art. 87 EC))

1. To be of direct concern to a private applicant for the purposes of the fourth paragraph of Article 173 of the EC Treaty (now, after amendment, the fourth paragraph of Article 230 EC), the Community measure must directly affect the applicant's legal situation and its implementation must be purely automatic and result from Community rules alone without the application of other intermediate rules. The same applies where the opportunity for addressees not to give effect to the Community measure is purely theoretical and their intention to act in conformity with it is not in doubt.

lify for that premium to be incompatible with the common market, in so far as the repeal obligation in that decision necessarily had the consequence of requiring the national authorities to recover the sums paid to the applicant.

(see paras 47-48, 50, 52)

It follows that the legal position of an undertaking entitled to an investment premium is directly affected by the Commission decision declaring a provision of the fiscal law of a Member State prolonging the period within which the investment project must have been completed in order to qua-

2. Persons other than the addressees of a decision may claim to be individually concerned within the meaning of the fourth paragraph of Article 173 of the EC Treaty (now, after amendment, the fourth paragraph of Article 230 EC) only if the decision affects them by reason of certain attributes peculiar to them or by reason of factual circum-

stances differentiating them from all other persons and, as a result, distinguishes them individually in like manner to the person addressed.

A Commission decision prohibiting generally the application of a national tax provision of general application laying down a fiscal investment premium, although addressed to the Member State concerned, has the appearance, as regards the potential beneficiaries of that provision, of a measure of general application covering situations which are determined objectively and entailing legal effects for a class of persons envisaged in a general and abstract manner. However, such a decision cannot be regarded as affecting an undertaking solely by virtue of its objective capacity as a potential recipient of the investment premium, in the same manner as any other operator who is, or might be in the future, in the same situation, unless there are a number of factors which place the applicant in a situation which differentiates it from all other operators.

(see paras 75-78)

3. The fact that, formally, the Commission has been notified of an aid scheme does not prevent it from examining its application in a particular case, as well as making a general and abstract examination of the scheme. Similarly, in the decision it adopts following its examination, the Commission can consider that some specific applications of the aid scheme notified constitute aid while others do not, or can declare certain applications only to be incompatible with the common market. In the exercise of its wide discretion, it may differentiate between the beneficiaries of the aid scheme notified by reference to certain characteristics they have or conditions they satisfy. An examination of the specific case of one of the undertakings to benefit from the notified aid scheme applicant may be required not only in view of the particular features of its situation but also because, during the administrative procedure, the Government of the Member State concerned had expressly asked for that to be done.

(see paras 116-117)