

Case T-136/05

EARL Salvat père & fils and Others

v

Commission of the European Communities

(State aid — Wine-production conversion measures — Decision declaring aid partly compatible and partly incompatible with the common market — Action for annulment — Admissibility — Obligation to state the reasons on which the decision is based — Assessment in the light of Article 87(1) EC)

Judgment of the Court of First Instance (Fifth Chamber), 20 September 2007 II - 4067

Summary of the Judgment

1. *Actions for annulment — Actionable measures — Measures producing binding legal effects (Art. 230 EC)*
2. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them (Art. 230, fourth para., EC)*

3. *Acts of the institutions — Statement of reasons — Obligation — Scope*
 (Arts 87(1) EC and 253 EC)

4. *State aid — Definition — Aid from State resources*
 (Art. 87(1) EC)

1. Only a measure the legal effects of which are binding on the applicant and are capable of affecting his interests by bringing about a distinct change in his legal position is an act or decision which may be the subject of an action for annulment under Article 230 EC. Therefore, the mere fact that a decision declares notified aid compatible with the common market and thus, in principle, does not have an adverse effect on the applicant does not dispense the Community judicature from examining whether the Commission's finding contained in the decision has binding legal effects such as to affect the applicant's interests.

and thereby distinguish them individually in the same way as the person addressed. Therefore, an undertaking cannot, as a general rule, challenge a decision of the Commission which prohibits a sectoral aid scheme if it is concerned by that decision solely by virtue of belonging to the sector in question and being a potential beneficiary of the scheme.

(see paras 34, 36)

2. Persons other than those to whom a decision is addressed can claim to be individually concerned only if that decision affects them by reason of certain attributes which are peculiar to them, or by reason of factual circumstances which differentiate them from all other persons

Such a decision is, vis-à-vis the applicant undertaking, a measure of general application covering situations which are determined objectively and entails legal effects for a class of persons envisaged in a general and abstract manner. However, an undertaking which is concerned by the decision at issue not only as an undertaking in the sector concerned and a potential beneficiary of the aid scheme at issue, but also as an actual recipient of individual aid granted under that scheme, recovery of which has been ordered by the Commission, is in a different position.

That undertaking is also directly concerned in so far as the Commission's decision obliges the Member State to which the decision is addressed to take the measures necessary to recover the aid held to be incompatible with the common market, and in so far as the undertaking has received such aid and will have to repay it. The two criteria of direct concern are, first, the fact that the measure in question must directly produce effects on the individual's legal situation and, secondly, the fact that the measure must not allow any discretion to the addressees of the measure, who must implement it. For the applicant undertaking to be directly concerned both the above criteria must be satisfied, whether or not it challenges the order for recovery issued to the Member State.

(see paras 64, 67, 69, 75-77)

3. The question whether the statement of the grounds for a decision meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and all the legal rules governing the matter in question. Whilst the Commission, in the statement of reasons for a decision, is not required to discuss all the issues of fact and law raised by interested parties during the administrative procedure, it must none the less take account of all

the circumstances and all the relevant factors of the case so as to enable the Community judicature to review its lawfulness and make clear both to the Member States and to the persons concerned the circumstances in which the Commission has applied the Treaty.

Concerning a decision finding aid incompatible with the common market, the Commission must, in particular, state the reasons why the measures in question came within the scope of Article 87(1) EC. However, the Commission cannot be required, in respect of each measure which it considers to constitute aid, to state separate reasons for each of the four conditions for applying Article 87 EC. Thus, where the decision examines in what way the conditions laid down in Article 87(1) EC for establishing the incompatibility of aid with the common market are met, the fact that it does so in a global fashion, the examination applying to all the measures in question, cannot in itself be regarded as an infringement of the duty to state reasons, especially where the measures in question are all part of the same course of action.

(see paras 91, 99, 100, 104)

4. Only advantages granted directly or indirectly through State resources are held to be aid within the meaning of Article 87(1) EC. In that respect, there is no need to distinguish between cases in which aid is granted directly by the State and those in which it is granted by a public or private body designated or established by the State. The status of such a body does not constitute a determining factor for the application of the rules of the Treaty on State aid. The mere fact that a public body is involved does not entail the automatic application of Article 87 EC, just as the fact that the measures are taken by a private body does not preclude its application.

In that context, inter-branch contributions, created by a decision of an inter-branch committee in order to finance aid to be paid to certain producers in the sector concerned must be classified as state resources in so far as the State is perfectly capable, by exercising its dominant influence over that committee, of directing the use of its resources in order, as occasion arises, to finance specific advantages in favour of certain undertakings.

(see paras 130, 139, 156)