

Case T-129/96

Preussag Stahl AG

v

Commission of the European Communities

(State aid to the steel industry — Notification of planned aid —
Expiry of the validity of the relevant provisions of the ECSC Aid Code —
Grant of the planned aid — Decision finding the aid to be incompatible
and ordering its repayment — Legitimate expectations)

Judgment of the Court of First Instance (Third Chamber, Extended Composition), 31 March 1998 II - 612

Summary of the Judgment

- 1. Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Commission decision, adopted within the framework of the ECSC Treaty, finding aid to be incompatible with the common market and ordering its repayment — No action brought by the undertaking in receipt of the aid against the decision opening the procedure for examination of the aid — Right of action (ECSC Treaty, Art. 33)*
- 2. ECSC — Aid to the steel industry — Authorisation by the Commission — Regional investment aid — Commission required to adopt a decision on the compatibility of aid with the common market by 31 December 1994 — Commission not empowered to authorise aid after that date — Consequence — Incompatibility of the aid with the common market (ECSC Treaty, Art. 4(c); Commission Decision No 3855/91/ECSC, Arts 1, 5 and 6)*

3. *ECSC — Aid to the steel industry — Authorisation by the Commission — Regional investment aid — Conditions — Notification of planned aid in good time — Failure to respect the deadline — Effects*
(Commission Decision No 3855/91/ECSC, Arts 5 and 6(1))
4. *ECSC — Aid to the steel industry — Recovery of unlawful aid — Possibility that the recipients may have legitimate expectations — Protection — Conditions and limits*
5. *Acts of the institutions — Statement of reasons — Obligation — Scope — ECSC decisions*
(ECSC Treaty, Art. 15, first para.)

1. Since a Commission decision finding aid to be incompatible with the common market and ordering its repayment produces its own legal effects, the undertaking to which the aid was granted has the right to bring an action for the annulment of such a decision, irrespective of whether or not it challenged the decision to open the procedure for examination of the aid.
2. As regards the application of Decision No 3855/91 establishing Community rules for aid to the steel industry, the deadline of 31 December 1994 laid down for the payment of regional investment aids is necessarily the deadline imposed on the Commission for adopting decisions on the compatibility of that category of aid. Thereafter, such aid can no longer be deemed compatible with the common market on the basis of Article 1(1) of Decision No 3855/91 and is thus prohibited pursuant to Article 4(c) of the ECSC Treaty.

In view of the provisions of Decision No 3855/91, the aid referred to therein may

be put into effect only with the prior approval of the Commission. Secondly, unlike the EC Treaty, which empowers the Commission to adopt decisions on the compatibility of State aids on a permanent basis, the derogation laid down in Decision No 3855/91 to the principle of the absolute prohibition of aid in Article 4(c) of the ECSC Treaty is limited in time and, furthermore, must be interpreted even more strictly since, according to the 11th recital in the preamble to the decision, 'as regional investment aids are exceptional in nature, there would be no justification in maintaining them beyond the appropriate period for the modernisation of the steel plants concerned, which is set at three years'.

3. The general scheme of the procedural provisions of Decision No 3855/91 establishing Community rules for aid to the steel industry, and, in particular, Article 6(1) thereof, indicates that it was designed to afford the Commission a period of at least six months within which to give a

decision on the compatibility of planned aid notified to it.

Since, in the case of aid granted for investment under regional aid schemes within the meaning of Article 5 of that decision, the Commission therefore needs at least six months before the deadline of 31 December 1994 in order to open and close the procedure before that deadline, where planned aid was notified after 30 June 1994 the Commission was no longer required to adopt a decision on its compatibility before 31 December 1994.

4. Undertakings to which State aid has been granted may not entertain a legitimate expectation that the aid is lawful unless it has been granted in compliance with the appropriate procedure, something which

a diligent businessman ought to be able to ascertain. Furthermore, an individual may rely on the principle of protection of legitimate expectations only in so far as the Community administration has led him to entertain justified hopes by giving him specific assurances.

5. The statement of the reasons for a decision satisfies the requirements of the first paragraph of Article 15 of the ECSC Treaty provided it clearly and unequivocally reveals the Commission's reasoning and thus enables the persons concerned to know the reasons for the measure adopted so that they can defend their rights and ascertain whether or not the decision was well founded and the Community judicature to exercise its power of review in that respect.