

Case T-34/02

EURL Le Levant 001 and Others

v

Commission of the European Communities

(State aid — Concept of interested party — Formal notice to submit comments — Decision to open the procedure provided for in Article 88(2) EC — Tax deduction measure for certain overseas investments — Development aid for shipbuilding — Assessment in the light of Article 87(1) EC — Obligation to state reasons)

Judgment of the Court of First Instance (First Chamber, Extended Composition), 22 February 2006 II - 272

Summary of the Judgment

1. *Procedure — Action by a legal person governed by private law — Application initiating proceedings*
(*Rules of Procedure of the Court of First Instance, Art. 44(5)*)

2. *Procedure — Action by a natural person — Application initiating proceedings*
(*Rules of Procedure of the Court of First Instance, Art. 44(3)*)
3. *State aid — Administrative procedure — Obligation for the Commission to put the parties concerned on notice to submit their observations*
(*Art. 88(2) EC; Council Regulation No 659/1999, Arts 1(h), 6(1) and 14(1)*)
4. *State aid — Administrative procedure — Obligation for the Commission to put the parties concerned on notice to submit their observations*
(*Arts 86(1) EC and 87(1) EC; Council Regulation No 659/1999, Art. 6(1)*)
5. *State aid — Not allowed — Exceptions — Shipbuilding aid — Directive 90/684*
(*Arts 87(1) and (3)(e) EC and 253 EC; Council Directive 90/684, Art. 4(7)*)
6. *State aid — Administrative procedure — Commission decision — Judicial review — Limits*
(*Arts 88(2) EC and 230 EC*)

1. The fact that the documents by which the applicant conferred authority on the lawyer are not dated does not make the action inadmissible under Article 44(5) of the Rules of Procedure of the Court of First Instance, since they were necessarily drawn up before the action was brought, because they are one of the annexes thereto.

required to produce a duly executed authority to act in the lodging of an application, subject to proof if challenged that he is so authorised. Thus the Rules of Procedure allow natural persons to be represented by a lawyer without that lawyer having to produce a document of authority to act, whereas that is a requirement for representing a legal person. It is, in principle, sufficient that the lawyer produce a document attesting to his professional status as a lawyer in a Member State.

(see paras 54, 55)

2. Article 44(3) of the Rules of Procedure of the Court of First Instance provides that the lawyer acting for a party is not

(see paras 62-64)

3. It follows from the first subparagraph of Article 88(2) EC that, before finding that a State aid measure is incompatible with the common market, the Commission must have called on the interested parties to submit their comments. The scope of that obligation is specified by Article 1(h) of Regulation No 659/1999 laying down detailed rules for the application of Article [88 EC], which defines 'interested party' as 'any Member State and any person, undertaking or association of undertakings whose interests might be affected by the granting of aid, in particular the beneficiary of the aid, competing undertakings and trade associations'. Where the formal investigation procedure concerns illegal aid which has been implemented, the question of identifying the beneficiary takes on major importance, since Article 14(1) of Regulation No 659/1999 provides that, in the event of a 'negative decision', finding that such aid is incompatible with the common market, 'the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary'.

market, they are named in the contested decision as direct beneficiaries of the aid and they are 'interested parties' within the meaning of the above definition. The identification of the beneficiary of the aid is necessarily one of the 'relevant issues of fact and law' within the meaning of the first sentence of Article 6(1) of Regulation No 659/1999 which must, under that provision, be contained in the decision to open the procedure if that is possible at that stage of the procedure, since it is on the basis of that identification that the Commission will be able to adopt the recovery decision. In the absence of an indication that a party is a beneficiary of the aid in dispute, either in the decision to open the procedure or at a later stage in the formal investigation procedure prior to adoption of the final decision finding that the aid is incompatible with the common market, that type of interested party cannot be regarded as having been duly called on to submit his comments, because he may legitimately believe that such comments are not necessary, since he is not named as the beneficiary of the aid to be recovered.

(see paras 77-83)

Accordingly, in the context of a review of aid implemented in the form of tax relief, the investors who were allowed to deduct their investment from their taxable income had to be called on to submit their comments in the administrative procedure because, in the final Commission decision finding that aid to be incompatible with the common

4. In the State aid investigation procedure, by failing to adopt a position on the request from an interested party for an extension, pursuant to the last sentence

of Article 6(1) of Regulation No 659/1999, of the one-month period granted to the interested parties to submit their comments on the decision to open the procedure and thereby failing to give that interested party an opportunity to submit its comments on that decision, without even giving reasons why the request was not 'duly justified', the Commission infringed the last sentence of Article 6(1).

The Commission cannot entrench itself behind a formalist interpretation of its State aid obligations, given that the main issue is the fact that an individual against whom the Commission is preparing to adopt an adverse decision designating that party as a beneficiary of incompatible aid from whom that aid is to be recovered must be given the opportunity to submit comments prior to the adoption of such a decision, in accordance with the general principle of law that requires that any person against whom an adverse decision may be taken must be given the opportunity to make his views known effectively regarding the facts held against him by the Commission as a basis for the disputed decision.

5. An investigation of aid relating to shipbuilding is not restricted solely to an assessment of the aid in the light of Article 4(7) of Seventh Directive 90/684 on aid to shipbuilding, but calls first for consideration of how the conditions laid down in Article 87(1) EC for a finding of incompatibility with the common market are met, since the conditions provided for in that provision must be met for State aid to be found to be incompatible with the common market. If the aid in question is compatible with the common market because the conditions laid down in Article 87(1) EC are not met, the Seventh Directive — which was adopted on the basis of Article 87(3)(e) EC — does not apply, because that directive necessarily supposes that the aid in question is incompatible with the common market under Article 87(1) EC.

Accordingly, in the absence of explanations showing how the aid in question meets the conditions laid down in Article 87(1) EC, the Commission's decision must be annulled because the Commission failed to comply with its obligation to state reasons as required by Article 253 EC.

(see paras 92-97)

(see paras 112-123, 132)

6. If, in the context of an action brought against a Commission decision on State aid, documents are produced before the Court which the applicants were not able to produce during the formal investigation procedure and which contain facts which are liable to contradict the facts which the Commission had before it during the administrative procedure and on the basis of which the contested decision was adopted, the Community court may not substitute its assessment for that of the Commission of the economic or legal implications which those facts might have on its analysis. If the Community court were to do so, it would be conducting its own analysis and drawing its own conclu-

sions from the new facts alleged rather than appraising the lawfulness of the contested decision. This is not the function of the Community courts. If they may not substitute their own assessment of the facts, especially in the economic field, for that of the originator of the decision, still less may they conduct a fresh assessment on the basis of facts which were not part of the administrative procedure before the Commission.

(see paras 138, 139)