

Case T-196/02

MTU Friedrichshafen GmbH

v

Commission of the European Communities

(State aid — Restructuring aid — Decision ordering the recovery of aid incompatible with the common market — Article 13(1) of Regulation (EC) No 659/1999 — Joint and several liability)

Judgment of the Court of First Instance (Fourth Chamber, Extended Composition), 12 September 2007 II - 2892

Summary of the Judgment

1. *State aid — Administrative procedure — Possibility for the Commission to base its decision on the information available — Condition*
(Art. 88(2) EC; Council Regulation No 659/1999, Arts 5(2), 10(3) and 13(1))

2. *State aid — Commission decision finding aid incompatible with the common market and ordering its repayment — Decision imposing on an undertaking simply assumed, on the basis of the available information, to have benefited from the aid a joint and several repayment obligation for a given amount — Not permissible*

(Art. 88(2) EC; Council Regulation No 659/1999, Arts 13(1) and 14(1))

1. In State aid matters, pursuant to the case-law reproduced and enshrined in Article 13(1) of Regulation No 659/1999 laying down detailed rules for the application of Article [88] EC, the Commission is empowered to adopt a decision on the basis of the information available when it is faced with a Member State which fails to comply with its obligation of cooperation and refuses to provide information requested from it for the purpose of assessing the compatibility of aid with the common market.

information is required and set an appropriate deadline for it to be provided. Finally, it is only if a Member State fails to comply with such an injunction that the Commission has the power to terminate the procedure and take a decision as to whether or not the aid is compatible with the common market on the basis of the information available.

(see paras 39-41)

However, given the Commission's very wide discretion, before taking such a decision, it must comply with certain procedural requirements. Those requirements are set out in Article 5(2), Article 10(3) and Article 13(1) of Regulation No 659/1999. In particular, where, despite a reminder, the Member State concerned does not provide the information requested within the period prescribed by the Commission, or where it provides incomplete information, the Commission must issue a decision requiring the information to be provided. In addition, that injunction requiring information must specify what

2. Article 13(1) of Regulation No 659/1999 laying down detailed rules for the application of Article [88] EC allows the Commission to close the formal investigation procedure for determining the compatibility of aid with the common market by way of a decision under Article 7 of the regulation. In particular, where the Member State concerned does not provide the Commission with the information requested, the Commission

may take a decision that the aid is incompatible on the basis of the information available and, if appropriate, order the Member State concerned to recover the aid from the beneficiaries in accordance with Article 14 of Regulation No 659/1999.

However, Article 13(1) of Regulation No 659/1999 does not allow the Commission to impose on a particular undertaking an obligation to repay, even jointly and severally, a fixed part of the amount of the aid declared to be incompatible, where the transfer of State resources from which that undertaking benefited is based on a hypothesis that the information available to the Commission allows it neither to confirm nor rebut.

Moreover, where the Commission's decision imposes a joint and several obligation to repay part of the aid on an

undertaking to which the aid was not granted, but which benefited from the aid, it is for the national authorities, where appropriate, to recover the aid from that undertaking, without those national authorities being entitled to review the correctness of the obligation of joint and several liability. Such a situation is not in any way a logical consequence of the implementation of the procedure laid down by the Treaty in relation to State aid, since the Member State providing the aid which is ordered to be recovered is, in any event, under an obligation to require recovery from the actual beneficiaries under the Commission's supervision, without it being necessary to name those beneficiaries expressly in the recovery decision and, a fortiori, to specify the amount of the sums which must be repaid by each beneficiary.

(see paras 45, 46, 48-50)