

Case T-366/00

Scott SA

v

Commission of the European Communities

(Action for annulment — State aid — Regulation (EC) No 659/1999 —
Article 15 — Limitation period — Recovery of aid —
Act interrupting the limitation period)

Judgment of the Court of First Instance (Fifth Chamber, Extended Composition), 10 April 2003 II - 1766

Summary of the Judgment

1. *State aid — Administrative procedure — Regulation No 659/1999 — Limitation period for recovery of unlawful aid — Application to aid granted before the regulation entered into force*
(Council Regulation No 659/1999, Art. 15)

2. *State aid — Recovery of unlawful aid — Application of the limitation period established by Article 15 of Regulation No 659/1999 to aid granted before that regulation entered into force — Starting point of the limitation period — Interruption of the limitation period by a request for information addressed to the Member State concerned*
(Council Regulation No 659/1999, Art. 15)
3. *State aid — Recovery of unlawful aid — Ten-year limitation period laid down in Article 15 of Regulation No 659/1999 — Application to both the Member State concerned and the beneficiary and third parties — Interruption of the limitation period by a request for information of which the beneficiary was unaware — Not relevant*
(Art. 88(2) EC; Council Regulation No 659/1999, Art. 15)
4. *State aid — Recovery of unlawful aid — Period preceding Regulation No 659/1999 — No limitation period — Possibility for the beneficiary to rely on the principles of legal certainty and protection of legitimate expectations — None*
(Art. 88 EC; Council Regulation No 659/1999)

1. Regulation No 659/1999 laying down detailed rules for the application of Article 88 EC is a procedural regulation and, as such, applies to all administrative procedures in the matter of State aid pending before the Commission at the time when it entered into force.

which the regulation entered into force, including aid granted before that date.

(see paras 52-53)

Since Article 15 of that regulation, which lays down a limitation period for recovery of unlawful aid, contains no transitional provision as regards its application *ratione temporis*, it applies to any definitive action ordering recovery of aid taken after the date on

2. The date on which State aid was granted must be taken into account as the starting date of the 10-year limitation period laid down in Article 15 of Regulation No 659/1999, on the Commission's powers relating to recovery of unlawful aid, even though that regulation was not applicable on that date, so that the grant of the aid in issue did not then have the effect of causing that limitation period to begin to run.

Likewise, in spite of the fact that a request to a national authority for information concerning aid which may have been granted, made at a date after the entry into force of that regulation, did not have the effect of interrupting the limitation period, it must be recognised as having that effect when the Commission, after the entry into force of that regulation, exercises its power to recover the aid in question.

aware of the existence of requests for information addressed by the Commission to the national authorities does not have the effect of depriving them of legal effect vis-à-vis the beneficiary, in particular as regards the interruption of the limitation period.

(see paras 58-60)

(see paras 56-57)

3. As the procedure established in Article 88(2) EC takes place primarily between the Commission and the Member State concerned, the single limitation period of 10 years laid down in Article 15 of Regulation No 659/1999 for recovery of unlawful aid applies in the same way to the Member State concerned, the recipient of the aid and third parties.
4. The beneficiary of State aid cannot, other than in exceptional circumstances, have a legitimate expectation that aid was lawful, and be relieved of the obligation to repay the aid, unless it has been granted in compliance with the provisions of Article 88 EC.

As the Commission is not under a duty to warn potentially interested persons, including the beneficiary of the aid, of the measures which it is taking in respect of unlawful aid before it initiates the administrative procedure, the mere fact that the beneficiary was not

Furthermore, as no limitation period was fixed by the Community legislature in relation to actions by the Commission in respect of unnotified State aid before Regulation No 659/1999 entered into force, a beneficiary could not rely before that date on any legitimate expectation or legal certainty in regard to a limitation period applicable to such aid.

(see paras 61-62)