

Case T-369/00

Département du Loiret

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 - 1793

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 — Administrative procedure — Excessive delay — Assessment in the light of the Commission's becoming aware of the aid*
3. *State aid — Planned aid — Not notified by the Member State concerned — Legitimate expectation on the part of the local authority which granted the aid — None*
(Arts 87 EC and 88 EC)
4. *State aid — Recovery of unlawful aid — Request for information addressed to a Member State concerning aid which may have been granted unlawfully — Effect — Interruption of the limitation period established by Article 15 of Regulation No 659/1999*
(Council Regulation No 659/1999, Arts 2(2), 5(1) and (2), 10(2) and 15)
5. *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)

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.

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

(see paras 50-51)

As Article 15 of that regulation, which prescribes a 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 which the

2. The question whether the conduct of an administrative procedure in respect of contested State aid was characterised by excessive delay cannot be examined on the basis of a consideration of the time which elapsed between the date on which the aid in question was granted and the date on which a Commission decision ordering its recovery was adopted. That examin-

ation must take as the starting date the date on which the Commission became aware that the aid in question had been granted.

internal to the parties, for which the Commission cannot be criticised. To decide otherwise would amount to impeding or to constituting an unjustified barrier to the achievement by the Commission of its task of ensuring compliance with Articles 87 EC and 88 EC.

(see para. 56)

(see para. 58)

3. Article 88(3) EC places the Member State concerned under an obligation to notify any plans to grant or alter State aid.

Since, save in exceptional circumstances, a recipient cannot have a legitimate expectation that aid was properly granted unless it has been granted in compliance with the provisions of Article 88 EC and since a diligent economic operator must normally be capable of ensuring that that procedure was observed, all the third parties, including the territorial authorities, are unable to rely on such a legitimate expectation or criticise the Commission for the fact that the administrative procedure relating to non-notified aid takes place principally between the Commission and the Member State concerned. If the central administration of a Member State has not complied with its obligation to notify the aid, to the detriment of the territorial authorities or of the beneficiary of aid granted by them, those circumstances constitute a problem

4. Article 10(2) of Regulation No 659/1999, like Article 15 of that regulation, appears in Chapter III of the regulation on the rules applicable to the procedure regarding unlawful State aid. Article 10(2) provides that the Commission is to request information from the Member State concerned. It follows from that article, read with Articles 2(2) and 5(1) and (2) thereof, that it imposes an immediate obligation on the Member State concerned to provide all necessary information following a request from the Commission. When it addresses a request for information to a Member State, the Commission is informing that State that it has in its possession information concerning aid alleged to be unlawful and, if necessary, that that aid will have to be repaid.

Accordingly, the fact that the request is merely a simple request for information

does not have the consequence of depriving it of legal effect as a measure capable of interrupting the limitation period provided for in Article 15 of Regulation No 659/1999.

(see paras 81-82)

5. As the procedure established in Article 88(2) EC takes place primarily between the Commission and the Member States concerned, the single limitation period for recovery of the unlawful aid applies in the same way to the Member States concerned, to the beneficiary of the aid and to third parties.

(see paras 83-85)

As the Commission is not obliged, before initiating the administrative procedure, to warn potentially interested persons, including the beneficiary of the aid, of the measures which it is taking in respect of unlawful aid, the mere fact that the beneficiary was not aware of the existence of requests for information sent 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.