

Joined Cases 67, 68 and 70/85 R

Kwekerij Gebroeders van der Kooy BV and Others

v

Commission of the European Communities

‘Aid — Horticulture — Price of gas’

Summary

- 1. Application for interim measures — Suspension of the operation of a measure — Interim measures — Conditions for granting*
(EEC Treaty, Arts 185 and 186)
 - 2. Aid granted by States — Plans to grant aid — Notification to the Commission — Aid put into effect before review of compatibility — Effect on right of the Member State concerned to challenge the Commission’s decision before the Court — None*
(EEC Treaty, Arts 92, 93, 173 and 186)
1. No order suspending the operation of a measure or providing for other interim measures can be considered unless the factual and legal grounds relied on to obtain them establish a *prima facie* case for granting them. In addition there must be urgency in the sense that it is necessary for the measures to be issued and to take effect before the decision of the Court on the substance of the case in order to avoid serious and irreversible damage to the party seeking them. Finally, the measures sought must be provisional in the sense that they do not prejudice the decision on the substance of the case.
 2. The fact that a Member State has put into effect measures granting aid before the Commission has given a decision on their compatibility with the Common Market and has thus infringed the provisions of Article 93 (3) of the Treaty does not deprive it of the right to bring an action before the Court for the annulment of the decision by which the Commission required the aid to be discontinued, or at the same time to apply for an order suspending the operation of that decision.