

Case C-188/92

TWD Textilwerke Deggendorf GmbH

v

Federal Republic of Germany

(Reference for a preliminary ruling
from the Oberverwaltungsgericht für das Land Nordrhein-Westfalen)

(State aid — Action against internal measures implementing a Commission decision
— Preliminary reference — Definitive nature of the decision vis-à-vis the recipient
of the aid to which it relates — Assessment of validity)

Opinion of Mr Advocate General Jacobs delivered on 15 September 1993 I - 835

Judgment of the Court, 9 March 1994 I - 846

Summary of the Judgment

Aid granted by States — Commission Decision finding aid to be incompatible with the common market and ordering its recovery — Decision not having been challenged under the second paragraph of Article 173 of the Treaty by the recipient of the aid who had been notified in due time — Challenge to the validity of the decision before the national court in an action brought against the national measures taken to implement it — Challenge to be dismissed by the national court (EEC Treaty, Art. 93 (2) and second paragraph of 173)

The national court is bound by a Commission decision adopted under Article 93 (2) of the Treaty where, in view of the implementation of that decision by the national authorities, the recipient of the aid to which the implementation measures are addressed brings before it an action in which it pleads the unlawfulness of the Commission's decision and where that recipient of aid, although informed in writing by the Member State of the Commission's decision, did not bring an action against that decision under the second paragraph of Article 173 of the Treaty, or did not do so within the period prescribed.

To accept that in such circumstances the person concerned could challenge the implementation of the decision in proceedings before the national court on the ground that the decision was unlawful would in effect enable the person concerned to overcome the definitive nature which the decision assumes as against that person once the time-limit for bringing an action has expired and would be incompatible with the requirements of legal certainty.