

Case T-25/04

González y Díez, SA

v

Commission of the European Communities

(State aid — Aid to cover exceptional restructuring costs — Withdrawal of an earlier decision — Expiry of the ECSC Treaty — Competence of the Commission — Continuity of the Community legal order — No infringement of essential procedural requirements — Protection of legitimate expectations — Manifest error of assessment)

Judgment of the Court of First Instance (Second Chamber, Extended Composition), 12 September 2007 II - 3127

Summary of the Judgment

1. *State aid — Aid falling within the scope of the ECSC Treaty ratione materiae and ratione temporis — Expiry of the ECSC Treaty — Continued review by the Commission under Article 88(2) EC*
(Art. 88(2) EC)

2. *Acts of the institutions — Temporary application — Procedural rules — Substantive rules — Distinction — Retrospective effect of a substantive rule — Conditions*
(Council Regulation No 1407/2002; Commission Notice 2002/C 152/03)
3. *Actions for annulment — Actionable measures — Measures producing binding legal effects — Commission decision closing the formal State aid review procedure provided for in Article 88(2) EC*
(Arts 88(2) EC and 230 EC)
4. *Acts of the institutions — Withdrawal — Unlawful measures — Commission decisions on State aid — Conditions*
(Council Regulation No 659/1999, Art. 9)
5. *State aid — Aid authorised by the Commission — Incorrect use by the recipient — Decision finding incorrect use of part of the authorised aid — Withdrawal — Opening of new investigation procedure*
(Art. 88(2) EC)
6. *State aid — Commission decision to open a formal aid review procedure — Protection of legitimate expectations of the interested parties regarding the complaints accepted by the Commission against the aid measures investigated*
(Art. 88(2) EC; Council Regulation No 659/1999, Art. 6)

1. Although the succession of the legal framework of the EC Treaty to that of the ECSC Treaty has led, since 24 July 2002, to a change of legal bases, procedures and applicable substantive rules, that succession is part of the unity and continuity of the Community legal order and its objectives. In that regard, the putting in place and maintaining of a system of free competition, within which the normal competitive conditions are ensured and on which, in particular, the rules in the field of State aid are based, constitutes one of the essential object-

ives of both the EC Treaty and of the ECSC Treaty. In that context, although the rules of the ECSC and the EC Treaties governing the regime relating to State aid differ to a certain extent, it must be pointed out that aid granted under the ECSC Treaty falls within the meaning of aid for the purposes of Articles 87 EC and 88 EC. Thus, the pursuit of the aim of undistorted competition in the sectors which initially fell within the common market in coal and steel is not suspended by the fact that the ECSC Treaty has expired, since that

objective is also pursued in the context of the EC Treaty.

adopted pursuant to the ECSC Treaty, in respect of situations existing prior to the expiry of that Treaty.

(see paras 55-57)

The continuity of the Community legal order and the objectives which govern its functioning thus require that, in so far as it succeeds the European Coal and Steel Community and in its own procedural framework, the European Community ensures, in respect of situations which came into being under the ECSC Treaty, compliance with the rights and obligations which applied *eo tempore* to both Member States and individuals under the ECSC Treaty and the rules adopted for its application. That requirement applies all the more in so far as the distortion of competition resulting from the non-compliance with the rules in the field of State aid is liable, under the EC Treaty, to expand its effects over time after the expiry of the ECSC Treaty.

2. Although procedural rules are generally held to apply to all disputes pending at the time when they enter into force, this is not the case with substantive rules. The latter must be interpreted, in order to ensure respect for the principles of legal certainty and the protection of legitimate expectations, as applying to situations existing before their entry into force only in so far as it clearly follows from their wording, objectives or general scheme that such an effect must be given to them.

It follows that Article 88(2) EC must be interpreted as enabling the Commission to review, after 23 July 2002, the compatibility with the common market of State aid granted in the fields falling within the scope of the ECSC Treaty *ratione materiae* and *ratione temporis*, and the application by the Member States of decisions authorising State aid

From that point of view, the continuity of the Community legal order and the requirements relating to the principles of legal certainty and the protection of legitimate expectations require the application of substantive provisions drawn from the ECSC Treaty to the facts which fall within their scope of application *ratione materiae* and *ratione temporis*. Just because, by reason of the expiry of the ECSC Treaty, the regulatory framework in question is no longer

in force at the time when the assessment of the factual situation is carried out does not alter that situation since that assessment concerns a legal situation which was definitively established at a time when substantive provisions adopted under the ECSC Treaty were applicable.

In that context, Regulation No 1407/2002 on State aid to the coal industry may not be applied to legal situations which definitively existed before the expiry of the ECSC Treaty. It is clear from the wording of Article 14 of that regulation that that regulation applies to situations existing from 24 July 2002 at the earliest. The Commission was thus not justified in finding, in paragraph 47 of the Communication concerning certain aspects of the treatment of competition cases resulting from the expiry of the ECSC Treaty, that State aid put into effect before 23 July 2002 without its prior approval would be subject to the provisions of Regulation No 1407/2002.

(see paras 58, 59, 67, 68)

88(2) EC constitutes a measure which may be contested on the basis of Article 230 EC. Such a decision produces binding legal effects which are capable of affecting the interests of the parties concerned, since it concludes the procedure in question and definitively decides whether the measure under review is compatible with the rules applying to State aid. Accordingly, interested parties are always able to contest the final decision which concludes the formal review procedure and must, in that context, be able to challenge the various elements which form the basis for the position definitively adopted by the Commission

That right is independent of whether the decision to initiate the formal review procedure gives rise to legal effects which may be the subject-matter of an action for annulment. The right to contest a decision to initiate the formal procedure may not diminish the procedural rights of interested parties by preventing them from challenging the final decision and relying in support of their action on defects at any stage of the procedure leading to that decision.

3. A final decision adopted by the Commission in order to conclude the formal review procedure provided for in Article

(see paras 91, 92)

4. It is apparent from the wording of Article 9 of Regulation No 659/1999 laying down detailed rules for the application of Article [88 EC] that the procedure laid down in that provision applies only to the revocation of positive decisions on State aid taken pursuant to Article 4(2) or (3), or Article 7(2), (3) or (4) of that regulation, adopted on the basis of incorrect information provided during the procedure. It is therefore not applicable to negative decisions establishing the incorrect use of an amount of aid authorised or the incompatibility of an aid measure with the common market.

That said, the Commission's right to revoke a decision on State aid is not restricted solely to the situation referred to in Article 9 of Regulation No 659/1999. That provision is merely a specific expression of the general principle of law according to which retrospective withdrawal of an unlawful administrative act which has created subjective rights is permissible, in particular if the administrative act at issue was adopted on the basis of false or incomplete information provided by the party concerned. The right to withdraw retroactively an unlawful administrative act which has created subjective rights is not, however, limited to that situation alone, since such a withdrawal may always be carried out provided that the institution which adopted the act complies with the conditions relating to reasonable time-limits and the legitimate expectations of beneficiaries of the act

who have been entitled to rely on its lawfulness.

(see paras 96, 97)

5. Where a Commission decision finds that part of the aid authorised has been incorrectly used, the other part of the aid in question which has not been found to have been incorrectly used remains within the scope of the authorising decision and benefits, as such, from a presumption that it has not been used incorrectly.

The examination carried out by the Commission in the context of the new formal procedure, opened with a view to revoking its earlier decision finding that part of the aid had been used incorrectly and to adopt a new decision in that regard, must relate to all the amounts of aid covered by the first examination in the context of the procedure which led to the adoption of that earlier decision.

Thus, an applicant cannot rely on a legitimate expectation that the amounts of aid which were not considered to have

been used incorrectly by the earlier decision would not fall within the scope of the Commission's examination in the context of the new formal procedure.

the reasoning which led the Commission provisionally to conclude that the measure in issue might constitute new aid incompatible with the common market.

(see paras 119-121)

6. Under Article 6 of Regulation No 659/1999 laying down detailed rules for the application of Article [88 EC], the decision to initiate the formal State aid review procedure must give the interested parties the opportunity effectively to participate in the formal investigation procedure, during which they will have the opportunity to put forward their arguments. For that purpose, it is sufficient for the parties to be aware of

In carrying out the procedure involving review of State aid the Commission must take account of the legitimate expectations which the parties concerned may entertain as a result of what was said in the decision to initiate the procedure and, subsequently, that it will not base its final decision on the absence of information which, in the light of what was said in that decision, the parties concerned could not have formed the view that they were under a duty to make available to it.

(see paras 124, 125)