

JUDGMENT OF THE COURT OF FIRST INSTANCE
(Fifth Chamber, Extended Composition)

10 April 2003 *

In Case T-366/00,

Scott SA, established in Saint-Cloud (France), represented by Sir Jeremy Lever QC, G. Peretz, Barrister, and R. Griffith, Solicitor, with an address for service in Luxembourg,

applicant,

supported by

French Republic, represented by F. Million, G. de Bergues and S. Seam, acting as Agents, with an address for service in Luxembourg,

intervener,

* Language of the case: English.

Commission of the European Communities, represented by G. Rozet and J. Flett, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for partial annulment of Commission Decision 2002/14/EC of 12 July 2000 on the State aid granted by France to Scott Paper SA Kimberly-Clark (OJ 2002 L 12, p. 1),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(Fifth Chamber, Extended Composition),

composed of: J.D. Cooke, President, R. García-Valdecasas, P. Lindh, N.J. Forwood and H. Legal, Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 26 September 2002,

gives the following

Judgment

Facts and legal framework

- 1 The applicant was the French subsidiary of Scott Paper Company, established in the United States of America, and throughout the material period was involved in household and sanitary paper production.

- 2 In 1986, the applicant decided to establish a factory in France and for that purpose chose a site in the *département* of Le Loiret on La Saussaye industrial estate.

- 3 On 31 August 1987, the City of Orleans, the *département* of Le Loiret and the applicant concluded an agreement for the sale to the applicant of a 48-hectare plot on La Saussaye industrial estate and on the water treatment levy, which was to be calculated at a special rate, corresponding to 25% of the lowest rate paid by other industries. The City of Orleans also offered to carry out the preliminary site-work free of charge. The agreement further provided that the *département* of

Le Loiret and the City of Orleans would contribute up to 80 million French francs (FRF) towards the preparation of the site for the applicant. Last, the purchase price of the plot together with the preparatory work was fixed at FRF 31 million, or FRF 65 per square metre.

- 4 In November 1996, the French Court of Auditors published a public report entitled 'Local authority assistance for undertakings' (special public report of the Court of Auditors, November 1996, Paris). Its aim in publishing this report was to draw attention to potential aid granted by French local authorities to certain undertakings, and in particular the conveyance to the applicant of a 48-hectare plot on La Saussaye industrial estate.

- 5 Following publication of this report, the Commission received a complaint, by letter dated 23 December 1996, about the preferential conditions on which the City of Orleans and the General Council of Le Loiret had sold the 48 hectares to the applicant and the rate at which the water treatment levy had been set for the applicant.

- 6 By letter of 17 January 1997, the Commission requested the French authorities to provide further information. There followed an exchange of correspondence between the French authorities and the Commission, between January 1997 and April 1998, in the course of which the French authorities provided in part the information and details requested, notably by letters of 19 March, 21 April and 29 May 1997. On 8 August 1997, the Commission again requested details from the French authorities. The Commission received further information from the French authorities on 3 November 1997 and from the complainant on 8 December 1997, 29 January 1998 and 1 April 1998.

- 7 By letter of 10 July 1998, the Commission informed the French authorities that it had taken a decision on 20 May 1998 to initiate the procedure provided for in Article 88(2) EC ‘[i]n view of... its doubts concerning the behaviour of the French authorities towards [the applicant] and its compatibility with the Treaty’ and invited them to submit their comments and also to answer certain questions (hereinafter ‘the decision to initiate the procedure’). In that letter, the Commission also requested the French authorities to inform the applicant that the procedure had been initiated and that it might have to repay any aid unlawfully received. The interested parties were informed that the procedure had been initiated and invited to submit any observations on the measures in question, by the publication of the letter of 10 July 1998 in the *Official Journal of the European Communities* of 30 September 1998 (OJ 1998 C 301, p. 4).
- 8 The applicant was informed of the decision to initiate the procedure by a telephone call from the French authorities on 30 September 1998.
- 9 By letter of 25 November 1998, and after requesting further time, the French authorities submitted observations on the decision to initiate the procedure. In response, notably, to an information injunction from the Commission dated 8 July 1999, pursuant to Article 10(3) of Regulation No 659/1999, the French authorities provided part of the necessary information on 15 October 1999.
- 10 During the administrative procedure, the applicant submitted observations and its representatives attended meetings held between the Commission and the French authorities.

- 11 On 16 April 1999, Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88 EC] (OJ 1999 L 83, p. 1) entered into force, pursuant to Article 30 thereof. That regulation establishes the procedural rules in matters of State aid.
- 12 Article 15 of that regulation provides:

‘Limitation period

1. The powers of the Commission to recover aid shall be subject to a limitation period of 10 years.

2. The limitation period shall begin on the day on which the unlawful aid is awarded to the beneficiary either as individual aid or as aid under an aid scheme. Any action taken by the Commission or by a Member State, acting at the request of the Commission, with regard to the unlawful aid shall interrupt the limitation period. Each interruption shall start time running afresh. The limitation period shall be suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Communities.

3. Any aid with regard to which the limitation period has expired, shall be deemed to be existing aid.’

The contested decision

- 13 On 12 July 2000, the Commission adopted a decision concerning State aid granted by France to the applicant ('the contested decision'), Article 1 of which provides:

'The state aid in the form of a preferential land price and a preferential rate of water treatment levy granted by France to Scott and amounting, in the case of the land price, to FRF 39.58 million (EUR 6.03 million) or, at present value, FRF 80.77 million (EUR 12.3 million)... is incompatible with the common market.'

- 14 Article 2 of the contested decision provides:

'1. France shall take all necessary measures to recover from the beneficiary the aid referred to in Article 1 and already made available to it unlawfully.

2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of this Decision. The aid to be recovered shall include interest from the date on which it was made available to the beneficiary until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.'

- 15 In the contested decision, the Commission considered that the limitation period applicable to its power concerning the recovery of aid granted unlawfully, under Article 15 of Regulation No 659/1999, had been interrupted in this case. In effect, any action taken by the Commission with regard to an unlawful aid interrupts the limitation period (see recital 219 of the preamble to the contested decision).
- 16 The Commission found that the aid in issue had been granted on 31 August 1987. The first measure taken by the Commission, in the form of a formal request for information made to the French authorities, dated from 17 January 1997. The limitation period had therefore been interrupted before the 10-year period provided for had expired, so that the Commission had the power to recover the aid in question (see recital 220 of the contested decision).
- 17 In the contested decision the Commission also rejected Scott's argument that the limitation period is designed to protect the beneficiary of the aid and that, consequently, it is interrupted only where the beneficiary has been informed that the Commission is investigating the aid. According to the Commission, the question as to who ultimately benefits from the limitation period is a separate matter from how that period is calculated. It further states that Article 15 of Regulation No 659/1999 does not refer to third parties, but is confined to the relations between itself and the Member States. The Commission is therefore under no obligation to provide information to third parties, who do not derive any specific right from Article 15 of that regulation. In proceedings relating to State aid, third parties enjoy only the procedural rights deriving from Article 88(2) EC (see recitals 221 to 223 of the contested decision).
- 18 When Article 15 of Regulation No 659/1999 refers to the beneficiary of the aid, it does so solely in order to determine the date from which the limitation period starts to run, i.e. 'the day on which the unlawful aid is awarded to the beneficiary' (see recital 223 of the contested decision).

- 19 The Commission also observes that the beneficiary of aid must check whether the aid it was granted was notified. If the aid was not notified and not approved, there is no legal certainty (see recital 224 of the contested decision).

Procedure and forms of order sought by the parties

- 20 By application lodged at the Registry of the Court of First Instance on 30 November 2000, the applicant brought the present action.
- 21 By application lodged at the Registry of the Court of First Instance on 4 December 2000, and registered under number T-369/00, an action which also seeks annulment of the contested decision was brought by the *département* of Le Loiret.
- 22 By document lodged at the Registry of the Court of First Instance on 5 April 2001, the French Republic sought leave to intervene in the present proceedings in support of the form of order sought by the applicant. On 25 April 2001, the Court of First Instance held a joint informal meeting in respect of both the present case and Case T-369/00, under Article 64(3)(e) of the Rules of Procedure, at which the request to join the two cases submitted by the applicant in Case T-369/00 and the possibility of deciding the limitation issue prior to any arguments on the merits of the case, as requested by the applicant in the present case, were discussed.

- 23 By order of the President of the Extended Composition of the Fifth Chamber of 10 May 2001, the French Republic was granted leave to intervene in support of the form of order sought by the applicant. In its statement of intervention, the French Republic limited its observations to the plea alleging breach of the principle of legitimate expectations and did not comment on the question of the application in the present case of the limitation period provided for in Article 15 of Regulation No 659/1999.
- 24 Upon hearing the report of the Judge-Rapporteur and in light of the views expressed at the informal meeting, the Court of First Instance (Fifth Chamber, Extended Composition) decided to open the oral procedure and to confine it to the grounds of annulment alleging that the Commission's power to order recovery of the State aid granted by France in the form of the preferential price of a 48-hectare plot at La Saussaye was time barred.
- 25 By way of measures of organisation of procedure, the Court of First Instance invited the applicant to submit its observations on certain arguments raised by the Commission in its rejoinder, which it did within the time allowed.
- 26 The main parties presented oral argument and replied to the questions put to them by the Court at the hearing on 26 September 2002.
- 27 At the hearing, the applicant informed the Court that it was withdrawing its application for annulment in so far as it related to the State aid granted in the form of a preferential rate of water treatment levy referred to at Article 1 of the contested decision and that its action should be understood as being limited to the application for annulment of the contested decision in so far as it found that aid granted in the form of a preferential land price was unlawful and, in the alternative, for annulment of Article 2 of the contested decision to the same extent. The Court took note of that partial withdrawal.

28 In the present judgment, the Court will therefore confine itself to considering the application for annulment of Article 2 of the contested decision in so far as that application is based on the plea alleging breach of Article 15 of Regulation No 659/1999.

29 In that context, the applicant claims that the Court should:

— annul Article 2 of the contested decision, in so far as it concerns the aid granted in the form of a preferential land price referred to in Article 1;

— order the Commission to pay the costs.

30 The French Republic, intervening in support of the form of order sought by the applicant, submits that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

31 The Commission contends that the Court should:

- dismiss the application;
- order the applicant to pay the costs;
- in the alternative, order the parties to bear their own costs.

Law

32 The applicant maintains that in ordering, in Article 2 of the contested decision, recovery of the aid in respect which it found to have been granted 31 August 1987, the Commission failed to observe the 10-year limitation period provided for in Article 15 of Regulation No 659/1999.

33 This plea is divided into two parts. First, the applicant disputes the Commission's interpretation of Article 15 of that regulation, set out at recitals 219 to 224 of the contested decision, to the effect that, although it was applicable in the present case, the 10-year limitation period was interrupted on 17 January 1997, the date on which the Commission sent the French authorities a request for further information, i.e. before the 10th anniversary of the grant of the aid. Second, the applicant disputes the alternative interpretation of Article 15 of Regulation No 659/1999 which the Commission provides in its defence, namely that the aid granted to the applicant on 31 August 1987 is not covered by the limitation period provided for in that article owing to the decision to initiate the procedure,

which was published on 30 September 1998 and of which the applicant was aware before Regulation No 659/1999 entered into force.

- 34 The Commission puts forward two series of arguments in response to the applicant's plea. First, it reaffirms the interpretation of Article 15 of Regulation No 659/12999 which it set out in the contested decision; and, second, in the defence, it states that Article 15 of that regulation was not applicable in the present case on the ground that the Article 88(2) EC procedure was initiated and the applicant was aware of that fact before Regulation No 659/1999 entered into force, namely at the latest by 30 September 1998, the date on which the decision to initiate the procedure was published in the *Official Journal of the European Communities*. Aid granted before the date on which Regulation No 659/1999 entered into force is not covered by the limitation period in Article 15 of that regulation unless two conditions are both satisfied, namely, first, that at least 10 years have elapsed since the aid was granted and, second, that no measure interrupting the limitation period was taken prior to the entry into force of Regulation No 659/1999.
- 35 The Court considers that the first part of the applicant's plea should be examined first.

Arguments of the parties

- 36 The applicant puts forward six specific arguments against the interpretation of Article 15 of Regulation No 659/1999 set out at recitals 219 to 224 of the contested decision.

- 37 First, it submits that a measure adopted by the Commission cannot interrupt the limitation period *vis-à-vis* the beneficiary of the aid, unless the latter, who may be subject to a recovery injunction in respect of a sum paid which the Member State concerned may be required to make following the State aid procedure, is aware of it. That is the position even if, to use the Commission's words, the State aid procedure takes place 'in the strict sense' between the Commission and the Member State concerned. Whatever the situation may be from a legal standpoint, it is the beneficiary who will actually be in the position of defendant and it is the beneficiary who will bear the financial loss at the close of the procedure provided for in Article 88(2) EC. For that reason, it is the beneficiary who, in order to defend its interests, should be entitled to rely on the limitation period provided for in Article 15 of Regulation No 659/1999.
- 38 Thus, where the Commission does not publish a notice in the *Official Journal of the European Communities* stating that a measure interrupting the limitation period has been taken or communicate that information either directly or via the Member State, the measure cannot constitute a measure interrupting the limitation period for the purposes of Article 15 of Regulation No 659/1999 *vis-à-vis* the beneficiary. In the present case, neither of those conditions was fulfilled.
- 39 Second, the applicant submits that the purpose of Article 15 of that regulation is to guarantee legal certainty for beneficiaries of State aid and also for Member States. The Commission's assertion that an action may constitute an interrupting measure even if the beneficiary of the aid is not aware of its existence is clearly not compatible with that purpose.
- 40 Third, the applicant observes that the Commission appears to accept that one of the essential characteristics of a measure interrupting the limitation period *vis-à-vis* the Member State is that the Member State must be informed of the existence of that measure. Similarly, in the applicant's submission, any measure taken by the Commission for the purpose of interrupting the limitation period *vis-à-vis* the beneficiary of the aid must be known to the beneficiary.

- 41 Fourth, when it maintains that in a procedure relating to State aid, the beneficiary of the aid is in a different position from that of other third parties, the applicant is not developing an ‘entirely novel’ position. The Commission’s own publications confirm that approach.
- 42 Fifth, the applicant submits that Article 15(2) of Regulation No 659/1999 states that measures taken by the Commission which are capable of interrupting the limitation period also include measures taken by a Member State at the request of the Commission. That separate reference to measures taken by the Member State would be unnecessary if the Commission’s request to the Member State were in itself sufficient to interrupt the limitation period *vis-à-vis* the beneficiary of the aid as well. It is clear that the Community legislature had in mind circumstances in which the measure sent by the Commission to the Member State had not interrupted the limitation period *vis-à-vis* a person other than the Member State in question and that it was therefore necessary to make clear that the measure adopted by the Member State at the request of the Commission should interrupt the limitation period in respect of persons other than the Member State.
- 43 Sixth, and last, the applicant maintains that there is no administrative or practical reason why the Commission should not inform the beneficiary of allegedly unlawful aid that it is going to examine the aid, in particular where, as in the present case, it discusses measures interrupting the limitation period and their results with a complainant. From an administrative and practical point of view, the applicant’s proposed interpretation of Article 15 of Regulation No 659/1999 is therefore perfectly acceptable.
- 44 The Commission contends that the letters which it sent to the French authorities between 17 January and 8 August 1997, i.e. before the end of the 10-year period commencing on the date on which the aid was granted, constitute measures interrupting the limitation period provided for in Article 15 of Regulation No 659/1999.

- 45 It observes, first of all, that the State aid procedure takes place between it and the Member State and not between it and the interested parties, including the beneficiaries of the aid. That is clear not only from the wording of Articles 87 EC, 88 EC and 89 EC and from the consistent case-law of the Court of Justice, but also from the wording of Regulation No 659/1999 and, more particularly, from Article 25, which provides that decisions taken pursuant to its provisions are to be addressed to the Member State concerned.
- 46 The Commission also states that the State aid procedure is not a penal action against the beneficiary of the aid. No fine is imposed on the beneficiary and the purpose of recovery of unlawful aid is to restore effective competition, not to penalise the beneficiary.
- 47 Next, the Commission observes that the rights of the interested parties, including the beneficiaries, are delimited by Article 88(2) EC and by the terms of Regulation No 659/1999 and, more particularly, by Article 20, entitled 'Rights of interested parties'. The Commission is under no obligation to communicate to the presumed beneficiaries of an aid a measure interrupting the limitation period, taken under Article 15(2) of that regulation.
- 48 The applicant is apparently relying on a specific procedural right in its favour, namely the right to be informed directly by the Commission of any measure interrupting the limitation period. It submits in that regard that the purpose of the limitation rule is to ensure legal certainty for the beneficiaries. The Commission does not share that point of view and states that, like the other procedural rules applicable to State aid, the limitation rule takes effect *vis-à-vis* the Member State concerned and not *vis-à-vis* the beneficiary of the aid. A recovery injunction made in respect of unlawful aid has negative consequences not only for the beneficiary of the aid but also for the Member State concerned. The grant of unnotified State aid infringes Article 88(3) EC and under national law may give rise to an action in non-contractual liability against the Member State.

- 49 Last, the Commission states that, by definition, the limitation period applies only to unnotified aid. Unnotified aid constitutes an infringement of Article 88(3) EC, which has direct effect. The beneficiaries are deemed to be aware of Community law on State aids and cannot plead ignorance of the law to found a legitimate expectation that the aid will never be recoverable. In those circumstances, the Commission submits that a restrictive application must be given to Article 15 of Regulation No 659/1999 as a whole and not just, as the applicant would have it, to the concept of a measure interrupting the limitation period.

Findings of the Court

- 50 It should be pointed out at the outset that, in accordance with settled case-law, the legality of a Community measure falls to be assessed on the basis of the elements of fact and of law existing on the date on which the measure was adopted (see Case T-123/97 *Salomon v Commission* [1999] ECR II-2925, paragraph 48, and Case T-126/99 *Graphischer Maschinenbau v Commission* [2002] ECR II-2427, paragraph 33).
- 51 It is also settled case-law that although procedural rules are generally held to apply to all proceedings pending at the time when they enter into force, this is not the case with substantive rules. The latter are usually interpreted as applying to situations existing before their entry into force only in so far as it clearly follows from their terms, objectives or general scheme that such an effect must be given to them. This interpretation ensures respect for the principles of legal certainty and the protection of legitimate expectations, by virtue of which the effect of Community legislation must be clear and predictable for those who are subject to it (see, in particular, Joined Cases 212/80 to 217/80 *Salumi and Others* [1981] ECR 2735, paragraphs 9 and 10, and Joined Cases C-121/91 and C-122/91 *CT Control (Rotterdam) and JCT Benelux v Commission* [1993] ECR I-3873, in particular paragraphs 22 and 23).

- 52 Regulation No 659/1999, which is a procedural regulation relating to the application of Article 88 EC, was adopted in the light of the practice developed by the Commission in that sphere with a view, particularly, to ensuring effective and efficient procedures pursuant to that article and to increasing transparency and legal certainty (see recitals 2 and 3 to that regulation). Chapter III, entitled 'Procedure regarding unlawful aid', sets out the Commission's powers relating, in particular, to the examination of State aid, to the request for information, to information injunctions and to the recovery of unlawful aid. It follows from the very wording of those provisions, including Article 15, that they are of a procedural nature and that, in application of the case-law cited above, they therefore apply to all administrative procedures in the matter of State aid pending before the Commission at the time when Regulation No 659/1999 entered into force, namely on 16 April 1999.
- 53 Furthermore, since Article 15 of Regulation No 659/1999 contains no transitional provision as regards its application *ratione temporae*, unlike the second subparagraph of Article 11(2) of that regulation, concerning the Commission's power to order provisional recovery of aid paid unlawfully, it applies to any definitive action ordering recovery of aid taken after the date on which the regulation entered into force, including aid granted before that date.
- 54 In the present case, it follows from the wording of the contested decision, and in particular from the analysis of the question of the application of the limitation period set out at recitals 219 to 224, that when it adopted that decision the Commission itself took the view that its action relating to the recovery of the aid in question fell within the scope of Article 15 of Regulation No 659/1999. Furthermore, the fact that the Commission issued an information injunction to the French authorities under Article 10(3) of the regulation on 8 July 1999 shows that it conducted the State aid procedure initiated pursuant to Article 88(2) EC on 20 May 1998 on the basis of the new procedural rules as soon as Regulation No 659/1999 entered into force, i.e. on 16 April 1999.

- 55 In those circumstances, it is for the Court to consider, first of all, whether the argument that the limitation period referred to in Article 15(2) of Regulation No 659/1999 was interrupted is capable of applying in the case of a measure taken before that regulation entered into force, but during the 10-year period commencing on the date on which the aid was granted; and, next, if appropriate, whether such a measure is capable of interrupting the limitation period *vis-à-vis* the beneficiary of the aid only if it was brought to the latter's knowledge.
- 56 Even though Regulation No 659/1999 was not applicable on 31 August 1987, so that the grant on that date of the aid in issue did not then have the effect of causing a limitation period of 10 years to begin to run, that date must none the less be taken as the starting date of that period when Article 15 is applied to the facts existing on 12 July 2000.
- 57 Likewise, in spite of the fact that the measures adopted by the Commission on 17 January 1997 did not then have the effect of interrupting the limitation period, they must be recognised as having such an effect when they are seen in the context of the exercise by the Commission, after 16 April 1999, of its power to order recovery of the aid granted on 31 August 1987. That interpretation is not intended to confer retroactive effect on Article 15 but merely to ensure the uniform application of that article to a series of facts or events which have already occurred and are examined after 12 July 2000. In other words, if the grant of the aid on 31 August 1987 must be regarded as having caused the limitation period provided for in Article 15 of Regulation No 659/1999 to begin to run, the events which occurred during that period must also be assessed on the basis of that regulation.
- 58 As regards the applicant's argument that the measures adopted by the Commission between January and August 1997 could not have the effect of interrupting the limitation period in application of Article 15 of Regulation No 659/1999, on the ground that the applicant was not aware of the measures at the time, the Court would point out that Article 15 introduced a single limitation period for recovery of aid which applies in the same way to the Member State concerned and to third parties.

59 In that regard, the procedure established in Article 88 EC takes place primarily between the Commission and the Member States concerned, while the persons concerned, including the beneficiaries of the aid, are entitled to be warned and to have the opportunity to put forward their arguments (see, to that effect, Case 323/82 *Intermills v Commission* [1984] ECR 3809, paragraphs 16 and 17). According to settled case-law, the interested parties have in essence the role of information sources for the Commission in the administrative procedure instituted under Article 88(2) EC (Case T-266/94 *Skibsvaerftsforeningen and Others v Commission* [1996] ECR II-1399, paragraph 256, and Joined Cases T-371/94 and T-394/94 *British Airways and Others and British Midland Airways v Commission* [1998] ECR II-2405, paragraph 59). 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.

60 It follows that the mere fact that the applicant was not aware of the existence of the Commission's requests for information from the French authorities beginning on 17 January 1997 (see paragraph 6 above) does not have the effect of depriving them of legal effect *vis-à-vis* the applicant. Consequently, the letter of 17 January 1997, sent by the Commission before the initiation of the administrative procedure and requesting further information from the French authorities, constitutes, under Article 15 of Regulation No 659/1999, a measure interrupting the 10-year limitation period, which in this case began to run on 31 August 1987, before that period expired, even though the applicant was not at the time aware of the existence of such correspondence.

61 Next, it should be borne in mind that the aid in issue was not notified to the Commission. It is settled case-law that, 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 (Case C-5/89 *Commission v Germany* [1990] ECR I-3437, paragraph 14, and

Case C-169/95 *Spain v Commission* [1997] ECR I-135, paragraph 51). The prudent economic operator should usually be able to ensure that that procedure was followed.

- 62 Last, it should be observed that before 16 April 1999 no limitation period was fixed by the Community legislature in relation to actions by the Commission in respect of unnotified State aid. It follows that before that date the applicant could not have had any legitimate expectation or legal certainty in regard to a limitation period applicable to unnotified aid granted in 1987. Accordingly, the interpretation of Article 15 of Regulation No 659/1999 set out at paragraphs 50 to 57 above and its application to the measure adopted by the Commission on 17 January 1997 does not have the effect of depriving the applicant of legal certainty or of any legitimate expectation which might have come into existence during the 10 years following the grant of the aid in question.
- 63 In light of the foregoing considerations, the first part of this plea must be rejected.
- 64 As regards the second part of the plea, relating to the alternative interpretation of Article 15 of Regulation No 659/1999 put forward by the Commission in its defence, the Court has already held at paragraphs 57 to 60 above that the regulation is applicable to the present case and that the 10-year limitation period laid down in Article 15 was interrupted on 17 January 1997. When the decision to initiate the procedure was published on 10 July 1998, the Commission's powers to order recovery of the aid were not therefore time barred.
- 65 In those circumstances, the application for annulment of Article 2 of the contested decision, in so far as it alleges infringement by the Commission of Article 15 of Regulation No 659/1999, must be dismissed.

Costs

- 66 Since the present judgment is confined to the limitation issue and the proceedings will be continued, costs will be reserved.

On those grounds,

THE COURT OF FIRST INSTANCE
(Fifth Chamber, Extended Composition),

hereby:

1. Dismisses the application for annulment of Article 2 of Commission Decision 2002/14/EC of 12 July 2000 in so far as it alleges that the Commission infringed Article 15 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88 EC];

2. Orders that the remainder of the proceedings be continued;

3. Reserves the costs.

Cooke

García-Valdecasas

Lindh

Forwood

Legal

Delivered in open court in Luxembourg on 10 April 2003.

H. Jung

Registrar

J.D. Cooke

President