

## Case T-17/03

**Schmitz-Gotha Fahrzeugwerke GmbH**

**v**

**Commission of the European Communities**

(State aid — Guidelines on State aid for rescuing and restructuring firms  
in difficulty — Necessity of the aid)

Judgment of the Court of First Instance (Fourth Chamber, Extended Composition), 6 April 2006 . . . . . II - 1142

### Summary of the Judgment

1. *State aid — Not allowed — Exceptions — Discretion of the Commission (Art. 87(3) EC)*
  
2. *State aid — Not allowed — Exceptions — Discretion of the Commission*

3. *State aid — Not allowed — Exceptions — Aid which may be considered compatible with the common market — Aid for restructuring firms in difficulty*  
(Art. 87(3)(c) EC; Commission communication 94/C 368/05, point 3.2.2)
4. *State aid — Examination by the Commission*

1. In the application of Article 87(3) EC, the Commission has a wide discretion the exercise of which involves economic and social assessments which must be made in a Community context. Judicial review of the manner in which that discretion is exercised is confined to establishing that the rules of procedure and the rules relating to the duty to give reasons have been complied with and to verifying the accuracy of the facts relied on and that there has been no error of law, manifest error of assessment in regard to the facts or misuse of powers. That review must be carried out on the basis of the elements of fact and of law available to the Commission at the time when it made its assessment.

vided that they contain directions on the approach to be followed by that institution and do not depart from the Treaty rules. Such measures reflect the Commission's desire to publish directions on the approach it intends to follow, in the light of its individual decisions in the field concerned.

(see para. 42)

(see paras 41, 54)

2. The Commission may lay down for itself guidelines on the exercise of its discretionary powers, by means, inter alia, of guidelines such as those which it has adopted on State aid for rescuing and restructuring firms in difficulty, pro-

3. In order to be declared compatible with the common market in application of Article 87(3)(c) EC, a restructuring aid plan for a firm in difficulty must be linked to a restructuring programme designed to reduce or redirect its activities. Point 3.2.2 of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty, which lays down that requirement, stipulates, in particular, that the restructuring plan must fulfil three material conditions. It is essential, first, that it restore the viability

of the beneficiary firm within a reasonable timescale and on the basis of realistic assumptions (point 3.2.2(i)); second, that it avoid undue distortions of competition (point 3.2.2(ii)); and, third, that it be in proportion to the restructuring costs and benefits (point 3.2.2(iii)). As those conditions are cumulative, the Commission must declare a restructuring aid plan to be incompatible if even one of those conditions has not been satisfied.

It follows from point 3.2.2(iii) that the aid in question must be strictly necessary to restore the viability of the beneficiary, that is to say, that it must not only meet the objective pursued of the restructuring of the undertaking concerned, but also be proportionate to that objective, that is to say, that any aid in excess of the strict return to viability of the beneficiary cannot in principle be eligible under the guidelines. In order to fulfil its duty to cooperate with the Commission, the Member State concerned must provide all the information necessary to

enable the Commission to verify that the conditions for the derogation from which it seeks to benefit are satisfied.

(see paras 43-45, 47, 48)

4. Once the Commission has given the interested parties the opportunity to submit their comments on planned aid of which it has been notified, it cannot be criticised for having failed to take account of any elements of fact which could have been submitted to it during the administrative procedure but which were not, as the Commission is under no obligation to consider, of its own motion and on the basis of prediction, what elements might have been submitted to it.

(see para. 54)