Case 248/84 R

Federal Republic of Germany
v
Commission of the European Communities

'Regional investment aids'

Summary

Application for interim measures — Suspension of operation — Conditions for granting such a measure
(EEC Treaty, Art. 185)

ORDER OF THE PRESIDENT OF THE COURT
13 June 1985 *

In Case 248/84 R

Federal Republic of Germany, represented by M. Seidel, Ministerialrat, assisted by Professor R. Lukes, with an address for service in Luxembourg at its Embassy,

applicant,

v

* Language of the Case: German.

Commission of the European Communities, represented by Norbert Koch, Legal Adviser at the Commission, acting as Agent, with an address for service in Luxembourg at the office of George Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the suspension of the operation of Article 1 of Commission Decision No 85/12 of 23 July 1984 (COM (84) 1272) concerning the economic development programme for the *Land* of North Rhine-Westphalia,

THE PRESIDENT OF THE COURT OF JUSTICE
OF THE EUROPEAN COMMUNITIES

makes the following

ORDER

1 The applicant in these interim proceedings brought an action on 16 October 1984 for a declaration that Commission Decision No 85/12 of 23 July 1984 was void in so far as it prohibited the granting of aid in the labour-market areas of Borken-Bocholt and Siegen after 30 June 1985 in accordance with the guidelines for the granting of investment aids for the improvement of the regional economic structure of the *Land* of North Rhine-Westphalia (regional economic aid programme) as published in the circular of the Minister for Economic Affairs, Small Businesses and Transport of 10 June 1982.

2 By application lodged at the Court Registry on 15 May 1985 the Federal Republic of Germany requested the Court to suspend the operation of the said Commission decision until the Court had given judgment in the main proceedings.

3 The German Government contends that if the investment aids — involving relatively small amounts — were to become unlawful after 30 June 1985 in the two labour-market areas of Borken-Bocholt and Siegen, the difficult situation in regard to economic structure would continue to deteriorate in those areas.

4 It further contends that application of the Commission decision would seriously affect the *Land* of North Rhine-Westphalia whose measures granting aid would become unlawful. Serious damage would also be caused to the municipalities in the two labour-market areas and their inhabitants. The employment situation, which is already bad, would continue to get worse.

5 If the Court were to uphold the claim in the main proceedings the damage suffered could not be made good, according to the German Government, since the undertakings would have already abandoned their investment plans or have implemented them in another way. Moreover, analysis of the interests involved leads to the conclusion that even if the Court were to dismiss the main application as unfounded, any delay in the taking effect of the Commission decision would not adversely affect the Community. The Commission has in any event already provided that the decision should not enter into force immediately but only on 30 June 1985.

6 The interim measures requested would not affect the judgment of the Court. The application for suspension relates only to the date on which the Commission decision takes effect and in no way to its validity.

7 The Commission states that the maintenance in force for a limited period of an aid prohibited by the Commission is possible under Article 93 (2) of the EEC Treaty in respect of an existing system of aid but not in respect of an aid which it is intended to introduce or alter and which has to be notified. It follows that the prohibition on the grant of aid by the *Land* of North Rhine-Westphalia after 30 June 1985 leaves intact the system of aid up to that date only to the extent of the maximum rate of aid already granted, namely a ceiling of 7.5%, and not to the extent of the increase of 2.5% in the maximum rate of aid which was contemplated. The latter increase is prohibited by the contested decision and there is no transitional period.

8 Furthermore, aid could still be granted after 30 June 1985 provided that the request reached the competent authorities of the *Land* of North Rhine-Westphalia before that date. The authorities could moreover still accept requests for subsidies after 30 June 1985 and grant them retroactively should the contested decision be declared void. Since the Commission's decision was known to those concerned,

there was an increase in requests during the period prior to the time-limit and approval in advance of aid programmes.

9 The Commission points out that, on the applicant's own admission, aid limited to 7.5% does not in itself have a decisive effect upon decisions by undertakings in relation to investments. Accordingly, the operation of the contested decision cannot entail an appreciable reduction in the number of investment plans expected to be lodged after 30 June 1985 and therefore cannot cause serious and irreparable damage to the municipalities concerned and their inhabitants. The Commission contends, in the alternative, that the applicant has not shown that the unfavourable economic structure was continuing to deteriorate. In any event the applicant's argument in relation to 'maintenance of the unfavourable economic structure' is intended to prejudice the decision on the substance of the case.

10 It follows from a consistent line of decisions of the Court that an application for interim measures must be urgent in the sense that it must be necessary to give an interim ruling in order to avoid serious and irreparable damage.

11 The applicant has failed to adduce any persuasive argument to establish that that condition is satisfied. On the contrary, it has stated that the regional aid in question does not in itself have a decisive effect upon the decisions which the undertakings take in relation to investment. Moreover, the contested decision has allowed a period of one year to the German authorities and undertakings to adjust to the abolition of aid and in addition has allowed aid to be granted even after 30 June 1985 in respect of requests made prior thereto. It must also be observed that the representatives of the German Government have not been able to point to important investment plans the implementation of which in the near future would be prevented by the ban on the grant of aid.

12 In those circumstances it cannot be held that application of the contested decision entails serious and irreparable damage.

On those grounds,

THE PRESIDENT,

as an interim measure,

hereby orders:

(1) The application is dismissed;

(2) Costs are reserved.

Luxembourg, 13 June 1985.

P. Heim
Registrar

A. J. Mackenzie Stuart
President