

SUMMARIES OF STATE AID JUDGMENTS AT NATIONAL LEVEL

JUDGMENTS SELECTED FROM THE 2006 STUDY ON THE ENFORCEMENT OF STATE AID LAW AT NATIONAL LEVEL - PART I

I- Information on the judgment

Decision of the State Council dated 11 April 1989

II- Brief description of the facts and legal issues

The commercial company Moulins de Kleinbettingen filed for a subsidy with the Ministry of Agriculture, in accordance with the act dated 18 December 1986 promoting agricultural development. The application was refused by the Ministry on the grounds that the claimant did not fall under the scope of application of Article 39, paragraph 1 of the Act, which lists the potential beneficiaries of such a subsidy, stating that such beneficiaries may, *inter alia*, be those undertakings whose main purpose is to increase the income of farmers in general.

The claimant instituted an administrative action against this decision before the State Council by arguing, first that the Act had not been correctly applied by the Ministry and, secondly, that, by such incorrect application of the Act, Article 87 EC had been infringed in the sense that anti-competitive structures had been created.

III- Summary of the Court's findings

As far as the first argument is concerned, the State Council held that the aim of the act was to enable the Ministry of Agriculture to promote the agricultural sector. Hence, the potential beneficiaries of the subsidies were to be found amongst the agricultural population and the rural establishments. The subsidies foreseen by the act were paid by the budget of the Ministry of Agriculture. As public expenditures must not be diverted from the purpose given to them by the legislator, it was held that the Minister of Agriculture must restrict the granting of subsidies to those entities for which his Ministry is in charge. This was not the case of the company Moulins de Kleinbettingen, a private company which fell under the competence of the Department of Industry and Middle Class affairs. Accordingly, the decision of the Minister of Agriculture was upheld by the State Council.

As far as the claimant's second argument is concerned, the State Council simply considered, without any further comments or explanations, that the aid granted under the Act, just like the aid benefiting to the industrial sector as provided by an act dated 14 May 1986, was compatible with the exceptions set out under Articles 87 (2) and (3) EC. The State Council also stated that the claimant could not reasonably assert that there was a risk of disturbing the balance of the Common Market by the mere fact that Luxembourg had granted structural aid to the agricultural sector by means of the Act.

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