SUPREME COURT OF ESTONIA

ADMINISTRATIVE LAW CHAMBER

COURT JUDGMENT
On behalf of the Republic of Estonia

Case number	3-15-241
Date of judgment	19 December 2019
Court panel	Chair: [redacted]; members: [redacted] and [redacted]
Case	AS Metaprint's appeal for annulment of Enterprise Estonia's decision of 22 September 2014
Parties to the proceedings	The appellant AS Metaprint, represented by [redacted], attorney-at-law The respondent Enterprise Estonia, represented by [redacted] advocate, and [redacted], attorney-at-law The administrative body involved, the European Commission, represented by advocates [redacted] and [redacted]
Contested decision	Judgment of Tallinn District Court of 18 May 2017
Grounds for proceedings in the Supreme Court	AS Metaprint's appeal in cassation
Examination of case	Written proceedings

OPERATIVE PART

1. To uphold the appeal in cassation in part.

2. To annul the judgment of Tallinn District Court of 18 May 2017 as regards the application for annulment. To refer this aspect of the case back to the district court.

3. To leave unchanged the operative part of the district court's judgment as regards the claim for compensation, but to replace the corresponding grounds as set out in the district court's judgment with the grounds set out in this judgment.

4. To return the security.

FACTS AND PROCEDURE

1. On 24 October 2008, AS Metaprint submitted an application, on the basis of Regulation No 44 of the Minister for Economic Affairs and Communications of 4 June 2008 on the conditions and procedure for supporting investment in technology by industrial undertakings, to Enterprise Estonia for aid totalling EUR 440,990.37 for a production line project. Enterprise Estonia satisfied the application by a decision of 31 December 2008. The aid has been paid.

2. By means of a **decision** dated 22 September 2014, Enterprise Estonia: (a) repealed its decision of 31 December 2008 retroactively as of its entry into force; (b) declared project expenditure of EUR 1,103,840.64 to be ineligible; (c) demanded that AS Metaprint repay aid amounting to EUR 440,990.37 plus compound interest for the period from when the aid was paid out until it was repaid. According to the decision, AS Metaprint had taken on a binding commitment towards its contractual partner to acquire a production line in accordance with the project before applying to Enterprise Estonia for aid. Thus the aid has no incentive effect, and Article 8(2) of Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the internal market in application of Articles 87 and 88 of the Treaty (General Block Exemption Regulation) has been disregarded. In line with the fundamental principles of the European Union, the State is required to recover any unlawful aid plus interest, on the basis of Regulation (EC) No 659/1999 and Article 9 of Regulation (EC) No 794/2004. AS Metaprint was already aware that the granting of State aid was unlawful at the time the aid was granted and so it cannot have had legitimate expectations.

3. AS Metaprint submitted an administrative appeal against Enterprise Estonia's decision. On 31 December 2014 the Ministry of Economic Affairs and Communications issued a decision rejecting the administrative appeal.

4. AS Metaprint filed an **appeal** with the Tallinn Administrative Court for annulment of Enterprise Estonia's decision of 22 September 2014. As an alternative, the appellant claimed compensatory damages from the respondent for a breach of good faith, plus default interest. The grounds for the appeal were as follows:
a) Before applying for the aid, work on the project had not commenced and no binding contract had been concluded within the meaning of the United Nations Convention on Contracts for the International Sale of Goods (CISG; RT II 1993, 21, 52). Without aid of that size, the appellant would not have taken on the project. Enterprise Estonia must have been aware of the order at the time of granting the aid.
b) A body that has granted aid becomes subject to the obligation to recover the aid only if the aid is unlawful and incompatible with the internal market. Since the European Commission has not confirmed the incompatibility of the aid with the internal market, and since no competitors have appealed to the courts in the Member States, the State is not required to recover the State aid. The recovery of aid is a discretionary decision, and there is currently insufficient public interest in it. This case is an example of the situation described in Section 67(2) of the Administrative Procedure Act [*haldusmenetluse seadus*].
c) There are no legal grounds for the claim for compound interest. The Commission has not adopted a recovery decision, and thus Article 14(2) of Regulation No 659/1999 does not apply. Nor is there any legal basis for claiming interest under Regulation No 794/2004, since this merely provides clarification concerning the application of Article 14(2) of Regulation No 659/1999.
d) The State aid cannot be recovered because the limitation period has expired. The limitation period depends on when the body that granted the State aid became aware of the circumstances under which the aid was to be recovered. Enterprise Estonia must have been aware of the alleged unlawfulness of the aid at the time it was granted. The appellant signed the final report on 5 February 2010. This also covered the disputed order.
e) The compensatory damages to which the appellant is entitled for a breach of good faith (Section 67(3) of the Administrative Procedure Act) is the difference between the amount being recovered and the cost of a loan hypothetically granted to the appellant at the time the aid was granted (plus interest). As at 31 December 2008, the appellant presumed that the aid

would not be recovered. Enterprise Estonia's decision is unlawful also in that it does not provide for the payment of compensatory damages to the appellant for the breach of good faith.

5. In its **judgment** of 25 May 2015, Tallinn Administrative Court rejected the appeal and ruled that the costs of the proceedings should be borne by the parties for the following reasons:

a) The contract between AS Metaprint and Styner+Bienz FormTech Ltd. was binding. The facts that the order of 7 July 2008 was confirmed, a deposit was paid and a bank guarantee was provided clearly demonstrate the intent of the parties in this regard. It is of no importance that the deposit was subsequently excluded from the eligible expenditure. Payment of the deposit confirms that the risk had been taken. It is clear from recital 28 and Article 8(2) of the General Block Exemption Regulation and also from paragraph 38 of the Guidelines on regional State aid that an application for aid must be submitted before work on the project commences and that one of the events that can be considered as the beginning of the work is the conclusion of the first definitive contract.

b) Enterprise Estonia's authority to issue the disputed decision is derived from Sections 18(6)(1) and 26(2)(1) of the 2007-2013 Structural Assistance Act [*perioodi 2007-2013 struktuuritoetuse seadus*], Section 19(5)(1) of Regulation No 44 of the Minister for Economic Affairs and Communications of 4 June 2008 on the conditions and procedure for supporting investment in technology by industrial undertakings, and Section 10(2)(1) of Government of the Republic Regulation No 278 of 22 December 2006 on the conditions and rules for recovering and repaying aid and for providing information on infringements during the granting and use of aid. The ban on paying aid in breach of the conditions set for that aid, which has been transposed into Estonian law, protects the public interest and is not linked to a negative decision by the Commission or to a complaint by a competitor. Article 98 of Council Regulation (EC) No 1083/2006 lays down the obligation to recover aid if irregularities are detected. At the time of applying for aid, the appellant had to be aware that the project was ineligible.

(c) In order to restore the situation prevailing before the aid was received, unlawful aid must be recovered, with interest, in accordance with Regulations Nos 659/1999 and 794/2004. When aid is being recovered, Section 28(1) and (2) of the 2007-2013 Structural Assistance Act does not allow interest to be calculated from when the aid was paid out to when it was repaid, as required by the objective of recovering the aid. For this reason the respondent justifiably did not apply those rules and applied the principles of Articles 11(2) and 14(2) of Regulation No 659/1999. Once the recovery decision enters into force, the rate of interest calculated on the basis of the 2007-2013 Structural Assistance Act is to be applied.

d) The limitation period applicable in respect of measures taken to protect the financial interests of the European Communities results from Article 3 of Council Regulation (EC, Euratom) No 2988/95. Since Estonia has not set a limitation period for recovering State aid, the 4-year limitation period referred to in Article 3(1) of the Regulation applies. It began to run on 31 December 2008, when Enterprise Estonia decided to grant State aid to the appellant. The limitation period was interrupted on 11 June 2012, when Enterprise Estonia verified the incentive effect. The new 4-year limitation period began to run on 14 September 2012, when the verification process ended. Thus at the time the decision was taken to recover the aid, the limitation period had not expired.

e) The respondent acted correctly in not paying compensatory damages to the appellant for a breach of good faith (Section 67(3) of the Administrative Procedure Act). The appellant could not have believed in good faith that the aid decision would remain valid, since the Act and the Regulations expressly set out the possibility of repealing the decision. The appellant used the

aid to cover ineligible expenditure and had to be aware of the unlawful nature of the aid (Section 67(4)(2), (4) and (5) of the Administrative Procedure Act). Failure to obtain compensatory damages for a breach of good faith does not rule out the possibility that the applicant may be able to claim compensation for the losses incurred as a result of the granting of unlawful State aid.

6. In its **appeal against the judgment**, AS Metaprint asked for the judgment of the administrative court to be annulled and for its appeal to be satisfied.

7. In its **judgment** of 18 May 2017, Tallinn District Court rejected the appeal against the judgment of the administrative court, did not change the judgment of the administrative court, and ruled that the appellant should bear the procedural costs of the appeal against the judgment for the following reasons:
a) The appellant has not claimed that the entry into force of the contract was dependent on receiving aid or that the appellant was given the opportunity in the contract to withdraw from the contract were aid not to be granted. It would thus have been complicated and probably economically counterproductive for the appellant to withdraw from the contract. The issue is that work had begun. There is no justification for the appellant's claim that the project could seemingly be broken down into parts and that it was a separate project that began after the aid was received from Enterprise Estonia. Regardless of the fact that the appellant paid its contractual partner on the basis of several invoices and that it declared some of its expenditure to be ineligible, there was just one project (acquisition of a components line). The question of whether the appellant, under market conditions, would have made the investment for which the aid was received or whether, had it not received the aid, it would instead have acquired a cheaper production line with different functionality is one to be considered only in the proceedings organised by the Commission.
b) EU law does not limit the recovery of unlawful State aid without a decision by the Commission. In the first instance it is the Member State that bears the responsibility, in line with Article 98 of Regulation No 1083/2006. As yet the Commission has not taken a decision to declare the aid granted to the appellant as compatible with the internal market. Aid in breach of Article 108(3) of the Treaty on the Functioning of the European Union (TFEU) is unlawful aid. The Member State concerned is to recover it (unless it is *de minimis* aid). This requirement does not depend on whether a competitor of the beneficiary has taken a case to court. Eliminating unlawful aid by recovering it is the logical consequence of aid being deemed unlawful (among many Court of Justice judgments, see: Case C-142/87, *Belgium* v *Commission*, paragraph 66; Case C-275/10, *Residex Capital IV*, paragraph 29; Case C-529/09, *Commission* v *Spain*, paragraph 90). The Commission has declined its jurisdiction on the basis of the General Block Exemption Regulation, but only on condition that aid is granted strictly in accordance with the Regulation. The appellant could have waited for the Commission's decision, but it asked the respondent to withdraw its application for authorisation.
c) When applying Section 26(2)(1) of the 2007-2013 Structural Assistance Act and Section 10(2)(1) of Regulation No 278, the discretionary powers of the administrative body are extremely limited (see the judgment in Court of Justice Case C-24/95, *Alcan*, paragraph 25). A beneficiary may entertain a legitimate expectation only if the procedure laid down in Article 108 TFEU is followed when the aid is granted. A diligent business operator should normally be able to determine whether that procedure has been followed (e.g. Case C-5/89, *Commission* v *Germany*, paragraph 14; Case C-81/10 P, *France Télécom*, paragraph 59).

d) In order to ensure the full effectiveness of EU law and to correct distortions of competition, the provision of national law which does not allow interest to be claimed as of when aid is granted was rightly left unapplied by Enterprise Estonia (see the judgment in Court of Justice Case C-232/05, *Commission* v *France*, paragraph 53).
e) Satisfying the claim for damages would limit the effectiveness of Article 108(3) TFEU and would not meet the objective of recovering unlawful State aid.

REASONS INVOKED BY THE PARTIES TO THE PROCEEDINGS

8. In its **appeal in cassation**, AS Metaprint asks for the judgment of the district court to be annulled and for its appeal to be satisfied on the following grounds:
a) The State aid was not unlawful, since it was granted legally on the basis of the General Block Exemption Regulation. The aid had an effect even to the extent that, without it, the appellant would have acquired a significantly cheaper production line with different characteristics. The substantive assessment of incentive effect provided by Court of Justice case-law also extends to decisions taken by Enterprise Estonia. The CISG does not recognise the conclusion of contracts by presenting an electronic order.
b) Even if the State aid was unlawful, recovery of that State aid is also unlawful. By disregarding the Commission's guidelines, Enterprise Estonia assumed on behalf of the Commission that the aid had no incentive effect and was incompatible with the internal market. The respondent mistakenly thought it was obliged to recover the aid. EU law does not rule out the protection of legitimate expectations, and under national law legitimate expectations are to be protected.
c) The limitation period for recovery ended no later than 24 October 2012, while the recovery proceedings only began on 22 January 2013. Enterprise Estonia's calculation of interest is unlawful. There are no legal grounds for requiring compound interest to be paid for the period from when the aid was granted until the decision was taken to recover it. Even if the recovery was lawful, the appellant should receive compensatory damages for the breach of good faith (Section 67(3) of the Administrative Procedure Act).

9. On 25 September 2018 the Supreme Court ruled to suspend the proceedings in the administrative case until the Court of Justice's judgment in Case C-349/17 *Eesti Pagar* had entered into force, and it resumed the proceedings by its ruling of 11 October 2019.

10. AS Metaprint emphasises in its additional **statements** that the limitation period for recovering the aid has expired. The Court of Justice noted in its judgment in Case C-349/17 *Eesti Pagar* that an application by analogy of the 10-year limitation period cannot be regarded as being sufficiently foreseeable (paragraph 113). What should be applied is the 4-year limitation period set out in the first subparagraph of Article 3(1) of Regulation No 2988/95, which begins to run from when the aid is granted. If an investigation or court proceedings are initiated, the limitation period is interrupted. The respondent first notified the appellant of the recovery proceedings on 22 January 2013. The internal audit that took place in 2012 is not part of the recovery proceedings. The audit examined Enterprise Estonia's own activities, and the appellant was not informed of it. The correspondence in 2012 does not prove that the limitation period had been interrupted. It is not evident from the correspondence that the respondent had suspected any irregularities or that an investigation was ongoing to ask for the State aid to be returned. When proceedings are initiated, the administrative body must inform the person of those proceedings and their objective (Sections 5(2), 36 and 37 of the Administrative Procedure Act, and paragraph 127 of *Eesti Pagar*).

11. In its **reply**, Enterprise Estonia states that the limitation period for the recovery claim has not expired. The limitation period began to run on 31 December 2008. The respondent communicated with the appellant on the issue of the investigation before 22 January 2013. The respondent verified the incentive effect between 11 June and 14 September 2012. There was communication between the parties both during and after the investigation (in July 2012 and December 2012). The limitation period was thus interrupted (*Eesti Pagar*, paragraph 126).

12. In its **reply**, the European Commission stated that the claim for compensatory damages in this case would allow Articles 107 and 108 TFEU to be disregarded. The Court of Justice has prohibited all attempts to compensate businesses for losses incurred in conjunction with banning or recovering State aid (judgments in Case C-110/02, *Commission* v *Council*, paragraphs 29-47, and Case C-129/12, *Magdeburger Mühlenwerk*, paragraph 43).

POSITION OF THE CHAMBER

13. As regards the application for annulment, the appeal in cassation is to be upheld as a result of the incorrect application of the substantive rules (Section 229(1) of the Code of Administrative Procedure [*halduskohtumenetluse seadustik*]). The Chamber refers this aspect of the case back to the district court (Section 230(5)(2) of the Code of Administrative Procedure). As regards the application for compensation, the appeal in cassation is to be rejected and the operative part of the district court's judgment is to be left unchanged. In this regard, the Chamber changes the grounds set out by the district court (Section 230(5)(6) of the Code of Administrative Procedure).

I

14. On the basis of the opinions expressed by the Court of Justice in Case C-349/17 *Eesti Pagar*, the Chamber changes the opinions it expressed in case No 3-3-1-8-16 as regards verification of incentive effect by a national authority, the obligation to recover aid, and the legitimate expectations of a beneficiary. As far as those aspects are concerned, the conclusions reached by the district court in this case must be upheld.

15. Article 8(2) of the General Block Exemption Regulation stated that 'aid granted to SMEs, covered by this Regulation, shall be considered to have an incentive effect if, before work on the project or activity has started, the beneficiary has submitted an application for the aid to the Member State concerned.' The Court of Justice's interpretation is that 'work […], within the meaning of that provision, started when a first order of equipment required for that project or that activity was made by means of entering into an unconditional and legally binding commitment before the submission of the aid application, regardless of any costs of resiling from that commitment.'

16. The Chamber agrees with the assessment of the courts that the appellant placed the first order for equipment with Styner+Bienz by means of entering into an unconditional and legally binding commitment. The administrative court undertook a thorough analysis of the objections made by the appellant in this regard, including relating to the electronic nature of the transaction and the CISG. The Chamber will not repeat those opinions here. The appeal in cassation sets out no grounds for taking the view – and nor is it clear to the Chamber why the view should be taken – that the courts have incorrectly applied substantive law on this issue.

Nonetheless, the Chamber notes that Article 11 of the CISG refers to the lack of requirements as to form.

17. As a result of the above, the respondent should not have granted State aid in this case, and nor did the respondent have the authority to verify the possible incentive effect of the aid on the basis of other circumstances, such as the cost of withdrawing from the contract or the possible implementation of the project in adapted form. The Court of Justice also concluded that, under Article 108(3) TFEU, the national authority must on its own initiative recover aid that it has granted pursuant to Regulation No 800/2008 when it subsequently finds that the conditions laid down by that regulation were not satisfied (*Eesti Pagar*, paragraph 95). Furthermore, the Court of Justice took the view that a national authority cannot, where it grants aid while misapplying Regulation No 800/2008, cause the beneficiary of that aid to hold a legitimate expectation that that aid is lawful (paragraph 106).

II

18. Since the resumption of the proceedings, the dispute between the parties has concentrated on the issue of the limitation period. In *Eesti Pagar*, the Court of Justice confirmed the position taken by the administrative court and the district court that, in circumstances similar to this case where national law does not lay down a limitation period, the 4-year limitation period referred to in Article 3(1) of Regulation 2988/95 should be applied (paragraph 128). There is no longer any dispute as to the fact that in this case the period began to run on 31 December 2008 when the aid application was satisfied.

19. In the administrative court's opinion, with which the district court concurred, the limitation period was interrupted on 11 June 2012, because the respondent conducted a verification of the incentive effect. In doing so, the courts have not focused on all the facts that have to be taken into account when assessing whether a limitation period has been interrupted.

20. In line with the explanation provided by the Court of Justice, the limitation period is interrupted if, for instance, the competent authority notifies the person in question of the beginning of an investigation into irregularities. The beginning of an investigation is denoted by any act which sets out with sufficient precision the transactions to which the suspicions of irregularities relate. The condition specified in that provision must be regarded as satisfied where a set of facts taken as a whole lead to the conclusion that the person in question has effectively been made aware of the beginning of the investigation (*Eesti Pagar*, paragraph 126).

The Court of Justice has previously explained that the general aim of a limitation period is to ensure legal certainty. This function would not be fully fulfilled if the limitation period could be interrupted by any act relating to a general check which bears no relation any suspicion concerning the existence of irregularities (judgments in Case C-278/02, *Handlbauer*, paragraph 40; Case C-367/09, *SGS Belgium*, paragraph 68; Case C-465/10, *Chambre de commerce*, paragraph 60; Case C-52/14, *Pfeifer & Langen*, paragraph 41). In accordance with the third subparagraph of Article 3(1) of Regulation No 2988/95, the proceedings must be conducted by the authority that has the responsibility, under national law, for adopting acts relating to the investigation or legal proceedings (*Pfeifer & Langen*, paragraph 33). When launching an investigation, the act must set out with sufficient precision the transactions to which the suspicions of irregularities relate. This requires the act to state the possibility that a

penalty or particular administrative measure may be imposed (*Pfeifer & Langen*, paragraph 47).

21. In the light of those opinions, the Chamber is unable to assess this case, since the specific content of the communication between the appellant and the respondent in 2012 has not been ascertained and the Chamber does not have the power to ascertain it (Section 229(2) of the Code of Administrative Procedure). When the case returns to the district court, the court must determine which proceedings by the competent authority, which suspicions of irregularities and which planned measures the appellant was informed of, and make an assessment as regards the interruption of the limitation period in the light of the Court of Justice's explanations.

The district court must also decide whether to accept the evidence concerning the limitation period as presented to the Chamber.

III

22. On the basis of the judgment of the Court of Justice in *Eesti Pagar*, the Chamber supplements the views expressed concerning interest in case No 3-3-1-8-16. In principle, it is possible to charge interest for the period between the granting of the State aid and its recovery, inasmuch as this is necessary to cancel out the beneficiary's advantageous position.

23. The respondent and the courts have mistakenly applied Regulations Nos 659/1999 and 794/2004 (judgment of the Court of Justice in *Eesti Pagar*, paragraph 136). The Court of Justice has explained that, in cases such as this, a national authority is bound under Article 108(3) TFEU to order the beneficiary of the aid to pay interest in respect of the period of unlawfulness. Since there is no EU legislation on the rules that are applicable to the calculation of interest, these rules must be enacted by the Member State. In that regard, the application of national law cannot have the consequence of frustrating the application of EU law in making it impossible for the national courts or authorities to ensure that the third sentence of Article 108(3) TFEU is observed. The national rules must ensure that interest is paid for the whole of the period during which the person benefited from that aid and at a rate equivalent to that which would have been applied if the beneficiary had had to borrow the amount of the aid at issue on the market within that period (*Eesti Pagar*, paragraphs 134-135, 139, 141).

24. The Chamber maintains the position it took in paragraph 41 of the judgment in case No 3-3-1-8-16 that Estonian law has no rule equivalent to legal certainty which could be invoked when claiming and calculating interest for the period between the granting of aid and its recovery. Were EU law to have no effect, Section 28(2) of the 2007-2013 Structural Assistance Act, as a specific provision, would rule out applying Section 28(1) of that Act, and Section 69(1) of the Administrative Procedure Act and the provisions on unjust enrichment contained therein. Where Section 28(2) of the 2007-2013 Structural Assistance Act contradicts the interpretation given to Article 108(3) TFEU, the respondent and the courts must not apply that rule. This allows subsection 1 of that Section to be applied for the period in question inasmuch as this is necessary to fulfil the obligations arising under Article 108(3) TFEU.

25. In paragraph 61 of its judgment in Case C-42/17 *M.A.S. and M.B.*, the Court of Justice explained that if the national court were to come to the view that the obligation to disapply the

provisions of the Criminal Code at issue conflicts with the principle that offences and penalties must be defined by law, it would not be obliged to comply with that obligation, even if compliance with the obligation allowed a national situation incompatible with EU law to be remedied. When applying penalties it must thus be ensured that measures taken by a national court to fulfil an obligation under EU law do not contradict important legal principles such as the foreseeability, precision and non-retroactivity of the criminal law applicable (ibid., paragraph 51 et seq.).

26. However, the objective of the interest obligation under Article 108(3) TFEU is not to punish, but to cancel out an unlawful advantage. When applying Section 28(1) of the 2007-2013 Structural Assistance Act in respect of the period between the aid being granted and the recovery decision being taken, the respondent and the courts must ensure that the interest is limited to just the amount that the beneficiary would have had to pay to take out a corresponding loan at the market rate. As far as the amount exceeding the interest expenditure actually saved is concerned, the time limit on the payment of interest as set out in Section 28(2) of the 2007-2013 Structural Assistance Act does not contradict EU law. Inasmuch as Section 28(2) of the 2007-2013 Structural Assistance Act is in line with EU law, the court must apply it. Secondly, the factors considered significant by the Court of Justice have been precisely the elimination of the advantageous position of a particular beneficiary and the loan conditions that would have applied to that beneficiary (*Eesti Pagar*, paragraphs 141-142). Thirdly, it must be ensured that the interest does not have a punitive function in a situation of legal uncertainty.

27. If the legislator considers it necessary to impose a uniform rate of interest for the period between the granting of unlawful State aid and its recovery, this must be done by means of a clear and precise Act of Parliament and without contradicting the principle of non-retroactivity.

28. Since the Chamber has no information concerning the appellant's borrowing capacity in the period concerned by the dispute, it is not possible at this stage of the proceedings to give more precise guidelines concerning the calculation of interest. If necessary, the district court will have to ascertain the relevant facts. If it proves unreasonable to investigate and assess the facts in the court proceedings, the district court also has the option of annulling the part of the respondent's decision concerning the interest on the basis of incorrect legal grounds. The respondent would then have the option of charging interest again (cf. paragraph 14 of the judgment in case No 3-3-1-12-15 and paragraph 41 of the judgment in case No 3-3-1-8-16).

IV

29. The claim for compensatory damages for a breach of good faith is not justified in this case. The factual basis for the appellant's claim is the decision to recover the aid (not the respondent's action in granting the aid), and the legal basis is Section 67(3) of the Administrative Procedure Act. For a claim to arise on this basis requires there to be a legitimate expectation on the part of the person concerned that the administrative act will remain valid. The opinions of the Court of Justice leave no room in this case for discussion of the appellant's legitimate expectation in the context of Section 67(3) of the Administrative Procedure Act. However, the administrative court's references to Section 67(4)(2) and (4) of the Administrative Procedure Act are inappropriate. The applicant used the aid for the purpose set out in the decision to award support, and legitimate expectations do not rule out various possibilities for repealing an administrative act (for more details, see paragraph 16 of

the Chamber's judgment in case No 3-3-1-9-14). The option provided in the specific acts and in the regulations to revoke an unlawful State aid decision overlaps in substance with the generally applicable option set out in Section 65(1) of the Administrative Procedure Act.

V

30. The security should be returned (Section 107(4) of the Code of Administrative Court Procedure). Other procedural costs should be allocated when the case is re-examined (Section 109(4) of the Code of Administrative Court Procedure). The appellant's legal costs in the Supreme Court amounted to EUR 4,406, including VAT. The other parties to the proceedings have not presented expenditure documents.

(signed digitally)