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EUROOPAN YHTEISÖJEN ENSIMMÄISEN OIKEUSASTEEN TUOMIOISTUIN
EUROPEISKA GEMENSKAPERNAS FÖRSTAINSTANSRÄTT

Press and Information

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Judgment of the Court of First Instance in Joined Cases T-254/00, T-270/00 and T-277/00

Hotel Cipriani SpA and Others v Commission

**SOCIAL SECURITY EXEMPTIONS FOR UNDERTAKINGS IN VENICE AND
CHIOGGIA CONSTITUTE AID INCOMPATIBLE WITH THE COMMON MARKET**

The beneficiaries are required to repay the aid paid out

For the years 1995, 1996 and 1997, Italian Law No 206/1995 extended to undertakings based in the island territory of Venice and Chioggia the scheme under which aid for the Mezzogiorno had been provided since 1978. Social security contributions payable by employers were reduced and, where new jobs were created within undertakings, even exempted. The reductions amounted to an annual average of EUR 37.7, shared between 1 645 undertakings, and the exemptions amounted to EUR 292 831 per year, shared between 165 undertakings.

By Decision 2000/394/EC, the Commission found that **those reductions and/or exemptions constituted State aid which was incompatible with the common market**, in so far as they were granted to undertakings which were not small or medium-sized enterprises (SMEs) and which were not located in an area eligible for a derogation because of the special features of the region. In addition, the Commission required Italy to recover from the beneficiaries the aid paid out, together with interest.

The decision was contested by 59 of those undertakings and the Court selected 3 test cases from among the 37 cases which were not declared inadmissible.

The Commission maintained that the applications lodged by the undertakings were inadmissible for lack of standing. According to the Commission, the decision was of general and abstract application and, in consequence, could not be of direct or individual concern to the beneficiaries.

According to the Court, although a decision concerning an aid scheme is of general application, **where the Commission finds that an aid scheme is incompatible with the common market and requires recovery of the aid paid out, all the actual beneficiaries are fully identifiable. The fact of belonging to a closed class of actual beneficiaries of an aid scheme, particularly affected by the obligation to repay the aid to the State, is sufficient to differentiate those beneficiaries from all other persons.** Individualisation results, in such cases, from the particular

adverse effect of the recovery order on the interests of the members of the closed class, who are fully identifiable.

On the substance, the undertakings maintained that the social security exemptions merely offset the structural disadvantages and unfavourable employment market conditions in the lagoon area, which are reflected in the additional costs borne by the undertakings (related, in particular, to the maintenance of buildings forming part of the historic heritage and landscape, and additional transport and transshipment costs). According to the undertakings, the reductions do not confer any financial advantage on the beneficiary undertakings; nor do they affect trade between the Member States or distort competition.

The Court finds that the undertakings have failed to show that there is a direct connection between the additional costs actually incurred and the amount of the aid received by each of the beneficiary undertakings. The mere fact that undertakings located in the lagoon area incur higher costs than undertakings on the mainland does not allow the conclusion to be drawn that the scheme at issue does not confer any advantage on them and did not introduce any sort of discrimination against their competitors in Italy or in other Member States.

As regards the specific situation of undertakings responsible for public services, such as the distribution of gas, the Court emphasises that it is for the Member State concerned and the beneficiaries of the measure to show that the measure at issue either does not constitute aid or is aid compatible with the common market. The Commission is not required to carry out an analysis of the aid granted in individual cases where specific information concerning those beneficiaries has not been communicated to it in the course of the administrative procedure by the national authorities or the interested third parties.

By the same token, in the case of a multi-sectoral aid scheme, the scope of the Commission's duty to state reasons depends on the data and information communicated to the Commission by the Member State concerned and the interested third parties within the framework of the administrative procedure.

Moreover, the Court points out that when it comes to granting derogations from the prohibition of State aid, the Commission enjoys a broad discretion. In that connection, judicial review 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 ascertaining that there has been no error of law, manifest error in the assessment of the facts or misuse of powers.

As regards the aid intended to facilitate the development of certain economic activities or of certain economic areas ("regional derogation"), the Court points out that only part of the territory of Venice was included in the list of regions eligible for the regional derogation, which was approved by the Commission on the basis of common criteria and of a project notified by the Member State concerned. Furthermore, the fact that the social security exemptions at issue constituted operating aid was sufficient justification for the Commission's refusal to authorise it as regional aid.

Lastly, the Court refuses to accept that the aid was justified by reason of the constraints imposed by the Italian law for the protection of goods of historic and artistic interest ("cultural derogation"). It has not been established that the additional costs connected with heritage conservation are borne by all the undertakings enjoying the social security reductions at issue. Nor has any link been established between the amount of the tax exemptions and the extent of the cultural and architectural constraints.

Thus, the Court concludes that the Commission did not exceed the limits of its discretion by considering that the reductions in social security contributions and the exemptions from such contributions constitute **State aid incompatible with the common market**, since those

measures do not satisfy any of the conditions for the application of the derogations provided for under the Treaty. The Court **confirms that Italy is under an obligation to recover the unlawful aid** in order to restore the situation existing before the aid was granted. Accordingly, the Court dismisses the actions.

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: DE, EN, FR, IT

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-254/00>,

It can usually be consulted after midday (CET) on the day judgment is delivered.

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