



Press and Information

Court of Justice of the European Union

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Joined Cases C-71/09 P, C-73/09 P and C-76/09 P
Comitato „Venezia vuole vivere“, Hotel Cipriani Srl, Società Italiana per il gas
SpA (Italgas) v European Commission

Reductions in social security contributions granted to Venice and Chioggia undertakings constitute unlawful aid which must be repaid

By decision of 25 November 1999¹, the Commission declared aid consisting in reductions in and exemptions from social security contributions incompatible with the common market, save for those granted to small and medium-sized undertakings, and ordered Italy to recover them.

According to information provided by the INPS (National Institute of Social Insurance) for the period between 1995 and 1997, those *reductions* amounted to €37.7 million per annum on average, spread amongst 1 645 undertakings. The *exemptions* amounted to €292 831 per annum, spread amongst 165 undertakings.

In 2000, fifty-nine actions were brought before the General Court against that decision. Of those actions, the General Court declared 28 inadmissible, whereas four were chosen as test cases and held to be unfounded². The Comitato “Venezia vuole vivere”, Hotel Cipriani and Italgas lodged appeals before the Court of Justice against the judgment by the General Court.

The Court of Justice states, as a preliminary observation, that the General Court was right to consider that the applicant undertakings had the capacity to bring an action in that they were individually concerned by the decision, by reason of the particular negative impact caused to their legal position by the order for recovery of the aid in question. The actual beneficiaries of individual aid measures granted under an aid scheme of which the Commission has ordered recovery are, for that reason, individually concerned.³

The Court of Justice holds in its judgment today that the General Court was right to hold that the allegedly compensatory character of the advantages granted (in relation to the disadvantageous situation of undertakings established in Venice) does not allow their classification as “aid” to be set aside.

The Court of Justice finds that the General Court – in taking the view that it was not for the national authorities, when implementing a decision concerning a multisectoral aid scheme, to verify in each individual case whether the conditions for finding the existence of State aid were met⁴ – misinterpreted the scope of that decision. The decision required Italy to take all necessary measures to ensure the repayment, by the beneficiaries, of “aid incompatible with the common market”. Implementation of that obligation therefore presupposes it to be first established that the advantages granted may be classified as State aid. That error by the General Court cannot, however, lead to the annulment of its judgment, since the Commission’s decision can be seen to be supported by sufficient reasoning to allow it to be implemented by the national authorities.

The applicants have further accused the General Court of wrongly taking the view that the Commission had complied with procedural obligations, arguing that the Commission failed to take account of the local character of the services and examined only the individual situation of

¹ Decision 2000/394/EC

² Judgment in Case [T-254/00](#) of 28 November 2008.

³ Article 230, fourth paragraph, EC.

⁴ Particularly if the advantage granted were capable of distorting competition and affecting Community trade.

municipal undertakings, without proceeding in the same way for private undertakings in similar situations.

The Court of Justice refers in that respect to its case-law, according to which the Commission may confine itself to studying the general characteristics of the aid scheme, without being required to examine each particular case of its application.

The Commission is required only to examine whether the aid is capable of affecting trade between Member States and distorting competition and not to establish the existence of an actual impact of the aid on such trade and an actual distortion of competition.

Moreover, the General Court rightly found that the small amount of the reductions in social security contributions and the fact that most of the beneficiaries carried on their activities at a local level did not exclude the possibility of those reductions being capable of affecting trade between Member States and leading to a distortion of competition.

Finally, the Court of Justice confirms that the General Court was not required to hold that the Commission was obliged to carry out an examination of individual cases or seek additional information from the Italian authorities; the General Court did not err in law by finding that the Commission, in the absence of specific information concerning the applicant undertakings, was not required to analyse the individual situation of the applicant undertakings, beyond an examination of the general characteristics of the scheme in question.

It also finds that the General Court correctly recognised that an order for recovery of unlawful aid is the logical consequence of its being found unlawful.

For those reasons, **the Court of Justice dismisses the appeals against the judgment of the General Court and confirms the order for recovery of the unlawful aid.**

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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