



When executing a Commission decision declaring an aid scheme illegal and incompatible with the internal market, the national court is not bound by the institution's later statements of position, but must take them into consideration by virtue of the principle of sincere cooperation

In that regard, the calculations made by the national court to quantify the amounts to be repaid may, on the basis of all the factors of which it has been made aware, result in an amount equal to zero

In the context of the digital switchover of television signals, which began in Italy in 2001, with November 2012 as the statutory deadline by which switchover had to be accomplished, the 2004 Finance Law made provision for a State subsidy of €150 to be granted to every user who purchased or rented equipment for the reception of TV signals transmitted using digital terrestrial technology. In 2005, that aid was refinanced, but the subsidy was reduced to €70.

Following complaints filed by Centro Europa 7 Srl and Sky Italia Srl, the Commission declared, by Decision 2007/374¹, that the aid scheme in question was illegal and incompatible with the internal market and ordered Italy to recover the aid from the recipients (together with interest).

After the adoption of that decision, the Commission and Italy cooperated to identify the recipients and quantify the precise amounts to be recovered.

By letter of 1 April 2008, the Commission approved the method used by the Italian Republic, namely a consumer survey, to ascertain the number of additional users resulting from the aid in question, the average revenue per user and the additional revenues. The Commission also agreed with the findings of the Italian Republic that TIMedia and Fastweb had made no additional profits and so did not have to make a repayment. However, the Commission stated that the amount of aid to be recovered from Mediaset was €6 844 361. On the basis of new facts, by letter of 11 June 2008, the Commission reduced that amount to €4 926 543.22.

Following an order for payment issued by the Italian authorities in 2009, Mediaset paid the sum of €5 969 442 (including interest), while bringing an action before the Tribunale civile di Roma (Civil District Court, Rome). Mediaset claimed that the quantification criteria laid down in the Commission's decision had been incorrectly applied and that the calculations to determine the additional profit generated by the aid were inaccurate.

Accordingly, an expert legal report was ordered, the findings of which were given in 2011. While criticising the consumer survey and the econometric models used, the report noted that it was not shown that the aid had actually influenced the sales of decoders during the period examined.

¹ Decision 2007/374/EC of 24 January 2007 on State aid C 52/2005 (ex NN 88/2005, ex CP 101/2004) implemented by the Italian Republic for the subsidised purchase of digital decoders (OJ 2007 L 147, p. 1). Mediaset brought an action for annulment against that decision before the General Court of the European Union. The action was dismissed by judgment of 15 June 2010 in Case [T-177/07 Mediaset v Commission](#); see Press Release No [55/10](#). The appeal filed against the judgment of the General Court was dismissed by the Court of Justice by judgment of 28 July 2011 (Case [C-403/10 P](#); see Press Release [No 77/11](#)).

The Italian court therefore referred a question to the Court of Justice to ascertain whether, in order to ensure that a Commission decision which, while declaring an aid scheme unlawful and incompatible with the internal market and ordering the recovery of the aid in question, does not identify the individual beneficiaries or determine the precise amounts to be recovered is executed, the national court is bound by the positions adopted by that institution as regards the exact amount of aid to be recovered from a particular recipient.

In its judgment delivered today, the Court of Justice recalls, firstly, that the implementation of the system of control is a matter for both the Commission and the national courts, their respective roles being complementary but separate. The Commission thus has exclusive competence, subject to review by the EU Courts, to assess the compatibility of aid with the internal market. However, it is not required, when it orders restitution of aid declared incompatible with the internal market, to fix the precise amount of the aid to be reimbursed. It is sufficient for the decision to include information enabling the recipient to work out himself, without overmuch difficulty, that amount.

Decision 2007/374 is accordingly binding on the Italian Republic to which it was addressed and binds the national court.

However, the letters sent subsequently by the Commission to the Italian Republic as part of the exchanges to ensure the immediate and effective execution of that decision – which letters identify Mediaset as a recipient and specify an exact amount of aid to be recovered from it – do not constitute decisions. Consequently, **those statements of position made by the Commission in the context of the execution of the decision are not binding on the national court.**

Nevertheless, the Court points out that, in the context of the **sincere cooperation** between the national courts and the Commission, the former must take all the necessary measures to ensure fulfilment of the obligations under EU law. **Where the national court entertains doubts or has difficulties as regards the quantification of the amount of aid to be recovered, it can contact the Commission. To the extent that the statements of position are intended to facilitate the accomplishment of the task of the national authorities in the execution of the recovery decision, the national court must take them into account as a factor in the assessment of the dispute before it and must state reasons having regard to all the documents in the file submitted to it.** The Court then recalls that, in the absence of pertinent provisions of EU law, **the recovery of aid which has been declared incompatible with the internal market is to be carried out in accordance with the rules and procedures laid down by national law**, in so far as those rules and procedures do not have the effect of making the recovery required by EU law practically impossible and do not undermine the principle of equivalence with procedures for deciding similar but purely national disputes.

Where, in its decision, the Commission has not identified the recipients or determined the precise amounts to be reimbursed, **the national court may thus conclude, without calling into question the validity of the decision or the obligation to repay the aid, that the amount of aid to be reimbursed is equal to zero** where that follows from the calculations made on the basis of all the relevant information of which it has been made aware.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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

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

Press contact: Christopher Fretwell ☎ (+352) 4303 3355