



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 48/14

Luxembourg, 3 April 2014

Judgment in Case C-559/12
France v Commission

The Court confirms that the implied unlimited guarantee granted by the French State in favour of La Poste constitutes unlawful State aid

A presumption exists that the grant of such a guarantee involves an improvement in the financial position of the undertaking through a reduction of charges which encumber its budget

Until its conversion on 1 March 2010 into a public limited company, the French post office, La Poste, was treated in the same way as an establishment of an industrial and commercial character (EPIC), that is a legal entity governed by public law which has distinct legal personality from the State, financial independence and certain special powers, without however falling within the insolvency and bankruptcy procedures under ordinary law.

By decision of 26 January 2010¹, the Commission established the existence of an unlimited guarantee from the French State in favour of La Poste because of certain particularities which were intrinsically linked to its status as a publicly-owned establishment. It maintained that La Poste was not subject to the ordinary law rules governing the administration and winding-up of firms in difficulty and that a creditor of La Poste could be sure that its claim would be repaid. The Commission concluded that unlimited guarantee given by France to La Poste constituted State aid that was incompatible with the internal market.

An action for annulment brought by France was rejected by judgment of 20 September 2012², as the General Court found, in essence, that such an unlimited guarantee constitutes an advantage for La Poste. France then brought an appeal before the Court of Justice.

In the context of that appeal, France complained, *inter alia*, that the General Court, first, considered that the Commission could reverse the burden of proof of the existence of the guarantee, and, second, misconstrued the rules relating the level of proof required for that purpose. However, the Court of Justice observes that the General Court did not validate any use of negative presumptions or any reversal of the burden of proof by the Commission. Like the General Court, the Court of Justice considers that the Commission made a positive finding as to the existence of an unlimited State guarantee in favour of La Poste by taking account of several concordant facts enabling the grant of such a guarantee to be established. Likewise, the Court of Justice confirms that, as the General Court was right to find, the Commission may, in order to prove the existence of an implied guarantee, rely on the method of a firm, precise and consistent body of evidence to determine whether the State is required under domestic law to use its own resources to cover losses of an EPIC in default and therefore, a sufficiently concrete economic risk of burdens on the State budget.

France also complained that the General Court committed an error of law by finding that the Commission established to the requisite legal standard the existence of an advantage arising from the alleged State guarantee. In that regard, the Court states that a simple presumption exists that the grant of an implied and unlimited State guarantee in favour of an undertaking which is not subject to the ordinary compulsory administration and winding-up procedures results in an improvement in its financial position through a reduction of charges which would normally

¹ Commission Decision 2010/605/EU of 26 January 2010 on State aid C 56/07 (ex E 15/05) granted by France to La Poste (OJ 2010 L 274, p.1).

² Case [T-154/10](#) *France v Commission*.

encumber its budget. Such a State guarantee grants an immediate advantage to that undertaking and constitutes State aid, in so far as it is granted without something in return and allows better financial terms for a loan to be obtained than those normally available on the financial markets. Accordingly, to prove the advantage obtained by such a guarantee to the recipient undertaking, it is sufficient for the Commission to establish the mere existence of that guarantee, without having to show the actual effects produced by it from the time that it is granted. Therefore the General Court was right to consider that the Commission observed the burden and the level of proof necessary to establish the advantage granted by the implied and unlimited State guarantee, specifying that such a guarantee enables the borrower 'to enjoy a lower interest rate or provide a lower level of security.'

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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