



Press and Information

General Court of the European Union
PRESS RELEASE No 5/15
Luxembourg, 15 January 2015

Judgment in Case T-1/12
France v European Commission

The General Court confirms that the aid granted by the SNCF to SeaFrance is incompatible with the internal market

SeaFrance, now wound up, was a French public limited company that was indirectly 100% owned by the French public entity the SNCF. It operated maritime passenger and freight transport services between the ports of Calais and Dover. In 2009, SeaFrance owned six vessels and employed 1 550 staff. From 2008, SeaFrance's financial situation systematically deteriorated owing to unfavourable conditions, internal difficulties and industrial action.

The SNCF therefore set up a credit line in favour of SeaFrance. That rescue aid was approved by the Commission on 18 August 2010.¹ The French authorities subsequently notified the Commission of a restructuring aid package in favour of SeaFrance along with a restructuring plan. That restructuring was to be financed mainly by State aid in the form of a recapitalisation of SeaFrance in the amount of €223 million. Following a complaint of a competitor of SeaFrance, the French authorities communicated, at the end of 2011, a modified restructuring plan: the recapitalisation of SeaFrance was now to be limited to €166.3 million and to be accompanied by two loans granted by the SNCF. The first loan, of €99.7 million, was intended to finance the restructuring, while the second loan sought to replace a loan pertaining to one of the vessels of the fleet.

By decision of 24 October 2011,² the Commission found that the rescue aid agreed in 2010 and the restructuring measures set out in the 2011 plan (recapitalisation and loans) constituted State aid incompatible with the internal market. The Commission therefore ordered that the rescue aid granted in 2010 be recovered. France is challenging the Commission's decision before the General Court of the European Union and is seeking its annulment.

By today's judgment, the General Court **dismisses France's action and thereby confirms that the aid granted to SeaFrance was indeed incompatible with the internal market.**

France maintains, first of all, that the Commission, in the context of the private investor test,³ should have dissociated the loans from the rescue aid and the recapitalisation. In that respect, the General Court observes that the two loans coincided with the recapitalisation and that those three measures were set out in the same restructuring plan submitted to the Commission six months after the implementation of the rescue aid. In addition, SeaFrance's major financial difficulties existed both when it received the rescue aid and when the SNCF planned the recapitalisation and the two loans in the restructuring plan. The General Court also finds that the two loans had the

¹ Decision C (2010) 5837 on State aid N 309/2010 – France.

² Decision 2012/397/EU on State aid SA 32600 (2011/C) – France – Restructuring aid to SeaFrance SA granted by the SNCF (OJ 2012 L 195, p. 1).

³ This test aims at determining whether a private investor could have been led to take the same rescue and restructuring measures as those taken by France or whether it would have opted to wind SeaFrance up. The test is necessary for determining whether State aid exists: the capital made available to an undertaking by the State in circumstances amounting to normal market conditions cannot be described as State aid. Where a State carries out several consecutive interventions, the Commission must examine whether those interventions are so closely linked that it is impossible to dissociate them from one another, or whether they must be regarded as one single intervention.

same purpose as the recapitalisation (i.e. financing the restructuring), especially given that the loans were only granted because of a rearrangement of the sole recapitalisation measure originally set out prior to the complaint of SeaFrance's competitor. The General Court takes into account, lastly, the general context of SeaFrance's recapitalisation and, in particular, the fact that no private external creditor acted alongside SNCF in that transaction. **Accordingly, the various measures, having regard in particular to their timescale, their purpose and SeaFrance's circumstances at the time, are so closely linked that they are inseparable as regards the private investor test.**

Moreover, the General Court takes the view that Commission correctly applied the private investor principle in concluding that the overall expected rate of return on the rescue aid, the recapitalisation and the loans did not match the return that would be expected by a private investor. Thus, **a private investor in a market economy would not have implemented in respect of SeaFrance all the measures implemented by the SNCF.**

Finally, the General Court considers that **the Commission correctly assessed the compatibility of the SeaFrance restructuring aid with the internal market.** The General Court recalls, first of all, that the recipient of restructuring aid must make a real contribution of its own, free of aid and as high as possible, necessarily amounting to 50% of the financing needs of the restructuring and aimed at allowing the markets to believe in the feasibility of the company's return to viability within a reasonable period. According to the General Court, the Commission was correct in finding that SeaFrance had not made such a contribution (the loan of €99.7 million having to be excluded from the amount of the own contribution, since it constitutes State aid provided by the SNCF).

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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

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

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