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## Press and Information

### **PRESS RELEASE No 51/07**

18 July 2007

Judgment of the Court of Justice in Case C-119/05

*Ministero dell'Industria, del Commercio e dell'Artigianato v. Lucchini SpA*

### **COMMUNITY LAW PRECLUDES APPLICATION OF THE PRINCIPLE OF *RES JUDICATA* IN CASES WHERE IT PREVENTS THE RECOVERY OF STATE AID GRANTED IN BREACH OF COMMUNITY LAW**

*National courts must give full effect to the provisions of Community law*

In 1985 the Lucchini company applied for aid under the Italian Law relating to special intervention measures for the Mezzogiorno<sup>1</sup>. Although the Commission was notified of the application, in 1988 – while a decision was still pending – the competent national authorities granted the aid in part – on a provisional basis – in the form of a subsidy of ITL 382.5 million.

In 1990 the Commission declared all of the aid applied for to be incompatible with the common market. Lucchini did not challenge the Commission's decision but brought proceedings against the Italian authorities in the civil courts, which – without referring to the applicable provisions of Community law or to the Commission's decision – held by judgments delivered in 1991 and 1994 that Lucchini was entitled to payment of all of the aid initially claimed.

As no appeal was brought against the second of those judgments, it became final on 28 February 1995. In 1996 Lucchini first obtained, against the Italian Ministry of Industry, an order for payment and subsequently, because of non-compliance with that order, seizure of a number of service vehicles. Subsequently, aid was granted to Lucchini by ministerial decree in the form of a capital injection of ITL 765 million and in the form of an interest rate subsidy amounting to ITL 367 million.

As a result of the opinion expressed by the Commission, to the effect that, having already disbursed aid that had been declared incompatible with the common market, the competent authorities were in breach of Community law, and which called on those authorities to recover the aid in question, the Ministry of Industry revoked the decree granting the aid and called on Lucchini to repay ITL 1 132 million.

In 1999 the Tribunale amministrativo del Lazio – on application by Lucchini – declared that, by reason of entitlement to the grant of the aid, confirmed by a decision which had become final and

<sup>1</sup> Law No 183 of 2 May 1976 (GURI No 121 of 8 May 1976).

conclusive (Article 2909 of the Italian Civil Code), the public authorities could not revoke their own act. Subsequently, the Consiglio di Stato, to which the Ministry appealed, finding that there was a conflict between the 1994 judgment and the 1990 decision of the Commission, asked the Court of Justice of the European Communities whether Community law precludes application of a provision of national law seeking to lay down the principle of *res judicata* in so far as application of that provision prevents the recovery of State aid granted in breach of Community law and which has been found to be incompatible with the common market in a Commission decision which has become final.

The Court first points out that, although national courts may have occasion to consider whether Community acts are valid, they do not themselves have jurisdiction to declare such acts invalid. That jurisdiction is vested in the Community Courts and such acts become definitive unless properly challenged by their respective addressees. A recipient of aid which has been the subject of a negative decision on the part of the Commission cannot call in question the lawfulness of that decision before national courts by challenging the national measures taken to implement that decision itself.

The Court then goes on to find that neither the Tribunale civile e penale (in 1991) nor the Corte d'appello di Roma (in 1994) had jurisdiction to determine whether the State aid sought by Lucchini was compatible with the common market and that neither of those courts could have invalidated the 1990 decision of the Commission.

The Court finally points out that, according to the Consiglio di Stato, Article 2909 of the Italian Civil Code may preclude not only the reopening, in a second set of proceedings, of pleas in law which have already been expressly and definitively determined but also the examination of matters which could have been raised in earlier proceedings but were not. One of the consequences of such an interpretation of that provision may be that effects are attributed to a decision of a national court which exceed the limits of the jurisdiction of the court in question as laid down in Community law. That interpretation of the principle of *res judicata* would, however, frustrate the application of Community law in so far as it would make it impossible to recover State aid that had been granted in breach of Community law.

According to well-established case-law of the Community Courts, and as a result of the principle of the primacy of Community law, **national courts must give full effect to provisions of Community law** and – if necessary – **refuse**, of their own motion, **to apply any provision of national law that is contrary to those provisions of Community law.**

Consequently, Article 2909 of the Italian Civil Code (principle of *res judicata*) must not be applied in so far as the application of that provision prevents the recovery of State aid granted in breach of Community law which has been found to be incompatible with the common market in a Commission decision which has become final.

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

*Languages available: CS DE EN FR IT HU PL RO SK SL*

*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=C-119/05>*

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

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