



Press and Information

Court of Justice of the European Union

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Judgment in Case C-63/14
Commission v France

France has failed to fulfil its obligations by failing to recover aid amounting to €220 million granted to SNCM for certain ferry services between Marseille and Corsica

Société Nationale Corse-Méditerranée ('SNCM') is a French shipping company which provides regular services from mainland France. By decision of 2 May 2013,¹ the Commission classified as State aid the financial compensation paid to SNCM and CMN (Compagnie Méridionale de Navigation) for ferry services between Marseille and Corsica from 2007 to 2013 under a public service agreement. While the compensation paid to SNCM and CMN for ferry services provided all year round ('the basic service') was classified as compatible with the internal market, the Commission considered the compensation paid to SNCM for the services it provided during the high season ('the additional service') to be incompatible.

Therefore, the Commission ordered the recovery of the incompatible aid, amounting to a total of €220 million.² That recovery was to be made within 4 months of the date of notification of the decision, that is, by 3 September 2013 at the latest. During the summer of 2013, France and SNCM brought an action before the General Court seeking annulment of that decision.³ That action is still pending before the General Court.

In the Commission's view, since the action before the General Court does not have suspensory effect, France was required to comply with the decision of 2 May 2013 within the time-limits set down. Finding that France: (1) failed to take the measures necessary to recover from SNCM the State aid declared illegal and incompatible with the internal market within the period prescribed; (2) failed to cancel payment of the aid concerned from the date of notification of the decision on 3 May 2013; and (3) failed to inform the Commission, within two months following the notification of the decision, of the measures adopted to comply with the decision, the Commission brought action for failure to fulfil obligations against France before the Court of Justice.

France submits, *inter alia*, that it was absolutely impossible for it to implement the decision at issue, since otherwise SNCM would have been placed in compulsory liquidation, which might have led to serious problems of public order (as in the past with strikes, a blockade of the port of Marseille and a risk of problems supplying the island with basic necessities) and, therefore a risk of a break in the territorial continuity with Corsica. Furthermore, a cessation of activities by SNCM would inevitably lead to the conclusion of a new public service delegation contract with another economic operator, which would not necessarily and immediately have the material resources or

¹ Commission Decision 2013/435/EU of 2 May 2013 on State aid SA.22843 (2012/C) (ex 2012/NN) implemented by France in favour of Société Nationale Maritime Corse Méditerranée.

² Other measures granted by France for the benefit of SNCM were the subject a judgment of the General Court of 11 September 2012, Case [T-565/08](#), see Press Release [No. 115/12](#) and a judgment of the Court of Justice of 4 September 2014 Cases, [C-533/12](#) and [C-536/12](#), see Press Release [No. 115/14](#). Those judgments partially annulled the Commission's decision which concluded, for various reasons, that the aid granted did not have to be recovered from SNCM. Even before the Court's judgment, the Commission, in a new decision of 20 November 2013, ordered the recovery of the amounts mentioned in the judgments of the General Court and the Court of Justice the latter decision also concerns a sum of approximately €220 million. SNCM has brought an action before the General Court to challenge the new decision of 20 November 2013 Case [T-1/15](#), still pending before that court.

³ Cases [T-366/13](#) France v Commission and [T-454/13](#) (SNCM v Commission).

manpower to satisfy the requirements of the delegation, which would also pose a risk with regard to territorial continuity.

By today's judgment, **the Court upholds the Commission's action for failure to fulfil obligations.**

The Court holds, first of all, that on the expiry of the time-limit fixed by the Commission (3 September 2013), **France had not taken the measures necessary to recover the illegal aid.** It was only on 7 and 19 November 2014 that France issued two recovery orders against SNCM for the sum of approximately €198 million (less than the €220 million which the Commission claimed), without the illegal aid actually being recovered. The Court observes that the issue of recovery orders alone cannot be regarded as recovery of the illegal aid.

Furthermore, the Court considers that **it was not absolutely impossible for France to recover the aid.** As regards the argument relating to social unrest, the Court holds that France has failed to establish that, if the situation arose, it could not cope with such unrest with the resources available to it. Even if a long-term blockade of ferry services with Corsica took place as a result of illegal acts, no evidence presented by the French Republic justifies the conclusion that the services between Corsica and the mainland by other maritime routes or by air would be impossible, so that supplying the island with basic necessities could no longer be guaranteed.

The Court holds that problems deriving from the conclusion of a new public service delegation contract, France does not put forward any facts justifying the conclusion that a cut in ferry services between Marseille and Corsica would have consequences on a scale which could be regarded as making it absolutely impossible to implement the decision at issue.

Finally, the Court declares, first, **that France failed to suspend the payment of illegal aid on 3 May 2013, suspending it only with effect from 23 July 2013 and**, second, **that it failed to inform the Commission of the measures taken within two months following the notification of the decision at issue.**

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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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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