

Press and Information Division

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Judgment of the Court of Justice in Case C-99/02

Commission of the European Communities v Italian Republic

**THE COURT RULES AGAINST ITALY FOR NOT HAVING TAKEN ANY
MEASURES TO RECOVER UNLAWFULLY GRANTED AID FOR
EMPLOYMENT UNDER THE TRAINING AND WORK EXPERIENCE
CONTRACTS**

*Legal, political and practical difficulties involved in recovering aid do not justify
failure to comply with a State's obligation.*

In 1995, the European Commission published guidelines on aid to employment. Stepped-up actions for employment of underprivileged groups in the labour market rank among the priority areas defined by the Member States in their employment policy. The guidelines state, however, that such measures must not adversely affect the Commission's parallel efforts to reduce distortions of competition.

In 1984 Italy introduced training and work experience contracts, which were fixed-term contracts, including a period of training, for the employment of unemployed persons under 30 years of age. Employers were exempt from paying social security contributions for a two-year period in respect of persons employed under this type of contract.

In a decision adopted against Italy in 1999, the Commission found the following to be compatible with the common market:

- **The aid granted for employment under the training and work experience contracts**, granted unlawfully since 1995, provided that it concerns either the creation of jobs in the recipient firm for persons who have not yet found employment or have lost their employment, or for the employment of workers experiencing particular difficulties in entering or

re-entering the labour market, that is, young persons under the age of 25 (or 29 for university graduates) and the long-term unemployed;

- **aid granted for the conversion of training and work experience contracts into open-ended contracts**, granted under 1997 legislation, provided that it complies with the net job creation requirement as defined in the relevant guidelines.

However, aid found not to be compatible with the common market should have been recovered from the recipient companies within two months (from the date of notification of the decision), that is, by 4 August 1999.

In 2002, the Court of Justice dismissed Italy's action for annulment of the Commission's decision.¹

The Commission now maintains that the Italian Republic has not yet taken all the measures necessary to comply with the obligation to recover the unlawfully granted aid from the recipient undertakings.

By way of explanation for its failure to recover the amounts, Italy refers to the difficulties encountered in identifying the recipients of the unlawful aid and the doubts the authorities have as to how much is to be recovered. The Italian Republic maintains that it definitely intends to perform its obligations and states its wish for the Italian and Community authorities to establish together certain criteria, in order to avoid the risk that recipients of the unlawful aid might bring proceedings of unforeseeable dimensions at national and Community level.

The Court begins by stating that the abolition, by means of recovery, of State aid which has been unlawfully granted is the logical consequence of a finding that it is unlawful and that **the only defence available** to a Member State is to plead that it was **absolutely impossible** for it to **implement** the Commission's decision properly. **It is not sufficient for a Member State merely to inform the Commission of the legal, political or practical difficulties which it fears may be involved in implementing the decision**, without taking any real step to recover the aid from the undertakings concerned, and without proposing to the Commission any alternative arrangements.

Next, a Member State **may not plead the legitimate expectations of recipients of unlawfully granted aid**; if it could do so, national authorities would be able to rely on their own unlawful conduct in order to render decisions taken by the Commission under the Treaty ineffectual. Moreover, by a notice published in the *Official Journal of the European Communities*,² the Commission had informed potential recipients of State aid of the risk attaching to any aid granted to them illegally. In any event, the Court points out that the legitimate expectation on which the recipient of illegally granted aid may rely to oppose reimbursement falls to be assessed by the national court.

1 Case C-310/99 *Italy v Commission* and related press release.

2 OJ 1983 C 318, p. 3.

The Court thus finds that **the Italian Government had not taken any of the measures necessary for recovery**, either by the date stated in the decision (two months from the date of notification of the decision) or by the time the present action for failure to fulfil obligations was brought. In addition, at the hearing in this case (18 September 2003), the Italian Government had not yet undertaken any actual steps with the firms concerned. For those reasons, **the Italian Republic has not established that it was impossible to implement the decision and cannot rely on an alleged lack of cooperation on the part of the Commission.**

Unofficial document, for media use only, which does not bind the Court of Justice.

Available languages: English, French and Italian.

The full text of the judgment can be found on the internet (www.curia.eu.int).

In principle it will be available from midday CET on the day of delivery.

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