

Press and Information Division

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Judgment of the Court of Justice (on questions referred for a preliminary ruling) in Cases C-34/01 to C-38/01

Enirisorse SpA. v Ministero delle Finanze

**ALLOCATION OF A PROPORTION OF PORT CHARGES TO AN UNDERTAKING
RESPONSIBLE FOR HANDLING GOODS IN PORTS CONSTITUTES STATE AID
IF IT IS NOT LINKED TO PUBLIC-SERVICE DUTIES THE COSTS OF WHICH
HAVE BEEN CLEARLY DEFINED BEFOREHAND.**

The national court must prevent the levying and allocation of the proportion of the charges intended for the recipient undertakings.

The Aziende dei Mezzi Meccanici e dei Magazzini (set up in 1967 in the ports of Ancona, Cagliari, Livorno, La Spezia, Messina and Savona) are public bodies under the supervision of the Merchant Navy Ministry, which are responsible, inter alia, for managing mechanical installations and the State's storage sites, and which handle the transport of goods.

Since 1974 charges on the loading and unloading of goods carried by sea or by air have been levied - in all Italian ports - and paid into the national exchequer. The amount of the charge (which varies between EUR 0.01 and EUR 0.05 per metric tonne, depending on what the goods are) is set for each port by decree of the President of the Republic. Two thirds of the revenue from the charges are allocated to the Aziende (for the performance of their duties), the remainder being kept by the State.

Using its own resources, Enirisorse has loaded and unloaded domestic and foreign goods in the port of Cagliari without making use of the services provided by the Azienda operating in that port. Taking the view that the charges (payable even if the undertaking does not use the Azienda's services) distort competition and amount to State aid in favour of the Aziende, Enirisorse has refused to pay them.

The Corte di Cassazione has therefore referred the matter to the Court of Justice for a preliminary ruling.

The Court observes that if the payment at issue is to be classified as State aid, it must come from State resources, be liable to affect trade between Member States, favour an undertaking, whether directly or indirectly, and distort or threaten to distort competition.

The proportion of the charges allocated to the Aziende comes out of the State budget.

This allocation **could influence intra-Community trade** as the recipient is an undertaking established in a port loading and unloading goods.

In order for the State funding not to be regarded as an advantage, it must constitute compensation for the performance of clearly defined public-service duties (and not a financial advantage), and the parameters for calculating that compensation must be set beforehand objectively and transparently.

First, the Court notes that **operating a commercial port does not necessarily involve the performance of public-service duties.**

Insofar as the Aziende have not shown that they are responsible for public-service duties or that the sum allocated to them constitutes compensation for the cost of performing such duties, allocation of that sum may constitute State aid.

Next, the Court declares that the Treaty forbids the implementation of any aid **which has not been notified**: the **national court** must take all measures necessary to **prevent both the levying** of a proportion of the charges **and its allocation** to the recipients.

It is to be remarked that even if the port charges are **unlawful**, that concerns only **the proportion paid to the recipient undertaking** (the remainder of the charges paid into the exchequer is not affected).

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

Available languages: EN, FR, IT.

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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