



Press and Information

Court of Justice of the European Union
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Judgment in Case C-89/14
A2A v Agenzia delle Entrate

EU law does not preclude Italian legislation which, by reference to an EU regulation not in force at the time, provides for the application of compound interest to the recovery of State aid

Thus the company A2A will have to repay not only €170 million in capital, but also €120 million in compound interest

In Italy, municipalities have traditionally provided various services to their local communities, such as distribution and treatment of water, public transport, gas distribution, etc. Those services may be provided directly or indirectly through, inter alia, undertakings with a majority public shareholding. At the beginning of the 1990s, Italy granted tax exemptions and subsidised loans to those undertakings. The undertakings concerned were in particular exempt, for three years, from corporation tax and could contract low-interest loans.

By decision of 5 June 2002,¹ the Commission considered that those tax exemptions constituted State aid incompatible with the common market. It therefore ordered Italy to recover the aid. Several companies, including ASM Brescia and AEM, brought, together with Italy, actions before the General Court for annulment of the Commission decision. All those actions were dismissed in 2009,² as were the appeals brought against several judgments of the General Court.³

By a judgment of 1 June 2006,⁴ the Court of Justice held that Italy had failed to fulfil its obligations by not recovering the aid from the beneficiaries. Following that judgment, in 2008 Italy took the measures necessary to recover the aid in question. It in particular provided in its legislation that, by reference to an EU regulation⁵ which entered into force in 2004 (that is to say after the Commission decision of 2002), the amounts to recover would be subject to compound interest.⁶

On that basis, the Italian authorities require the companies ASM Brescia and AEM, which in the meantime merged to create the company A2A, to repay €170 million by way of the corporation tax which they did not pay as a result of the exemption granted by Italy and to repay €120 million by way of compound interest. A2A contests the basis of calculation of interest before the Italian courts. Hearing the case at last instance, the Corte suprema di cassazione (the Italian Court of Cassation) asks the Court of Justice whether the Italian legislation could provide for compound interest by reference to a regulation which was not yet applicable on the date recovery of the aid was ordered by the Commission.

¹Commission Decision 2003/193/EC of 5 June 2002 on State aid granted by Italy in the form of tax exemptions and subsidised loans to public utilities with a majority public capital holding (OJ 2002 L 77, p. 21).

²Case [T-292/02](#) Confservizi v Commission, Case [T-297/02](#) ACEA v Commission, Case [T-300/02](#) AMGA v Commission, Case [T-301/02](#) AEM v Commission, Case [T-309/02](#), Acegas v Commission, Cases [T-189/03](#) ASM Brescia v Commission and [T-222/04](#) Italy v Commission.

³Case [C-319/09](#) ACEA v Commission, Case [C-329/09](#) Iride v Commission, Case [C-320/09](#) A2A v Commission and Case [C-318/09](#) A2A v Commission.

⁴Case [C-207/05](#) Commission v Italy

⁵Commission Regulation No 794/2004 of 21 April 2004 implementing Council Regulation No 659/1999 (OJ 2004 L 140, p. 1 and corrigendum OJ 2004 L 286, p. 3).

⁶The term 'compound interest' means that the interest accruing in the previous year is to be subject to interest in each subsequent year.

In today's judgment, the Court notes that, at the time when the Commission ordered recovery of the aid, EU law⁷ did not state whether interest should be calculated on a simple or compound basis. It notes that, since the decision to recover aid was adopted before the entry into force of the EU regulation at issue, the question whether the interest should be calculated on a simple or on a compound basis was not regulated at that time by any provision of EU law, especially as the practice of the Commission applicable at the time referred, on that point, to national law.⁸ **It was therefore solely for Italian law to determine whether the interest rate should be determined on a simple or on a compound basis.**

The Court notes moreover that where a national measure implements EU law, the Member State concerned must respect the general principles of EU law such as the principles of legal certainty and protection of legitimate expectations. The Court must therefore satisfy itself that the Italian legislation respects those principles. In that regard, the Court notes that the principle of legal certainty precludes legislation being applied retroactively to a situation which arose prior to the entry into force of that legislation and that, if the new law is valid only for the future, it applies also to the future effects of situations which arose during the period of validity of the old law.⁹ The tax assessments providing for the application of compound interest were notified to A2A after the entry into force of the Italian legislation providing for the calculation of interest on a compound basis. **Since the State aid at issue had not been recovered or even set out in a tax assessment on the date the Italian legislation entered into force, the latter cannot be considered to affect a situation which arose earlier. Therefore, the Italian legislation has no retroactive effect and only applies new rules to the future effects of situations which arose under the earlier rules.**

Furthermore, in the light of the long delay between the adoption of the recovery decision by the Commission in 2002 and the recovery order issued by the Italian authorities in 2009 to A2A, it must be considered that **the application of compound interest is a particularly appropriate means of neutralising the competitive advantage granted unlawfully to undertakings benefitting from the State aid at issue.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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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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⁷ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

⁸ Case [C-295/07](#) Commission v Département du Loiret.

⁹ Case [C-120/08](#) Bavaria.