



Press and Information

General Court of the European Union
PRESS RELEASE No 151/15
Luxembourg, 17 December 2015

Judgment in Case T-242/12
Société nationale des chemins de fer v Commission

The General Court confirms that the State aid in the sum of € 503 million granted by France to Sernam and conditionally approved by the Commission in an earlier decision was wrongfully implemented

In 2001, the Commission conditionally gave initial authorisation¹ for restructuring aid of € 503 million in favour of Sernam, a private delivery and express package and palette transport company, then wholly owned by SNCF ('the Sernam 1 decision'). Finding that the conditions attached to that decision had not been satisfied and that new, incompatible aid of € 41 million had been granted, in 2004 the Commission adopted a second decision ('the Sernam 2 decision').² In the Sernam 2 decision, the Commission required the recovery of the € 41 million declared incompatible and confirmed, while laying down new conditions for compatibility, that the aid approved under the Sernam 1 decision of € 503 million was compatible with the internal market. The Sernam 2 decision provided, inter alia, for a possible choice between two conditions, which were, in essence, the following:

- within a set period, Sernam was to withdraw from the road transport market;
- alternatively, '[i]n the event that Sernam [sold] its **assets en bloc** by 30 June 2005 at market price, through a transparent and open procedure, to a company that [had] no legal link with SNCF, the conditions [of withdrawal from the road transport market] [would] not be applicable'.

France stated to the Commission that it had opted to sell Sernam's assets en bloc, the purchaser being la Financière Sernam, a company created by the former management team of Sernam.

Having received a number of complaints, the Commission then found that the condition that Sernam's assets en bloc should be sold had not been satisfied and that the incompatible aid of € 41 million had not been recovered. It concluded therefrom that the restructuring aid of € 503 million, conditionally authorised in 2004, had been wrongfully implemented and was incompatible with the internal market. The Commission also declared that the measures granted by SNCF to enable the 'sale of the assets en bloc' to be made, namely the recapitalisation of Sernam by SNCF in the net sum of € 57 million, the waiving of € 38.5 million of Sernam's debts by SNCF and certain guarantees granted by SNCF when Sernam's activities were transferred to la Financière Sernam constituted new State aid incompatible with the internal market. By decision of 9 March 2012,³ the Commission concluded that all the aid which Sernam had received, namely a total of more than € 642 million (excluding interest), should be reimbursed by la Financière Sernam and its subsidiaries because of the economic continuity between Sernam and those companies.

SNCF brought an action before the General Court, seeking the annulment of the decision of 9 March 2012. It submitted that, inter alia, it correctly applied the condition concerning the sale of

¹ Commission Decision NN 122/00 (ex N 140/00) of 23 May 2001.

² Commission Decision 2006/367/EC of 20 October 2004 on the State aid partly implemented by France for the Sernam company (OJ 2006 L 140, p. 1).

³ Commission Decision 2012/398/EU of 9 March 2012 on State aid SA.12522 (C 37/08) — France — Enforcing the Sernam 2 Decision [of 20 October 2004] (OJ 2012 L 195, p. 19).

Sernam's assets en bloc, that the inclusion among Sernam's payment liabilities of the aid of € 41 million is sufficient to eliminate the distortion of competition connected with the grant of that aid and that that aid was therefore not transferred to la Financière Sernam. It is also of the opinion that the measures granted by SNCF to enable the 'sale of Sernam's assets en bloc' to be made (namely the prior recapitalisation of Sernam, the waiving of Sernam's debts and the guarantees) do not constitute new State aid, since the private investor test⁴ in circumstances involving a negative sale price, which it regards as applicable to the present case, is satisfied.

In today's judgment, **the General Court dismisses SNCF's action.**

The General Court finds that **the condition for compatibility of the restructuring aid concerning the sale of Sernam's assets en bloc has not been satisfied.** In particular, the transfer made concerned not only Sernam's assets, but also the quasi-totality of its debts, whereas, under the Sernam 2 decision, the debts ought to have been excluded from the sale of the assets en bloc. In addition, the General Court finds that the purpose of the sale of Sernam's assets en bloc in this case, which was to interrupt Sernam's economic activity, was not met.

The General Court also considers that, in the present case, **the inclusion in Sernam's payment liabilities of € 41 million declared incompatible by the Sernam 2 decision was not sufficient to eliminate the distortion of competition. It confirms the finding of economic continuity between Sernam and la Financière Sernam, by the intermediary of Sernam Xpress (a wholly-owned subsidiary of Sernam). Consequently, the General Court confirms that the obligation to reimburse the State aid of € 41 million has been transferred to la Financière Sernam.**

Finally, **the General Court confirms that, in the specific circumstances of the present case, the private investor test in circumstances involving a negative sale price did not apply.** It also confirms that the measures granted by SNCF to enable the 'sale of the assets en bloc' to be made, namely the recapitalisation of Sernam by SNCF in the net sum of € 57 million, the waiving of € 38.5 million of Sernam's debts and the guarantees constituted State aid.

The General Court thus confirms that a total of more than € 642 million (excluding interest) of incompatible State aid must be reimbursed by la Financière Sernam and its subsidiaries.⁵

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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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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⁴ The private investor test consists of ascertaining whether a private undertaking placed under the same conditions would have acted in the same way, so that the existence of State aid can be excluded.

⁵ That is the case without prejudice to the subsequent decision of the Commission of 4 April 2012 on State aid SA. 34547 (2012/N) – France – Takeover of the assets of the Sernam group as part of its composition with creditors.