



Press and Information

Court of Justice of the European Union

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Judgment in Case C-212/19

Ministre de l'Agriculture et de l'Alimentation v Compagnie des pêches de Saint-Malo

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**Seized with an interpretation request concerning the arrangements for implementing a Commission decision penalising France for State Aid declared incompatible with the common market, the Court of Justice rules that the decision is invalid**

*The Commission erred in law in considering that the reduction in employees' contributions conferred a direct advantage on fisheries undertakings*

Following, first, the oil pollution caused by the wreck of the tanker *Erika* on 12 December 1999 in the Bay of Biscay and, secondly, the significant damage caused in the southern half of France by the violent storm which occurred on 27 and 28 December 1999, France adopted a compensation scheme for fishermen and fish farmers in order to make good the damage caused to those persons by those events.

By two circulars of 15 April and 13 July 2000, France adopted several measures consisting, in particular, in granting all fisheries undertakings a 50% reduction in social security contributions for the period between 15 April and 15 October 2000. That reduction concerned both employers' and employees' contributions and applied to all fishermen in mainland France and the overseas departments.

By decision of 14 July 2004,<sup>1</sup> the Commission classified some of those measures, in particular those relating to reductions in fishermen's social security contributions, as State aid incompatible with the common market and ordered the immediate recovery of the sums corresponding to those reductions. Neither France nor any of the beneficiaries of the measures concerned challenged the legality of that decision by way of an action for annulment under Article 263 TFEU.

Since France had not implemented the decision, the Commission brought an action for failure to fulfil obligations before the Court of Justice, which gave rise to the judgment delivered on 20 October 2011 in *Commission v France* (C-549/09). Following that judgment, by which the Court held that France had failed to fulfil its obligations under EU law, the Commission requested France to initiate the procedure for the recovery of the aid concerned, in order to recover, in addition to the sums corresponding to the reduction in employers' contributions, the sums corresponding to the reduction in employees' contributions.

In accordance with that request, an order for payment was issued against Compagnie des pêches de Saint-Malo (France) for an amount corresponding to the reduction in employees' contributions from which that company had allegedly benefited between 15 April and 15 October 2000. That company disputed the order for payment before the national courts.

In light of the expiry of the time limit for challenging the validity of the decision at issue, the Conseil d'État (Council of State, France) has referred the matter to the Court of Justice for a preliminary ruling on interpretation in order to ascertain whether the concept of "social security contributions" used by the Commission in its decision covers both employers' contributions and employees' contributions and whether, as a consequence, France is required to order repayment by the

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<sup>1</sup> Commission Decision 2005/239/EC of 14 July 2004 concerning certain aid measures applied by France to assist fish farmers and fishermen (OJ 2005 L 74, p. 49).

employees concerned of the part of the aid which they received by way of the reduction in the second category of contributions. In this respect, the referring court specifies that, in accordance with the applicable provisions of national law, employees' contributions are not borne by the fisheries undertakings, but are simply deducted by them from the remunerations of their employees on each salary slip. Thus, those employees were the direct beneficiaries of the reductions in employees' contributions, since they received, for the period between 15 April and 15 October 2000, a net salary increased by a sum corresponding to the reductions in those contributions.

In today's judgment, the Court begins by emphasising that, although the questions referred for a preliminary ruling formally concern the interpretation of the decision at issue, the first of those questions raises, implicitly, a question concerning the assessment of the validity of that decision, since, by that question, the French Conseil d'État is asking the Court of Justice about the Commission's assessment in the decision at issue of the classification of the reduction in employees' contributions as 'State aid' for the purposes of Article 107(1) TFEU. Having regard, first, to the doubts expressed by the referring court as to the validity of the decision at issue and, second, to the fact that the question of the validity of that decision had been raised by *Compagnie des pêches de Saint-Malo* in the proceedings before the national courts, the Court of Justice considers that it is appropriate, in order to give a full answer to the referring court, also to examine the validity of that decision.

The Court states, however, that such an examination of its own motion of the validity of the decision at issue cannot be carried out if *Compagnie des pêches de Saint-Malo* would undoubtedly have had standing to seek annulment of the decision at issue under Article 263 TFEU. According to the Court, this is not the case, given that, at the time when that company could have brought an action for annulment, it was not certain that it had an interest in bringing an action against the part of the decision relating to employees' contributions. Since those contributions were not borne by the fisheries undertakings, in their capacity as employers, but were payable by the employees, and since, in addition, it was only after the delivery of the judgment of 20 October 2011 that *Compagnie des pêches de Saint-Malo* was informed that the order for recovery issued by the Commission also concerned the sums corresponding to the reductions in employees' contributions, it could take the view, before the expiry of the period for bringing proceedings prescribed by Article 263 TFEU, that it had no interest in bringing proceedings against the decision at issue for the purpose of opposing the recovery of those sums.

The Court therefore examines the validity of the decision at issue in so far as it classifies the reduction in employees' contributions concerned as State aid incompatible with the common market.

After recalling that, according to settled case-law, the classification of a measure as 'State aid' requires, in particular, that it must be capable of being regarded as an advantage granted to the recipient undertaking, the Court emphasises that, in the present case, the fisheries undertakings merely act as an intermediary between their employees and the social security bodies to which they pay the employees' contributions deducted from those employees' salaries. It considers that, since the measure reducing the employees' contributions at issue remains neutral in relation to those undertakings, the measure does not relate to charges included in their budgets. The Court also states that the obligation to pay to the competent bodies sums corresponding to employees' contributions does not, by itself, permit the inference that the reduction in those contributions confers on the undertakings concerned a direct advantage in an amount equivalent to the amount of that reduction.

Thus, by arguing that the reductions in social security contributions were, as a whole, measures favouring fisheries undertakings in that they were relieved of certain charges which they would normally have had to bear, the Commission erred in law.

According to the Court, that error is sufficient to find that the decision at issue is invalid, in so far as it classifies the reduction in employees' contributions as State aid incompatible with the common market, even though the condition relating to the existence of an advantage conferred on an undertaking, which is essential for that classification, is not satisfied.

**The Commission's decision is therefore invalid in so far as it classifies the reduction in employees' contributions granted by France to fishermen for the period from 15 April to 15 October 2000 as State aid incompatible with the common market.**

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**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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