

2. The contested decision should be annulled because the facts were assessed incorrectly. The assessments contained in the contested decision are manifestly misconceived:
 - (i) with regard to Article 32(2) of Law 2008/92; and
 - (ii) with regard to Article 5 of law 2237/94.
3. The contested decision infringed Article 87(1) since, even if the provisions in question were to be regarded as State aid, they did not distort competition or affect trade.
4. The statement of grounds in the contested decision is general and vague since it does not explain why the relevant provisions of Law 2237/94, Law 2198/94 and Order 1620/89 of the Governor of the Bank of Greece would be unacceptable for a private investor.
5. The statement of grounds in the contested decision is inadequate because the refund of aid granted unlawfully is not a mandatory requirement under Article 88(2) and the Commission does not prove that the refund is necessary in order to restore market conditions.
6. The contested decision which seeks the refund of all the 'aid' with interest infringes the principle of proportionality and the principle of legal certainty.
7. Under the case-law, it is not possible for aid granted in compliance with the procedure under Article 88 EC to be recovered, in particular after seven years have elapsed.
8. The decision is absolutely incapable of being duly implemented.

Action brought on 13 July 2000 by the Commission of the European Communities against the Italian Republic

(Case C-279/00)

(2000/C 259/19)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 13 July 2000 by the Commission of the European Communities, represented by Enrico Traversa, Legal Adviser, and Maria Patakia, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

- (a) declare that, by requiring undertakings engaged in the provision of temporary labour which are established in other Member States to:
 - maintain their registered office or a branch office on Italian territory; and
 - to deposit a guarantee amounting to ITL 700 million with a credit institution having its registered office or a branch on Italian territory,

the Italian Republic has failed to comply with its obligations under Articles 59 and 73b of the EC Treaty (now Articles 49 and 56 EC);
- (b) order the Italian Republic to pay the costs.

Pleas in law and main arguments

A national rule requiring an undertaking engaged in the provision of labour to maintain its registered office or a branch in Italy, thereby making it totally impossible for undertakings established in other Member States to render such services, is manifestly contrary to the principle of freedom to provide services within the Community, as enshrined in Article 59 of the EC Treaty (now, after amendment, Article 49 EC).

In the Commission's view, the obligation to deposit a sum by way of guarantee with a bank established in Italy, even where that financial guarantee or an equivalent guarantee is required under the legislation of the Member State in which the undertaking wishing to avail itself of its freedom to provide services is established, constitutes a restriction falling within the scope of the prohibition laid down in Article 59 of the Treaty. That rule also infringes the principle of the free movement of capital (Article 56 EC, formerly Article 73b of the EC Treaty), as expressed in the judgment in *Svensson*⁽¹⁾, in which the Court of Justice assessed the compatibility with Community law of a Luxembourg regulation rendering the grant of an interest-rate subsidy on loans for the construction, acquisition or improvement of housing subject to the condition that such loans were to be taken out from banks established in Luxembourg.

⁽¹⁾ Judgment of 14.11.1995 in Case C-484/93 *Svensson and Gustavsson* [1995] ECR I-3955.