

Lastly, both the Commission in the contested decision and the General Court in the judgment under appeal misinterpreted the appellant's intentions, attributing to it the aim of contriving to render a decision which referred to a general scheme one that concerned it individually and, as a result of that misunderstanding, incorrectly failed to consider the impact which the factors brought to their attention by the appellant could have had on the assessment of the scope of the aid scheme in general terms.

Appeal brought on 8 December 2011 by Grand Hotel Abi d'Oru SpA against the judgment delivered by the General Court (Fourth Chamber) on 20 September 2011 in Joined Cases T-394/08, T-408/08, T-453/08 and T-454/08 Regione autonoma della Sardegna and Others v Commission

(Case C-633/11 P)

(2012/C 118/15)

Language of the case: Italian

Parties

Appellant: Grand Hotel Abi d'Oru SpA (represented by: D. Dodaro and R. F. Masuri, avvocati)

Other parties to the proceedings: European Commission, Regione autonoma della Sardegna, Selene di Alessandra Cannas Sas and others

Form of order sought

— Set aside the judgment of the General Court of the European Union of 20 September 2011 in Joined Cases T-394/08, T-408/08, T-453/08 and T-454/08 in so far as it:

- (a) rejects the appellant's complaint alleging breach of the obligation to notify the adjustment decision laid down in Article 254(3) EC and Article 20(1) of Regulation (EC) No 659/1999 ⁽¹⁾ (paragraphs 103 to 112 of the judgment);
- (b) rejects the appellant's complaint alleging failure to state adequate reasons with regard to the assessment of the incentive effect of the aid at issue (paragraphs 136 to 145 and 218 to 228 of the judgment)

on the grounds of distortion of the pleas in law relied on in the application, error of law and illogical and inconsistent reasoning;

— annul Commission Decision 2008/854/EC of 2 July 2008 concerning the aid scheme 'Regional Law No 9 of 1998 — Misapplication of aid N 272/98' C/104 (ex NN 158/03 and CP 15/2003) (OJ 2008 L 302, p. 9);

— order the European Commission to pay the costs of the appeal proceedings.

Pleas in law and main arguments

The judgment under appeal is defective as a result of misapplication of Article 254 EC and Regulation (EC) No 659/99 and illogical and inconsistent reasoning, in so far as it states that 'the adjustment decision was directed solely at the Italian Republic and not the beneficiaries of the scheme at issue. Consequently, Article 254(3) EC did not require the Commission to notify the adjustment decision to Grand Hotel Abi d'Oru' (paragraph 107 of the judgment). In the appellant's view, that reasoning is inconsistent with paragraphs 71 and 72 of the judgment under appeal.

The judgment under appeal fails to recognise the different functions of an adjustment decision and a decision to open a formal investigation, and the fact that the latter is a step in a procedure that has already been instigated requires, in the appellant's view, account to be taken of the parties who have in fact already participated in that procedure. The error made by the General Court in equating the adjustment decision to the decision to initiate the formal investigation procedure entailed an erroneous assessment of the scope of application of Article 20(1) of Regulation No 659/1999.

The judgment under appeal is flawed as a result of distortion of the pleas in law relied on in the application; errors of law and illogical and inconsistent reasoning in so far as the General Court failed to give reasons, even implicitly, for its rejection of the complaint alleging manifest error on the part of the Commission in its assessment of the incentive effect of the aid.

Lastly, both the Commission in the contested decision and the General Court in the judgment under appeal misinterpreted the appellant's intentions, attributing to it the aim of contriving to render a decision which referred to a general scheme one that concerned it individually and, as a result of that misunderstanding, incorrectly failed to consider the impact which the factors brought to their attention by the appellant could have had on the assessment of the scope of the aid scheme in general terms.

⁽¹⁾ OJ 1999 L 83, p. 1.