

- a. the order was made without giving sufficient time for the appellant to prove the existence of unforeseeable circumstances or *force majeure* that delayed the sending of the hard copy of the application. That has deprived the appellant of the right to a fair hearing; and
 - b. there were unforeseeable circumstances in the present case.
2. Incorrect interpretation of Article 43(6) of the Rules of Procedure.
3. Retroactive application, to the detriment of the appellant, of new provisions of the Rules of Procedure, which came into force on 1 July 2015, to situations which had to be subject to the previous Rules of Procedure.

Appeal brought on 3 September 2015 by the European Commission against the judgment of the General Court (Third Chamber) delivered on 24 June 2015 in Case T-527/13 Italy v Commission

(Case C-467/15 P)

(2015/C 406/15)

Language of the case: Italian

Parties

Appellant: European Commission (represented by: V. Di Bucci and P. Němečková, Agents)

Other party to the proceedings: Italian Republic

Form of order sought

The Commission claims that the Court of Justice should:

- set aside the judgment of the General Court (Third Chamber) of 24 June 2015, of which the Commission was notified on the same day, in Case T-527/13 *Italian Republic v Commission*;
- dismiss the action brought at first instance and order the Italian Republic to pay the costs of both sets of proceedings.

Pleas in law and main arguments

1. The General Court unlawfully reinterpreted and reclassified the second plea in law relied on at first instance. In doing so, the General Court infringed the principle that the action is confined to the subject-matter as delimited in the application and the rule prohibiting the Court from raising of its own motion a plea relating to the substantive legality of the decision which the applicant did not raise in good time in the application.
2. The General Court infringed Article 108 TFEU and Article 1 of Council Regulation (EC) No 659/1999, ⁽¹⁾ in relation to the concepts of new and existing aid. In particular, it erred in considering that aid may be considered to be existing aid even though a condition laid down by the decision declaring that aid compatible was infringed. Accordingly, the General Court ignored the settled case-law to the effect that mere failure to comply with such conditions is sufficient for it to be found that there is new aid and, in the absence of new facts enabling a different assessment to be made, justifies a new decision declaring the aid incompatible.

Furthermore, after correctly rejecting the claims concerning an alleged failure to give reasons, the General Court contradicted that assessment by criticising the Commission for failing to demonstrate that the breach of the condition altered the substance of the scheme adopted by the Council and, on that basis, erred in considering that it could partially annul the decision on the ground of an error of law.

The General Court failed to take due account of the institutional balance between the Council and the Commission provided for in Article 108 TFEU. When the Council, acting unanimously, uses its authority to declare aid, exceptionally, to be compatible with the internal market but makes the declaration of compatibility subject to compliance with certain conditions, the Commission may not decide whether those conditions are in fact essential or whether their infringement may be overlooked.

3. The General Court infringed Article 108 TFEU and Articles 4, 6, 7, 14 and 16 of Regulation No 659/1999 concerning the procedures applicable to new aid and misused aid.

Having acknowledged that failure, by a Member State, to comply with the conditions imposed when the aid was approved constitutes a form of misuse of that aid, the General Court dismissed the relevance of the provisions concerning the procedure for examining misused aid on the basis that the Commission did not base its decision on those provisions and on the basis of the view that the concepts of new and misused aid are mutually exclusive. However, the provisions relating to misused aid and those relating to new aid are identical, in so far as they are relevant to the present case. The General Court therefore erred in law by partially annulling the decision on the ground of an error in the classification of the aid, which was of no legal consequence.

⁽¹⁾ 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).

Request for a preliminary ruling from the Bezirksgericht Linz (Austria) lodged on 7 September 2015 — Peter Schotthöfer & Florian Steiner GbR v Eugen Adelsmayr

(Case C-473/15)

(2015/C 406/16)

Language of the case: German

Referring court

Bezirksgericht Linz

Parties to the main proceedings

Applicant: Peter Schotthöfer & Florian Steiner GbR

Defendant: Eugen Adelsmayr

Question referred

1. Is the principle of non-discrimination laid down in Article 18 TFEU to be interpreted as meaning that, where a Member State has laid down a provision in its legal system, such as Article 16(2) of the Basic Law of the Federal Republic of Germany, which prohibits the extradition of German citizens to non-Member States, the prohibition also applies to citizens of other Member States residing in the Member State at issue?