

At the 25th meeting of the OTIF Revision Committee a vote was held with respect to certain changes to the convention and its annexes. The Council laid down the EU common position with regard to several of those points in Decision 2014/699/EU.

At the meeting, the Federal Republic of Germany voted in two points against the common position laid down in that decision, expressed open opposition to that common position and in one case also to exercise of voting rights by the EU provided for in the decision.

That conduct is incompatible with Decision 2014/699/EU and with Article 4(3) TEU.

⁽¹⁾ Council Decision 2014/699/EU of 24 June 2014 establishing the position to be adopted on behalf of the European Union at the 25th session of the OTIF Revision Committee as regards certain amendments to the Convention concerning International Carriage by Rail (COTIF) and to the Appendices thereto (OJ L 293, p. 26).

Appeal brought on 25 November 2016 by Scuola Elementare Maria Montessori Srl against the judgment delivered by the General Court (Eighth Chamber) on 15 September 2016 in Case T-220/13 Scuola Elementare Maria Montessori v Commission

(Case C-622/16 P)

(2017/C 038/21)

Language of the case: Italian

Parties

Appellant: Scuola Elementare Maria Montessori Srl (represented by: E. Gambaro, F. Mazzocchi, lawyers)

Other parties to the proceedings: European Commission, Italian Republic

Form of order sought

- Set aside the judgment dismissing the action brought by Scuola Elementare Maria Montessori and, consequently, annul Commission Decision 2013/284/EU⁽¹⁾ in so far as it considered that the recovery of the aid in the form of the exemption from the imposta comunale sugli immobili (ICI) (municipal tax on real estate) should not be ordered and that the measures relating to the exemption from IMU (imposta municipale propria) (the Municipality's own property tax) did not fall within the scope of Article 107(1) TFEU;
- in any event set aside those parts of the judgment covered by such pleas in the appeal as the Court may find valid and well founded;
- order the Commission to pay the costs at first instance and on appeal.

Pleas in law and main arguments

- 1) By its first plea in law, divided into four parts, Scuola Elementare Maria Montessori claims infringement and misapplication of Article 108 TFEU, Article 14(1) of Regulation (EC) No 659/1999⁽²⁾ and the duty of sincere cooperation in Article 4(3) TEU, misinterpretation of the concept of absolute impossibility, incorrect legal characterisation of the facts, distortion of certain evidence and contradictory reasoning, in that the General Court found that the Commission did not err in failing to order the Italian Republic to recover the sums ICI relating to the tax exemptions which non-commercial entities for specific purposes benefitted from under the ICI rules, which the Commission considered unlawful and incompatible with the internal market.

- 2) By its second plea in law, Scuola Elementare Maria Montessori claims that Article 107(1) TFEU was infringed and misapplied in that the General Court found that the IMU exemption, which replaced the ICI rules as of 2012, did not constitute State aid for the purposes of Article 107(1) TFEU.

⁽¹⁾ Commission Decision 2013/284/EU of 19 December 2012 on State aid SA.20829 (C 26/2010, ex NN 43/2010 (ex CP 71/2006)) Scheme concerning the municipal real estate tax exemption granted to real estate used by non-commercial entities for specific purposes implemented by Italy (OJ 2013 L 166, p. 24).

⁽²⁾ 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).

Appeal brought on 25 November 2016 by the European Commission against the judgment of the General Court (Eighth Chamber) of 15 September 2016 in Case T-220/13, Scuola Elementare Maria Montessori v Commission

(Case C-623/16 P)

(2017/C 038/22)

Language of the case: Italian

Parties

Appellant: European Commission (represented by: P. Stancanelli, D. Grespan, F. Tomat, acting as agents)

Other parties to the proceedings: Scuola Elementare Maria Montessori Srl, Italian Republic

Form of order sought

The appellant claims that the Court should:

- set aside the judgment under appeal to the extent that it declares the proceedings at first instance admissible for the purpose of the final limb of the fourth paragraph of Article 263 TFEU;
- declare the action at first instance inadmissible for the purpose of the second and last limb of the fourth paragraph of Article 263 TFEU and consequently dismiss it in its entirety;
- order Scuola Elementare Maria Montessori to pay the costs incurred by the Commission in the proceedings before the General Court and in the present proceedings.

Pleas in law and main arguments

By a single plea in law, divided into three parts, the Commission claims that the last limb of the fourth paragraph of Article 263 TFEU was misinterpreted and misapplied, in that the General Court ruled that the applicant's action at first instance was admissible on the basis of that provision. In particular, the General Court erred in law by finding that the contested act amounted to a regulatory act which was of direct concern to the applicant at first instance and did not entail implementing measures in respect of the applicant itself.

Appeal brought on 25 November 2016 by the European Commission against the judgment of the General Court (Eighth Chamber) of 15 September 2016 in Case T-219/13, Ferracci v Commission

(Case C-624/16 P)

(2017/C 038/23)

Language of the case: Italian

Parties

Appellant: European Commission (represented by: P. Stancanelli, D. Grespan, F. Tomat, acting as agents)

Other parties to the proceedings: Pietro Ferracci, Italian Republic