JUDGMENT OF THE COURT (Fourth Chamber)

10 June 2010 *

In Case C-140/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Tribunale di Genova (Italy), made by decision of 27 February 2009, received at the Court on 17 April 2009, in the proceedings

Fallimento Traghetti del Mediterraneo SpA

v

Presidenza del Consiglio dei Ministri,

* Language of the case: Italian.

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, C. Toader, K. Schiemann, P. Kūris (Rapporteur) and L. Bay Larsen, Judges,

Advocate General: N. Jääskinen,
Registrar: M.-A. Gaudissart, Head of Unit,

having regard to the written procedure and further to the hearing on 11 February 2010,

after considering the observations submitted on behalf of:

— Fallimento Traghetti del Mediterraneo SpA, by V. Roppo, P. Canepa and S. Sardano, avvocati,

— the Italian Government, by G. Palmieri, acting as Agent, and G. De Bellis, avvocato dello Stato,

— the European Commission, by V. Di Bucci and E. Righini, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of the European Union law on State aid.

2 The reference has been made in the context of proceedings between Fallimento Traghetti del Mediterraneo SpA ('TDM'), a maritime transport undertaking in liquidation, and the Presidenza del Consiglio dei Ministri, concerning compensation for the damage which TDM allegedly suffered as a result of an incorrect interpretation by the Corte suprema di cassazione (Supreme Court of Cassation) of the European Union rules on competition and State aid, and because of that court's refusal to bring the matter before the Court of Justice in accordance with the third paragraph of Article 234 EC.

National legal context

3 The subsidies at issue in the main proceedings were granted to Tirrenia di Navigazione SpA ('Tirrenia'), a shipping company competitor of TDM, under Law No 684 of 20 December 1974 on the restructuring of shipping services of major national interest (GURI No 336 of 24 December 1974, 'Law No 684'), and more specifically Article 19 thereof.

4 Article 7 of Law No 684 provides as follows:

'The Minister for Merchant Shipping is authorised to grant subsidies for the provision of the services referred to in the preceding article, by concluding annual ad hoc agreements, in consultation with the Minister for the Treasury and the Minister for State Investments.

The subsidies referred to in the preceding paragraph must provide, over a period of three years, for operation of the services under conditions of economic equilibrium. On a prospective basis, such subsidies are to be determined by reference to net income, the amortisation of investments, operating costs, organisational costs and financial burdens.

…'

5 Article 8 of Law No 684 provides:

'The services linking the larger and smaller islands, referred to in Article 1(c), and any extensions which are technically and economically necessary, must satisfy requirements relating to the economic and social development of the regions concerned, particularly the Mezzogiorno.

The Minister for Merchant Shipping is consequently authorised to grant subsidies for the provision of those services, by concluding ad hoc agreements, in consultation with the Minister for the Treasury and the Minister for State Investments, for a period of twenty years.'

6 In accordance with Article 9 of Law No 684:

'The agreements under the preceding article must stipulate:

(1) the routes to be served;

(2) the frequency of each service;

(3) the types of vessel allocated to each route;

(4) the subsidy, which must be determined on the basis of net income, the amortisation of investments, operating costs, organisational costs and financial burdens.

Before 30 June each year, the subsidy to be paid for the year shall be adjusted whenever, during the previous year, at least one of the economic components specified in the agreement was subject to variation by more than one twentieth of the value used for the same item when determining the previous year's subsidy.'

7 Article 18 of Law No 684 provides:

'The financial burden arising from the application of the present Law is to be met in the sum of ITL 93 billion by the amounts already entered in Chapter 3061 of the Ministry for Merchant Shipping's estimate of expenditure for the financial year 1975 and by those which will be entered in the corresponding chapters for successive financial years.'

8 Article 19 of Law No 684 provides as follows:

'Until the date of approval of the agreements provided for under the present Law, the Minister for Merchant Shipping shall, in agreement with the Minister for the Treasury, make in deferred monthly instalments payments on account which may not in the aggregate exceed [ninety] per cent of the total amount indicated in Article 18.'

9 Law No 684 was subject to an implementing measure, Presidential Decree No 501 of 1 June 1979 (GURI No 285 of 18 October 1979), Article 7 of which states that the payments on account referred to in Article 19 of that Law are to be paid to the undertakings providing services of major national interest until the date on which the documents relating to the conclusion of the new agreements are registered by the court of auditors.

The dispute in the main proceedings and the question referred for a preliminary ruling

10 As may be seen from the judgment in Case C-173/03 *Traghetti del Mediterraneo* [2006] ECR I-5177, to which the dispute in the main proceedings has already given rise and to which reference is made for a fuller account of the facts and the procedure prior to that judgment, TDM and Tirrenia are two maritime transport undertakings which, in the 1970s, ran regular ferry services between mainland Italy and the islands of Sardinia and Sicily. In 1981, TDM brought proceedings against Tirrenia before the Tribunale di Napoli (Naples District Court) seeking compensation for the damage which it claimed to have suffered as a result of the low-fare policy operated by Tirrenia between 1976 and 1980.

11 TDM submitted that there had been unfair competition and alleged infringement of Articles 85, 86, 90 and 92 of the EEC Treaty (subsequently Articles 85, 86, 90 and 92 of the EC Treaty and now Articles 81 EC, 82 EC, 86 EC and, after amendment, 87 EC respectively). In particular, it maintained that Tirrenia had abused its dominant position on the market in question by operating with fares well below cost owing to its having obtained public subsidies, the legality of which was doubtful under European Union law. However, its action was dismissed by decision of 26 May 1993, upheld on appeal by judgment of the Corte d'appello di Napoli (Naples Court of Appeal) of 13 December 1996.

12 The appeal brought against that judgment by the administrator of TDM was dismissed by judgment of the Corte suprema di cassazione of 19 April 2000, which, in particular, refused to accede to the administrator's request to submit questions of interpretation of European Union law to the Court of Justice, on the ground that the approach adopted by the court ruling on the substance complied with the relevant provisions and was consistent with the Court's case-law.

13 By writ of summons of 15 April 2002, the administrator of TDM, an undertaking which had in the meantime been put into liquidation, instituted proceedings against the Italian Republic before the Tribunale di Genova (Genoa District Court) for compensation from that Member State for the damage allegedly suffered by that undertaking as a result of the errors of interpretation of the European Union rules on competition and State aid committed by the Corte suprema di cassazione and of the breach of its obligation to make a reference for a preliminary ruling pursuant to the third paragraph of Article 234 EC. The alleged damage consists in the loss of the opportunity to obtain, by the proceedings brought against Tirrenia, compensation for the injurious effects of what TDM claims was unfair competition by Tirrenia.

14 On 14 April 2003, the Tribunale di Genova made the reference for a preliminary ruling to the Court of Justice which gave rise to the judgment in *Traghetti del Mediterraneo*, in which the Court held:

'Community law precludes national legislation which excludes State liability, in a general manner, for damage caused to individuals by an infringement of Community law attributable to a court adjudicating at last instance by reason of the fact that the infringement in question results from an interpretation of provisions of law or an assessment of facts or evidence carried out by that court.

Community law also precludes national legislation which limits such liability solely to cases of intentional fault and serious misconduct on the part of the court, if such a limitation were to lead to exclusion of the liability of the Member State concerned in other cases where a manifest infringement of the applicable law was committed, as set out in paragraphs 53 to 56 of the judgment in Case C-224/01 *Köbler* [2003] ECR I-10239'.

15 Further to that judgment, by decision of 27 February 2009 the Tribunale di Genova found that the 'State judiciary [had] acted unlawfully', and by a separate order directed that the proceedings should continue so that the claim for damages from that unlawful conduct might be heard. It was at that stage of the proceedings that, uncertain as to the interpretation of the European Union law on State aid, the Tribunale di Genova made a further reference to the Court.

16 In support of its reference for a preliminary ruling, the Tribunale di Genova states that it does not perceive in the legislation and case-law of the European Union an unequivocal answer to the question of whether the conduct engaged in at that time by Tirrenia, inter alia as a result of the subsidies at issue, distorted competition in the common market. Although in its judgment of 19 April 2000 the Corte suprema di cassazione ruled out that possibility on the basis that those subsidies benefited an activity of cabotage, taking place within a single Member State, the Tribunale di Genova is none the less of the opinion that the question has arisen as to whether Law No 684, in particular Article 19 thereof, is compatible with Articles 86 EC to 88 EC.

17 First, the Tribunale di Genova is uncertain whether State aid, paid on account, is lawful, in the absence of precise and stringent criteria capable of ensuring that the aid does not distort competition. It observes that the payment of such aid may lead to the award of State subsidies without any prior examination of the financial management of the beneficiary undertaking, which might prompt that undertaking, on the basis of such aid, to adopt commercial policies capable of eliminating competition. It points out that, in the light of the *dicta* of the Corte suprema di cassazione, it is important to answer that question with reference to the fact that the undertaking receiving the subsidies at issue was required to apply tariffs imposed by the administrative authority.

18 Second, the Tribunale di Genova is of the opinion that, in the light of Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747, and in view of the routes served by Tirrenia which must be taken into consideration in order to resolve the dispute in the main proceedings, namely the Genoa–Cagliari and Genoa–Porto Torres routes, and of the fact that those municipalities are within the territory of the European Union, the question of distortion of competition may indeed arise as a result of the impact of the subsidies at issue on trade between Member States. It states that any assessment on that point is a matter for the Court of Justice.

19 It is against that background that the Tribunale di Genova decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Is national legislation on State aid of the kind laid down in Law No 684 …, in particular in Article 19 thereof, which provides for the possibility of the payment of State aid – albeit only on account – in the absence of agreements and without the prior establishment of precise and stringent criteria capable of ensuring that payment of the aid cannot give rise to distortion of competition, compatible with the principles of Community law and, in particular, with the provisions laid down in Articles 86 EC, 87 EC and 88 EC and in Title V (formerly Title IV) of the Treaty and, in that regard, may importance be attached to the fact that the beneficiary is required to apply tariffs imposed by the administrative authority?'

The question referred for a preliminary ruling

The subject-matter, wording and admissibility of the question

20 It is clear from the order for reference that the Tribunale di Genova has already ruled, in the main proceedings, on the liability of the Italian State as a result of the failure of the Corte suprema di cassazione to seek a preliminary ruling from the Court pursuant to the third paragraph of Article 234 EC, recognising that: first, there was a rule of law intended to confer rights on individuals; second, the breach of that rule of law was sufficiently serious; and, third, there was a direct causal link between the breach of the obligation incumbent on the State and the alleged damage consisting in a loss of opportunity for TDM to succeed in its action against Tirrenia. In that context, the Tribunale di Genova also accepted, it seems, by referring to Case C-39/94 *SFEI and Others* [1996] ECR I-3547, that a court could, applying its national law, hold that the recipient of State aid unlawfully paid has incurred non-contractual liability.

21 Nevertheless, before ruling on the claim for damages for the loss cited by TDM, the Tribunale di Genova asks the Court whether national legislation of the kind laid down in Law No 684, in particular in Article 19 thereof, is compatible with European Union law. In addition, as is apparent not from the question referred but from the grounds of the order for reference as set out at paragraphs 16 and 18 above, the Tribunale di Genova asks essentially whether the subsidies at issue in the main proceedings affected trade between Member States and distorted competition, leaving the assessment of that point to the Court.

22 As regards the wording of the question itself and the questions raised by the national court, it is to be borne in mind, first, that the Court does not have jurisdiction to rule upon the compatibility of a national measure with European Union law (see, inter alia, Case C-118/08 *Transportes Urbanos y Servicios Generales* [2010] ECR I-635, paragraph 23 and case-law cited). Nor does the Court have jurisdiction to rule on the compatibility of State aid or of an aid scheme with the common market, since that assessment falls within the exclusive competence of the European Commission, subject to review by the Court (see Case C-237/04 *Enirisorse* [2006] ECR I-2843, paragraph 23). The Court also has no jurisdiction to give a ruling on the facts in an individual case or to apply the European Union law rules which it has interpreted to national measures or situations, since those questions are matters for the exclusive jurisdiction of the national court (see Case C-451/03 *Servizi Ausiliari Dottori Commercialisti* [2006] ECR I-2941, paragraph 69 and case-law cited).

23 It follows that, in the present case, the Court does not have jurisdiction to give a ruling on the compatibility of Law No 684 with European Union law or on the compatibility of the subsidies at issue in the main proceedings with the common market nor to assess the facts of the main proceedings in order to determine whether the subsidies have affected trade between Member States and distorted or threatened to distort competition.

24 However, the Court does have jurisdiction to give the national court full guidance on the interpretation of European Union law in order to enable it to determine the issue of compatibility of a national measure with that law for the purposes of deciding the case before it (see *Enirisorse*, paragraph 24, and *Transportes Urbanos y Servicios Generales*, paragraph 23). In the area of State aid, the Court has jurisdiction, inter alia, to give the national court guidance on interpretation in order to enable it to determine whether a national measure may be classified as State aid under European Union law (see, to that effect, in particular, Case C-53/00 *Ferring* [2001] ECR I-9067,

paragraph 29; *Enirisors*e, paragraphs 25 and 51; *Servizi Ausiliari Dottori Commercialisti*, paragraphs 54 and 72; Case C-206/06 *Essent Netwerk Noord and Others* [2008] ECR I-5497, paragraph 96; and Case C-222/07 *UTECA* [2009] ECR I-1407, paragraphs 41 and 47).

25 It must be observed, second, that, although the Tribunale di Genova seems already to have found that the subsidies at issue in the main proceedings constitute State aid, its doubts, as set out at paragraphs 16 to 18 of this judgment, relate to the actual conditions for the existence of State aid under European Union law, as will be established when the substance of the claim is examined.

26 On the other hand, although the Commission proposes that guidance be given to the Tribunale di Genova in relation, first, to the concept of new aid subject to the obligation of prior notification and, second, to the liability of the recipient of illegal aid, it must be held that the uncertainties of the Tribunale di Genova are not concerned with those issues, which it seems to have resolved, at least in part. The Tribunale di Genova does not, moreover, disclose the matters of law or of fact necessary to examine such issues.

27 In the light of all the foregoing, the question referred must be construed as asking whether under European Union law subsidies paid in circumstances such as those in the main proceedings, pursuant to national legislation providing for payments on account prior to the approval of an agreement, may constitute State aid.

28 The Italian Government submits that that question is irrelevant and must therefore be declared inadmissible. It contends that the question of the classification of the subsidies at issue in the main proceedings as State aid is not raised, since they relate to the period from 1976 to 1980, that is, a period during which the cabotage market had not yet been liberalised.

29 It is to be observed in that regard that the presumption that questions referred by national courts for a preliminary ruling are relevant may be rebutted only in exceptional cases, where it is quite obvious that the interpretation which is sought of the provisions of European Union law bears no relation to the actual facts of the main action or where the problem is hypothetical (see, inter alia, Case C-429/05 *Rampion and Godard* [2007] ECR I-8017, paragraphs 23 and 24, and Case C-387/07 *MI.VER and Antonelli* [2008] ECR I-9597, paragraph 15 and case-law cited).

30 It is clear that the question of the classification of the subsidies at issue in the main proceedings does bear a relation to the subject-matter of the dispute between TDM and the Italian State and does not raise a hypothetical problem, since, in order to resolve that dispute, it is necessary for the Tribunale di Genova to ascertain whether Tirrenia benefited from State aid. Therefore, the question referred, as reformulated, is admissible.

The question referred

31 It should be recalled that, in accordance with settled case-law, classification as aid requires all the following conditions to be fulfilled. First, there must be intervention by the State or through State resources. Second, the intervention must be liable to affect trade between Member States. Third, it must confer an advantage on the recipient. Fourth, it must distort or threaten to distort competition (see, to that effect, in particular, Case C-142/87 *Belgium* v *Commission* [1990] ECR I-959 ('*Tubemeuse*'),

paragraph 25; *Altmark Trans and Regierungspräsidium Magdeburg*, paragraphs 74 and 75; *Enirisorse*, paragraphs 38 and 39; *Servizi Ausiliari Dottori Commercialisti*, paragraphs 55 and 56; Joined Cases C-341/06 P and C-342/06 P *Chronopost and La Poste* v *UFEX and Others* [2008] ECR I-4777, paragraphs 121 and 122; *Essent Netwerk Noord and Others*, paragraphs 63 and 64; and *UTECA*, paragraph 42).

32 In this case, the first of those conditions is not the subject of the question referred and is not in dispute, since the subsidies at issue in the main proceedings were paid under Law No 684 and, as is clear in particular from Articles 18 and 19 thereof, borne by the State budget.

33 In the light of the grounds of the order for reference, as set out at paragraphs 16 to 18 above, the third condition must be examined, first, then the second and fourth conditions together.

The advantage conferred on the recipient undertaking

34 Measures which, whatever their form, are likely directly or indirectly to favour certain undertakings or are to be regarded as an economic advantage which the recipient undertaking would not have obtained under normal market conditions are regarded as aid (*SFEI and Others*, paragraph 60; *Altmark Trans and Regierungspräsidium Magdeburg*, paragraph 84; *Servizi Ausiliari Dottori Commercialisti*, paragraph 59; and *Essent Network Noord and Others*, paragraph 79).

35 By contrast, where a State measure must be regarded as compensation for the services provided by the recipient undertakings in order to discharge public service obligations, so that those undertakings do not enjoy a real financial advantage and the measure thus does not have the effect of putting them in a more favourable competitive position than the undertakings competing with them, such a measure does not constitute State aid under European Union law (see the judgments in *Ferring*, paragraphs 23 and 25, and *Altmark Trans and Regierungspräsidium Magdeburg*, paragraph 87, in response to questions referred for a preliminary ruling prior to the judgment of the Corte suprema di cassazione of 19 April 2000, at issue in the main proceedings; and *Servizi Ausiliari Dottori Commercialisti*, paragraph 60, and *Essent Netwerk Noord and Others*, paragraph 80).

36 However, for such compensation to escape classification as State aid in a particular case, a number of conditions must be satisfied (*Altmark Trans and Regierungspräsidium Magdeburg*, paragraph 88; *Servizi Ausiliari Dottori Commercialisti*, paragraph 61; and *Essent Netwerk Noord and Others*, paragraph 81).

37 First, the undertaking receiving such compensation must actually have public service obligations to discharge, and the obligations must be clearly defined (*Altmark Trans and Regierungspräsidium Magdeburg*, paragraph 89; *Servizi Ausiliari Dottori Commercialisti*, paragraph 62; and *Essent Netwerk Noord and Others*, paragraph 82).

38 Second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner, to avoid it conferring an economic advantage which may favour the recipient undertaking over competing undertakings (*Altmark Trans and Regierungspräsidium Magdeburg*, paragraph 90; *Servizi Ausiliari Dottori Commercialisti*, paragraph 64; and *Essent Netwerk Noord and Others*, paragraph 83).

39 Third, the compensation cannot exceed what is necessary to cover all or part of the costs incurred in the discharge of public service obligations, taking into account the relevant receipts and a reasonable profit for discharging those obligations (*Altmark Trans and Regierungspräsidium Magdeburg*, paragraph 92; *Servizi Ausiliari Dottori Commercialisti*, paragraph 66; and *Essent Netwerk Noord and Others*, paragraph 84).

40 Fourth, the compensation must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with the requisite means so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations (*Altmark Trans and Regierungspräsidium Magdeburg*, paragraph 93; *Servizi Ausiliari Dottori Commercialisti*, paragraph 67; and *Essent Netwerk Noord and Others*, paragraph 85).

41 In the present case, it is apparent from Articles 8 and 9 of Law No 684 that the subsidies at issue in the main proceedings were intended for the provision of services linking the larger and smaller Italian islands, which had to satisfy requirements relating to the economic and social development of the regions concerned, particularly the Mezzogiorno. The agreements signed with the undertakings receiving those subsidies had to lay down obligations concerning the routes to be served, the frequency of those services, and the types of vessels allocated to each route. It follows that the recipient undertakings were required to discharge public service obligations.

42 Article 7 of Law No 684 states, moreover, that the subsidies must provide for operation of the services under conditions of economic equilibrium, and that the subsidies are to be determined on a prospective basis by reference to net income, the amortisation of investments, operating costs, organisational costs and financial burdens.

43 However, the Tribunale di Genova points out, in its decision, that it was only as a result of Presidential Decree No 501 of 1 June 1979 that the economic components of the operation to be taken into account in the agreements to be entered into under Law No 684 were laid down, and only in July 1991 that the Italian State concluded the agreements of 20 years' duration with each of the Tirrenia group undertakings, to run from 1 January 1989. For the entire period in question in the main proceedings, that is to say from 1976 to 1980, and until the agreements were approved, the subsidies at issue in the main proceedings were paid on account under Article 19 of Law No 684.

44 It follows that, in the absence of those agreements, the subsidies at issue in the main proceedings were paid during the entire period referred to above without the public service obligations imposed on the recipient undertakings being clearly defined, without the parameters on the basis of which the compensation for those obligations is calculated being established in advance in an objective and transparent manner, and without ensuring that that compensation did not exceed what was necessary to cover the costs arising from the discharge of those obligations. Since the fourth condition referred to at paragraph 40 above is not satisfied either, those subsidies do not therefore fulfil any of the conditions for the compensation of public service obligations to escape classification as State aid under European Union law on the basis of no advantage being conferred on the undertaking concerned.

45 The fact that the subsidies were paid on account, pending approval of the agreements which, moreover, were concluded and took effect only many years later, is of no consequence. Such a fact does not eliminate the advantage conferred on the recipient undertaking or the effects which an advantage of that kind may have on competition since all the conditions referred to have not been fulfilled.

46 Similarly, the fact that tariffs were imposed on the undertaking receiving the subsidies at issue in the main proceedings by the administrative authority is of no consequence. While, in the light of the conditions referred to, the existence of such tariffs is of importance in assessing the costs incurred in the discharge of public service obligations,

taking into account the relevant receipts, it has no bearing by contrast on the advantage conferred on the recipient undertaking, since all the conditions have not been fulfilled.

The effect on trade between Member States and the risk of distorting competition

47 As was stated at paragraphs 16 and 18 above, the Tribunale di Genova is of the opinion that the question of the effect on trade between Member States and of the distortion of competition does arise in the main proceedings.

48 The Italian Government takes the opposite view, maintaining that at the relevant time the cabotage market was not liberalised, since that market was liberalised only as a result of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ 1992 L 364, p. 7), and, more specifically, as regards island cabotage in the Mediterranean, from 1 January 1999. At the hearing, it stated that no operator from another Member State operated on the domestic routes where Tirrenia was present during the years 1976 to 1980, whereas TDM referred to the presence on those routes of an undertaking formed by the merger of an Italian and a Spanish undertaking.

49 In that connection, the fact that the restrictions on the freedom to provide maritime transport services within Member States were abolished after the relevant period in the main proceedings does not necessarily exclude the possibility that the subsidies

at issue in the main proceedings were liable to affect trade between Member States or that they distorted or threatened to distort competition.

50 First, it cannot be excluded that Tirrenia was, as TDM contends, in competition with undertakings from other Member States on the domestic routes concerned, which it is for the national court to determine. Second, it cannot be excluded either that it was in competition with such undertakings on international routes and that, in the absence of any separate accounting for its various activities, there was a risk of cross-subsidisation, that is to say, in the present case, a risk that the revenue from its cabotage activity which received the subsidies at issue in the main proceedings was used for the benefit of activities carried on by it on its international routes, which it is also for the national court to determine.

51 It is in any event for the national court to assess, having regard to the above and in the light of the facts in the main proceedings, whether the subsidies at issue in those proceedings were liable to affect trade between Member States and whether they distorted or threatened to distort competition.

52 Having regard to all those considerations, the answer to the question referred is that under European Union law subsidies paid in circumstances such as those in the main proceedings, pursuant to national legislation providing for payments on account prior to the approval of an agreement, constitute State aid if those subsidies are liable to affect trade between Member States and distort or threaten to distort competition, which it is for the national court to determine.

Costs

53 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

Under European Union law subsidies paid in circumstances such as those in the main proceedings, pursuant to national legislation providing for payments on account prior to the approval of an agreement, constitute State aid if those subsidies are liable to affect trade between Member States and distort or threaten to distort competition, which it is for the national court to determine.

[Signatures]