

JUDGMENT OF THE COURT (First Chamber)

22 December 2010 \*

In Case C-304/09,

ACTION under Article 88(2) EC for failure to fulfil obligations, brought on 30 July 2009,

**European Commission**, represented by L. Flynn, V. Di Bucci and E. Righini, acting as Agents, with an address for service in Luxembourg,

applicant,

v

**Italian Republic**, represented by G. Palmieri, acting as Agent, assisted by P. Gentili, avvocato dello Stato, with an address for service in Luxembourg,

defendant,

\* Language of the case: Italian.

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, J.-J. Kasel, A. Borg Barthet, E. Levits and M. Safjan (Rapporteur), Judges,

Advocate General: V. Trstenjak,  
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 29 September 2010,

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

gives the following

### **Judgment**

- <sup>1</sup> By its application, the Commission of the European Communities claims that the Court should declare that, by failing to adopt, within the time-limits laid down, all measures necessary to abolish the aid scheme which was declared unlawful and incompatible with the common market by Commission Decision 2006/261/EC of 16 March 2005 on aid scheme C-8/2004 (ex NN 164/2003) implemented by Italy in favour of newly listed companies (OJ 2006 L 94, p. 42) and to recover from the

beneficiaries the aid granted under that scheme, the Italian Republic has failed to fulfil its obligations under the EC Treaty and under Articles 2, 3 and 4 of that decision.

## **The legal context**

- 2 Recital 13 in the preamble to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88 EC] (OJ 1999 L 83, p. 1) is worded as follows:

‘... in cases of unlawful aid which is not compatible with the common market, effective competition should be restored; ... for this purpose it is necessary that the aid, including interest, be recovered without delay; ... it is appropriate that recovery be effected in accordance with the procedures of national law; ... the application of those procedures should not, by preventing the immediate and effective execution of the Commission decision, impede the restoration of effective competition; ... to achieve this result, Member States should take all necessary measures ensuring the effectiveness of the Commission decision.’

- 3 Article 14 of Regulation No 659/1999, which is entitled ‘Recovery of aid’, provides:

‘1. Where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary (hereinafter referred to as a “recovery decision”). The Commission shall not require recovery of the aid if this would be contrary to a general principle of Community law.

2. The aid to be recovered pursuant to a recovery decision shall include interest at an appropriate rate fixed by the Commission. Interest shall be payable from the date on which the unlawful aid was at the disposal of the beneficiary until the date of its recovery.

3. Without prejudice to any order of the Court of Justice of the European Communities pursuant to Article [242 EC], recovery shall be effected without delay and in accordance with the procedures under the national law of the Member State concerned, provided that they allow the immediate and effective execution of the Commission's decision. To this effect and in the event of a procedure before national courts, the Member States concerned shall take all necessary steps which are available in their respective legal systems, including provisional measures, without prejudice to Community law.'

4 Pursuant to Article 23(1) of that regulation:

'Where the Member State concerned does not comply with conditional or negative decisions, in particular in cases referred to in Article 14, the Commission may refer the matter to the Court of Justice of the European Communities direct in accordance with Article [88(2) EC].'

### **The facts and Decision 2006/261**

5 By Article 1 of Decision 2006/261, the Commission declared that the State aid scheme implemented by the Italian Republic in the form of tax incentives for companies admitted to listing on a regulated European market was incompatible with the common market.

- 6 As emerges from that decision, the State aid scheme at issue conferred two types of economic advantage. First, it granted companies newly listed on a regulated stock exchange a reduced corporate income tax rate of 20%, thereby increasing the after-tax income they earn from any business activity over a three-year period. Second, the scheme lowered the taxable income in the tax year in which the listing transaction took place. That negative adjustment also had the effect of lowering the effective tax rate applied to 2004 income.
  
- 7 Following the opening of a formal investigation by the Commission, the Italian authorities publicly warned the scheme's potential beneficiaries of the possible consequences, should the Commission find that the scheme at issue constitutes aid that is incompatible with the common market. The Commission held, in any event, that it was necessary to recover any aid already made available to the beneficiaries.
  
- 8 More specifically, Articles 2, 3 and 4 of Decision 2006/261 provided as follows:

*'Article 2*

Italy shall abolish the aid scheme ... with effect from the tax year current on the date of notification of this Decision.

*Article 3*

1. Italy shall take the necessary measures to recover from the beneficiaries the aid ... unlawfully made available to them.

2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective implementation of the Decision.

3. The recovery shall be completed at the earliest opportunity. In particular, where the aid has already been made available by means of lower part-payments of taxes due for the current tax year, Italy shall collect the entire tax due by means of the final scheduled payment for 2004. In all other cases, Italy shall recover the tax due at the latest by the end of the tax year current on the date of notification of this Decision.

4. The aid to be recovered shall bear interest, running from the date on which it was first put at the disposal of the beneficiaries until its actual recovery.

5. The interest shall be calculated in accordance with Chapter V of Commission Regulation (EC) No 794/2004.

6. Within two months of the date of notification of this Decision, Italy shall enjoin all beneficiaries of the aid referred to in Article 1 to reimburse the unlawful aid, with interest.

#### *Article 4*

Within two months of the date of notification of this Decision, Italy shall inform the Commission of the measures already taken and planned to comply with it. This information shall be provided using the questionnaire in Annex I to this Decision. Within the same period of time, Italy shall transmit all documents giving evidence that the recovery proceedings have been initiated against the beneficiaries of the unlawful aid'

## **The action contesting Decision 2006/261**

- 9 On 26 May 2005, the Italian Republic brought an action before the Court of First Instance of the European Communities (now 'the General Court') seeking annulment of Decision 2006/261. The Italian Republic did not apply for interim measures.
- 10 By the judgment in Case T-211/05 *Italy v Commission* [2009] ECR II-2777, the General Court dismissed that action. On 16 November 2009, the Italian Republic lodged an appeal against that judgment. That appeal, which has been registered as Case C-458/09 P, is currently pending before the Court of Justice.

## **The pre-litigation procedure**

- 11 On 17 March 2005, Decision 2006/261 was notified to the Italian Republic.
- 12 In order to implement that decision, the Italian authorities adopted a number of measures and informed the Commission accordingly. Thus, the implementation procedure was composed of the following steps:

— a draft law was drawn up for the implementation of Decision 2006/261;

- faced with difficulties in the legislative process for adopting a law, the Italian authorities opted in July 2006 to recover the unlawful aid through administrative channels;
  
- the Agenzia delle Entrate (‘the Revenue Authority’) gave advance notification to the taxpayers concerned of a communication containing a repayment order requiring reimbursement of the sums owed within 60 days and it determined appropriate codes in order to enable beneficiaries to return the aid of their own volition, together with interest; special administrative instructions were addressed to the directorates and departments responsible for carrying out the related control and recovery procedures before 30 September 2006;
  
- two companies brought an action before the Italian tax courts, contesting the recovery measures; one company was unsuccessful at first instance and, as a result, paid in full the sums owed on 1 April 2009; in the case of another company, which was the main beneficiary of the aid, the Commissione Tributaria Provinciale di Modena (Provincial Tax Court, Modena) made an order suspending enforcement of the repayment order, the decisive reason for doing so being the fact that there had been no legal basis for the repayment order; ruling on the appeal against the judgment at first instance annulling the repayment order, the Commissione Tributaria Regionale di Bologna (Regional Tax Court, Bologna) ordered the proceedings to be stayed, stating in particular that the action for annulment of Decision 2006/261 was pending before the General Court (Case T-211/05);
  
- the Italian legislature attempted to solve the procedural problem arising as a result of the suspension by the national courts of enforcement of the repayment orders by making use of legislative means, through the adoption of Decree-Law No 59 of 8 April 2008 (*GURI* No 84, of 9 April 2008, p. 3; ‘Decree-Law 59/2008’), converted into law by Law No 101 of 6 June 2008 (*GURI* No 132, of 7 June 2008, p. 4).



- 13 Throughout the pre-litigation procedure, the Commission has emphasised the need for the immediate and effective implementation of Decision 2006/261. In addition, the Commission has several times requested additional information and clarification regarding the beneficiaries and the procedural rules for the adoption of a legislative framework for recovery. The Commission's requests were made, either because of the inadequacy, in its view, of the information provided by the Italian authorities or in order to update the information regarding the progress made in recovering the aid. The Italian authorities informed the Commission, by a series of letters, of the procedure for implementing Decision 2006/261 and the progress made.
- 14 The Commission drew the attention of the Italian Republic to the inadequacy of the recovery procedure, since the amount of the aid wrongly paid and not yet reimbursed amounted at October 2008 to a total of EUR 4365265,04 (aid and interest). Consequently, in the Commission's view, the recovery of the aid had not progressed despite the legislative action. In those circumstances, the Commission decided to bring the present action.

## **The action**

### *Arguments of the parties*

- 15 In its application, the Commission submits that the Member State to which such a decision requiring recovery of unlawful aid is addressed is obliged under Article 249 EC to take all measures necessary to ensure the implementation of that decision.

- 16 The Commission considers that the obligation to recover constitutes a genuine obligation to achieve a result. In addition, the recovery must be not only effective but immediate.
- 17 With regard to the draft legislation which the Italian Republic had planned to adopt in order to implement Decision 2006/261, the Commission stated more than once that the choice of a legislative instrument was not the most suitable way of ensuring the immediate and effective implementation of that decision.
- 18 The application of national procedures must not impede the restoration of effective competition. On the contrary, those procedures should be adopted with a view to ensuring the effectiveness of Decision 2006/261.
- 19 The Commission next observes that the only defence available to the Italian Republic in the present case is to plead that it was absolutely impossible for it to implement Decision 2006/261 properly. However, the Italian authorities have never pleaded that it was absolutely impossible to implement the decision properly.
- 20 The condition that it be absolutely impossible to implement a decision is not fulfilled where, as in the present case, the defendant Member State merely informs the Commission of the legal, political or practical difficulties involved in implementing the decision, without taking any real steps to recover the aid from the undertakings concerned and without proposing to the Commission any alternative arrangements for implementing the decision which could have enabled those difficulties to be overcome.

- 21 With regard to orders of national courts suspending the operation of measures, the Commission stresses that the principle of effectiveness must also apply to national courts. Confronted with an application from the aid beneficiary for suspension of enforcement of the recovery measure, the national court must apply the conditions laid down in the case-law, in order to prevent the recovery decision from being deprived of its effectiveness. As it is, in the present case, the suspension orders made by the national courts do not comply with the requirements under the case-law.
- 22 Even though, pursuant to Decree-Law No 59/2008, referred to in paragraph 12 above, in the event of suspension on grounds relating to the unlawfulness of the repayment order, the national court must in principle make a reference for a preliminary ruling immediately to the Court of Justice, the Commission is of the opinion that that national legislation does not seem to have had a significant effect on the procedural practice of the national courts. The Commission states that, more than four years after the adoption of Decision 2006/261, the Italian authorities have recovered no more than 25.91 % of the aid in respect of which a repayment order had been issued.
- 23 As regards the action before the General Court for annulment of Decision 2006/261, the Commission states that the Italian Republic challenged that decision without, however, requesting that its operation be suspended. Yet, the order of the Commissione Tributaria Provinciale di Modena did not make any reference to the proceedings before the General Court or to possible flaws in the decision, but is based solely on the alleged lack of a legal basis for the repayment order issued by the Italian authorities.
- 24 Lastly, as regards the two beneficiary companies, the Commission notes that, since 31 October 2008, no update has been provided on the situation of the ongoing appeal, or on the progress of the recovery. That situation constitutes a breach of the

obligation to provide information, which is incumbent on the Italian authorities both under Article 4 of Decision 2006/261 and under Article 10 EC.

- 25 The Italian Republic contends that EU law does not require that a specific procedure be followed in order to recover State aid, but merely that national procedures be applied only if they make it possible for the decision in question to be implemented immediately and effectively.
- 26 The Italian Republic contends that, under the Italian Constitution, only a legislative measure is appropriate for regulating the administrative activity of recovery and the amounts to be repaid in this context. Furthermore, the draft law referred to in paragraph 17 above is intended to facilitate the voluntary return of the aid, in order to accelerate the recovery phase.
- 27 The Italian Republic also states that the fact that the only defence open to the addressee Member State is to plead that implementation was absolutely impossible does not prevent a Member State which, in implementing a decision such as that giving rise to the present dispute, encounters unforeseen and unforeseeable difficulties or becomes aware of consequences overlooked by the Commission, from submitting those problems for consideration by the Commission, together with proposals for suitable amendments to the decision at issue.
- 28 As it is, in the voluminous correspondence exchanged between the Commission and the Italian authorities, the latter indicated both the reasons for which they considered it necessary to proceed by adopting a specific rule and the unforeseen circumstances which subsequently led to the adoption of a different recovery procedure from that initially planned, that is to say, implementation through administrative channels.

- 29 As regards the judicial suspension orders, the Italian Republic argues that the order of the Commissione Tributaria Provinciale di Modena suspending enforcement of the repayment order had been made despite the Revenue Authority's insistence that the recovery was lawful and that Decision 2006/261 was directly applicable in the Italian legal order. With regard to the procedure before the Commissione Tributaria Regionale di Bologna, the Revenue Authority lodged an application before that court seeking revocation of its order staying the appeal proceedings. Following delivery of the judgment in Case T-211/05 *Italy v Commission*, by which the General Court dismissed the action contesting Decision 2006/261, the Revenue Authority again sought revocation of the court order at issue.
- 30 Lastly, as regards the Commission's plea alleging breach of the obligation to provide information, the Italian Republic produced in its defence a supplementary overview of the position regarding the amounts repaid as well as of the litigation in progress on the subject.

### *Findings of the Court*

- 31 It is settled case-law that the Member State to which a decision requiring recovery of unlawful aid is addressed is obliged under Article 249 EC to take all measures necessary to ensure implementation of that decision (see Case C-232/05 *Commission v France* [2006] ECR I-10071, paragraph 42 and the case-law cited).
- 32 The Member State must actually recover the sums owed (see *Commission v France*, paragraph 42). Recovery out of time, after the deadlines set, cannot satisfy the requirements of the Treaty (see, to that effect, judgment of 14 February 2008 in Case C-419/06 *Commission v Greece*, paragraphs 38 and 61).

- 33 Pursuant to Article 3(3) of Decision 2006/261, the Italian Republic was to recover the aid at issue at the earliest opportunity. In particular, where the aid had already been made available by means of lower part-payments of taxes due for the current tax year, the Italian Republic had to collect the entire tax due by means of the final scheduled payment for 2004. In all other cases, the tax due had to be recovered, together with interest, at the latest by the end of the tax year current on the date of notification of the decision, that is to say, by 17 March 2005.
- 34 As it is, it is not disputed in the present case that, several years after Decision 2006/261 was notified to the Italian Republic and after the expiry of all the deadlines fixed by that decision, a considerable proportion of the unlawful aid has not yet been recovered by the Italian Republic. Such a situation is clearly irreconcilable with the Member State's obligation actually to recover the sums owed and constitutes a breach of the duty to implement Decision 2006/261 immediately and effectively.
- 35 As regards the arguments submitted by the Italian Republic in its defence, it should be noted that, according to settled case-law, the only defence available to a Member State in infringement proceedings brought by the Commission under Article 88(2) EC is to plead that it was absolutely impossible for it properly to implement the decision at issue (see, *inter alia*, Case C-177/06 *Commission v Spain* [2007] ECR I-7689, paragraph 46, and Case C-214/07 *Commission v France* [2008] ECR I-8357, paragraph 44).
- 36 The condition that it be absolutely impossible to implement a decision is not fulfilled where the defendant Member State merely informs the Commission of the legal, political or practical difficulties involved in implementing the decision, without taking any real steps to recover the aid from the undertakings concerned, and without proposing to the Commission any alternative arrangements for implementing the

decision which could have enabled those difficulties to be overcome (see, *inter alia*, Joined Cases C-485/03 to C-490/03 *Commission v Spain* [2006] ECR I-11887, paragraph 74, and Case C-214/07 *Commission v France*, paragraph 46).

37 The Court has also held that a Member State which, in giving effect to a Commission decision on State aid, encounters unforeseen and unforeseeable difficulties or becomes aware of consequences overlooked by the Commission must submit those problems to the Commission for consideration, together with proposals for suitable amendments to the decision at issue. In such a case, the Member State and the Commission must respect the principle underlying Article 10 EC, which imposes a duty of genuine cooperation on the Member States and on the EU institutions, who must work together in good faith with a view to overcoming difficulties whilst fully observing the Treaty provisions and, in particular, the provisions on State aid (see, *inter alia*, Case C-348/93 *Commission v Italy* [1995] ECR I-673, paragraph 17; Case C-99/02 *Commission v Italy* [2004] ECR I-3353, paragraph 17; Case C-207/05 *Commission v Italy*, paragraph 47; and Case C-280/05 *Commission v Italy*, paragraph 20).

38 In that respect, it should be noted that, in its contacts with the Commission as well as in the proceedings before the Court, the Italian Republic did not plead that it was absolutely impossible for it to implement Decision 2006/261, which was the only defence available by virtue of the case-law referred to in paragraph 35 above.

39 In fact, the Italian Government merely informed the Commission of the legal or practical difficulties involved in giving effect to the decision.

- 40 It is true that, during the recovery process, the Italian legislature had taken serious action with a view to ensuring the effectiveness of that recovery by adopting Decree-Law No 59/2008. In particular, it appears from the documents before the Court that that measure, which was intended to resolve the procedural problem of the suspension of operation of the repayment orders by the national courts, was designed to speed up the settlement of the litigation already in progress.
- 41 However, Decree-Law No 59/2008 did not enable the delay in recovering the aid referred to in Decision 2006/261 to be remedied. It was adopted on 8 April 2008, that is to say, after 7 February 2007, the date of the order of the Commissione Tributaria Provinciale di Modena suspending enforcement of the repayment order addressed to the main beneficiary of the unlawful aid. Furthermore, despite the entry into force of Decree-Law No 59/2008, the proceedings concerning that main beneficiary have subsequently been stayed by the appeal court.
- 42 It should be noted that, where legislative steps intended to ensure the implementation by national courts of a Commission decision requiring a Member State to recover unlawful aid are taken too late or prove ineffective, they do not meet the requirements under the case-law referred to in paragraphs 31 and 32 above.
- 43 It should be added that, in any event, the Italian authorities did not apply for the amendment or revocation of the order of the Commissione Tributaria Provinciale di Modena of 7 February 2007 suspending enforcement of the repayment order, despite the fact that — as was admitted by the Italian Republic at the hearing — such an application may be made in this type of procedure. Lastly, on the date of the hearing in the present case, the Italian Republic had not yet taken steps with a view to lifting the



stay of the appeal proceedings, ordered by the Commissione Tributaria Regionale di Bologna on 21 January 2010.

<sup>44</sup> Furthermore, as regards the Commission's argument concerning the option open to the national courts of adopting suspension measures during the aid recovery process, it should be pointed out that the national courts are required, under Article 14(3) of Regulation No 659/1999, to ensure that the decision ordering recovery of the unlawful aid is fully effective and achieves an outcome consistent with the objective pursued by that decision (see, Case C-210/09 *Scott and Kimberly Clark* [2010] ECR I-4613, paragraph 29).

<sup>45</sup> As regards the interim suspension measures adopted by the Italian courts, it should be borne in mind that, according to settled case-law (see, inter alia, Joined Cases C-143/88 and C-92/89 *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest* [1991] ECR I-415 and Case C-465/93 *Atlanta Fruchthandels-gesellschaft and Others (I)* [1995] ECR I-3761), such measures may be granted, provided that certain conditions are met, namely:

- where the national court entertains serious doubts as to the validity of the EU measure and the validity of the contested measure is not already in issue before the Court of Justice, that court itself refers the question to the Court;

- there is urgency, in that the interim relief is necessary to avoid serious and irreparable damage being caused to the party seeking the relief;

- the national court takes due account of the interests of the European Union;
  
  - in its assessment of all those conditions, the national court complies with any decisions of the Court of Justice or the General Court ruling on the lawfulness of the EU measure or on an application for provisional measures seeking similar interim relief at EU level.
- <sup>46</sup> It should also be stated that the national court cannot restrict itself to referring the question on validity to the Court for a preliminary ruling, but must, when making the interim order, set out the reasons for which it considers that the Court should find the EU measure to be invalid (*Atlanta Fruchthandelsgesellschaft and Others*, paragraph 36).
- <sup>47</sup> The requirements set out in the two preceding paragraphs are also applicable to any action seeking a stay of the appeal proceedings in which the national measure for recovery of the unlawful aid is challenged.
- <sup>48</sup> It is appropriate to consider whether, in the present case, the decisions of the Italian courts meet those requirements.
- <sup>49</sup> The suspension orders, in the recovery proceedings concerning the main beneficiary of the unlawful aid, were made by the Italian courts on two grounds. First, by order of 7 February 2007, the Commissione Tributaria Provinciale di Modena suspended enforcement of the repayment order, the decisive ground for that suspension being the fact that the repayment order had no legal basis. Second, by orders of 26 May 2009 and 21 January 2010, the Commissione Tributaria Regionale di Bologna stayed the

appeal proceedings in which the annulment at first instance of the repayment order was challenged, on the ground that the action for annulment of Decision 2006/261 was pending before the General Court (Case T-211/05).

50 In that regard, it should be observed that the first of the two grounds referred to above cannot, in light of the case-law of *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest* and *Atlanta Fruchthandelsgesellschaft and Others (I)*, justify suspension of operation of the measure for recovery of the unlawful aid.

51 As regards the second of those grounds, it should be noted that a decision of a national court which seeks to stay the proceedings necessary for ensuring the effective implementation of a Commission decision requiring the Member State to recover unlawful aid, on the ground that the legality of that decision is under challenge before the General Court, is supposed to substantiate that suspension — as was stated in paragraph 46 above — by setting out the arguments intended to show that the decision at issue is invalid.

52 That requirement is confirmed by the fact that an action brought before the General Court for annulment of a decision ordering recovery of aid does not have suspensory effect on the obligation to implement that decision (see Case C-280/05 *Commission v Italy*, paragraph 21). The same applies when the judgment of the General Court in such an action is under appeal before the Court of Justice. In that regard, it should be added that the Italian Republic did not apply for interim measures in the context of that action for annulment.

53 However, in the present case, the Italian courts do not indicate in their orders the reasons for which the Courts of the European Union would be moved to declare that Decision 2006/261 is invalid. Moreover, the proceedings were stayed by the order of 21 January 2010 on the ground that an action contesting that decision had been brought before the General Court, despite the fact that the General Court had dismissed that action by judgment of 4 September 2009.

- 54 Lastly, as regards the other conditions which must be fulfilled by virtue of the case-law referred to in paragraph 45 above, it need merely be observed that the national judicial decisions at issue do not refer to the interests of the European Union and that, in its orders of 26 May 2009 and 21 January 2010, the Commissione Tributaria Regionale di Bologna did not address the issue of the urgency of the measures ordered.
- 55 In those circumstances, it must be held that the suspension orders were made by the Italian courts in clear breach of the requirements of EU law on the recovery of State aid.
- 56 It follows from the foregoing that the present action is well founded in so far as the Commission claims that the Italian Republic failed to adopt, within the time-limits laid down, all the measures necessary to abolish the aid scheme which was declared unlawful and incompatible with the common market by Decision 2006/261 and to recover from the beneficiaries the aid granted under that scheme.
- 57 Given the finding set out in the preceding paragraph, there is no need to rule on the Commission's claim that the Court should declare that the Italian Republic failed to inform the Commission of the measures referred to in that paragraph, since that Member State did not in fact implement Decision 2006/261 within the time-limits laid down (see Case C-348/93 *Commission v Italy*, paragraph 31; Joined Cases C-485/03 to C-490/03 *Commission v Spain*, paragraph 82; Case C-177/06 *Commission v Spain*, paragraph 54; Case C-280/05 *Commission v Italy*, paragraph 30; and Case C-214/07 *Commission v France*, paragraph 67).
- 58 The Court therefore finds that, by failing to adopt, within the time-limits laid down, all the measures necessary to abolish the aid scheme which was declared unlawful

and incompatible with the common market by Decision 2006/261 and to recover from the beneficiaries the aid granted under that scheme, the Italian Republic has failed to fulfil its obligations under Articles 2 and 3 of that decision.

## Costs

- <sup>59</sup> Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has asked for the Italian Republic to be ordered to pay the costs, and the latter has been unsuccessful, it must be ordered to pay the costs.

On those grounds, the Court (First Chamber) hereby:

- 1. Declares that, by failing to adopt, within the time-limits laid down, all the measures necessary to abolish the aid scheme which was declared unlawful and incompatible with the common market by Commission Decision 2006/261/EC of 16 March 2005 on aid scheme C 8/2004 (ex NN 164/2003) implemented by Italy in favour of newly listed companies and to recover from the beneficiaries the aid granted under that scheme, the Italian Republic has failed to fulfil its obligations under Articles 2 and 3 of that decision.**
- 2. Orders the Italian Republic to pay the costs.**

[Signatures]