By the 2008 Finance Law, Italy intended simply to allocate additional funds for the aid to support shipbuilding provided for in the 2004 Finance Law and the Ministerial Decree of 2 February 2004, which had already been authorised by the Commission on the basis of Regulation (EC) No 1177/2002 [3] ('the TDM Regulation'), without changing the conditions on which the aid itself was granted or the undertakings and types of contract which could benefit from it. In fact, the funds were exhausted because more applications for aid were submitted than was anticipated. Due to its intrinsic structure, it is not possible to predetermine the total amount of such aid; therefore, if additional funds are granted for such aid, that cannot entail a substantial amendment of the aid that has already been authorised, that is, it cannot constitute new aid. The General Court erred in failing to take account of those matters.

Second ground: breach of Articles 2, 3, 4 and 5 of Regulation (EC) No 1177/2002.

The Commission was of the view that the 2008 Finance Law constituted new aid because the scheme provided for in the TDM Regulation expired on 31 March 2005 and was no longer applicable after that date. That is not correct, because that date simply referred to the deadline for the signature of shipbuilding contracts which could be subsidised; however, the regulation went on to provide that the aid was to be granted to undertakings which delivered the ships in question within three years from the date of signing the final contract (which could be extended for no more than three years). The regulation could therefore be applied to such contracts at least until 31 March 2008. The 2008 Finance Law, which was approved on 24 December 2007, is in fact a measure which gives effect to the regulation and is designed to enable aid to be paid in respect of all contracts signed before 31 March 2005. Accordingly, the legal basis for the 2008 Finance Law is the TDM Regulation, which the Commission should have applied to authorise it. The General Court erred in finding that, after 31 March 2005, the Commission ceased to have any power to assess measures relating to shipbuilding on the basis of the TDM Regulation, even if those measures related to contracts signed before 31 March 2005.

Third ground: breach of Articles 87(2) and (3) and 88(3) EC and breach of essential procedural requirements on the ground of failure to state adequate reasons (Article 253 EC)

The Commission was of the view that there is no provision in the Treaty or any other source on the basis of which the aid referred to in the 2008 Finance Law can be regarded as compatible with the common market. That is incorrect, because what was at issue was the protection of the Community shipbuilding industry from Korean dumping, so that Article 87(3)(b) (important projects of Community interest) or Article 87(3) (c) (aid to promote the development of a given economic sector) and, in any event, the principle of proportionality may have been applicable: to provide financial assistance in respect of some contracts but not others because the relevant funds were exhausted would have constituted a disproportionate means of protecting public finances since it would have brought about a serious distortion of competition between the undertakings concerned. The Commission failed to consider any of those potential grounds for derogation from the prohibition of State aid. The General Court erred in finding that Italy had not put forward any ground justifying derogation from the prohibition of State aid, in particular on the basis of unequal treatment and the distortion of competition that would have occurred if aid had been denied to some undertakings and granted to others in the same situation. Instead, that court erred in finding that adequate reasons were given for the Commission's decision.

Fourth ground: breach of the principle of the protection of legitimate expectations and equal treatment (non-discrimination).

However, after the Commission approved the scheme provided for in the Ministerial Decree of 2 February 2004, there was a legitimate expectation that a law would also be approved the purpose of which was simply to grant additional funds for the financing of that scheme. The principle of equal treatment or non-discrimination also requires such an approach because, as the funds were exhausted, only some of the operators had received aid but not others who were in the same situation. The General Court erred in finding that it was clear to Italy and the persons concerned that the 2004 approval decision imposed a ceiling on the aid that could be granted of EUR 10 million. On the contrary, there was a legitimate expectation that all those entitled to aid would be able to receive it.

(1) OJ 1999 L 83, p. 1.
(2) OJ 2004 L 140, p. 1.
(3) OJ 2002 L 172, p. 1.

Appeal brought on 27 April 2011 by Union of European Football Associations (UEFA) against the judgment of the General Court (Seventh Chamber) delivered on 17 February 2011 in Case T-55/08: Union of European Football Associations (UEFA) v European Commission

(Case C-201/11 P)

(2011/C 204/30)

Language of the case: English

Parties

Appellant: Union of European Football Associations (UEFA) (represented by: D. Anderson QC, D. Piccinin, Barrister, B. Keane, Solicitor, T. McQuail, Solicitor)

Other parties to the proceedings: European Commission, Kingdom of Belgium, United Kingdom of Great Britain and Northern Ireland

Form of order sought

The appellant submits that the contested judgment should be set aside on the following grounds:

(a) The General Court erred in law in the application of the Directive 89/552 [1], both as regards the requirement of clarity and transparency and the characterisation of the EURO as an event of major importance for society.

(b) The General Court erred in law in the application of the Treaty provisions concerning competition.

(c) The General Court erred in law in the application of the Treaty provisions concerning the freedom to provide services and proportionality.

(d) The General Court erred in law in the application of UEFA's right to property.

(e) The General Court erred in law by finding that the contested decision contained an adequate statement of reasons in respect of (i) the characterization of the EURO as an event of major importance for society, (ii) competition, (iii) freedom to provide services, and (iv) property rights.

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[1] Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities
OJ L 298 p. 23

Appeal brought on 13 May 2011 by the European Commission against the judgment of the General Court (Second Chamber) delivered on 3 March 2011 in Joined Cases T-122/07 to T-124/07 Siemens AG Österreich and Others v Commission.

(Case C-231/11 P)

(2011/C 204/31)

Language of the case: German

Parties

Appellant: European Commission (represented by: A. Antoniadis, R. Sauer, N. von Lingen, Agents)

Other parties to the proceedings: Siemens AG Österreich, VA Tech Transmission & Distribution GmbH & Co. KEG, Siemens Transmission & Distribution Ltd, Siemens Transmission & Distribution SA, Nuova Magrini Galileo SpA.

Form of order sought

The Commission claims that the Court should:

First,

— set aside paragraph 2 of the operative part of the judgment of the General Court of 3 March 2011 in Joined Cases T-122/07 to T-124/07, in so far as it is based on the finding of the Court in Paragraph 157 of the judgment under appeal, that the Commission is obliged to determine the respective shares of the various companies in the fines imposed on them as jointly and severally liable;

— set aside paragraph 3 of the operative part of the judgment of the General Court of 3 March 2011 in Joined Cases T-122/07 to T-124/07, in so far as the General Court in accordance with the findings in Paragraph 158 in conjunction with Paragraphs 245, 247, 262 and 263 of the judgment under appeal imposed fines anew to include a determination of the proportion of the fine for which each individual company was liable;

Second, in the alternative,

— set aside the judgment of the General Court of 3 March 2011 in Joined Cases T-122/07 to T-124/07, in so far as it imposed on the Commission in accordance with Paragraph 157 of the judgment under appeal an obligation to determine the respective shares of the various companies in the fines imposed on them as jointly and severally liable;

— set aside the judgment of the General Court of 3 March 2011 in Joined Cases T-122/07 to T-124/07, in so far as the General Court in accordance with the findings in Paragraph 158 of the judgment under appeal in conjunction with Paragraphs 245, 247, 262 and 263 of the judgment determines the proportion of the fine for which each individual company was liable, and thereby alters the Commission Decision of 24. January 2007 (C(2006) 6762 final) in COMP/38.899 — *Gas insulated switchgear*;

Third,

— reject the claims in Joined Cases T-122/07, T-123/07 and T-124/07 for the annulment of Article 2(j) (k) and (l) of Decision C(2006) 6762 final;

Fourth,

— order the respondents and applicants to pay the costs both of the appeal and of the proceedings at first instance.

Grounds of appeal and main arguments

1. The obligation imposed on the Commission, to apportion individual liability on parties who are jointly and severally liable as between themselves, misconceives the limits on the powers and duties conferred on the Commission under Article 23 of Regulation No 1/2003 and encroaches on the national legal systems. Those powers and duties extend to the external relationship, in other words, the imposition of fines and when appropriate the determination that the parties to whom the decision is addressed should be jointly and severally liable. The internal relationship of parties who are jointly and severally liable as the result of a determination of joint and severally liability, which may include rights of recourse by one joint debtor against another is conversely, as a matter of principle, subject to the law of the Member States.

2. The General Court exceeded the boundaries of its unlimited jurisdiction to review, where it determined fixed proportions of liability in that internal relationship with regard to possible claims for redress before the national courts.