

Appeal brought on 25 November 2011 by HGA Srl and Others against the judgment delivered by the General Court (Fourth Chamber) on 20 September 2011 in Joined Cases T-394/08, T-408/08, T-453/08 and T-454/08 Regione autonoma della Sardegna and Others v Commission

(Case C-630/11 P)

(2012/C 118/12)

Language of the case: Italian

Parties

Appellants: HGA Srl and Others (represented by: G. Dore, F. Ciulli and A. Vinci, avvocati)

Other parties to the proceedings: European Commission, Regione autonoma della Sardegna, Selene di Alessandra Cannas Sas and Others

Form of order sought

- Set aside and/or vary the judgment of the General Court of 20 September 2011 in Joined Cases T-394/08, T-408/08, T-453/08 and T-454/08;
- Annul the Commission Decision of 3 July 2008 (State aid C1/2004 Italy — SG-Greffe (2008) D/204339) concerning the aid scheme 'Regional Law No 9 of 1998 — Misapplication of aid N 272/98'.

Pleas in law and main arguments

The appellants rely on six grounds of appeal.

By their first ground, the appellants allege, in particular, breach of essential procedural requirements, breach and misapplication of Articles 4, 6, 7 and 16 of Regulation (EC) No 659/1999,⁽¹⁾ breach of the principle of the protection of legitimate expectations and the principle of legal certainty and breach of Article 81 of the Rules of Procedure of the General Court. The Commission's decision is unlawful in that it was adopted after the adjustment of the classification of the aid without any measure whatsoever providing for such an adjustment. Moreover, the decision to initiate the procedure following the adjustment was communicated three and a half years after the Commission had received all the documentation concerning the aid. A plea based on that ground was put forward in the proceedings at first instance but the General Court omitted to give any ruling in that regard.

The second ground of appeal concerns breach of the principle of legal certainty and the principle of the protection of legitimate expectations and breach and misapplication of Article 4, 7, 10 and 16 of Regulation (EC) No 659/1999. The Commission's decision was adopted in breach of the prescribed time limits.

The third ground of appeal alleges breach of Article 108 TFEU and Articles 1, 7, 14 and 16 of Regulation (EC) No 659/1999. In support of this ground, the appellants submit that the

Commission's decision is unlawful because the aid was never altered by the Regione in relation to what was provided for by Legge Regionale No 9/1998.

The fourth ground of appeal alleges breach and misapplication of the principle of the necessity of aid, the principle of the incentive effect and the principle of the protection of competition and the consequent infringement of Articles 7 and 14 of Regulation (EC) No 659/1999, breach and misapplication of Article 108 TFEU, defective reasoning and breach of Article 81 of the Rules of Procedure of the General Court. In the appellants' view, the Commission's decision is unlawful in that, in actual fact, the aid was characterised by the incentive effect, a fact which the Commission should have verified even if the applications for aid had been submitted after the work had started. The General Court failed to rule on that aspect of the case.

The fifth ground of appeal concerns the breach of the principles of legal certainty and the protection of legitimate expectations in another respect and breach of Article 14 of Regulation (EC) No 659/1999. The judgment under appeal is based on the incorrect assumption that the Community court could not assess the legitimate expectation on the part of the beneficiaries created by the national bodies.

The final ground of appeal concerns breach of the principle of impartiality and the principle of the protection of competition. The General Court held, incorrectly, that the Commission's conduct did not give rise to any unequal treatment in the contested decision, in so far as it declared that it was necessary to recover the aid granted to the appellants and, at the same time, declared that the incentive effect operated in relation to ten other undertakings which had started work after submitting an application, notwithstanding the fact that the application did not guarantee with any certainty that aid would be granted

⁽¹⁾ OJ 1999 L 83, p. 1.

Appeal brought on 8 December 2011 by Regione autonoma della Sardegna against the judgment of the General Court (Fourth Chamber) delivered on 20 September 2011 in Joined Cases T-394/08, T-408/08, T-453/08 and T-454/08 Regione autonoma della Sardegna and Others v Commission

(Case C-631/11 P)

(2012/C 118/13)

Language of the case: Italian

Parties

Appellant: Regione autonoma della Sardegna (represented by: A. Fantozzi, avvocato)

Other parties to the proceedings: European Commission, Selene di Alessandra Cannas Sas and Others