

**Appeal brought on 22 November 2012 by the Société nationale maritime Corse-Méditerranée (SNCM) SA against the judgment delivered by the General Court (Fourth Chamber) on 11 September 2012 in Case T-565/08 Corsica Ferries France SAS v European Commission**

(Case C-533/12 P)

(2013/C 32/09)

*Language of the case: French*

**Parties**

*Appellant:* Société nationale maritime Corse-Méditerranée (SNCM) SA (represented by: A. Winckler and F.-C. Laprèvote, lawyers)

*Other parties to the proceedings:* Corsica Ferries France SAS, European Commission, French Republic

**Form of order sought**

The appellant claims that the Court should:

— annul in part the judgment delivered by the General Court on 11 September 2012 in Case T-565/08 *Corsica Ferries France SAS v European Commission* in so far as it annuls the second and third paragraphs of Article 1 of Commission Decision 2009/611/EC of 8 July 2008 concerning the measures C-58/02 (ex N 118/02) which France has implemented in favour of the Société Nationale Maritime Corse-Méditerranée (SNCM) <sup>(1)</sup> on the grounds (i) that the Commission has committed an error in law and manifest errors of assessment so far as concerns its analyses of the negative sale price of EUR 158 million, of the capital contribution in conjunction and simultaneous with CGMF for an amount of EUR 8,75 million and aid to individuals for an amount of EUR 38,5 million; and (ii) that the analysis, by the Commission, of the balance for restructuring, for a final amount of EUR 15,81 million, was based on an incorrect premiss;

— order Corsica Ferries to pay the costs.

**Pleas in law and main arguments**

The appellant raises four grounds of appeal seeking that the judgment of the General Court be set aside in part.

Firstly, in respect of the sale at a negative price, the appellant submits that the General Court has not only failed to have regard to the Commission's discretion for the purposes of the application of the test of the private investor in a market economy, but has also committed an error of law as regards the interpretation of that test. The General Court distorted the Commission's decision and failed to fulfil its obligation to state reasons in adopting an interpretation of the test of the private investor in a market economy which was contrary to Article 345 TFEU.

Secondly, in respect of the capital contribution, the appellant criticises the General Court for having distorted the Commission's decision, in holding that that decision did not take into account all the relevant factors in its assessment of the comparable nature of the investment conditions of the private capital contributions made simultaneously.

Thirdly, in respect of measures involving aid to individuals, the General Court not only distorted the Commission's decision, but it also committed an error of law and failed to fulfil its obligation to state reasons as regards the advantage from which it held the SNCM benefited.

Fourthly, having regard to the foregoing, the General Court's reasoning relating to the balance for restructuring, calculated at EUR 15,81, is misplaced.

<sup>(1)</sup> OJ 2009 L 225, p. 180

**Appeal brought on 26 November 2012 by the French Republic against the judgment of the General Court (Fourth Chamber) delivered on 11 September 2012 in Case T-565/08 Corsica Ferries France SAS v European Commission**

(Case C-536/12 P)

(2013/C 32/10)

*Language of the case: French*

**Parties**

*Appellant:* French Republic (represented by: G. de Bergues, D. Colas, N. Rouam and J. Rossi, Agents)

*Other parties to the proceedings:* Corsica Ferries France SAS, European Commission, Société nationale maritime Corse-Méditerranée (SNCM) SA

**Form of order sought**

The appellant claims that the Court should:

— set aside the judgment delivered by the Fourth Chamber of the General Court on 11 September 2012 in Case T-565/08 *Corsica Ferries France v European Commission*, in so far as it annulled the second and third paragraphs of Article 1 of Commission Decision 2009/611/EC of 8 July 2008 concerning the measures C-58/02 (ex N 118/02) which France has implemented in favour of the Société Nationale Maritime Corse-Méditerranée (SNCM); <sup>(1)</sup>

— rule definitively on the dispute or refer the case back to the General Court;

— order the defendant to pay the costs.

### Pleas in law and main arguments

The appellant raises four grounds of appeal seeking that the judgment of the General Court be set aside.

Firstly, the appellant submits that the General Court infringed Article 107(1) TFEU in holding that the Commission erred in law in finding that the sale of the Société nationale maritime Corse-Méditerranée at a negative price of EUR 158 million did not constitute State aid. The appellant criticises the General Court for having considered that the Commission could not take into account the risk that the brand image of the State, as a global economic actor in the private sector, would be adversely affected, in the context of the reasonable private investor test, in order to determine whether the payment of supplementary redundancy payments to SNCM's employees in the event of the liquidation of that undertaking would also have been made by a reasonable private investor. In addition, it criticises the General Court for having demanded evidence from the Commission that the payment of supplementary redundancy payments constituted a sufficiently established practice, or even the normal practice, among private entrepreneurs.

Secondly, the General Court committed an error in law derived from the infringement of Article 107(1) TFEU by holding that the Commission did not take into account all the relevant evidence in its analysis of the comparability of the capital contribution of EUR 8,75 million made by SNCM's public shareholder and the capital contribution of EUR 26,25 million made by the private purchasers, and that the Commission ought to have taken into account the clause to cancel the sale conceded to the private purchasers in the context of SNCM's privatisation.

Thirdly, the General Court infringed Article 36 of the Statute of the Court of Justice, read in combination with the first paragraph of Article 53 thereof, and Article 81 of the Rules of Procedure of the General Court, by treating as State aid the measures involving aid to individuals amounting to EUR 38,5 million, without ascertaining, in the alternative, whether that measure met the reasonable private investor test, as maintained by the Commission in the contested decision and the French Government at the hearing before the General Court.

Lastly, the General Court erred in law in holding that the Commission committed a manifest error of assessment in approving the balance for restructuring under Article 107(3)(c) TFEU and the Guidelines.

### Action brought on 27 November 2012 — European Commission v Republic of Cyprus

(Case C-545/12)

(2013/C 32/11)

*Language of the case: Greek*

#### Parties

*Applicant:* European Commission (represented by: P. Hetsch, J. Hottiaux and M. Constantinidis, Agents)

*Defendant:* Republic of Cyprus

#### Form of order sought

The applicant claims that the Court should:

- Declare that by not adopting all the laws, regulations and administrative provisions necessary to comply with Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (recast) (OJ 2006 L 403 p. 18) and, in any event, by not communicating to the Commission the text of those provisions, the Republic of Cyprus failed to fulfil its obligations under Article 16 of that directive;
- impose on the Republic of Cyprus, pursuant to Article 260(3) TFEU, payment of a daily penalty payment amounting to EUR 6 504,96 from the date of publication of the judgment of the Court;
- order the Republic of Cyprus to pay the costs.

#### Pleas in law and main arguments

Article 16(1) of Directive 2006/126/EC obliges the Member States to adopt and publish, no later than 19 January 2011, the laws, regulations and administrative provisions necessary to comply with the new provisions which the directive concerned introduces and specifies.

The Republic of Cyprus has not fully transposed into domestic law the provisions of the directive. In particular, the Commission has ascertained that, at the date of lodging of the action, the Republic of Cyprus had not transposed into its domestic law Articles 1(1), 3, 7(1), 7(3), 7(5), 10 and 15 or Annex I, point 2, Annex II, point 5.2 or Annexes IV, V and VI of the directive.

Consequently, the Commission considers that the Republic of Cyprus failed to fulfil its obligations under Article 260(3) TFEU.

<sup>(1)</sup> OJ 2009 L 225, p. 180