Lastly, the appellant takes the view that the General Court erred in law and that its reasons were contradictory, in that it categorised the infringement that Electrabel was found to have committed as continuous, whereas it was a one-off infringement.

([1]) Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ 1989 L 395, p. 1).

([2]) Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ 2004 L 24, p. 1).

Appeal brought on 26 February 2013 by Cooperativa tra i Lavoratori della Piccola Pesca di Pellestrina Soc. coop. rl and Others against the order of the General Court (Fourth Chamber) delivered on 12 December 2012 in Case T-260/00 Cooperativa San Marco fra Lavoratori della Piccola Pesca — Burano Soc. coop. rl and Others v European Commission

(Case C-94/13 P)

(2013/C 129/13)

Language of the case: Italian

Parties

Appellant: Cooperativa tra i Lavoratori della Piccola Pesca di Pellestrina Soc. coop. rl and Others (represented by: A. Vianello, A. Bortoluzzi and A. Veronese, avvocati)

Other parties to the proceedings: European Commission; Italian Republic, Cooperative Pescatori di San Pietro in Volta Soc. Coop. rl and Others

Form of order sought

— Annul and/or vary the order under appeal and order the Commission to pay the costs.

Pleas in law and main arguments

In support of their appeal, the appellants allege errors of law in the application of the principles outlined by the Court of Justice in the judgment in 'Comitato Venezia vuole vivere', first, with regard to the obligation to state reasons for the Commission's decisions on State aid and, second, with regard to the allocation of the burden of proof as to the conditions set out in Article 107(1) TFEU.

By the order that is the subject of this appeal, the General Court did not follow the rulings of the judgment delivered by the Court of Justice on 9 June 2011 in 'Comitato Venezia vuole vivere', in so far as it states that the Commission's decision 'must contain in itself all the matters essential for its implementation by the national authorities'. However, even though the decision lacked the matters essential for its implementation by the national authorities, the General Court failed to point to any deficiency in the method used by the Commission in the contested decision, and consequently erred in law.

On the basis of the principles outlined by the Court in the judgment in 'Comitato Venezia vuole vivere', when aid is being recovered, it is the Member State — and not, therefore, the individual beneficiary — which is required to show, in each individual case, that the conditions laid down in Article 107(1) are met. In the present case, however, in the contested decision the Commission failed to clarify the 'modalities' of any such verification; consequently, since it did not have available to it, at the time when the aid was to be recovered, the matters essential for the purpose of showing that the advantages granted constituted, in the hands of the beneficiaries, State aid, the Italian Republic — by Law No 228 of 24 December 2012 (Article 1, paragraphs 351 et seq.) — decided to reverse the burden of proof, in breach of Community case-law. According to the Italian legislator, in particular, it is not for the State but for the individual beneficiaries of aid granted in the form of relief to prove that the advantages in question do not distort competition or affect trade between Member States. In the absence of any such proof, there is a presumption that the advantage granted was likely to distort trade and affect trade between Member States. That is contrary to the principles outlined by the Court in its judgment in 'Comitato Venezia vuole vivere'.

Appeal brought on 26 February 2013 by Alfier Costruzioni Srl and Others against the order of the General Court (Fourth Chamber) delivered on 12 December 2012 in Case T-261/00 Sacaim SpA and Others v European Commission

(Case C-95/13 P)

(2013/C 129/14)

Language of the case: Italian

Parties

Appellant: Alfier Costruzioni Srl and Others (represented by: A. Vianello, A. Bortoluzzi and A. Veronese, avvocati)

Other parties to the proceedings: European Commission, Italian Republic, Sacaim SpA and Others

Form of order sought

— Annul and/or vary the order under appeal and order the Commission to pay the costs.

Pleas in law and main arguments

In support of their appeal, the appellants allege errors of law in the application of the principles outlined by the Court of Justice in the judgment in 'Comitato Venezia vuole vivere', first, with regard to the obligation to state reasons for the Commission's decisions on State aid and, second, with regard to the allocation of the burden of proof as regards the conditions set out in Article 107(1) TFEU.

By the order under appeal, the General Court did not follow the rulings of the judgment delivered by the Court of Justice on 9 June 2011 in 'Comitato Venezia vuole vivere', in so far as that judgment states that the Commission's decision 'must contain in itself all the matters essential for its implementation by the national authorities'. Even though the decision lacked the matters essential for its implementation by the national authorities, the General Court failed to point to any deficiency in the method used by the Commission in the contested decision, and consequently erred in law.

On the basis of the principles outlined by the Court of Justice in the judgment in 'Comitato Venezia vuole vivere', when aid is being recovered, it is the Member State — and not, therefore, the individual beneficiary — which is required to show, in each individual case, that the conditions laid down in Article 107(1) are met. In the present case, however, in the contested decision the Commission failed to specify the 'modalities' for any such verification. Consequently, since it did not have available to it, at the time when the aid was to be recovered, the matters essential for the purpose of showing whether the advantages granted constituted, in the hands of the beneficiaries, State aid, the Italian Republic — by Law No 228 of 24 December 2012 (Article 1, paragraphs 351 et seq.) — decided to reverse the burden of proof, in breach of Community case law. According to the Italian legislature, in particular, it is not for the State but for the individual beneficiaries of aid granted in the form of relief to prove that the advantages in question do not distort competition or affect trade between Member States. In the absence of any such proof, there is a presumption that the advantage granted was likely to distort trade and affect trade between Member States. That is clearly contrary to the principles outlined by the Court in its judgment in 'Comitato Venezia vuole vivere'.

Action brought on 26 February 2013 — European Commission v Hellenic Republic

(Case C-96/13)

(2013/C 129/15)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: M. Patakia and A. Tokár)

Defendant: Hellenic Republic

Form of order sought

— declare that, by inserting terms in the open invitation to tender for the provision of services to support the production operation of OPS-IKA (the integrated information system of the Idrima Kinonikon Asfalision (Social Security Institution; 'the IKA')) and of the IKA's website and to expand the databases, for a period of 30 months (invitation to tender No L30/POY/9/5-6-2009 — published in the *Official Journal of the European Union* under No 2009/S110-159234), under which, first, the tenderers had to have experience in the performance of similar contracts for a Greek insurance body and, second, experience of the subcontractors could not establish experience of the tenderers, the Hellenic Republic has failed to fulfil its obligations under Article 2, and Articles 44(2) and 48 in conjunction with Article 2, of Directive 2004/18/EC; [1]

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

1. The pleaded infringement of Articles 44(2) and 48 of Directive 2004/18, in conjunction with Article 2, concerns the tender procedure of the IKA, as contracting authority, relating to the provision of services to support the production operation of OPS-IKA (the integrated information system of the IKA) and of the IKA's website and to expand the databases.

2. The Commission considers that the term of the invitation to tender requiring experience in achieving an integrated information system for a social security institution in Greece constitutes a geographical condition that infringes the principles of equal treatment and non-discrimination as laid down in Articles 2, 44(2) and 48 of Directive 2004/18.

3. It is noted that, in their responses to the Commission's reasoned opinion, the Greek authorities assumed the obligation to make all the changes in accordance with the Commission's complaint, accepting in essence the alleged infringement.

4. Also, the Commission considers that the term of the invitation to tender which provides that experience of the tenderer's subcontractors does not establish experience of the tenderer infringes Article 48 of Directive 2004/18 since, as a result of that term, tenderers cannot rely on third parties' experience in order to demonstrate that they have the required technical ability to perform the contract concerned.

5. In their response, the Greek authorities gave the commitment that the tender documentation for the new procurement procedure would expressly provide for the possibility for economic operators submitting tenders to rely on the relevant experience of third-party entities such as subcontractors, accepting in essence also the abovementioned second complaint of the Commission.

6. Nevertheless, the Greek authorities failed to set a specific date for a new invitation to tender and instead decided to extend the duration of the previous contract, invoking grounds relating to the internal legal order.