Reports of Cases

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

15 September 2016*

(State aid — Municipal real estate tax — Exemption granted to non-commercial entities carrying on specific activities — Codified law on income tax — Exemption from the single municipal tax — Decision in part finding no State aid and in part declaring the aid incompatible with the internal market — Action for annulment — Regulatory act not entailing implementing measures — Whether of direct concern — Admissibility — Absolute impossibility of recovering the aid — Article 14(1) of Regulation (EC) No 659/1999 — Obligation to state reasons)

In Case T-219/13,

Pietro Ferracci, residing in San Cesareo (Italy), represented initially by A. Nucara and E. Gambaro, and subsequently by E. Gambaro, lawyers,

applicant,

v

European Commission, represented initially by V. Di Bucci, G. Conte and D. Grespan, and subsequently by G. Conte, D. Grespan and F. Tomat, acting as Agents,

defendant,

supported by

Italian Republic, represented by G. Palmieri and G. De Bellis, acting as Agents,

intervener,

APPLICATION under Article 263 TFEU for annulment of Commission Decision 2013/284/EU of 19 December 2012 on State aid SA.20829 (C 26/2010, ex NNN 43/2010 (ex CP 71/2006)) Scheme concerning the municipal real estate tax exemption granted to real estate used by non-commercial entities for specific purposes implemented by Italy (OJ 2013 L 166, p. 24),

THE GENERAL COURT (Eighth Chamber),

composed of D. Gratsias, President, M. Kancheva (Rapporteur) and C. Wetter, Judges,

Registrar: J. Palacio González, Principal Administrator,

Having regard to the written procedure and further to the hearing on 17 December 2015,

gives the following

* Language of the case: Italian.

Judgment

Background to the dispute

1 The applicant, Mr Pietro Ferracci, is the owner of a 'Bed & Breakfast' establishment, consisting of two bedrooms, situated in the municipality of San Cesareo, near Rome (Italy).

2 He is one of the many complainants who in 2006 approached the Commission of the European Communities, claiming that the amendment made by the Italian Republic concerning, in particular, the scope of the national regime relating to the Imposta comunale sugli immobili (municipal real estate tax; 'ICI') constituted State aid incompatible with the common market under Article 87 EC.

3 In essence, the purpose of the amendment was to establish that the ICI exemption enjoyed since 1992 by non-commercial entities carrying on in the real estate concerned exclusively social assistance, welfare, health, cultural, educational, recreational, accommodation, sports and religious activities should be understood as also applicable to those activities 'even if they were of a commercial nature'.

4 On 5 May 2006, the Commission sent a request for information to the Italian authorities concerning the ICI exemption. Those authorities complied with that request on 6 June 2006 and explained that the scope of the ICI regime would be redefined in order to limit exemption from that tax to entities carrying on activities 'which are not of an exclusively commercial nature'.

5 On 8 August 2006, the Commission informed the complainants that, in the light of the information received from the Italian authorities, and following the new amendments to the Italian legislation, there were no grounds for pursuing the investigation.

6 On 24 October 2006, 8 and 16 January 2007 and 12 September 2007, the complainants again contacted the Commission, maintaining, in essence, that the ICI exemption for non-commercial entities was contrary to Article 87 EC, even after the amendments implemented by the Italian authorities. In addition, they drew the Commission's attention to the Testo unico delle imposte sui redditi (Codified law on income tax, 'the TUIR'), Article 149(4) of which stated, in essence, that, unlike all other entities, ecclesiastical entities recognised as legal persons governed by civil law and amateur sports clubs were not subject to the criteria laid down in that provision for the purposes of determining whether they would lose their non-commercial-entity status. The complainants maintained that that provision had the consequence of granting a tax advantage to those two types of entity, as it allowed them to maintain their status as non-commercial entities even where they were no longer non-commercial entities in accordance with the criteria applied to other entities.

7 On 5 November 2007, the Commission invited the Italian authorities and the complainants to provide further information about all the alleged preferential provisions cited by the complainants. The Italian authorities provided the requested information by letters of 3 December 2007 and 30 April 2008.

8 On 20 October 2008, the complainants sent a letter of formal notice to the Commission, requesting it to open the formal investigation procedure and to adopt a decision on their complaints.

9 On 24 November 2008, the Commission sent a new request for information to the Italian authorities, which replied by letter of 8 December 2008.

10 On 19 December 2008, the Commission informed the complainants that, on the basis of a preliminary analysis, it considered that the contested measures did not appear to constitute state aid and that accordingly, there was no need to pursue the investigation.

11 On 26 January 2009, the Italian authorities issued a circular in order to clarify the scope of the ICI exemption for non-commercial entities. In particular, that circular defined which entities could be considered non-commercial and specified the characteristics required of the activities performed by these entities in order to benefit from the exemption in question.

12 On 2 March 2009 and 11 January 2010, the complainants contacted the Commission in order to express their dissatisfaction with respect to the Italian rules on ICI and to criticise the abovementioned circular. The Commission replied on 15 February 2010, reminding them, in essence, of the reasons which it had already set out in its letter of 19 December 2008.

13 On 26 April 2010, the applicant brought an action before the General Court for annulment of the Commission's decision as set out in its letter of 15 February 2010. The action was registered as Case T-192/10.

14 On 12 October 2010, the Commission decided to initiate the formal investigation procedure within the meaning of Article 108(2) TFEU, concerning the ICI exemption for non-commercial entities for specific purposes and also Article 149(4) of the TUIR. The decision to initiate the formal procedure, in which the Commission invited interested parties to submit comments, was published in the *Official Journal of the European Union* on 21 December 2010.

15 By order of 18 November 2010, the Court, on application by the applicant, ordered that Case T-192/10 be removed from the register.

16 Between 21 January and 4 April 2011, the Commission received comments on the decision initiating the procedure from 80 interested parties.

17 On 15 February 2012, the Italian authorities informed the Commission that they intended to adopt new rules on the municipal real estate tax and announced that the ICI exemption would be replaced, as from 1 January 2012, by the exemption provided for in the new regime on the Imposta municipale unica (single municipal tax, 'the IMU'). In particular, the new rules were intended, inter alia, to limit the IMU exemption to specific activities carried on by non-commercial entities 'on a non-commercial basis'. Those rules also included rules permitting a pro-rata payment of the IMU in cases where the same property would be used for both commercial and non-commercial activities. Last, it was provided that a subsequent implementing regulation would define the cases in which the specific activities to which the IMU exemption applied should be considered to be carried on a non-commercial basis. That regulation was adopted on 19 November 2012.

18 On 16 May 2012, the Commission sent the Italian authorities a request for information following the adoption of the new provisions relating to the IMU exemption. The Italian authorities complied with that request on 6 July 2012. On 27 June and 25 October 2012, the Commission also received further information from the complainants.

19 On 19 December 2012, the Commission adopted Decision 2013/284/EU of 19 December 2012 on State aid SA.20829 (C 26/2010, ex NNN 43/2010 (ex CP 71/2006)) Scheme concerning the municipal real estate tax exemption granted to real estate used by non-commercial entities for specific purposes implemented by Italy (OJ 2013 L 166, p. 24; 'the contested decision'), which was addressed solely to the Italian Republic.

20 In the contested decision, first of all, the Commission established that the exemption granted to non-commercial entities carrying on, in the real estate concerned, specific activities in the ICI regime constituted State aid incompatible with the internal market and unlawfully put into effect by the Italian Republic, in breach of Article 108(3) TFEU. Next, the Commission considered that, given the specific nature of the present case, it would be absolutely impossible for the Italian Republic to recover any

illegal aid, and therefore did not order recovery of the aid in the contested decision. Last, the Commission established that neither Article 149(4) of the TUIR, nor the new IMU exemption constituted State aid within the meaning of Article 107(1) TFEU.

Procedure and forms of order sought

21 By application lodged at the Court Registry on 16 April 2013, the applicant brought the present action.

22 On the same day, the Scuola Elementare Maria Montessori Srl brought an action for annulment of the contested decision, which was registered as Case T-220/13.

23 By separate document lodged at the Court Registry on 17 July 2013, the Commission raised an objection of inadmissibility under Article 114(1) of the Rules of Procedure of the General Court of 2 May 1991.

24 On 16 September 2013, the applicant submitted his observations on the objection raised by the Commission. He claimed, in particular, that the Court should reject the objection of inadmissibility or, in the alternative, reserve its decision on admissibility for the final judgment.

25 Following a change in the composition of the Chambers of the Court, the Judge-Rapporteur was assigned to the Eighth Chamber, to which the present case was therefore assigned.

26 On 18 March 2014, the Court invited the parties, on the basis of Article 64 of the Rules of Procedure of 2 May 1991, to answer the question whether the contested decision constituted a regulatory act not entailing implementing measures and of direct concern to the applicant within the meaning of the final limb of the fourth paragraph of Article 263 TFEU. The parties complied with that request within the prescribed period.

27 By order of 29 October 2014, the Court decided to reserve for the final judgment its decision on the objection of inadmissibility raised by the Commission.

28 By document lodged at the Court Registry on 8 April 2015, the Italian Republic sought leave to intervene in the present proceedings in support of the form of order sought by the Commission. By order of 1 June 2015, the President of the Eighth Chamber of the Court granted that request.

29 On 3 November 2015, the Court, inter alia, requested the Commission, on the basis of Article 89 of the Rules of Procedure of the Court, to clarify certain aspects relating to the substance of the case and to produce certain provisions of the Italian legislation cited in the contested decision. The Commission complied with the Court's request within the prescribed period.

30 On the same day, the Court asked the parties whether Cases T-219/13 and T-200/13 might be joined for the purposes of the oral procedure, in accordance with Article 68(1) of the Rules of Procedure. On 13 November 2015, both the applicant and the Commission lodged their observations, indicating that they had no objections to such joinder.

31 On 16 November 2015, the President of the Eighth Chamber of the Court decided to join Cases T-219/13 and T-220/13 for the purposes of the oral procedure.

32 On hearing the report of the Judge-Rapporteur, the Court (Eighth Chamber) decided to open the oral procedure.

33 The parties presented oral argument and answered the questions put to them by the Court at the hearing on 17 December 2015.

34 In the application, the applicant claims that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

35 The Commission, supported by the Italian Republic, contends that the Court should:

— dismiss the action as inadmissible;

— in the alternative, dismiss the action as unfounded;

— order the applicant to pay the costs.

Law

36 As is apparent on reading the application, the applicant's first head of claim must be understood as seeking annulment of the contested decision in that the Commission found that it was impossible for the Italian authorities to recover the aid considered illegal and incompatible with the common market (first aspect of the contested decision) and also that neither Article 149(4) of the TUIR, nor the exemption provided for in the new IMU regime constituted State aid (second and third aspects, respectively, of the contested decision).

Admissibility

37 The Commission maintains that the present action is inadmissible, on the ground that, in the first place, the contested decision is not of individual concern to the applicant. In the second place, the Commission submits that the contested decision cannot be considered to be a regulatory act that does not entail implementing measures and is of direct concern to the applicant, within the meaning of the final limb of the fourth paragraph of Article 263 TFEU. In that regard, the Commission claims, first, that a decision addressed to a Member State and concerning an aid scheme is not a regulatory act. Second, it observes that the contested decision entails implementing measures, in particular as regards the aspect relating to Article 149(4) of the TUIR and the aspect relating to the IMU exemption. Third, it claims that the measures referred to in the contested decision are not of direct concern to the applicant.

38 The applicant disputes the Commission's arguments and maintains that the contested decision is of individual concern to him. In addition, he claims that he is not required, in the present case, to demonstrate that the contested decision is of individual concern to him, since it must be classified as a regulatory act which does not entail implementing measures and is of direct concern to him, within the meaning of the final limb of the fourth paragraph of Article 263 TFEU.

39 For the purposes of examining the admissibility of the present action, the Court considers it appropriate to examine, first, whether the action is admissible under the final limb of the fourth paragraph of Article 263 TFEU. In the words of that provision, any natural or legal person may institute proceedings against an act which is of direct concern to him and does not entail implementing measures. A person may therefore bring an action for annulment without having to adduce evidence that the act in question is of individual concern to him, but on condition that that act (i) is of direct concern to him, (ii) is regulatory in nature and (iii) does not entail implementing measures.

The ‘direct concern’ condition

40 As regards the question whether the contested decision is of direct concern to the applicant, it should be borne in mind that, according to settled case-law, in order to have a direct effect on an individual, first, the contested act must directly affect the legal situation of that individual and, second, it must leave no discretion to its addressees, who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules without the application of other intermediate rules (judgments of 5 May 1998, *Dreyfus* v *Commission*, C-386/96 P, EU:C:1998:193, paragraph 43, and of 10 September 2009, *Commission* v *Ente per le Ville Vesuviane* and *Ente per le Ville Vesuviane* v *Commission*, C-445/07 P and C-455/07 P, EU:C:2009:529, paragraph 45).

41 As a preliminary point, the Court must reject the Commission’s assertion, made both in its written pleadings and at the hearing, that the evidence adduced by the applicant does not demonstrate that he has the status of operator on the market.

42 In that regard, it should be pointed out that, in accordance with settled case-law, the activity of the Court of Justice and of the General Court is governed by the principle of the unfettered evaluation of evidence, and that it is only the reliability of the evidence furnished that is decisive when it comes to the assessment of its value. Moreover, in order to assess the probative value of a document, regard should be had to the credibility of the account it contains, also, in particular, to the person from whom the document originates, the circumstances in which it came into being and the person to whom it was addressed and whether, on its face, the document appears to be sound and reliable (see, to that effect, judgment of 27 September 2012, *Shell Petroleum and Others* v *Commission*, T-343/06, EU:T:2012:478, paragraph 161 and the case-law cited).

43 The applicant supplied the Court with a document issued by the Italian authorities which recognises that the premises which he owns are suitable for carrying on the bed and breakfast activity. The Court therefore considers that that document demonstrates the applicant’s status as an operator on the tourism/hotel market, as its credibility is sufficiently established. In addition, although the Commission generally disputes the veracity of such a declaration and its current validity, it puts forward no evidence that would suggest that any specific information contained in the document submitted by the applicant is false or that such information may not be currently valid.

44 As regards the question whether the measures referred to in the contested decision are capable of affecting the applicant’s legal situation, it should be borne in mind that a competitor of a beneficiary of aid is directly concerned by a Commission decision authorising a Member State to pay the aid when there is no doubt as to that State’s intention to do so (see, to that effect, judgments of 28 January 1986, *Cofaz and Others* v *Commission*, 169/84, EU:C:1986:42, paragraph 30; of 6 July 1995, *AITEC and Others* v *Commission*, T-447/93 to T-449/93, EU:T:1995:130, paragraph 41; and of 22 October 1996, *Skibsværftsforeningen and Others* v *Commission*, T-266/94, EU:T:1996:153, paragraph 49).

45 In this instance, it must be observed that the accommodation services provided by certain of the entities at which the measures referred to in the contested decision are aimed, and which, in the applicant’s submission, benefit from the alleged aid, might be in a competitive relationship with services provided by other types of accommodation. In fact, as is apparent from the extracts from websites supplied by the applicant as annexes to his pleadings, those entities, namely, in particular, the ecclesiastical and religious entities, appear as a category of tourist accommodation in the same way as hotel rooms, furnished rooms and campsites, in that they offer holiday accommodation and facilities comparable to those of other hotels. In that context, it must be stated that, as the owner of a ‘Bed & Breakfast’ establishment, the applicant might be in a competitive relationship with those entities and for that reason be affected by the measures concerned by the contested decision.

46 Furthermore, in so far as the Commission claimed at the hearing that, in accordance with the judgments of 28 April 2015, *T & L Sugars and Sidul Açúcares* v *Commission* (C-456/13 P, EU:C:2015:284, paragraph 37 and the case-law cited), and of 17 September 2015, *Confederazione Cooperative Italiane and Others* v *Anicav and Others* (C-455/13 P, C-457/13 P and C-460/13 P, not published, EU:C:2015:616, paragraphs 47 to 50), the fact that certain aid measures do not affect the position of a competitor on the market does not relate to its legal situation, but to its factual situation, it is sufficient to observe that, unlike in the present case, the applicants in those two cases were not present on the markets regulated by the contested provisions. For that reason, the Court considered that the fact that those provisions placed the applicants at a competitive disadvantage could not of itself allow the view to be taken that their legal position was affected and that, accordingly, those provisions were of direct concern to them.

47 It follows that the measures referred to in the contested decision affect the applicant's legal situation.

48 As regards the second condition determining direct concern, in accordance with the case-law cited in paragraph 40 above, it should be pointed out that, given the nature of the contested decision, which allows the Italian Republic not to recover the aid considered illegal and incompatible with the internal market and, in addition, to apply a regime of tax emptions which, according to the Commission, contain no element of aid, that decision has legal effects on a purely automatic basis under the EU legislation alone and without application of other intermediate rules, thus allowing the Italian Republic not to recover the illegal aid and to apply its tax exemptions regime.

49 In the light of the foregoing, it must be concluded that the contested decision is of direct concern to the applicant.

The classification of the contested decision as a regulatory act

50 As to whether the contested decision must be classified as a regulatory act, it should be borne in mind that, in accordance with the case-law, regulatory acts, within the meaning of the fourth paragraph of Article 263 TFEU, are acts of general application, with the exclusion of legislative acts (judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 60, and order of 6 September 2011, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, T-18/10, EU:T:2011:419, paragraph 56).

51 The distinction between a legislative act and a regulatory act is based, according to the FEU Treaty, on the criterion of the procedure, legislative or not, which led to its adoption (order of 6 September 2011, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, T-18/10, EU:T:2011:419, paragraph 65). In the present case, as the contested decision was not adopted in a legislative procedure, it is not a legislative act within the meaning of Article 297 TFEU. It is therefore necessary to consider whether the contested decision is of general application.

52 In that regard, it should be borne in mind that, according to settled case-law, a Commission decision on State aid which applies to situations which are determined objectively and entails legal effects for a class of persons envisaged in a general and abstract manner is of general application (judgments of 2 February 1988, *Kwekerij van der Kooy and Others* v *Commission*, 67/85, 68/85 and 70/85, EU:C:1988:38, paragraph 15; of 19 October 2000, *Italy and Sardegna Lines* v *Commission*, C-15/98 and C-105/99, EU:C:2000:570, paragraph 33; of 22 December 2008, *British Aggregates* v *Commission*, C-487/06 P, EU:C:2008:757, paragraph 31; and of 17 September 2009, *Commission* v *Koninklijke FrieslandCampina*, C-519/07 P, EU:C:2009:556, paragraph 53).

53 In particular, the purpose of the contested decision is to examine, in the light of Article 107 TFEU, whether national rules applied to an indeterminate number of persons envisaged in a general and abstract manner entail elements of State aid and, if so, whether the aid at issue is compatible with the

internal market and recoverable. Having regard to the nature of the power conferred on the Commission under the Treaty provisions on State aid, such a decision, even if it has only a single addressee, reflects the scope of the national instruments under investigation by the Commission, whether in order to grant the necessary authorisation for an aid measure to be applied or to set out the consequences if it is found to be illegal or incompatible with the internal market. In fact, the instruments in question have a general scope, since the operators to which they apply are defined in a general and abstract manner.

54 In the light of the foregoing considerations, it must be held that the contested decision is of general application as regards the three aspects the legality of which is challenged in the present action, namely the fact that the decision did not order recovery of the State aid which it considered illegal and incompatible concerning the ICI exemption and the fact that it considered that neither Article 149(1) of the TUIR nor the IMU exemption constituted State aid within the meaning of Article 107 TFEU (see paragraph 36 above).

55 Consequently, the contested decision act, which is an act of general application and is not a legislative act, constitutes a regulatory act within the meaning of the fourth paragraph of Article 263 TFEU.

The existence of implementing measures

56 As regards the existence of implementing measures relating to the contested decision, it should be observed that the Court has had occasion to point out that the concept of a 'regulatory act … which does not entail implementing measures', within the meaning of Article 263 TFEU, is to be interpreted in the light of the provision's objective, which, as is clear from its origin, consists in preventing an individual being obliged to infringe the law in order to have access to a court. Where a regulatory act directly affects the legal situation of a natural or legal person without requiring implementing measures, that person could be denied effective judicial protection if he did not have a direct legal remedy before the Courts of the European Union for the purpose of challenging the legality of the regulatory act. In the absence of implementing measures, natural or legal persons, although directly concerned by the act in question, would be able to obtain a judicial review of that act only after having infringed its provisions, by pleading that those provisions are unlawful in proceedings initiated against them before the national courts (judgment of 19 December 2013, *Telefónica* v *Commission*, C-274/12 P, EU:C:2013:852, paragraph 27).

57 On the other hand, where a regulatory act entails implementing measures, judicial review of compliance with the European Union legal order is ensured irrespective of whether those measures were adopted by the European Union or the Member States. Natural or legal persons who are unable, because of the conditions governing admissibility laid down in the fourth paragraph of Article 263 TFEU, to challenge a regulatory act of the European Union directly before the Courts of the European Union are protected against the application to them of such an act by the ability to challenge the implementing measures which the act entails (judgment of 19 December 2013, *Telefónica* v *Commission*, C-274/12 P, EU:C:2013:852, paragraph 28).

58 Furthermore, where the implementation of such an act is a matter for the Member States, those persons may plead the invalidity of the basic act at issue before the national courts and tribunals and cause the latter to request a preliminary ruling from the Court of Justice, on the basis of Article 267 TFEU (judgment of 19 December 2013, *Telefónica* v *Commission*, C-274/12 P, EU:C:2013:852, paragraph 29).

59 The question whether a regulatory act entails implementing measures should be assessed by reference to the position of the person pleading the right to bring proceedings under the final limb of the fourth paragraph of Article 263 TFEU. It is therefore irrelevant whether the act in question entails implementing measures with regard to other persons (judgment of 19 December 2013, *Telefónica* v *Commission*, C-274/12 P, EU:C:2013:852, paragraph 30).

60 In order to determine whether the measure being challenged entails implementing measures, reference should be made exclusively to the subject-matter of the action and, where an applicant seeks only the partial annulment of an act, it is solely any implementing measures which that part of the act may entail that must, as the case may be, be taken into consideration (judgment of 19 December 2013, *Telefónica* v *Commission*, C-274/12 P, EU:C:2013:852, paragraph 31).

61 In the present case, first of all, as regards the first contested aspect of the contested decision, it should be stated that, in so far as the Commission considered that, in the light of the particular features of the present case, it would be absolutely impossible to recover the illegal aid granted under the ICI regime and thus decided not to require the Italian Republic to recover the sums paid under that regime from each recipient, the national authorities will not be required to adopt any measure, particularly vis-à-vis the applicant, in order to implement the contested decision.

62 Next, as regards the second contested aspect, it should be observed that, according to the conclusion which the Commission reached in the contested decision, the exemption provided for in Article 149 (4) of the TUIR does not constitute aid within the meaning of Article 107(1) TFEU. In those circumstances, the contested decision, under which no obligation is imposed on the Member State, does not entail the adoption of any implementing measure, as the national authorities' role in that regard is limited to applying the national legislation. Furthermore, and in any event, it must be stated that the provisions established by Article 149(4) of the TUIR relate only to the loss of non-commercial-entity status. In those circumstances, no implementing measure can be adopted by the Italian authorities vis-à-vis the applicant, as a commercial entity.

63 Last, as regards the third contested aspect, it should be observed that the exemption referred to by the IMU regime was likewise considered by the Commission not to constitute aid within the meaning of Article 107(1) TFEU. Consequently, as the contested decision does not impose any obligation on the Member State, no measure will be decreed at national level in order to implement that decision, in particular vis-à-vis the applicant.

64 It follows from the foregoing that none of the contested aspects of the contested decision entails implementing measures vis-à-vis the applicant, and the applicant will therefore be unable to initiate proceedings before an Italian national court, in accordance with the case-law cited in paragraph 58 above, and rely, in his action, on the invalidity of those aspects of the contested decision.

65 In order to counter the foregoing assertion, the Commission contends, relying in particular on the judgments of 26 September 2014, *Dansk Automat Brancheforening* v *Commission* (T-601/11, EU:T:2014:839) and *Royal Scandinavian Casino Århus* v *Commission* (T-615/11, EU:T:2014:838) and the case-law cited, that the specific and actual consequences of the contested decision will in fact be given concrete form by the acts fixing the amount of the taxes payable by taxpayers, which as such will constitute implementing measures which the contested decision entails. It further contends that the applicant will be able to challenge before a national court what he alleges to be the discriminatory nature of the acts imposing the tax, by demanding the same advantages as their beneficiaries or, failing that, by claiming that the advantages which they enjoy as competitors are illegal under EU law.

66 However, that argument cannot be accepted.

67 Any tax measure adopted by the Italian authorities under the IMU regime will not be the consequence of the contested decision, but will result solely from the Italian tax rules, since, as is apparent from recital 202 of the contested decision, that decision merely declares that the IMU exemption does not fall within the scope of Article 107(1) TFEU.

68 Furthermore, as regards the tax measures that will be addressed to him in his capacity as a person not eligible for the exemptions at issue, the applicant cannot claim that the exemption the legality of which he challenges should be extended to his situation (see judgment of 20 September 2001, *Banks*, C-390/98, EU:C:2001:456, paragraphs 80 and 92 to 94 and the case-law cited). For the same reason, the Commission's argument that the applicant is still in a position to ask the Italian tax authorities to confer on him the same tax advantages as those granted to the entities concerned by the measures at issue, and to challenge a decision refusing that request, must also be rejected. In addition, it must be stated that, in the context envisaged by the Commission, the decision of the Italian authorities refusing such a request could not, strictly speaking, be classified as an implementing measure flowing from the contested decision, but would be the consequence of a domestic measure adopted autonomously by the competent national authorities following the individual request submitted by the applicant.

69 Last, it should be observed that, unlike in the present case, in the judgments of 26 September 2014, *Dansk Automat Brancheforening* v *Commission* (T-601/11, EU:T:2014:839) and *Royal Scandinavian Casino Århus* v *Commission* (T-615/11, EU:T:2014:838), the operative part of the contested decision made express provision, in Article 1, for the adoption of the provisions implementing the notified measure, which is why the Court had found that such a decision entailed implementing measures within the meaning of the final limb of the fourth paragraph of Article 263 TFEU. In particular, in paragraphs 59 and 51 of those judgments, the Court established that there was a Danish law and acts implementing that law that were to come into effect after the adoption of the contested decision so that the aid scheme in question would produce effects in respect of the applicants, which cannot be the case here. It should be pointed out, in that regard, that the only implementing measure referred to in the contested decision in the present case concerns the exemption relating to the new IMU regime and that, as pointed out in paragraph 17 above, the adoption of that act preceded the adoption of the contested decision itself.

70 In the light of the foregoing, it must be concluded that the contested decision does not entail implementing measures vis-à-vis the applicant and that, accordingly, the action must be declared admissible under the final limb of the fourth paragraph of Article 263 TFEU.

Substance

71 In support of the action, the applicant relies on four pleas in law. The first plea alleges infringement of Article 14(1) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1). The second and third pleas allege infringement of Article 107(1) TFEU. The fourth plea alleges breach of the obligation to state reasons.

First plea, alleging infringement of Article 14(1) of Regulation No 659/1999

72 By its first plea, the applicant takes issue with the Commission for having failed, in breach of Article 14(1) of Regulation No 659/1999, to order the Italian Republic to recover the tax exemptions to which non-commercial entities for specific purposes benefited in accordance with the ICI and which the Commission considered to be illegal and incompatible with the common market.

73 This plea consists of two parts, alleging, respectively, an error of law and an error of assessment.

– First part, alleging an error of law

74 The applicant maintains that the Commission infringed Article 14(1) of Regulation No 659/1999 in that it did not fulfil the conditions that would have allowed it to conclude that it would be absolutely impossible to recover the illegal aid in a case such as this. He contends that it is only after the Commission has adopted a decision ordering recovery of the illegal aid and the Italian Republic has declared that it would be impossible to comply with that request that it would have been possible to preclude recovery. Likewise, he submits that, before finding that recovery would be absolutely impossible, the Commission ought to have shown that recovery from all the beneficiaries of the illegal aid was impossible and that at least partial recovery could not be achieved either.

75 The Commission disputes those arguments.

76 As a preliminary point, it should be observed that Regulation No 659/1999 states, in recital 13, that:

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

77 Article 14(1) of that regulation, entitled 'Recovery of aid', states the following:

'Where negative decisions are 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 …. The Commission shall not require recovery of the aid if this would be contrary to a general principle of Community law.'

78 It has consistently been held that the recovery of illegal aid is the logical consequence of a finding that the aid is illegal (see judgment of 9 July 2015, *Commission* v *France*, C-63/14, EU:C:2015:458, paragraph 44 and the case-law cited). The purpose of the Treaty provisions on State aid is to restore effective competition, so that, in principle, the Commission decisions require the Member State concerned to secure, without delay, effective recovery of the aid in question (see, to that effect, judgment of 17 September 2009, *Commission* v *MTU Friedrichshafen*, C-520/07 P, EU:C:2009:557, paragraph 57 and the case-law cited). However, where recovery would be absolutely impossible, non-recovery of illegal State aid may be justified (see, to that effect, judgment of 14 February 2008, *Commission* v *Greece*, C-419/06, not published, EU:C:2008:89, paragraph 39 and the case-law cited).

79 In the contested decision, the Commission stated, in recitals 191 to 198, that, given the specific nature of the present case, it would be absolutely impossible for the Italian Republic to recover any aid illegally granted under the ICI provisions. In essence, it explained that it was not possible to identify from the cadastral databases or the tax databases the type of activity (economic or non-economic) carried on in the real estate belonging to the non-commercial entities, or to calculate objectively the amount of the tax to be recovered.

80 It should be observed that the case-law of the Court of Justice relating to the absolute impossibility of recovering illegal State aid generally refers to cases in which the Member State concerned claims that it is impossible to do so after a recovery decision has been adopted and in the context of the implementation of that decision (judgments of 4 April 1995, *Commission* v *Italy*, C-348/93, EU:C:1995:95; of 22 March 2001, *Commission* v *France*, C-261/99, EU:C:2001:179; of 26 June 2003, *Commission* v *Spain*, C-404/00, EU:C:2003:373; of 1 April 2004, *Commission* v *Italy*, C-99/02,

EU:C:2004:207; of 12 May 2005, *Commission* v *Greece*, C-415/03, EU:C:2005:287; of 14 December 2006, *Commission* v *Spain*, C-485/03 to C-490/03, EU:C:2006:777; and of 13 November 2008, *Commission* v *France*, C-214/07, EU:C:2008:619).

81 Furthermore, in accordance with settled case-law, when, during the implementation of a Commission decision on State aid, a Member State encounters unforeseen and unforeseeable difficulties or becomes aware of consequences unforeseen by the Commission, it must submit those problems to the Commission for its assessment, proposing appropriate amendments to the decision in question. In such cases, the Commission and the Member State must, by virtue of the rule imposing on the Member States and the Community institutions a duty of genuine cooperation which underlies, in particular, Article 4(3) TEU, work together in good faith with a view to overcoming the difficulties whilst fully observing the Treaty provisions and, in particular, the provisions on aid (see judgment of 22 December 2010, *Commission* v *Italy*, C-304/09, EU:C:2010:812, paragraph 37 and the case-law cited).

82 Relying, in essence, on that case-law, the applicant claims that it is only after the Commission has adopted a decision ordering recovery of the illegal aid and the Member State concerned has found that it is impossible in practice to comply with that request, that recovery of the aid may be precluded.

83 However, the applicant's argument cannot be accepted.

84 As the Commission observes, although it is correct that thus far the question of absolute impossibility has been raised by Member States, in particular, at the stage of implementing the decision, mainly as a defence in an action for failure to fulfil obligations under Article 258 TFEU, neither the applicable rules nor the case of the Court of Justice law have established that absolute impossibility could not be found during the administrative procedure leading to a Commission decision on State aid.

85 In addition, the only obligation which, in accordance with the case-law cited in paragraph 81 above, is imposed on the Member State in question and the Commission, where recovery is found to be absolutely impossible, is the obligation to establish sincere cooperation under which the Member State must submit for the Commission's assessment the reasons why recovery of the aid would be impossible and the Commission must carefully examine those reasons. Accordingly, and contrary to the applicant's assertion, the cooperation between the Member State and the Commission may take place before the adoption of the final Commission decision if absolute impossibility has already been found during the formal investigation procedure. In addition, if, during that investigation, the Commission finds that there are no alternative methods of recovering the illegal aid or that partial recovery cannot be achieved either, there is no reason why absolute impossibility should not be recognised by the Commission even before it orders recovery of the aid.

86 In this instance, in the light of the preceding observations, it must be stated, first, that the applicant does not deny that absolute impossibility may be invoked as a ground for non-recovery of the illegal aid. In any event, in accordance with the case-law cited in paragraph 78 above, it must be considered that the Commission did not err in law when it explained in the contested decision that it could not require the Italian authorities to recover the illegal aid because it was absolutely impossible for them to do so. It should be borne in mind, in that regard, that the Commission may not impose, in the field of State aid, obligations whose implementation would, from the outset, be impossible in objective and absolute terms (see, to that effect, judgment of 17 June 1999, *Belgium* v *Commission*, C-75/97, EU:C:1999:311, paragraph 86).

87 Second, as is apparent from recitals 192 to 197 of the contested decision, both the Italian Republic and the Commission fulfilled their duty of sincere cooperation, in accordance with the case-law cited in paragraph 81 above.

88 First of all, the Italian Republic informed the Commission before the latter adopted the contested decision that an obligation to recover the aid would be absolutely impossible to implement. It thereby submitted for the Commission's appraisal problems associated with the recovery of the aid at issue. In addition, since the Italian authorities raised that question during the formal investigation stage, the Commission considered it necessary to address that question before adopting a final decision. Furthermore, it should be observed that the Italian Republic explained that, owing to the structure of the cadastre and absence of relevant tax information, it was impossible to extrapolate, retroactively, on the basis of the cadastral and fiscal databases, the type of data necessary to undertake recovery of the alleged aid. In the light of those explanations, the Commission considered that it was impossible to identify the beneficiaries of the aid in question and that the aid could not objectively be calculated in the absence of available data, as it explained in the contested decision.

89 Third, in so far as the applicant claims that the Commission ought in any event to have established that there were no other alternative means of implementing the recovery obligation, at least in part, in the present case, such an analysis must be carried out in the context of the second part of this plea, alleging an error of assessment.

90 It follows from the foregoing that the Commission did not err in law in finding, during the formal investigation procedure and before adopting a recovery order, that it would be absolutely impossible for the Italian Republic to recover the aid considered to be illegal in the contested decision.

91 The first part must therefore be rejected.

– Second part, alleging an error of assessment

92 The applicant claims that there was no exceptional circumstance on the basis of which the Commission could find that it would be absolutely impossible to recover the illegal aid. He disputes, in particular, the notion that it was not possible to identify the beneficiaries of the aid and that the aid could not in any event be calculated for the purposes of its recovery by the Italian authorities. In that regard, he submits that the Court of Justice has rejected arguments alleging that it would be impossible to recover aid owing to the large number of beneficiary undertakings or the non-availability of the information necessary in order to quantify the sums to be recovered. Furthermore, in the applicant's submission, there were adequate alternative methods whereby the Italian authorities could have identified the beneficiaries of the illegal aid and recovered that aid, at least in part.

93 The Commission disputes those arguments.

94 It has consistently been held that the condition that it be absolutely impossible to implement a decision is not fulfilled where the Member State merely informs the Commission of the legal, political or practical difficulties involved in implementing the decision (see judgment of 13 November 2008, *Commission* v *France*, C-214/07, EU:C:2008:619, paragraph 46 and the case-law cited).

95 Furthermore, it should be borne in mind that, in situations relating to the recovery of amounts of aid from a large number of undertakings, in conjunction with numerous individual factors with respect to the calculation of the aid, the Court of Justice has held that such difficulties in implementing the decisions concerned do not amount to absolute impossibility (see judgment of 17 November 2011, *Commission* v *Italy*, C-496/09, EU:C:2011:740, paragraph 29 and the case-law cited).

96 Last, the condition that it be absolutely impossible to implement a decision is fulfilled only where the circumstances amount to a situation of objective absolute impossibility (see, to that effect, Opinion of Advocate General Sharpston in *Commission* v *France*, C-214/07, EU:C:2008:343, point 46 and the case-law cited).

97 In the present case, it should be observed at the outset that, as is apparent from recitals 102 and 106 of the contested decision, the Commission considered that only the ICI exemption for specific purposes of which the non-commercial entities were the beneficiaries when they exercised activities of an economic nature was incompatible with the internal market, within the meaning of Article 107 TFEU. In fact, it considered, in essence, that in those cases the entities in question must be classified as undertakings and must therefore be subject to that provision of the Treaty. On the other hand, when those entities carried on only non-commercial activities, the State aid regime did not apply and the ICI exemption was therefore not deemed illegal.

98 Furthermore, in the contested decision the Commission considered, in essence, that the recovery of the illegal aid by the Italian authorities was impossible, in absolute and objective terms, on the ground that the determination of the economic or non-economic nature of the activities carried on by the beneficiary undertakings in real estate subject to the ICI rules could not be identified. In fact, in recitals 194 to 198 of the contested decision, the Commission adopted the explanations provided by the Italian Republic, namely that the cadastral and tax databases did not make it possible to identify the type of activity carried on in the real estate owned by those entities or to calculate objectively the amount of the tax to be recovered.

99 In the first place, the applicant challenges the Commission's assessment and claims that it is vitiated by an error, as regards both the cadastral databases and the tax databases.

100 In that regard, it must be stated at the outset that, apart from the general reference which the applicant makes in his written pleadings to the case-law cited in paragraphs 94 to 96 above, he puts forward no specific argument designed to call the Commission's assessment in question.

101 In any event, as regards the cadastral databases, it must be considered that, as the Commission explained, in essence, in recital 195 of the contested decision, the cadastral databases identify the real estate on the basis of their objective characteristics, in particular their physical features and their structure. In those circumstances, the Commission was entitled to conclude that it was not possible to work out the type of activities, either economic or non-economic, carried on by the non-commercial entities in their real estate, in order to be able to determine whether those entities had illegally benefited from the ICI exemption and, if so, to quantify the amount to be repaid to the Italian authorities.

102 As regards, moreover, the tax databases, the Commission stated in recital 196 of the contested decision that they, too, did not provide sufficient information for recovery purposes.

103 In that regard, the Court finds, in the light of the provisions of the Italian legislation supplied by the Commission in the context of the measure of organisation of procedure adopted under Article 89 of the Rules of Procedure, that the tax databases did not allow the economic or non-economic nature of the activities carried on by the non-commercial entities in their real estate to be identified.

104 In fact, first, it should be observed that, in accordance with the 'Modello "Unico — Enti non commerciali ed equiparati"'('"Single [model] — non-commercial entities and entities treated as such"') and with the directions relating to the declaration of income of non-commercial entities, the real estate that generates land income for those entities was required to be indicated in Section 'RB' of the form. That section, consisting of 11 columns, required an indication of, in particular, the amount of municipal real estate tax payable for the financial year in question and for each unit. However, according to the directions relating to the declaration, the column relating to municipal tax on real estate was not to be completed in the event of exemption from that tax. Accordingly, as the Commission correctly maintains, the information to be recorded in Section 'RB' did not indicate the real estate in which the activity which had generated the income from a commercial activity indicated in the other sections of the declaration had been carried on.

105 Second, it should be pointed out that the single form also contained Section 'RS', relating to the deductibility of charges and mixed negative elements. In accordance with the directions relating to the declaration, that table was to be completed with the requisite data for the purposes of calculating the deductible amounts of charges and other negative elements relating to goods and services assigned to the mixed exercise of commercial activities and other activities. As stated in recital 196 of the contested decision, Section 'RS' contains aggregated data concerning goods and services used for both commercial and non-commercial purposes. In those circumstances, as the Commission has indicated, where several buildings were declared in Section 'RB', it was not possible to identify the building in which the activity that had generated the income declared had been carried on. Likewise, where a single building was indicated in Section 'RB', it was not possible, given the structural characteristics of the cadastral system, to identify what portion of the building had been used for the economic activities that had generated the revenue stated in the tax declaration.

106 In the light of the foregoing, it must be concluded that the applicant has not succeeded in calling in question the Commission's finding that it was not objectively possible to obtain from the cadastral databases the information necessary to identify the beneficiaries concerned or to calculate the amount of any exemptions to be recovered and, moreover, that the tax databases also did not allow the type of activities carried on by the entities benefiting from the ICI exemption in their buildings to be traced retroactively or the amount of the exemptions received illegally to be calculated.

107 In the second place, the applicant claims that, in any event, there are alternative methods that would enable the commercial or non-commercial nature of the activities carried on by the entities benefiting from the ICI in their real estate to be identified, and proposes four such methods. In essence, he maintains that those methods could have shown that at least partial recovery would have been achievable.

108 First, the applicant maintains that, since the new IMU rules (see paragraph 17 above) require that non-commercial entities declare the real estate subject to that tax and those that have been exempted, and since the purpose for which most of the buildings in question are used does not vary, the Italian authorities could use the declarations submitted under the IMU rules to determine whether or not the real estate had been used for commercial purposes in the past.

109 In that regard, it must be stated at the outset that, as the Commission points out, the applicant supplies no evidence on which it might be presumed that the purpose for which the non-commercial entities' real estate is used generally does not vary. In those circumstances, the declarations made under the IMU rules are not a valid method of identifying the information sought. Furthermore, if the applicant's argument must be interpreted as inviting the Commission to order recovery of the aid unless the beneficiary entity is able to show that it carried on non-economic activities in the past, it must be recalled that, according to the case-law, the Commission cannot assume that an undertaking has benefited from an advantage constituting State aid solely on the basis of a negative presumption, based on a lack of information enabling the contrary to be found, if there is no other evidence capable of positively establishing the actual existence of such an advantage (judgment of 17 September 2009, *Commission* v *MTU Friedrichshafen*, C-520/07 P, EU:C:2009:557, paragraph 58).

110 Second, the applicant claims that a self-certification obligation is a valid manner of disclosing the information sought. However, it must be stated that, as the Commission contends, that method cannot be regarded as effective, owing to the non-existence of information relating to the previous situation of the real estate. If such information existed, the accuracy of the self-certification could be verified.

111 Third, in the applicant's submission, the Italian authorities could carry out spot checks using inspection bodies, as has already been done by certain Italian municipalities. Here, again, it must be considered that although such a method might provide information about the activities currently carried on by the entities benefiting from the IMU, it is nonetheless not a valid means of identifying the nature of the use of their real estate in the past.

112 Fourth, whereas the applicant claims that the Commission could have relied on the information which he supplied during the formal investigation procedure, at least for the purposes of partial recovery, it must be stated that such information does not appear in the file and that it is therefore not possible to examine its suitability for those purposes.

113 It follows that the applicant has not succeeded in demonstrating that the nature of the activities carried on by the entities benefiting from ICI could have been ascertained by using alternative methods. Consequently, the Commission cannot be criticised for having made an error of assessment when it concluded that the Italian authorities had no means that would allow them to recover the aid which it considered illegal, even in part.

114 In the light of the foregoing, the second part of the first plea must be rejected, as must the first plea in its entirety.

Second plea, alleging infringement of Article 107(1) TFEU as regards the failure to classify Article 149(4) of the TUIR as State aid

115 By its second plea, the applicant claims that the Commission infringed Article 107(1) TFEU, in that it considered that Article 149(4) of the TUIR did not constitute State aid within the meaning of the Treaty. In essence, he maintains that that provision, in particular, allows the ecclesiastical institutions not to lose their status as non-commercial entities in any circumstances, irrespective of the commercial or non-commercial nature of their activities. In that context, the ecclesiastical institutions benefit on a permanent basis from the exemptions provided for in the tax legislation, including the ICI and IMU exemptions.

116 The Commission disputes those arguments.

117 As a preliminary point, it should be observed that, first of all, as the Commission explained in recitals 31 to 34 of the contested decision, Article 149 of the TUIR is in Chapter III of Title II of the TUIR. Title II contains the provisions on corporate tax and Chapter III lays down the tax provisions applicable to non-commercial entities, such as the rules for calculating the taxable base and the rules on the rates of taxation.

118 Next, Article 149 defines the conditions that may trigger the loss of an entity's 'non-commercial status'. In particular, it establishes that a non-commercial entity is to lose its non-commercial status if it mainly carries on commercial activities throughout an entire tax period. Article 149(2) TUIR defines an entity's 'commercial status' by reference, for example, to the fact that the income from commercial activities exceeds its institutional revenue or to the fact that the fixed assets employed in the commercial activity exceed those devoted to its other activities. The legal form adopted by the entities in question has no effect on the loss of their 'non-commercial status'. Article 149(4) of the TUIR, moreover, states that the above provisions, that is to say, Article 149(1) and (2) of the TUIR), are not to apply to ecclesiastical institutions that have been granted civil law status or to amateur sports clubs.

119 Last, it should be pointed out that, as is apparent from recital 38 of the contested decision, the Commission justified the initiation of the formal investigation procedure as regards Article 149(4) of the TUIR by maintaining that that provision could at first sight be selective. It stated in that regard

that Article 149(4) of the TUIR seemed to allow the ecclesiastical institutions, in particular, to maintain their non-commercial status, even though they were no longer non-commercial entities on the basis of the criteria applicable to other entities.

120 The applicant maintains, in essence, that the Commission ought to have approved its initial considerations as regards Article 149(4) of the TUIR, after the formal investigation procedure, and not to have considered, as is apparent from recital 159 of the contested decision, that that measure conferred no selective advantage on the ecclesiastical institutions.

121 However, none of the applicant's arguments is capable of upsetting the Commission's final assessment.

122 First, the fact that the criteria laid down in Article 149(4) of the TUIR and applicable to entities as regards the loss of 'non-commercial-entity' status do not apply to ecclesiastical institutions does not mean, as the Commission explains, that those institutions cannot lose that status in accordance with other criteria laid down in the Italian legislation. In particular, it should be observed that the circolare del 12 maggio 1998, No 124/E (Circular No 124/E of 12 May 1998) states that ecclesiastical institutions can benefit from the tax treatment applied to non-commercial entities only if the main object of their activity is not commercial in nature.

123 Second, it should be observed that, as is apparent from recital 154 of the contested decision, the legge del 20 maggio 1985, n. 222 (Law No 222 of 20 May 1985), which implements the international agreements between the Italian Republic and the Holy See, provides that the Interior Ministry is to have competence to recognise the civil-law status of ecclesiastical institutions and to revoke that status in accordance with precise criteria laid down in that law. An institution which loses its civil-law status thereby loses its status as a non-commercial entity and is therefore not eligible to receive the advantageous tax treatment.

124 The applicant disputes such considerations and alleges, in essence, that the provisions laid down in Law No 222 of 20 May 1985 do not allow the Italian Interior Ministry to ensure that the loss of non-commercial-entity status of the ecclesiastical institutions is kept under constant review.

125 In that regard, it should be observed that, first of all, Article 1 of Law No 222 of 20 May 1985 provides that ecclesiastical institutions having their seat in Italy and pursuing a religious activity may be recognised as legal persons governed by civil law. Next, the third paragraph of Article 2 of that law provides that the religious aim must be set out in the act establishing the institution and be essential to the institution. Furthermore, Article 16 of that law states that commercial or for-profit activities cannot in any event be considered to be religious activities. Last, Article 19 of that law, read in conjunction with Article 13 of the decreto del Presidente della Repubblica del 13 febbraio 1987, n. 33 (Decree No 33/1987 of the President of the Republic of 13 February 1987), provides that, in the event of a change in the purpose for which the assets are employed and the means of existence of an ecclesiastical institution recognised under civil law, leading to the loss of one of the necessary conditions of its recognition, that recognition is to be revoked on a proposal of the Interior Minister, and by decree of the President of the Republic, after the ecclesiastical institution has been heard and the Consiglio di Stato (Italian Council of State) has given its opinion. It should be added that, following the adoption of the legge del 12 gennaio 1991, n. 13 (Law No 13 of 12 January 1991), the Decree of the President of the Republic provided for in Article 19 of Law No 222 of 20 May 1985 is no longer necessary for the revocation of the civil status of the ecclesiastical institutions, which is now within the competence of the Interior Minister.

126 In the light of the foregoing, and contrary to the applicant's contention, the Interior Ministry of the Italian Republic is in fact competent to review the loss of legal personality of the ecclesiastical institutions and, consequently, of their non-commercial-entity status. In addition, in so far as, in accordance with Article 16 of Law No 222 of 20 May 1985, the ecclesiastical institutions may retain

their legal personality only if they do not carry on any commercial or for-profit activities, the Court must reject the applicant's argument that the loss of civil recognition has no consequence for their tax status.

127 Third, it should be observed that, in accordance with the decreto del Presidente della Repubblica del 10 febbraio 2000, n. 361 (Decree No 361 of the President of the Republic of 10 February 2000), the Interior Ministry is to ascertain that the ecclesiastical institutions satisfy the criteria that allow them to retain civil-law legal personality, so that, as the Commission considered in recital 158 of the contested decision, the ecclesiastical institutions are subject to provisions and control measures that ensure the loss of the tax treatment reserved for non-commercial entities if they carry on commercial or for-profit activities.

128 It follows that, contrary to the applicant's contention, the ecclesiastical institutions do not enjoy permanent non-commercial-entity status. Thus, the Commission was entitled to consider that the measure laid down in Article 149(4) of the TUIR did not confer any selective advantage on the ecclesiastical institutions and that that provision therefore did not constitute State aid within the meaning of Article 107(1) TFEU.

129 As regards the arguments put forward by the applicant in his written pleadings concerning the application of Article 351 TFEU in the present case, it is sufficient to observe that the Commission did not base its assessment on the existence of an international agreement falling within the scope of that article and that, in those circumstances, his arguments can have no impact on the legality of the Commission's finding that Article 149(4) of the TUIR does not constitute State aid within the meaning of the Treaty. The applicant's arguments must therefore be rejected as inoperative.

130 The second plea must therefore be rejected.

Third plea, alleging infringement of Article 107(1) TFEU as regards the failure to classify the IMU exemption as State aid

131 The applicant maintains that the Commission infringed Article 107(1) TFEU, in that it considered that the IMU exemption did not constitute State aid within the meaning of that provision.

132 First of all, he claims that, contrary to the finding made by the Commission in the contested decision, the fact that the IMU rules limit the benefit of exemption on real estate to entities carrying on economic activities on a 'non-commercial basis' does not mean that those entities cannot be regarded as undertakings for the purposes of competition law. He submits that, in accordance with consistent case-law, the concept of 'undertaking' includes any entity carrying on an economic activity, irrespective of its legal status and the way in which it is financed. Next, the applicant maintains that the criteria laid down for the purpose of determining the activities that qualify for the IMU exemption are vague and contrary to the rules on State aid. In particular, he takes issue with the fact that the accommodation activities are considered to be exercised on a non-commercial basis if they are performed free of charge or for payment of a symbolic fee. In addition, the applicant observes that those criticisms apply to the criteria applicable to educational and health activities. Last, he claims that the IMU exemption fulfils all the conditions for a finding of aid within the meaning of Article 107(1) TFEU and that it does not satisfy the compatibility requirements laid down in paragraphs 2 and 3 of that article.

133 The Commission disputes those arguments.

134 According to settled case-law, the concept of 'undertaking' covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed (see judgment of 16 March 2004, *AOK Bundesverband and Others*, C-264/01, C-306/01, C-354/01 and C-355/01, EU:C:2004:150, paragraph 46 and the case-law cited).

135 Any activity consisting in offering goods or services on a particular market is an economic activity (see judgment of 12 September 2000, *Pavlov and Others*, C-180/98 to C-184/98, EU:C:2000:428, paragraph 75 and the case-law cited).

136 The fact that the offer of goods or services is made without a profit motive does not prevent the entity which carries on those operations on the market from being considered an undertaking, since that offer exists in competition with that of other operators which do seek to make a profit (judgment of 1 July 2008, *MOTOE*, C-49/07, EU:C:2008:376, paragraph 27).

137 In the present case, it should be stated, first of all, that the IMU exemption adopted pursuant to the decreto-legge del 24 gennaio 2012, n. 1 (Legislative Decree No 1 of 24 January 2012), as described in recitals 82 to 86 of the contested decision, differs from the ICI regime in particular in that it applies only to activities carried on by non-commercial entities, including the ecclesiastical institutions, 'on a non-commercial basis'.

138 Next, the IMU legislation introduced specific rules to allow a pro-rata payment of the IMU in cases where the same property is used for both commercial and non-commercial activities. In particular, it is provided that if the property has mixed usage, the exemption is to apply only to the part of the property in which the non-commercial activity is carried on, provided that it is possible to determine which part of the property is intended to be used exclusively for that activity. Where it is not possible to determine which parts of a property are independent, the exemption applies pro rata to the non-commercial use of the property, which will have to be stated in a special declaration.

139 Last, the IMU legislation refers for the definition of a number of aspects to an implementing regulation, namely the decreto ministeriale del 19 November 2012, n. 200 (Ministerial Decree No 200 of 19 November 2012), which concerns the terms and conditions for submitting the declaration referred to above, the relevant information for identifying the pro rata use of the property and the general and specific conditions that must be satisfied in order for an activity to be classified as being performed on a non-commercial basis. In that regard, and in order to be eligible for the IMU exemption, the implementing regulation provides as follows:

— first, as a general requirement, the activities carried on by the entities concerned must be not-for-profit; in addition, they must not, because of their nature, be in competition with other market operators that seek to make a profit and they must abide by the principles of solidarity and subsidiarity;

— second, as subjective conditions for the non-commercial entities, the entity's articles of association or statutes must include a general prohibition on distributing any type of profits, operating surpluses, funds and reserves; in addition, any profits must be reinvested exclusively in activities that contribute to the institutional aim of social solidarity; if the non-commercial entity is wound up, its assets must be attributed to another non-commercial entity performing a similar activity;

— third, by way of an objective condition for entities active in the accommodation sector, the recipient must provide services free of charge or for a symbolic fee which, in any event, must not exceed half the average price for similar activities in the same geographical area, also taking into account the absence of any connection with the actual cost of the service.

140 In the first place, it follows from the general aspects of the new IMU legislation and from the specific criteria set out in the preceding paragraph that that legislation applies only to entities that cannot be regarded as 'undertakings' for the purposes of the application of EU law. Contrary to the applicant's contention, and as the Commission observed in recital 166 of the contested decision, the implementing regulation expressly excludes from the scope of the IMU exemption activities which by their nature are in competition with those of other market operators that seek to make a profit.

141 In the second place, the applicant's argument relating to the vagueness of the new legislation must be rejected, since, among other aspects, the Italian legislation makes clear that, in the event of the mixed use of a property, it is necessary to calculate the proportion in which the property is used for commercial purposes and the IMU must be applied only to the economic activities. In addition, where an entity performs both economic and non-economic activities, the partial exemption that it enjoys for the part of the real estate used for non-economic activities does not represent an advantage for that entity when it performs an economic activity as an undertaking.

142 In the third place, although the applicant seems to maintain that the accommodation services are by their nature offered on the market in a context of competition with other operators, it should be pointed out, first of all, that that argument is put forward only as an abstract and unsubstantiated observation.

143 Next, as is apparent from recital 174 of the contested decision, the implementing regulation limits the exemption of the activities carried on by non-commercial entities to services that are accessible only to certain categories of people and are not open on a continuous basis. In particular, as regards 'social accommodation', the regulation indicates that the activities must be targeted at people with temporary or permanent special needs or people who are disadvantaged due to physical, psychological, economic, social and family conditions.

144 Furthermore, the implementing regulation states that, in any event, the exemption is not to apply to activities carried on in hotels or similar establishments, as defined in Article 9 of the decreto legislativo del 23 maggio 2011, n. 79 (Legislative Decree No 79 of 23 May 2011). According to that article, the following are to be regarded as hotels and similar structures: hotels; motels; holiday villages; tourist/service apartments; boarding houses; seasonal residential hotels; bed-and-breakfast establishments run as a business; health farms; and any other tourist accommodation structures with similar features to one or more of the preceding categories. The exemption is therefore excluded for activities carried on, for instance, in hotels, motels and bed-and-breakfast establishments.

145 Last, it must be stated that by the present action the Court is required to rule on the legality of the contested decision, which, in turn concerns the general conditions and criteria for the application of the IMU exemption. It is for the national authorities to determine on a case-by-case basis whether that regime is to be implemented and, more specifically, whether or not there is a competitive relationship between a specific beneficiary of the IMU and the other operators in the accommodation sector, and the applicant can use national remedies where the regime, as authorised by the Commission, is not applied correctly.

146 It follows that the Commission was entitled to consider, in essence, that the accommodation services, as governed by the preceding provisions, were not offered on the market in a context of competition with other operators.

147 In the fourth place, the applicant criticises the symbolic nature of the fee, which in his submission does not exclude the onerous nature of the service. It maintains that that criterion has the perverse effect that the aid would be granted to operators who, because they receive that aid, could charge lower prices.

148 However, it must be stated that, as is apparent from recital 173 of the contested decision, the regulation implementing the IMU provides that, in order to be symbolic, the fee must not be connected with the cost of the service and, furthermore, that the limit fixed at half the average price charged for similar activities performed on a competitive basis in the same geographical area can be used only to exclude entitlement to the exemption and, conversely, does not imply that service providers who charge a price below that limit may benefit from the exemption. In those circumstances, and having regard to the fact that the symbolic fee is only a condition imposed in addition to those described in the preceding paragraphs, the applicant cannot maintain that the Commission made an error of assessment.

149 In the light of the foregoing, the applicant has not succeeded in showing that the IMU legislation allows the exemption to be applied to activities of an economic nature and that the Commission thereby infringed Article 107 TFEU, by considering that that legislation did not fall within the scope of that provision of the Treaty. Furthermore, in so far as the applicant claims that the conditions of the existence of State aid, within the meaning of Article 107(1) TFEU, would be fulfilled by the IMU legislation, his arguments must be rejected as inoperative.

150 It follows from all of the foregoing that the third plea must be rejected.

Fourth plea, alleging breach of the obligation to state reasons

151 The applicant maintains that it is impossible on reading the contested decision to understand the reasoning on which the three aspects of that decision are based.

152 The Commission disputes those arguments.

153 According to settled case-law, the statement of reasons required by Article 296 TFEU must show clearly and unequivocally the reasoning of the institution adopting the measure, so as to inform the persons concerned of the reasons given for the measure adopted and thus enable them to defend their rights and the Courts to exercise their power of review. However, the statement of reasons is nonetheless not required to go into every relevant point of fact and law. The question as to whether the statement of reasons for a decision satisfies those requirements must be assessed with reference not only to the wording of the measure but also to its context and to the whole body of legal rules governing the matter in question (judgments of 22 April 2008, *Commission* v *Salzgitter*, C-408/04 P, EU:C:2008:236, paragraph 56; of 30 April 1998, *Vlaamse Gewest* v *Commission*, T-214/95, EU:T:1998:77, paragraphs 62 and 63; and of 27 September 2005, *Common Market Fertilizers* v *Commission*, T-134/03 and T-135/03, EU:T:2005:339, paragraph 156).

154 In the present case, it is sufficient to state that, as the Commission correctly observes, having regard both to its wording and to the context in which it was adopted, the contested decision contains, in recitals 22 to 198, a statement of reasons which satisfies the requirements of Article 296 TFEU.

155 The Commission explained, in recitals 191 and 198 of the contested decision, the reasons why it would be absolutely impossible for the Italian Republic to recover any aid illegally granted under the ICI exemption provisions. Those reasons relate to the way in which the cadastre is structured and to the cadastral databases, which do not allow the information necessary in order to calculate the amounts to be recovered to be obtained retroactively.

156 Furthermore, the Commission set out, in 151 to 159 of the contested decision, the reasons why it considered that Article 149(1) of the TUIR did not contain any selective advantage whatsoever on the ecclesiastical institutions and amateur sports clubs. The same applies to the IMU exemption, concerning which the Commission set out, in recitals 160 to 177 of the contested decision, the

reasons why it considered that, where they carry on the relevant activities and comply in full with the conditions laid down in the Italian legislation, the non-commercial entities concerned do not act as undertakings within the meaning of EU law, so that Article 107 TFEU does not apply to them.

157 Such a statement of reasons allowed the applicant to understand and challenge the reasoning followed by the Commission when it adopted the contested decision, as demonstrated by the content of his application, and allowed the Court to exercise its power of review, as is clear upon examining the pleas examined above.

158 Consequently, the Commission has not infringed Article 296 TFEU.

159 The fourth plea must therefore be rejected and the action must be dismissed in its entirety.

Costs

160 Under Article 134(1) 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. Furthermore, Article 138(1) of the Rules of Procedure provides that Member States and institutions which intervene in the proceedings are to bear their own costs.

161 Since the applicant has been unsuccessful, he must be ordered to pay the costs, in accordance with the form of order sought by the Commission. As for the Italian Republic, it must be ordered to bear its own costs incurred in connection with its intervention.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Mr Pietro Ferracci, in addition to bearing his own costs, to pay those incurred by the Commission;**

3. **Orders the Italian Republic to bear its own costs incurred in connection with its intervention.**

Gratsias Kancheva Wetter

Delivered in open court in Luxembourg on 15 September 2016.

[Signatures]