



Reports of Cases

Case T-122/14

Italian Republic
v
European Commission

(Failure to comply with a judgment of the Court of Justice finding that a Member State has failed to fulfil its obligations — Periodic penalty payment — Judgment quantifying the amount of the periodic penalty payment — Method of calculating the interest applicable to the recovery of unlawful aid — Compound interest)

Summary — Judgment of the General Court (Sixth Chamber), 9 June 2016

State aid — Recovery of unlawful aid — Payment of interest justified by the need to re-establish the previous position — Application of the interest rate on a compound basis — Regulation No 794/2004 — Scope ratione temporis — Determination of the method of calculating interest applicable, before the entry into force of the said regulation, to the recovery of unlawful aid — Reference to national law

(Art. 108(2) TFEU; Commission Regulation No 794/2004, Arts 11(2), and 13)

Although Article 11(2) of Regulation No 794/2004 implementing Council Regulation (EC)No 659/1999 laying down detailed rules for the application of Article [108 TFEU] states that the interest rate is to be applied on a compound basis until the date of the recovery of the aid and that the interest accruing in the previous year is to be subject to interest in each subsequent year, it is nevertheless necessary to note that that provision is, in accordance with the fifth paragraph of Article 13 of that regulation, applicable only to recovery decisions notified after the date on which that regulation entered into force, namely after 20 May 2004. Therefore, Article 11(2) of that regulation is not, as such, applicable *ratione temporis* to a decision ordering recovery of aid, notified to a Member State before that date.

In the absence of a provision under EU law on that subject, it is for national law to determine whether, in this case, the interest rate must be applied on a simple or on a compound basis. Thus, for recovery decisions preceding the entry into force of Regulation No 794/2004, compound interest can be taken into account only if that is the method normally applied under national law.

(see paras 59-61, 64, 65)