Reports of Cases

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

6 April 2017 [1]

(State aid — Maritime transport — Public service compensation — Capital increase — Decision declaring aid incompatible with the internal market and ordering that it be recovered — Liquidation of the recipient undertaking — Continued interest in bringing proceedings — Failure to find that there was no need to adjudicate — Concept of aid — Service of general economic interest — Private investor test — Manifest error of assessment — Error of law — Plea of illegality — Obligation to state reasons — Rights of defence — Decision 2011/21/EU — Guidelines on State aid for rescuing and restructuring firms in difficulty — Union framework applicable to State aid in the form of public service compensation — Altmark judgment)

In Case T-219/14,

Regione autonoma della Sardegna (Italy), represented by T. Ledda, S. Sau, G.M. Roberti, G. Bellitti and I. Perego, lawyers,

applicant,

v

European Commission, represented by G. Conte, D. Grespan and A. Bouchagiar, acting as Agents,

defendant,

supported by

Compagnia Italiana di Navigazione SpA, established in Naples (Italy), represented initially by F. Sciaudone, R. Sciaudone, D. Fioretti and A. Neri, and subsequently by M. Merola, B. Carnevale and M. Toniolo, lawyers,

intervener,

APPLICATION under Article 263 TFEU for annulment of Commission Decision C(2013) 9101 final of 22 January 2014 concerning aid measures SA.32014 (2011/C), SA.32015 (2011/C), SA.32016 (2011/C) granted by the Autonomous Region of Sardinia (Italy) to the maritime company Saremar in the form of public service compensation and a capital increase, in so far as that decision found those measures to be State aid incompatible with the internal market and ordered that it be recovered,

THE GENERAL COURT (Eighth Chamber),

composed of D. Gratsias (Rapporteur), President, M. Kancheva and N. Półtorak, Judges,

Registrar: J. Palacio González, Principal Administrator,

1 — * Language of the case: Italian.

having regard to the written part of the procedure and further to the hearing on 20 July 2016,

gives the following

Judgment

Background to the dispute

1. *Facts*

1 Saremar — Sardegna Regionale Marittima SpA ('Saremar') is a company currently in liquidation which, since it was established, ensured a public service of maritime cabotage, on the one hand, between Sardinia (Italy) and the small Sardinian islands and, on the other, between Sardinia and Corsica (France). Saremar's public service task was initially governed by a vicennial agreement concluded on 17 October 1991 with the Italian State, which entered into effect retroactively on 1 January 1989 and the end of which was fixed at 31 December 2008. The privatisation of Saremar was provided for in Article 19b of decreto-legge 25 settembre 2009, n. 135, Disposizioni urgenti per l'attuazione di obblighi comunitari e per l'esecuzione di sentenze della Corte di giustizia delle Comunita' europee, convertito in legge, con modifiche, dalla legge 20 novembre 2009 (Decree Law No 135 of 25 September 2009 on urgent measures with a view to implementing Community obligations and complying with decisions of the Court of Justice of the European Communities, converted into a law, with amendments, by Law No 166/2009 of 20 November 2009 ('the 2009 Law')) (GURI No 223 of 25 September 2009 and GURI No 274 of 24 November 2009, Ordinary Supplement No 215).

2 Saremar was initially part of the Tirrenia Group. The group originally comprised five other companies as well: Tirrenia di Navigazione SpA ('Tirrenia'), a national maritime cabotage company providing, inter alia, transport links between Sardinia and the mainland; Adriatica, Caremar and Siremar, regional maritime cabotage companies; and, lastly, Fintecna — Finanziaria per i Settori Industriale e dei Servizi SpA. The latter company held 100% of the capital in Tirrenia, which itself held all of the capital in the abovementioned regional companies and in Saremar. Fintecna was wholly owned by the Italian State.

3 Under Article 19b of the 2009 Law, Saremar's capital was transferred, free of charge, to the Regione autonoma della Sardegna ('the applicant' or 'the RAS') with a view to the privatisation of that company. The same provisions also provided for the conclusion of a new public service contract between Saremar and the RAS, which was to take effect at the time of the privatisation. However, on the date of the facts of the present dispute, Saremar's privatisation process was still ongoing and it was still 100% owned by the RAS. Thus, until 31 July 2012, Saremar's public service obligations relating to the transport links referred to in paragraph 1 above were governed as part of the successive extensions of the initial vicennial agreement concluded with the Italian State. As from 1 August 2012, those obligations were maintained as part of an agreement concluded between Saremar and the RAS that was to produce its effects until the completion of that privatisation process, in accordance with legge regionale n. 15 del 7 agosto 2012, Disposizioni urgenti in materia di trasporti (Regional Law No 15 of 7 August 2012 on urgent measures for transport) ('the 2012 Regional Law') (*Bollettino ufficiale della Regione autonoma della Sardegna* No 35, of 9 August 2012, p. 5).

4 In parallel, Tirrenia was put up for sale in 2010. It had been placed under an extraordinary administration procedure by Presidential Decree of 5 August 2010 and, in the course of its privatisation process, it continued to ensure the routes between Sardinia and the mainland. That process ended in July 2012 with its being acquired by the intervener, Compagnia Italiana di Navigazione SpA ('CIN'), which is a consortium of private shipowners operating on the same maritime

routes. A new agreement was then concluded between that consortium and the Italian State. It should also be explained that, in 2011, those routes were operated by four private operators: Moby, Forship, SNAV and Grandi Navi Veloci.

5 The national competition authority, the Autorità Garante della Concurrenza e del Mercato (Italy) ('the AGCM'), opened an investigation procedure following numerous complaints about fare increases introduced by those private operators for the 2011 summer period. In its decision of 11 June 2013, the AGCM found that those fare increases constituted a concerted practice contrary to Article 101 TFEU. That decision was annulled by the judgment of 29 January 2014 of the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy).

6 It was in that context that, on 26 April 2011, the RAS adopted delibera n. 20/57 (Regional Decision No 20/57), in which it requested Saremar to examine the possibility of operating at least two routes between Sardinia and the mainland on an experimental basis for the period from 15 June to 15 September 2011. In that regard the RAS referred to the adverse effects of those private operators' fare increases on Sardinia's economic and social system and the need to take urgent measures in response to that situation. In that Regional Decision, the RAS stated that those routes had to be mixed (passenger and freight transport) and that the economic and financial sustainability of the activity had to be taken into account. Next, the RAS, by delibera n. 25/69 (Regional Decision No 25/69) of 19 May 2011, and delibera n. 27/4 (Regional Decision No 27/4) of 1 June 2011, in essence, approved the fares proposed by Saremar, firstly, in relation to the route Golfo Aranci-Civitavecchia for the period between 15 June and 15 September 2011 inclusively and, secondly, in relation to the route Vado Ligure-Porto Torres for the period between 22 June and 15 September 2011 inclusively. The latter two regional decisions authorised Saremar to introduce variations in the fares system adopted in order to reconcile budgetary balance with maximum consumer satisfaction.

7 On 1 September 2011, the RAS adopted delibera n. 36/6 (Regional Decision No 36/6). In that regional decision, taking the view that an interruption in the maritime cabotage service ensured by Saremar on the routes to and from the mainland would have the effect of reinstating a monopoly situation on those routes, the RAS requested Saremar to examine, on the basis of a business plan and on an experimental basis, the viability of a maritime cabotage service for the period between 30 September 2011 and 30 September 2012 inclusively on at least one of the following three routes: the Olbia-Livorno route, the Porto Torres-Livorno route and the Cagliari-Piombino route. The Regional Decision provided that, in the course of that examination, Saremar had to take into consideration transport demand and the economic and financial sustainability of the cabotage service.

8 Moreover, in the same Regional Decision, the RAS defined the measures to be taken in order to compensate for the losses suffered by Saremar in connection with Tirrenia's bankruptcy proceedings. Saremar had had to devaluate 50% of its claims against Tirrenia, amounting to EUR 11546403.59, which had caused it to record a loss of EUR 5 253 530. 05 in 2010. The RAS therefore decided, firstly, to cover that loss by reducing Saremar's capital by EUR 4890950.36, once the legal reserves and profits from previous years had been exhausted. Secondly, noting that, under Article 2446 of the Italian Civil Code, the shareholder of a company whose capital has been reduced by more than a third is bound to recapitalise the company, the RAS decided to grant a Saremar a capital increase, subsequently to the aforementioned reduction and in the same amount. On 28 March 2012, the shareholders' meeting of Saremar voted for that capital reduction and, on 15 June 2012, the subsequent capital increase ('the disputed capital increase'). On 11 July 2012, the same shareholders' meeting paid part of that capital increase in the amount of EUR 824309.69.

9 On 1 December 2011, the RAS adopted delibera n. 48/65 (Regional Decision No 48/65), by which it ordered Saremar to activate immediately the mixed route Olbia-Civitavecchia using the ferries employed for the 2011 summer season, on the basis of one crossing per day and the low-season fare applied in 2011, in return for the option of modifying that fare according to demand and the objective of budgetary balance. The RAS considered that, in the light of the analysis provided by Saremar, only

that route enabled the achievement of financial balance. In the same Regional Decision, the RAS further provided for the hire of three high-capacity cruise ferries for the crossings on the routes Olbia-Civitavecchia and Porto Torres-Vado Ligure (or Porto Torres-Genoa) for the period between May and September 2012. It also provided for Saremar to determine a standard fare for all routes, irrespective of season, that would enable it to reconcile budgetary balance with maximum consumer satisfaction. Subsequently, the RAS adopted delibera n. 12/28 (Regional Decision No 12/28) of 20 March 2012, and delibera n. 22/14 (Regional Decision No 22/14) of 22 May 2012, by which it allowed Saremar latitude to determine, from among the fares submitted to it by Saremar for the 2012 summer season, those enabling the best possible reconciliation between budgetary balance and the meeting of public interest objectives on the routes Olbia-Civitavecchia and Porto Torres-Vado Ligure.

10 Article 1(3) of the 2012 Regional Law No 15 provided for the authorisation of expenditure of EUR 10 million in order to cover Saremar's 'potential losses' resulting from its operating the routes between Sardinia and the mainland ('the disputed compensation measure'). The latter provision was implemented by the RAS in the form of two payments made on 6 November 2012 and then 3 December 2012.

2. *Administrative procedure*

11 On 5 October 2011, the European Commission notified the Italian Republic of its decision to open the formal investigation procedure pursuant to Article 108(2) TFEU in regards to a number of measures adopted by the Italian authorities in favour of companies in the former Tirrenia Group and, through publication of that letter in the *Official Journal of the European Union* of 1 February 2012 (OJ 2012 C 28, p. 18), invited the parties concerned to submit their observations. That decision concerned only the public service compensation amounts paid by the Italian State between 2009 and 2011 and potential aid disbursed as part of the privatisation of Tirrenia and Saremar.

12 Following the adoption of that decision, the Commission recorded new complaints relating to, inter alia, certain measures taken by the RAS in favour of Saremar. On 12 October 2012, on grounds of legal certainty, the Italian authorities notified the disputed compensation measure.

13 On 19 December 2012, the Commission notified the Italian authorities of its decision to extend the formal investigation procedure, published in the Official Journal of 22 March 2013 (OJ 2013 C 84, p. 58). The Commission considered that the doubts it had expressed in its decision to open the investigation also applied to the compensation paid to the former Tirrenia Group as from January 2012 and, in particular, as regards Saremar, to the disputed compensation measure and to the public financing measures that had been granted to that company as from that date.

14 The RAS submitted observations on the measures it had adopted in favour of Saremar by correspondence of 13 December 2012, 26 February, 3 September, 24 October, 13 November and 21 November 2013. Saremar and its competitors also submitted observations. Similarly, the Italian authorities responded to requests for additional information from the Commission by correspondence of 26 September and 25 October 2013. Lastly, the measures in question were discussed at a number of meetings attended by the Commission, the RAS and Saremar (24 April 2012, 2 May, 10 July and 10 October 2013) and the Commission and the complainants (27 July and 20 November 2012 and 8 August 2013).

15 By correspondence of 14 March 2013, the RAS requested the Commission to separate the examination of the series of measures taken in favour of Saremar from that of the other measures concerned by the formal investigation procedure and to treat that series of measures as a matter of priority, inter alia in the light of the imminent privatisation of Saremar. Following that request, on 22 January 2014 the

Commission adopted Commission Decision C(2013) 9101 final concerning aid measures SA.32014 (2011/C), SA.32015 (2011/C), SA.32016 (2011/C) granted by the RAS to Saremar ('the contested decision').

3. *Contested decision*

16 As evidenced by paragraph 15 above, the contested decision concerns only the measures adopted by the RAS in favour of Saremar.

17 In the contested decision, the Commission examined five measures: (i) the disputed compensation measure; (ii) the financing of Saremar's promotional activities, that is to say, the RAS's grant of EUR 3 million to Saremar with a view to promoting tourism in Sardinia; (iii) the authorisation granted to Saremar to take out a loan of EUR 3 million and a letter of intent issued by the RAS to the banking establishment concerned; (iv) a second letter of intent in favour of Saremar in order for it to be able to obtain a bank overdraft authorisation for EUR 5 million; and (v) lastly, the disputed capital increase.

18 As regards the disputed compensation measure, the Commission's analysis in the contested decision comprised four stages.

19 In the first place, the Commission examined whether the disputed compensation measure constituted aid within the meaning of Article 107(1) TFEU. After having found that the measure entailed a transfer of State resources (paragraphs 161 to 165) and that it was selective (paragraph 166), the Commission ascertained whether or not the measure entailed an economic advantage for Saremar by examining whether it complied with the conditions laid down in the judgment of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg* (C-280/00, EU:C:2003:415) ('the *Altmark* conditions') (paragraphs 167 to 225). The Commission began by examining the disputed compensation measure in the light of the second *Altmark* condition and went on to conclude that that condition was not met and that, consequently, that measure granted an economic advantage to Saremar (paragraphs 173 to 179). It nevertheless examined the measure in question also in the light of the first and third *Altmark* conditions and went on to conclude that nor were those conditions met (paragraphs 180 to 219 and 220 to 224). Lastly, the Commission observed that the measure in question affected trade between Member States and was liable to distort competition and that, consequently, it constituted State aid within the meaning of Article 107(1) TFEU (paragraphs 246 and 247)

20 Secondly, the Commission examined whether the disputed compensation measure could be considered aid deemed compatible and exempt from the obligation of notification provided for by Article 108(3) TFEU in the light of the conditions laid down in Commission Decision 2012/21/EU of 20 December 2011 on the application of Article 106(2) [TFEU] to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ 2012 L 7, p. 3) ('the 2011 SGEI Decision'), which implements the derogation provided in Article 106(2) TFEU. It concluded that it could not (paragraphs 255 to 260 of the contested decision).

21 Thirdly, the Commission considered that Saremar fulfilled the conditions for being categorised as a firm in difficulty within the meaning of its Communication of 1 October 2004, entitled 'Community guidelines on State aid for rescuing and restructuring firms in difficulty' (OJ 2004 C 244, p. 2) ('the Guidelines on aid for rescuing and restructuring'). The Commission accordingly considered that, in accordance with paragraph 9 of its communication of 11 January 2012 entitled 'European Union framework for State aid in the form of public service compensation (2011)' (OJ 2012 C 8, p. 15) ('the 2011 SGEI Framework'), the compatibility of the disputed compensation measure had to be assessed

in the light of the same Guidelines and Article 107(3)(c) TFEU. The Commission observed, however, that the conditions laid down in those guidelines were not met in the present case. It concluded that the measure constituted incompatible aid (paragraphs 261 to 280 of the contested decision).

22 Fourthly, in the alternative, the Commission nevertheless examined, in the event that Saremar was found not to be a firm in difficulty, whether the disputed compensation measure could be considered compatible aid under the conditions of the SGEI Framework. In the light of, inter alia, its findings in relation to the application of the *Altmark* conditions and the 2011 SGEI Decision, it concluded that it could not (paragraphs 282 to 296 of the contested decision)

23 As regards the disputed capital increase, the Commission considered that the conditions for categorising that measure as State aid were met (paragraphs 161 to 166 and 235 to 247). In particular, it found, with respect to the condition relating to the existence of an economic advantage, that that capital increase did not meet the criterion of the private investor operating in a market economy (paragraphs 235 to 245). Next, the Commission considered that that capital increase did not meet the criteria laid down in the Guidelines on aid for rescuing and restructuring and could not, therefore, constitute compatible aid under Article 107(3)(c) TFEU (paragraphs 297 to 299).

24 Article 1(1) of the contested decision states that the State aid granted to Saremar in the form of the disputed compensation measure and in the form of the disputed capital increase is incompatible with the internal market and was unlawfully implemented by the Italian authorities, contrary to Article 108(3) TFEU. Article 1(2) of that decision states that the financing of promotional activities and the issuance of the letters of intent, referred to in paragraph 17 above, do not constitute State aid granted to Saremar. Article 2(1) of that decision orders the recovery of the incompatible aid referred to in Article 1(1) thereof.

25 The present action relates only to that part of the contested decision relating to the compensation measure and the disputed capital increase. That same part of the contested decision is also the subject matter of proceedings instituted by Saremar, judgment in which is also given today: *Saremar* v *Commission* (T-220/14).

Procedure and forms of order sought

26 By application lodged at the Registry of the General Court on 2 April 2014, the RAS brought the present action.

27 On 8 July 2014, the Commission lodged its defence.

28 By document lodged at the Court Registry on 21 July 2014, CIN applied for leave to intervene in support of the form of order sought by the Commission. By correspondence of 10 September 2014, the RAS and the Commission each submitted individual requests for confidential treatment of their information in relation to CIN and, to that end, produced a non-confidential version of the pieces of evidence concerned. By order of the President of the Eighth Chamber dated 10 October 2014, CIN was granted leave to intervene. The requests for confidential treatment submitted by the RAS and the Commission were not challenged and were accordingly granted.

29 The reply and the rejoinder were lodged at the Registry of the General Court on 26 September and 10 November 2014 respectively.

30 CIN's statement in intervention was lodged at the Court Registry on 16 December 2014. The Commission and the RAS submitted their observations on that statement on 12 February and 2 March 2015 respectively.

31 By correspondence of 15 April 2016 sent to the Court Registry, the parties were informed of the decision of the President of the General Court to designate a judge to replace a judge who was prevented from acting, in accordance with Article 17(2) of the Rules of Procedure of the General Court.

32 By correspondence from the Court Registry of 21 April 2016, the main parties were invited to submit their observations about possibly joining the present case with Case T-220/14, *Saremar* v *Commission* (see paragraph 25 above) for the purposes of the hearing and, as the case may be, the decision terminating the proceedings. By correspondence of 28 April and 10 May 2016 respectively, the Commission and the RAS stated that they had no observations on that joining. The Commission requested that, in the event that the cases were joined, only the non-confidential version of the evidence in the present case be communicated to the interveners in Case T-220/14. The RAS, for its part, requested that, in that scenario, the interveners in Case T-220/14 be provided with a non-confidential version of the annexes to the application that is identical to the one lodged on 11 June 2015 by Saremar in Case T-220/14 following the order of 7 May 2015, *Saremar* v *Commission* (T-220/14, not published, EU:T:2015:320).

33 By order of the President of the Eighth Chamber of 22 June 2016, the present case and Case T-220/14 were joined for the purposes of the oral part of the procedure. Acting on a proposal of the Judge-Rapporteur, the Court decided to open the oral part of the procedure and, by way of measure of organisation of procedure, invited inter alia the RAS and Saremar to provide the Court with up-to-date information in writing on Saremar's economic and financial situation and, in particular, to inform it as to whether Saremar had been admitted to a procedure for an arrangement with creditors and, if so, the outcome of that procedure. The RAS and Saremar provided their respective responses on 11 July 2016.

34 By correspondence of 30 June 2016, Grandi Navi Veloci, intervener in Case T-220/14, informed the Court that it was withdrawing its intervention. By order of 19 July 2016, that intervener was removed from Joined Cases T-219/14 and T-220/14.

35 The parties presented oral argument and answered the questions put by the Court at the hearing on 20 July 2016. In the course of that hearing, the debate between the parties concerned inter alia the question of whether the RAS, on the one hand, and Saremar, on the other, continued to have an interest in the proceedings, given that Saremar had been placed under liquidation. The Court invited the parties to state their position in writing on this matter and to provide a certain number of related documents. On 29 July 2016, the parties submitted their observations and produced the documents requested by the Court. The oral part of the procedure was closed by decision of 7 September 2016.

36 The RAS claims that the Court should:

— annul, 'in whole or in part', the contested decision in so far as the Commission categorised as State aid the compensation measure and the disputed capital increases and in so far as it found that those measures were incompatible with the internal market and ordered that they be recovered;

— declare Article 4(f) of the 2011 SGEI Decision and paragraph 9 of the 2011 SGEI Framework unlawful and inapplicable, pursuant to Article 277 TFEU;

— order the Commission to pay the costs.

37 The RAS further requests the Court to order measures of organisation of procedure and measures of inquiry, within the meaning of Articles 64 to 66 of the Rules of Procedure of the General Court of 2 May 1991, aimed at putting questions to the Commission and to ask it to produce certain documents concerning questions raised under the first and second parts of the first plea.

38 The Commission contends that the Court should:

— dismiss the application;

— order the RAS to pay the costs.

39 CIN claims that the Court should:

— dismiss the application;

— order the applicant to pay the costs, including those relating to its intervention.

Law

1. Locus standi *and interest in bringing proceedings*

40 At the hearing and in its correspondence of 29 July 2016, the Commission submitted that, given that Saremar was in liquidation, the RAS no longer had any interest in bringing proceedings. It submits in that regard that the RAS has no intention of continuing Saremar's economic activity. In that regard it bases itself on the RAS's observations submitted in connection with Case T-506/14, *Grandi Navi Veloci* v *Commission*, in which the RAS implicitly acknowledged that, should the contested decision be annulled, Saremar's liquidation could not be brought to an end and its economic activity could not resume. The Commission also relies on the statements of the President of the RAS, reproduced in the reasons for delibera n. 24/23 (Regional Decision No 24/23) of 22 April 2016, attached to its observations of 29 July 2016, in which it was stated that 'the regional administration no longer has an interest in maintaining Saremar's activity'. The Commission adds that, as a creditor of Saremar for the payment of the aid, the RAS has no interest in having the amount of the aid excluded from Saremar's liabilities. Lastly, the RAS's interest in having a judgment from the Court holding that, in the present case, it did not grant incompatible State aid, is abstract and hypothetical as such a finding would have no actual effects. In particular, the Commission submits that, in the light of the judgment of 16 July 2013 of the Corte costituzionale (Constitutional Court, Italy), the RAS cannot derive any 'political' advantage from the annulment of the contested decision, because it has no power to take the disputed measures. The Commission states, by way of conclusion, that such a lack of interest in bringing proceedings should lead the Court to rule that there is no need to adjudicate in the present case.

41 In response to those arguments, the RAS submits that it continues to have an interest in bringing proceedings, first, in its capacity as a public authority and, second, in its capacity as sole shareholder of Saremar. In the RAS's submission, the choices it made in its capacity as a public authority in order to ensure territorial continuity between Sardinia and the mainland were called into question in the contested decision, in which the Commission disputes there being a need for public service and the need for public service obligations. The RAS therefore takes the view that it has an actual and ongoing interest in seeing the lawfulness of its decisions confirmed through annulment of the contested decision. It adds that, should the decision be annulled, the liabilities in the arrangement with the creditors would be significantly reduced, which would enable creditors to obtain full satisfaction on their claims and it to be paid from the surplus upon liquidation.

42 In the first place, the Commission expressly calls into question whether the Court has to rule on the present action, given that in the course of the proceedings the applicant has lost its interest in bringing proceedings, although it does not question the admissibility of the action. However, its argument alleging that the RAS was not competent under national law to adopt the disputed measures raises both the question of whether the applicant has *locus standi* and the question of its interest in bringing proceedings at the point where the present action was brought. Those two conditions of admissibility

of the action are cumulative (see judgment of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraph 62 and the case-law cited) and the Court must in any event examine them of its own motion (see orders of 24 March 2011, *Internationaler Hilfsfonds* v *Commission*, T-36/10, EU:T:2011:124, paragraph 45 and the case-law cited, and 4 May 2012, *UPS Europe and United Parcel Service Deutschland* v *Commission*, T-344/10, not published, EU:T:2012:216, paragraph 31 and the case-law cited).

43 It follows from Article 263 TFEU that there is a clear distinction between the right of EU institutions and Member States, referred to in the second paragraph thereof, to bring an action for annulment and that of legal persons and individuals, referred to in the fourth paragraph. Thus, according to the case-law, in order for the EU institutions and Member States to be able to exercise that right, it is only necessary that the act annulment of which is sought be challengeable; there is no need to prove that they have *locus standi* or an interest in bringing proceedings (see, to that effect, judgments of 8 September 2011, *Commission* v *Netherlands*, C-279/08 P, EU:C:2011:551, paragraphs 35 to 42, and of 20 September 2012, *France* v *Commission*, T-154/10, EU:T:2012:452, paragraphs 37 and 38).

44 By contrast, first of all, the right of a natural or legal person referred to in the fourth paragraph of Article 263 TFEU to bring an action is subject to the condition that they be accorded standing to bring proceedings, which means that such proceedings may be instituted if the act is addressed to them or is of direct and individual concern to them, or if it is a regulatory act not entailing implementing measures that is of direct concern to them (see judgment of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraph 59 and the case-law cited).

45 Secondly, in order for of natural and legal persons to have a right to bring proceedings, that right must exist at the stage of lodging the action, which is a distinct condition of admissibility from *locus standi*. Like the subject matter of the action, the interest in bringing proceedings must continue until the final decision, failing which there will be no need to adjudicate (see judgment of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraphs 57 and 62 and the case-law cited). Such an interest requires that the annulment of that act must be capable, in itself, of having legal consequences and that the action may therefore, through its outcome, procure an advantage to the party which brought it (judgments of 7 June 2007, *Wunenburger* v *Commission*, C-362/05 P, EU:C:2007:322, paragraph 42, and of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraph 55). An applicant's interest in bringing proceedings must be vested and current and may not concern a future and hypothetical situation (see judgment of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraph 56 and the case-law cited).

46 In particular, the conditions referred to in paragraphs 44 to 45 apply to an action for annulment brought by an infra-State body of a Member State, which may be brought on the basis of the fourth paragraph of Article 263 TFEU provided it has legal personality under that Member State's domestic law (see, to that effect, judgment 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 42 and the case-law cited).

47 As regards, first of all, *locus standi*, it follows from the case-law on State aid that an infra-State body of a Member State which is the addressee of a decision of the Commission ruling on the compatibility and lawfulness of an aid measure implemented by that State may be held to be directly and individually concerned in certain circumstances. That authority must be held to be directly concerned when the contested decision is liable to have a direct impact on the measures by which the aid was granted adopted by it and on its aid recovery obligations, without the national authorities to whom the contested decision was notified having any discretion in the matter. That authority must be held to be individually concerned where it is the originator of the measure(s) covered by the contested decision and the decision prevents it from exercising its own powers as it sees fit, with the result that its interest in challenging the decision is distinct from that of the Member State concerned (see, to that

effect and by analogy, judgments of 15 June 1999, *Regione Autonoma Friuli-Venezia Giulia* v *Commission*, T-288/97, EU:T:1999:125, paragraphs 30 to 34, and of 9 September 2014, *Hansestadt Lübeck* v *Commission*, T-461/12, not published, EU:T:2014:758, paragraph 34).

48 In the present case, firstly, regarding whether the RAS's interests are directly affected, there is nothing in the case file indicating that the Italian State, to whom the contested decision was notified, exercised its discretion when the applicant was given notice of the decision. Thus, the decision is liable to affect directly the RAS's rights and obligations in relation to the disputed aid. Secondly, regarding whether those interests are individually affected, it should be noted that, as follows from the regional decisions and the 2012 Regional Law No 15 referred to in paragraphs 6 to 10 above, the disputed aid was granted by the RAS on its own initiative and as part of its own powers, both as a regional authority charged with the protection of socio-economic interests on the territory of Sardinia and in its capacity as public authority charged with the economic and financial management of Saremar, with a view inter alia to its being privatised. Nor is there anything in the case file indicating that the Italian State intervened in the grant of that aid or that it has the power to determine what the RAS's interests are in that regard. Consequently, the RAS is directly and individually concerned by the contested decision and therefore has *locus standi* to contest that decision.

49 However, as evidenced by paragraph 45 above, those circumstances, if they are sufficient to establish *locus standi* for the RAS, do not necessarily establish its interest in bringing proceedings (see, to that effect and by analogy, judgment of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraph 62). It must also be demonstrated that annulment of the contested decision is capable, in itself, of having legal consequences for the RAS and that the present action may, through its outcome, procure it an advantage.

50 Suffice it to note in that regard that, on the date the action was lodged, the contested decision had an adverse effect on the RAS inasmuch as the Commission had declared the disputed aid incompatible and unlawful and ordered that it be recovered. Thus, on that date, the RAS could derive an advantage from the annulment of the contested decision. That annulment alone would automatically put an end to the legal consequences of that decision on the validity of the RAS's acts by which it granted the disputed aid and its ensuing obligations, being the prohibition on implementation of those acts and the obligation to recover the aid at issue, thereby necessarily bringing about a change in its legal situation (see, to that effect and by analogy, judgment of 4 March 2009, *Tirrenia di Navigazione and Others* v *Commission*, T-265/04, T-292/04 and T-504/04, not published, EU:T:2009:48, paragraphs 69 and 70).

51 As stated in paragraph 40 above, the Commission considers that the RAS could not derive any 'political' advantage from the annulment of the contested decision, inasmuch as it did not have the power to take the measures forming the subject matter of that decision. In the Commission's submission, the judgment of 16 July 2013 of the Corte costituzionale ruled in favour of the Italian State on the question of which authority had the power to determine the public service obligations on the routes between Sardinia and the mainland. The Commission's position thus amounts to finding, in essence, that, in the light of that judgment by the Corte costituzionale, only the Italian State had the power to implement the public cabotage service instituted by the RAS in 2011 and in 2012 and to adopt the associated disputed compensation measure.

52 However, it should be noted firstly that, according to settled case-law, it is not for the EU institutions, in particular the EU Courts, to rule on the distribution of powers and respective obligations of the various national entities effected by the institutional rules under national law (order of 21 March 1997, *Région wallonne* v *Commission*, C-95/97, EU:C:1997:184, paragraph 7, and judgment of 15 June 1999, *Regione Autonoma Friuli-Venezia Giulia* v *Commission*, T-288/97, EU:T:1999:125, paragraph 48).

53 Secondly and in any event, it is clear that the Commission's argument does not in any way cast doubt on the considerations set out in paragraphs 47 to 50 above, relating to the applicant's *locus standi* and interest in bringing proceedings. As regards *locus standi*, as stated in paragraph 48 above, the Court can only observe that the disputed aid was paid by the RAS on its own initiative and with a view to exercising its own powers and that the Italian State did not intervene in that regard, with the result that the RAS's interest in challenging the contested decision is distinct from the State's. Consequently, it is not necessary for the Court to interpret the judgment of 16 July 2013 of the Corte costituzionale in order to ascertain whether, as regards the disputed compensation measure, the RAS actually had the power to institute, as a matter of territorial continuity, its own maritime cabotage service between Sardinia and the Italian peninsula, as it maintains it did. Regarding the interest in bringing proceedings, it follows from paragraph 50 above that the contested decision has an adverse effect on the applicant and that it accordingly may derive a legal advantage from seeing it annulled. The fact that it may not derive any 'political' advantage for the reasons set out by the Commission thus has no bearing on the matter. Nor does the Commission argue that the abovementioned judgment of the Corte costituzionale cast doubt on the RAS's power to grant the disputed capital increase.

54 In the second place, it must be ascertained whether the RAS's interest in bringing proceedings has ceased in the course of the proceedings due to Saremar's being placed under liquidation, as the Commission maintains has occurred.

55 In that regard, it is apparent from the explanations and documents provided to the Court by the parties on 11 and 29 July 2016 that, given the impossibility of repaying that portion of the disputed aid that has already been disbursed, Saremar requested permission to be included in the procedure for an arrangement with creditors with a view to its being liquidated, which arrangement was homologated by the Tribunale di Cagliari (Cagliari Court, Italy) on 22 July 2015. That arrangement with creditors provides for satisfaction of Saremar's creditors' claims through the sale and liquidation of all its property. Saremar's fleet was assigned on 30 December 2015 and it ceased all activity on 31 March 2016, whilst on 18 March 2016 the RAS granted the concession for the route between Sardinia and the small Sardinian islands to another company. In its reply of 11 July 2016, the RAS stated that Saremar was at an advanced stage of the liquidation phase in the procedure for an arrangement with creditors, inasmuch as all privileged creditors had had their claims satisfied and the plan was to proceed in the coming months with an initial substantial distribution amongst the unsecured creditors.

56 It is clear however that, notwithstanding Saremar's being placed under liquidation, the RAS has not lost its interest in bringing proceedings.

57 First of all, the contested decision has not been repealed or withdrawn, so that the present action retains its purpose (see, to that effect, judgment of 7 June 2007, *Wunenburger* v *Commission*, C-362/05 P, EU:C:2007:322, paragraph 48).

58 Secondly, the contested decision continues to produce legal effects affecting the RAS, which have not become obsolete merely because Saremar has been placed under liquidation. In that regard, the Commission does not dispute the point made at the hearing by the RAS and Saremar, to the effect that its being placed under liquidation has not meant that it has ceased to exist, which can only occur at the end of the liquidation process. Even if the obligations ensuing from the contested decision were to cease having specific content for the RAS once Saremar is no more, that is not the case at the time of its being placed under liquidation. Nor has the Court been informed to date that the process of liquidating Saremar has been completed.

59 Thus, because of that decision, the RAS is still not allowed to disburse to Saremar that part of the disputed capital increase which it had not paid because of being notified of that operation by the Commission, as indicated in the minutes of the shareholders' meeting of Saremar dated 11 July 2012 annexed to the application.

60 As regards that part of the disputed aid already disbursed by the RAS to Saremar, according to settled case-law the mere fact that the undertaking is in bankruptcy proceedings, including when those proceedings lead to the undertaking's being liquidated, does not call into question the principle that unlawful aid must be recovered. In such a scenario, restoration of the previous situation and removal of the distortion of competition resulting from aid unlawfully paid may, in principle, be achieved by entry in the liabilities of the undertaking in liquidation of an obligation relating to repayment of the aid concerned (see judgment of 1 July 2009, *KG Holding and Others* v *Commission*, T-81/07 to T-83/07, EU:T:2009:237, paragraphs 192 and 193 and the case-law cited). The RAS therefore at the very least remains under an obligation to ensure that its claims against Saremar by virtue of the part of the disputed aid previously paid remain entered in Saremar's schedule of liabilities.

61 In those circumstances, without its being necessary to examine the RAS's arguments, it follows that Saremar's being placed under liquidation has no bearing on the conclusion in paragraph 50 above, to the effect that the applicant could derive an advantage from the annulment of the contested decision, as it would automatically cease to be under the obligations ensuing from that decision and its legal situation would then necessarily be changed.

62 Those considerations are not undermined by any of the Commission's arguments.

63 Firstly, it is clear from those considerations that the question whether or not Saremar may pursue its economic activity and, consequently, the question whether the RAS has an interest in the pursuit of that activity are irrelevant for the issue whether the applicant has retained its interest in bringing proceedings. It follows from paragraphs 57 to 60 above that what matters in that regard is: (i) that the contested decision retains a purpose; and (ii) that it continues to produce legal effects in relation to the RAS and the decisions taken by it in its capacity as public authority. That is why the RAS's statements in the context of Case T-506/14, *Grandi Navi Veloci* v *Commission* and those of the President of the RAS, reproduced in the reasons of Regional Decision No 24/23 (see paragraph 40 above), relied on by the Commission, are not relevant to the present case. Moreover, contrary to the Commission assertions, in maintaining the present action despite those statements, the RAS is not disregarding the principle *nemo potest venire contra factum proprium* (no one may set himself in contradiction to his own previous conduct).

64 Secondly, as follows from paragraphs 47 to 61 above, it is not in its capacity as a creditor of Saremar, but as a public authority dispensing the disputed aid that the RAS may bring the present action. Consequently, the fact that it has no interest in annulment of the contested decision as a creditor of Saremar due to its being placed under liquidation has no bearing on the matter.

65 Lastly, for the reasons set out in paragraphs 52 and 53 above, the Commission's argument alleging that the RAS had no power to grant the disputed compensation measure cannot be upheld.

66 It follows from all the foregoing that the RAS retains an interest in bringing the present proceedings and, therefore, that there is a need to adjudicate in the present case.

2. *Substance*

67 The action comprises two parts, the first seeking annulment of the contested decision, inasmuch as the Commission declared the disputed compensation measure to be incompatible with the internal market and unlawfully implemented, and the second seeking the annulment of that decision, inasmuch as the Commission declared the disputed capital increase incompatible and unlawful.

The first part of the action: the part of the contested decision concerning the disputed compensation measure

68 The applicant formally puts forward five pleas directed against the part of the contested decision concerning the disputed compensation measure, alleging essentially errors of law and manifest errors of assessment. The first plea concerns the identification of the public service obligations imposed on Saremar; the second the application of the *Altmark* conditions; the third the application of Commission Decision 2005/842/EC of 28 November 2005 on the application of [Article 106(2) TFEU] to State aid in the form of public service compensation granted to certain undertakings entrusted with the operation of services of general economic interest (OJ 2005 L 312, p. 67) ('the 2005 SGEI Decision') and the 2011 SGEI Decision; the fourth the classification of Saremar as a firm in difficulty; and the fifth the application of the principles of the 2011 SGEI Framework.

69 It should be noted that those pleas concern essentially the legality of the merits of the contested decision. As part of those pleas, however, the RAS also submits that the contested decision is vitiated by a failure to provide a statement of reasons. Similarly, as part of the fourth plea, the RAS alleges infringement of its rights of defence arising from the fact that the question whether Saremar was a firm in difficulty was not debated during the administrative procedure. Consequently, it must be considered, in reality, that the RAS puts forward, in that regard, a sixth plea distinct from the abovementioned substantive pleas, alleging infringement of essential procedural requirements and comprises two parts relating, firstly, to infringement of the obligation to state reasons and, secondly, infringement of the rights of the defence. That plea must be examined separately (see, to that effect, judgment of 5 December 2013, *Commission* v *Edison*, C-446/11 P, not published, EU:C:2013:798, paragraph 20, and the case-law cited).

70 The Court considers it appropriate to examine the sixth plea first, the second to fifth pleas second and the first plea third.

The sixth plea: infringement of essential procedural requirements

– First part: infringement of the obligation to state reasons in the contested decision

71 In support of the first part of the sixth plea: the RAS submits, in essence, five complaints. It is appropriate to begin by examining the first two complaints.

72 The first complaint alleges that the contested decision did not contain sufficient reasons for the identification of the public service obligations imposed on Saremar. The second complaint alleges that the Commission did not give reasons for its decision not to take into account the evidence provided by the RAS in order to demonstrate the need for the public service obligations imposed on Saremar and how they are not sufficiently clearly defined.

73 In that regard, it should be noted that those two complaints relate to the statement of reasons in the part of the contested decision relating to the examination of the disputed compensation measure in the light of the first *Altmark* condition. As will be explained in paragraphs 123 to 132 below, that part of the contested decision was not indispensable for enabling the Commission to find that that compensation measure did not comply with the *Altmark* conditions, as it could find, correctly, that the second of those conditions was not fulfilled. Consequently, the Commission's alleged errors in applying the first *Altmark* condition have no bearing on the lawfulness of the contested decision. Accordingly, without its being necessary to ascertain whether the first complaint complies with the admissibility conditions laid down in Article 44(1)(c) of the Rules of Procedure of the General Court of 2 May 1991, which was applicable on the date the action was lodged, those two complaints are ineffective and must be rejected.

74 The third complaint relates to a failure to state reasons in paragraphs 255 to 260 of the contested decision, in which the Commission examined the compatibility of the disputed compensation measure in the light of the conditions laid down in the 2011 SGEI Decision and the 2005 SGEI Decision.

75 Firstly, according to settled case-law, the requirement laid down in Article 44(1)(c) of the Rules of Procedure of 2 May 1991, under which the application must state the subject matter of the proceedings and also set out the pleas and arguments relied on and a summary of those pleas, must be interpreted as meaning that the application must specify the nature of the grounds on which the action is based, so that a mere abstract statement of the grounds does not satisfy the requirements of the Rules of Procedure, failing which the pleas will be held to be inadmissible. Similar requirements are laid down with respect to a complaint put forward in support of a plea (see, to that effect, judgments of 14 February 2012, *Italy* v *Commission*, T-267/06, not published, EU:T:2012:69, paragraph 35, and of 12 September 2013, *Besselink* v *Council*, T-331/11, not published, EU:T:2013:419, paragraphs 37 to 41 and the case-law cited).

76 In the present case, the applicant has failed to specify the content of the third complaint. It merely refers in the title of its third plea referring to errors committed by the Commission in paragraphs 255 to 260 of the contested decision to an 'infringement of Article 296 TFEU', without specifying in any way what that infringement consists of. Consequently, under Article 44(1)(c) of the Rules of Procedure of 2 May 1991, that complaint is inadmissible.

77 The fourth complaint alleges, in essence, that the Commission failed to specify in paragraph 269 of the contested decision whether it considered that the grant of public service compensation to a firm in difficulty was ruled out as a matter of principle.

78 It must be borne in mind that, according to settled case-law, the statement of reasons required by Article 296 TFEU must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the statement of reasons to specify all the relevant matters of fact and law, since the question whether the statement of reasons meets the requirements of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see judgment of 28 January 2016, *Slovenia* v *Commission*, T-507/12, not published, EU:T:2016:35, paragraph 23 and the case-law cited).

79 Moreover, as regards State aid, the necessary correlation between the grounds relied on by the interested parties during the formal investigation procedure and the statement of reasons for the Commission's decision cannot mean that the Commission is obliged to reject each of the arguments put forward in support of those grounds. It is sufficient if it sets out the facts and the legal considerations of fundamental importance in the context of the decision (see judgment of 28 January 2016, *Slovenia* v *Commission*, T-507/12, not published, EU:T:2016:35, paragraph 25 and the case-law cited).

80 In the present case, it was not indispensable for the Commission to state in paragraph 269 of the contested decision whether it considered that the grant of public service compensation to a firm in difficulty was ruled out as a matter of principle. It was sufficient for it to state, as indeed it did in that paragraph of the contested decision, that in accordance with paragraph 9 of the 2011 SGEI Framework and given the failure to comply with the conditions of the 2011 SGEI Decision in the present case, the compatibility of that compensation had to be assessed in the light of the Guidelines on aid for rescuing and restructuring. That statement clearly sets out the decisive legal factors that led the Commission to

consider it necessary to apply those guidelines in the present case. Consequently, it was not necessary for the Commission to provide any greater degree of detail on the theoretical postulates on which its reasons were based, as paragraph 269 of the contested decision enabled the RAS to understand those reasons and to debate those postulates in the context of the present proceedings, in particular under the fourth plea and, moreover, the Court to exercise its power of review. The fourth complaint must accordingly be rejected.

81 The fifth complaint alleges, in essence, that the Commission failed to give reasons for the application in the present case of the principles laid down in paragraphs 14, 19, 20, 39 and 60 of the 2011 SGEI Framework, whereas under paragraph 61 thereof, those principles are not applicable to the disputed compensation measure.

82 Suffice it to note in that regard that, as observed by the Commission in its statement in defence, this complaint is based on the premiss that the disputed public service compensation meets the conditions set out in Article 2(1) of the 2011 SGEI Decision and that, therefore, in accordance with paragraph 61 of the 2011 SGEI Framework, paragraphs 14, 19, 20, 39 and 60 of that framework were not applicable to that compensation. Yet earlier on in the contested decision, namely in paragraphs 255 to 260, the Commission set out the reasons why it considered that the conditions of application of the 2011 SGEI Decision were not met in the present case. Consequently, it was not required to justify subsequently why it was examining the disputed compensation in the light of the conditions laid down in paragraphs 14, 19, 20, 39 and 60 of the 2011 SGEI Framework.

83 In those circumstances, the fifth complaint must be rejected, as must be the first part of the sixth plea as a whole.

– The second part: infringement of the rights of the defence

84 The RAS submits that the Commission classified Saremar as a firm in difficulty for the first time in the contested decision. In its submission, that question was never the subject of an adversarial debate during the administrative procedure.

85 The Commission replies that the applicant's rights of defence during the administrative procedure cannot be relied on in the present proceedings.

86 It should be borne in mind in that regard that, according to settled case-law, interested parties within the meaning of Article 108(2) TFEU have, in the procedure for reviewing State aid, only the opportunity to send to the Commission all information intended for the guidance of the latter with regard to its future action and they cannot themselves seek to engage in an adversarial debate with the Commission in the same way as is offered to that Member State. Interested parties within the meaning of Article 108(2) TFEU include not only the recipients of the aid or, as the case may be, their competitors, but also territorial infra-State bodies which granted the aid, such as the RAS in the present case (see, to that effect, judgments of 15 November 2011, *Commission and Spain* v *Government of Gibraltar and United Kingdom*, C-106/09 P and C-107/09 P, EU:C:2011:732, paragraph 181 and the case-law cited, and of 12 May 2011, *Région Nord-Pas-de-Calais and Communauté d'Agglomération du Douaisis* v *Commission*, T-267/08 and T-279/08, EU:T:2011:209, paragraph 87 and the case-law cited). Consequently, in the present case, the fact that no adversarial debate took place between the RAS and the Commission during the formal investigation procedure concerning the question whether Saremar had to be classified as a firm in difficulty cannot constitute infringement of the applicant's rights of defence. In any event, as correctly observed by the Commission, the decision to open the formal investigation procedure, set out in recitals 260 and 261, referred expressly to the hypothesis that Saremar was a firm in difficulty, whilst adding that the

Commission did not at that point in time have any indications to that effect. Therefore, it was not for the RAS, during that procedure, to make use of the possibility offered to it to submit observations and information on that question if it deemed it necessary to do so.

87 Accordingly, the second part of the sixth plea must be rejected, as must the sixth plea in its entirety.

The second plea: infringement of Article 107(1) TFEU and of Article 106(2) TFEU, and manifest errors of assessment committed by the Commission in the application of the *Altmark* conditions

88 The second plea concerns the Commission's application of the first three *Altmark* conditions in paragraphs 167 to 224 of the contested decision. This plea comprises five parts. The first three parts relate to the first *Altmark* condition, whilst the fourth and fifth parts concern the second and third of those conditions respectively. The RAS considers, in essence, that the manifest errors of assessment made by the Commission in the application of those conditions constitute infringement of Article 107(1) TFEU and Article 106(2) TFEU.

89 As a preliminary point, it should be noted that it is for the Court to examine the merits of the RAS's arguments put forward in support of the different parts of the second plea solely in the light of an alleged infringement of Article 107(1) TFEU and not in the light of an alleged infringement of Article 106(2) TFEU. The sole purpose of the *Altmark* is the classification of the measure in question as State aid within the meaning of Article 107(1) TFEU for the purpose of establishing the existence of an obligation to notify the measure to the Commission in the case of new aid or to cooperate with the Commission in the case of existing aid (see, to that effect and by analogy, judgment of 1 July 2010, *M6 and TF1* v *Commission*, T-568/08 and T-573/08, EU:T:2010:272, paragraphs 128 and 129 and the case-law cited). However, those conditions do not relate to the determination of the compatibility of that aid in the light of Article 106(2) TFEU, which determination implies, by definition, that the measure was classified beforehand as State aid. Consequently, in so far as it alleges infringement of Article 106(2) TFEU, this plea is ineffective.

90 It should also be borne in mind that, according to settled case-law, classification as State aid requires that all the conditions set out in Article 107(1) TFEU be fulfilled. First, there must be an intervention by the State or through State resources; second, the intervention must be liable to affect trade between Member States; third, it must confer an advantage on the recipient; fourth, it must distort or threaten to distort competition (see judgment of 22 October 2015, *EasyPay and Finance Engineering*, C-185/14, EU:C:2015:716, paragraph 35 and the case-law cited).

91 Thus, for the purpose of classification as State aid, Article 107(1) TFEU presupposes in particular that there is an advantage conferred on an undertaking. As the Court Justice held in paragraph 87 of the judgment of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg* (C-280/00, EU:C:2003:415), where a State measure must be regarded as compensation for the services provided by the recipient undertakings in order to discharge public service obligations, so that those undertakings do not enjoy a real financial advantage and the measure thus does not have the effect of putting them in a more favourable competitive position than the undertakings competing with them, such a measure is not caught by Article 107(1) TFEU (judgments of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg*, C-280/00, EU:C:2003:415, paragraph 87, and of 22 October 2015, *EasyPay and Finance Engineering*, C-185/14, EU:C:2015:716, paragraph 45).

92 However, for such compensation to escape classification as State aid in a particular case, a number of conditions must be satisfied. First, the recipient undertaking must actually have public service obligations to discharge, and the obligations must be clearly defined. Second, the parameters on the basis of which the compensation is calculated must be established in advance in an objective and transparent manner, to avoid it conferring an economic advantage which may favour the recipient undertaking over competing undertakings. Third, the compensation cannot exceed what is necessary

to cover all or part of the costs incurred in the discharge of the public service obligations, taking into account the relevant revenues and a reasonable profit for discharging those obligations. Fourth, where the undertaking which is to discharge public service obligations is not chosen pursuant to a public procurement procedure, the level of compensation needed must be determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately equipped so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant revenues and a reasonable profit for discharging the obligations (judgments of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg*, C-280/00, EU:C:2003:415, paragraphs 88 to 93, and of 11 March 2009, *TF1* v *Commission*, T-354/05, EU:T:2009:66, paragraph 128).

93 Consequently, a State measure which does not comply with one or more of the *Altmark* conditions must be regarded as State aid within the meaning of Article 107(1) TFEU, provided that the other conditions required for classification as aid referred in that article are fulfilled (see, to that effect, judgments of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg*, C-280/00, EU:C:2003:415, paragraph 94, and of 11 March 2009, *TF1* v *Commission*, T-354/05, EU:T:2009:66, paragraph 129).

94 It follows from the foregoing that the *Altmark* conditions, which must be met in order for a State measure in the form of public service compensation to avoid being classified as State aid, are cumulative. Those conditions are, moreover, distinct from one another, with each pursuing its own objective (judgment of 18 February 2016, *Germany* v *Commission*, C-446/14 P, not published, EU:C:2016:97, paragraph 31). Thus, in its review of State aid, the Commission is not required to examine all of those conditions if it finds that one or more of them is or are not met (see, to that effect, judgment of 11 March 2009, *TF1* v *Commission*, T-354/05, EU:T:2009:66, paragraphs 142, 143 and 146). Similarly, should the Commission make an error in finding that one of those conditions is not met, that cannot lead to annulment of the contested decision if the Commission otherwise makes a similar, correct finding concerning one of the other conditions. The latter finding is in itself sufficient to establish that the disputed measure grants an economic advantage entailing classification of that measure as State aid (see, to that effect, judgment of 26 November 2015, *Abertis Telecom and Retevisión I* v *Commission*, T-541/13, not published, appeal pending, EU:T:2015:898, paragraphs 64 and 112).

95 In those circumstances, it seems appropriate, in the present case, to examine together the different parts of the present plea. Each of those parts relates to one of the *Altmark* conditions and, consequently, none of them is capable by itself of leading to annulment of the contested decision.

96 Moreover, as is apparent from paragraph 173 of the contested decision, the Commission considered that, for reasons of clarity, it was more appropriate to begin its examination of compliance with the *Altmark* conditions with the disputed compensation measure, by analysing it in the light of the second of those conditions. In paragraph 179 of that decision, it concluded that analysis by finding that that condition was not fulfilled and that, consequently, the public service compensation granted an advantage to Saremar within the meaning of Article 107(1) TFEU. It was only once that analysis had been completed that the Commission examined in turn the first (paragraphs 180 to 219 of the contested decision) and third *Altmark* conditions (paragraphs 220 to 223 of the contested decision). Thus, it is appropriate to examine, firstly, the RAS's arguments relating to errors of law and of assessment made by the Commission in the application of the second *Altmark* condition, which are set out in support of the fourth part of the present plea.

97 The RAS submits, in essence, that the second *Altmark* condition does not require that decisions conferring a mandate for public service be directed explicitly at the compensation measure at issue. Thus, it is sufficient, as in the present case, that all organisational and operational criteria of the public service be defined beforehand in a transparent and objective manner enabling all associated costs and revenues to be identified. In the present case, the introduction of separate accounting for

Saremar's operation of the routes to and from the mainland avoided there being any overcompensation and cross-financing. The RAS considers that the possibility of operating losses cannot be ruled out, as it required Saremar to fulfil its public service task in any event. Lastly, in the RAS's submission, Commission Decision 2009/611/EC of 8 July 2008 concerning the measures C 58/02 (ex N 118/02) which France has implemented in favour of the Société Nationale Maritime Corse-Méditerranée (SNCM) (OJ 2009 L 225, p. 180) ('the SNCM Decision') confirms that the Commission has the option of approving public service compensation paid a posteriori.

98 In its statement in defence, the Commission reiterates, in essence, the considerations set out by it in paragraphs 174 to 177 of the contested decision that led it to conclude that the second *Altmark* condition was not fulfilled in the present case. It further maintains that the SNCM Decision is not relevant. In its intervention, CIN in essence endorses that line of argument.

99 As a preliminary point, it should be borne in mind that, in order to conclude, in paragraph 179 of the contested decision, that the second *Altmark* condition was not fulfilled in the present case, the Commission found, in paragraphs 174 to 177 of that decision, that the parameters for calculating the disputed compensation measure could not be considered as having been established beforehand in an objective and transparent manner. It observed that, in the decisions determining Saremar's public service task, compensation was not provided for in any way and was even excluded. Thus, according to the contested decision, the abovementioned decisions of the RAS were based on the postulate that that public service task had to be carried out by Saremar, or profitably, at least maintaining budgetary balance and it was only subsequently, once the losses arising from that task had emerged, that a mechanism for compensation had been implemented (paragraphs 174 to 177 of the contested decision). It added that, as it would explain subsequently, under the application of the first *Altmark* condition, the obligations relating to fare levels had not been clearly defined, as the parameters for calculating the compensation, which were necessarily linked to those fare levels, could themselves not have been established beforehand in an objective and transparent manner (paragraph 178 of the contested decision).

100 As observed in paragraph 92 above, the second *Altmark* condition relates to the need to establish beforehand, in an objective and transparent manner, the parameters on the basis of which the compensation is calculated, in order to prevent that compensation from conferring an economic advantage favouring the recipient undertaking over competing undertakings.

101 As the Court of Justice has observed on a number of occasions, Member States enjoy a broad discretion not only for defining what they regard as services of general economic interest, to which the first *Altmark* condition relates, but also for determining the compensation for the costs of providing that public service. Thus, in the absence of EU rules on services of general economic interest (SGEI), the Commission is not entitled to rule on the scope of the public service tasks assigned to the public operator, in particular the level of costs linked to that service, or the expediency of the political choices made in that regard by the national authorities, or on the economic efficiency of the public operator (see, to that effect, judgment of 16 July 2014, *Zweckverband Tierkörperbeseitigung* v *Commission*, T-309/12, not published, EU:T:2014:676, paragraphs 104 and 148 and the case-law cited).

102 It is, moreover, precisely because the determination of the compensation is subject to only restricted control by the EU institutions that the second *Altmark* condition requires that those institutions must be in a position to verify the existence of previously defined objective and transparent parameters, which must be defined in such a way as to preclude any abusive recourse to the concept of an SGEI on the part of the Member State having the effect of conferring on the public operator an economic advantage in the form of compensation (see, to that effect, judgment of 16 July 2014, *Zweckverband Tierkörperbeseitigung* v *Commission*, T-309/12, not published, EU:T:2014:676, paragraph 148 and the case-law cited).

103 Thus, that condition leaves the Member States free to choose how to comply with it in practical terms, provided that the rules for determining the parameters for calculating the compensation remain objective and transparent. The Commission's assessment for that purpose must be based on an analysis of the actual legal and economic considerations which governed the setting of the amount of the compensation (see, to that effect, judgment of 7 November 2012, *CBI* v *Commission*, T-137/10, EU:T:2012:584, paragraph 192 and the case-law cited).

104 In the present case, it is clear that the Commission's analysis in paragraphs 174 to 177 of the contested decision, in which it focuses in particular on the absence of any prior determination of compensation, contains no error.

105 It is apparent from the material in the case file that none of the regional decisions referred to in paragraphs 6 to 9 above, by which the RAS mandated Saremar to operate routes to and from the mainland and specified the associated public service obligations, makes any express or even implicit provision for the payment of public service compensation corresponding to the costs incurred in fulfilling the aforementioned obligations. On the contrary, as the Commission emphasised in paragraphs 174 to 177 of the contested decision, all those decisions provided Saremar with guidance for determining routes and fares to implement and adapting those fares with a view to reconciling transport demand with the objective of economic and financial balance. Thus, those decisions were based on the postulate that the performance of the aforementioned public service obligations had to be done in accordance with market conditions and thus in a manner that safeguarded the activity's viability without recourse to public service compensation paid by the RAS. Moreover, as observed by the Commission in paragraph 177 of the contested decision, the Regional Decision No 48/65 expressly endorses the obligation to maintain the economic balance of the routes to and from the mainland, referring to the objective of avoiding payments of incompatible State aid.

106 In those circumstances, the Commission was correct in finding that the requirement of prior determination of objective and transparent parameters for calculating the public service compensation could not be held to be fulfilled in the present case. It could not be, if the RAS had not adopted provisions providing for the grant of such compensation and as part of the organisational arrangements for the public service in question, as described in paragraph 105 above, which rules out, at least in principle, the possibility of that compensation. As observed in paragraph 103 above, under the second *Altmark* condition, the case-law allows the national authorities broad discretion in determining the methods for calculating the public service compensation in question. However, as part of that determination, that discretion does not release the national authorities from having to provide beforehand for public service compensation. Thus, the prior determination of the methods for calculating that compensation is necessary in order for the second *Altmark* condition to be fulfilled and presupposes, by definition, that it was also decided beforehand to grant such compensation.

107 Moreover, as observed in essence by the Commission in the rejoinder, the national authorities are free, if they see fit, to provide for a public service task, the financial balance of which is ensured through operating revenues, without recourse to public service compensation. The imposition of public service obligations generally implies, in return, the grant of compensation to the operator concerned. However, in the absence of EU rules governing SGEI, EU law does not preclude there being no provision made for such public service compensation. In the present case, as observed correctly by the Commission in paragraph 174 of the contested decision, the discretion the RAS granted to Saremar in the regional decisions referred to in paragraphs 6 to 9 above to adjust its fares was aimed precisely at allowing Saremar to maintain financial and economic balance in its activities under market conditions, without recourse to public financing.

108 That being so, in that framework, which excluded financing Saremar's tasks using public resources, the disputed compensation measure, which was granted subsequently in the light of the operating losses arising from that activity, cannot be considered public service compensation within the meaning of the judgment of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg* (C-280/00,

EU:C:2003:415). Since no provision was made for such compensation beforehand, it could not be calculated, as required by the second *Altmark* condition, on the basis of objective and transparent parameters, themselves defined beforehand. Thus, as observed by the Commission in paragraph 176 of the contested decision, it was only within the framework of the 2012 Regional Law No 15 that the RAS took the decision to pay Saremar a subsidy of EUR 10 million to 'cover potential losses' arising from Saremar providing routes to and from the mainland. Nor does that regional law say anything as to which parameters served as the basis for the calculation of the amount of that subsidy.

109 It follows from the foregoing that, solely on the basis of paragraphs 174 to 177 of the contested decision, the Commission could find, correctly, that the second *Altmark* condition was not fulfilled in the present case.

110 The RAS's arguments put forward under the fourth part of the second plea do not cast doubt on that conclusion.

111 Firstly, the RAS's argument, to the effect that the absence of explicit reference to public service compensation in the regional decisions conferring a public service mandate on Saremar is not contrary to the second *Altmark* condition, is completely unfounded.

112 In that regard, firstly, neither the 2011 SGEI Framework nor the Communication from the Commission on the application of the European Union State aid rules to compensation granted for the provision of services of general economic interest (OJ 2012 C 8, p. 4), relied on by the RAS, support that argument. As the applicant itself states, those communications indicate merely that the Commission considers that the competent national authorities are not required to determine beforehand the exact amount of compensation or a given formula for calculating that amount. However, nor do those communications indicate that the Commission considered that those same authorities could, like the RAS, refrain from making provision beforehand for payment of compensation. In that regard, as indicated in paragraph 106 above, by definition, the broad discretion national authorities have to determine the parameters for calculating public service compensation does not release those authorities from having to provide beforehand for such compensation.

113 Secondly, nor can the SNCM Decision be relied on in support of that argument. As correctly observed by the Commission, it is settled case-law that it is solely under Article 107(1) TFEU, as interpreted in the judgment of 24 July 2003, *Altmark Trans and Regierungspräsidium Magdeburg*, (C-280/00, EU:C:2003:415), that the lawfulness of a decision classifying public service compensation as State aid must be assessed and not in the light of the Commission's earlier decision-making practice, assuming that it is established (see, to that effect and by analogy, judgment of 15 June 2005, *Regione autonoma della Sardegna* v *Commission*, T-171/02, EU:T:2005:219, paragraph 177 and the case-law cited). Secondly and in any event, as observed by the Commission in the rejoinder, the SNCM Decision does not support the applicant's argument. Thus, contrary to the applicant's assertions in the reply, it follows from paragraph 253 of that decision that, unlike the disputed compensation measure, the public service compensation granted to SNCM had been provided for beforehand in the agreement conferring the public service mandate concluded between the French authorities and SNCM. Moreover, in that same SNCM decision, the Commission found that that compensation constituted State aid in the light of the *Altmark* conditions

114 In the second place, the fact that all the criteria necessary for identifying and calculating exactly the costs and revenues associated with the public service in question are defined in the RAS decisions conferring a mandate on Saremar, and the fact that Regional Decision No 20/57 instituted a separate accounting system in relation to that public service, do not establish that there was an error of law or manifest error of assessment made by the Commission in the application of the second *Altmark* condition.

115 Firstly, the postulate on which the first of the arguments referred to in paragraph 114 above is based is incorrect. As acknowledged by the RAS itself in the application, all the criteria necessary for identifying and calculating the costs and revenues relating to the public service in question had not been defined beforehand, as the regional decisions conferring a mandate on Saremar did not take account of the volume of traffic foreseeable on the routes to and from the mainland that it had to operate. Clearly that is a variable that would play an essential role in whether or not economic balance could be achieved in the activity in question and therefore in the calculation of any compensation necessary for that balance. Thus, the RAS recognises, implicitly but necessarily, that an essential factor in fixing objective factors for calculating the amount of compensation had not been taken into account in the abovementioned regional decisions.

116 Secondly, the fact that those regional decisions facilitated the identification of the accounting factors necessary for calculating the amount of potential compensation is not decisive in the present case. Even if it were established, it does not make up for the lack of provision for the grant of public service compensation in those decisions or, consequently, the lack of objective and transparent parameters for the calculation of that compensation. It should be noted in particular that, in those regional decisions, there is nothing indicating that the accounting factors put forward by the RAS had to be used for the determination of the calculation of the amount of public service compensation which, as noted in paragraph 106 above, was in principle ruled out.

117 Moreover, as argued by the Commission, it follows from the very wording of Regional Decision No 20/57 that the separate accounting system established by that decision was aimed at guaranteeing economic and financial balance of the public service in question under market conditions. In particular, as the RAS itself indicates in its application, that separate accounting system was aimed inter alia at avoiding the charges associated with that public service from being compensated for by the revenues associated with the routes to and from the small Sardinian islands and Corsica provided by Saremar under a public service agreement and comprised, in particular, the public service compensation paid under that agreement.

118 Lastly, the RAS cannot rely on the fact that the prior identification of the relevant accounting factors in the regional decisions conferring the public service mandate and the introduction of a separate accounting system enabled overcompensation to be avoided.

119 As observed in paragraph 92 above, the requirement that there be no overcompensation is relevant in the examination of the third *Altmark* condition but not in the examination of the second condition, which must be restricted to verifying that there was a prior determination of objective and transparent parameters for calculating and setting the amount of that compensation. Although those conditions are somewhat interdependent, the fact remains that, as indicated in paragraph 94 above, those conditions must all be fulfilled distinctly in order for the disputed compensation measure not to be classified as aid.

120 In that regard, the applicant's reference to paragraph 210 of the judgment of 12 February 2008, *BUPA and Others* v *Commission* (T-289/03, EU:T:2008:29) is in vain. In that paragraph, the Court found that, in the decision at issue in those proceedings, the Commission had verified that there was overcompensation in that case, which was relevant in the examination of the third *Altmark* condition. The Court therefore inferred therefrom, in essence, that it had, implicitly but necessarily, verified beforehand that there were objective and transparent parameters for calculating the amount of the public service compensation in question, which came under the second *Altmark* condition. In paragraph 211 of the same judgment, the Court concluded that it was for it to ascertain whether the Commission had been correct in finding that the second condition was fulfilled. Thus, far from supporting the applicant's argument, paragraph 210 of that judgment, placed in context, confirms the need to verify that objective and transparent parameters have been determined beforehand with a

view to setting the amount of the disputed compensation measure, irrespective of whether there is no overcompensation (judgment of 12 February 2008, *BUPA and Others* v *Commission*, T-289/03, EU:T:2008:29, paragraphs 210 and 211).

121 Thirdly and lastly, it should be noted that, contrary to the RAS's assertions, Saremar's obligation to carry out, whatever the circumstances, the public service task with which it was entrusted in the present case, with a view to guaranteeing territorial continuity, including when there are operating losses, does not show that the second *Altmark* condition was fulfilled. On the contrary, the existence of such an obligation suggests precisely that, contrary to what follows from the regional decisions referred to in paragraphs 6 to 9 above, the RAS could not rule out the possibility of having recourse to public service compensation and that, consequently, in those regional decisions, it ought to have made provision for the grant of compensation and for objective and transparent parameters for determining the amount thereof.

122 It follows from all the foregoing that the Commission was correct in finding, on the basis of the considerations set out in paragraphs 174 to 177 of the contested decision, that the disputed compensation measure did not fulfil the second *Altmark* condition. The fact relied on by the RAS that, in paragraph 178 of that decision, the Commission based itself on incorrect considerations relating to Saremar's discretion in determining and adjusting its fares, set out in the examination of the first *Altmark* condition, has no bearing on this point. Since, as stated above, the considerations set out in paragraphs 174 to 177 of that decision were sufficient for a finding that the second *Altmark* condition was not fulfilled, those set out in paragraph 178 are necessarily superfluous. The RAS's complaint relating to the latter paragraph is, therefore, ineffective. An incorrect ground need not lead to annulment of the measure thereby vitiated if it is superfluous and there are other grounds which provide a basis for it (see judgment of 20 September 2012, *France* v *Commission*, T-154/10, EU:T:2012:452, paragraph 99 and the case-law cited). The fourth part of the second plea must therefore be rejected.

123 Given the rejection of the fourth part of this plea for the reasons set out in paragraphs 100 to 122 above, the other parts of the second plea are ineffective.

124 Firstly, as stated in paragraph 94 above, given that the *Altmark* conditions are cumulative and independent of one another, the Commission is not required to examine all of those conditions if it finds that one of them is not fulfilled and that, consequently, the disputed measure must be classified as State aid. Secondly, where the Commission was correct in making such a finding, any potentially incorrect assessments it may have made in relation to one or more of the other *Altmark* conditions will not, in principle, lead to annulment of the contested decision.

125 In the present case, although the Commission, in the contested decision, examined the disputed compensation measure in the light of the first three *Altmark* conditions, it nevertheless considered, as observed in paragraph 96 above, that it was appropriate to determine whether the disputed compensation measure had to be classified as State aid by beginning with verifying whether the second of those conditions was fulfilled, whilst examining the first and third of those conditions only at a later stage of its analysis. Moreover, in paragraph 179 of the contested decision, the Commission, after concluding that the second condition could not be held to have been fulfilled, inferred therefrom that the compensation conferred an advantage on Saremar within the meaning of Article 107 TFEU. Thus, in the contested decision, it necessarily found that the examination of the second condition was sufficient for a finding that the disputed compensation measure conferred an economic advantage on Saremar.

126 Admittedly, the possibility cannot be ruled out that, in certain cases, given a certain degree of interdependence of the *Altmark* conditions, the merits of the Commission's findings about one of those conditions may depend on the merits of the assessments made in relation to another of those conditions.

127 However, firstly, as held in paragraph 122 above, in the present case, the Commission's finding that the second *Altmark* condition was not fulfilled could be based solely on the reasons set out in paragraphs 174 to 177 of the contested decision.

128 Secondly, those reasons do not depend in any way on the Commission's assessments made in the examination of the first or third *Altmark* condition.

129 First of all, in the application of the first *Altmark* condition, the Commission considered, in essence, in paragraphs 181 to 210 of the contested decision, that the public service obligations imposed on Saremar were not necessary, in particular because they were not liable to guarantee economic accessibility of fares on the routes between Sardinia and the mainland. It is clear that those considerations are entirely unrelated to those set out in paragraphs 174 to 177 of the same decision which, as indicated in paragraph 99 above, are based on the finding that the decisions of the RAS determining Saremar's public service obligations made no provision for the grant of public service compensation.

130 Next, continuing under the application of the first *Altmark* condition, the Commission considered, in paragraphs 211 to 219 of the contested decision, that Saremar's public service obligations were not defined sufficiently clearly in terms of the level of fares to apply. In that regard, in paragraph 178 of that decision, it referred to that assessment in order to conclude that the parameters for calculating the amount of compensation could not have been determined beforehand in a transparent and objective manner, given the link in the present case between the determination of those parameters and the definition of the level of those fares. However, as observed in paragraph 122 above, in the application of the second *Altmark* condition, paragraph 178 of that decision is superfluous in the light of the considerations set out in paragraphs 174 to 177 thereof.

131 Lastly, in paragraphs 220 to 222 of the contested decision, the Commission based itself solely on its assessments that there was no public service need and the insufficiently clear definition of the public service obligations, conducted in relation to the application of the first *Altmark* condition, before going on to conclude that, consequently, the third *Altmark* condition, relating to there being no overcompensation, could not be held to be fulfilled.

132 Accordingly, even if the Commission was incorrect in finding that the first and third *Altmark* condition were not fulfilled, as the RAS maintains in essence that it was in the first, second, third and fifth parts of the present plea, those errors do not cast doubt on the Commission's conclusion at the end of its analysis of the second of those conditions, to the effect that the disputed compensation measure conferred an economic advantage on Saremar. Accordingly, those parts of the present plea must be held to be ineffective, with the result that, without its being necessary to order the measures of inquiry requested by the RAS under the first and second of those parts, this plea must be rejected in its entirety.

The third plea: errors of law and manifest errors of assessment relating to the application of the 2005 SGEI Decision and of the 2011 SGEI Decision

133 Under the third plea, the RAS submits, in essence, that the Commission's examination of the compatibility of the disputed compensation measure with the internal market in the light of the 2011 SGEI Decision, conducted in paragraphs 249 to 260 of the contested decision, is vitiated by errors of laws and manifest errors of assessment. This plea comprises three parts.

134 As a preliminary point, it should be borne in mind that public service compensation not fulfilling the *Altmark* conditions but otherwise meeting the conditions laid down in Article 107(1) TFEU to be classified as State aid may nevertheless be declared compatible with the internal market, in particular under Article 106(2) TFEU (see judgment of 7 November 2012, *CBI* v *Commission*, T-137/10, EU:T:2012:584, paragraph 81 and the case-law cited).

135 It should also be borne in mind that, under Article 106(2) TFEU, the undertakings entrusted with the operation of SGEI are to be subject to the rules on competition in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them, subject to the proviso, however, that the development of trade must not be affected to such an extent as would be contrary to the interests of the Union (see judgment of 1 July 2010, *M6 and TF1* v *Commission*, T-568/08 and T-573/08, EU:T:2010:272, paragraph 136 and the case-law cited).

136 As observed in paragraph 101 above, according to case-law applicable both in the context of the implementation of the *Altmark* conditions and in the context of the implementation of Article 106(2) TFEU, the Commission, where there are no relevant harmonised Union rules, has no authority to rule on the scope of the public service tasks assigned to the public operator, in particular the level of costs associated with the service, the appropriateness of political choices taken in that regard by the national authorities, or the public operator's economic efficiency.

137 However, as observed above in paragraphs 102 and 103, the broad discretion those national authorities are recognised as having is not unlimited. In particular, in the application of Article 106(2) TFEU, that broad discretion must not prevent the Commission from verifying that the derogation from the prohibition on State aid provided for therein may be granted.

138 It should also be noted that the Commission's discretion in the application of Article 106(2) TFEU to determine the compatibility of a State measure it has classified as State aid with the internal market involves complex assessments of an economic and social nature. Thus, the Court, in reviewing whether that discretion was lawfully exercised, cannot substitute its own assessment in the matter for that of the Commission (see, to that effect and by analogy, judgment of 5 March 2015, *Banco Privado Português and Massa Insolvente do Banco Privado Português*, C-667/13, EU:C:2015:151, paragraph 67 and the case-law cited).

139 Lastly, in the application of Article 106(2) TFEU, the discretion of the Member States and the Commission may be limited by the directives and decisions that the Commission is competent to adopt on the basis of Article 106(3) TFEU. Thus, the Commission adopted successively the 2005 SGEI Decision and the 2011 SGEI Decision with a view to defining the conditions in which public service compensation may be held to comply with Article 106(2) TFEU and may, consequently, be exempt from the obligation of notification new aid provided for in Article 108(3) TFEU. Articles 11 and 12 of the 2011 SGEI Decision state that it repeals the 2005 SGEI Decision and enters into force on 31 January 2012.

– The first part of the third plea: error of law relating to the scope *ratione temporis* of the 2005 SGEI Decision and of the 2011 SGEI Decision

140 By the first part of the third plea, the RAS submits that the Commission was incorrect in applying the 2011 SGEI Decision when it was in fact the 2005 SGEI Decision that was applicable to the facts of the case *ratione temporis*. In that regard, it submits that all the essential elements of Saremar's public service task had been defined before the entry into force of the 2011 SGEI Decision and that the regional decisions defining Saremar's public service task involved compensation for potential losses.

141 The Commission and CIN reply, in essence, that the disputed aid was granted only in August 2012.

142 In that regard, it is settled case-law that aid must be considered to be granted at the time that the competent national authorities adopt a legally binding act by which they undertake to pay the aid in question or when the right to receive it is conferred on the beneficiary under the applicable national rules (judgment of 21 March 2013, *Magdeburger Mühlenwerke*, C-129/12, EU:C:2013:200, paragraph 40; see also judgment of 30 November 2009, *France and France Télécom* v *Commission*, T-427/04 and T-17/05, EU:T:2009:474, paragraph 320 and the case-law cited).

143 In the present case, it was observed in paragraphs 105 and 116 above that none of the regional decisions referred to in paragraphs 6 to 9 above provided for granting Saremar public service compensation corresponding to the obligations imposed on it by those decisions. Moreover, as pointed out in paragraph 108 above, it was only in the context of the 2012 Regional Law No 15 that the RAS decided to pay Saremar the disputed compensation measure. Consequently, in accordance with the case-law referred to above, it is only as from the date of adoption of that regional law, which conferred on Saremar the right to be paid that compensation, that it may be held to have been granted.

144 As observed in paragraph 139 above, under Articles 11 and 12 of the 2011 SGEI Decision, that decision repealed the 2005 SGEI Decision and entered into force on 31 January 2012. Consequently, only the 2011 SGEI Decision may apply *ratione temporis* to the disputed compensation measure, since the 2005 SGEI Decision was, in any event, no longer in force on the date on which that compensation must be held to have been granted to Saremar.

145 The RAS's arguments do not call into question the conclusion set out in paragraph 144 above. As observed in paragraph 116 above, even if all the essential elements of Saremar's public service task were defined in the regional decisions defining its public service obligations, that does not, in any event, make up for the lack of provision in those regional decisions for granting the disputed compensation measure. Moreover, even if those regional decisions did not rule out the possibility of compensation from the RAS for operating losses potentially incurred by Saremar, the fact remains that none of their provisions contained a commitment for the RAS, even implicitly, to pay that compensation, nor conferred a right on Saremar to receive it.

146 In any event, it should be noted that, after examining the disputed compensation measure in the light of the conditions of Article 4 of the 2011 SGEI Decision in paragraphs 256 and 257 of the contested decision, the Commission, in paragraph 260 of that same decision, examined, in the alternative, that measure in the light of Article 4(e) of the 2005 SGEI Decision. It concluded that the conditions set out in the latter decision, like those of the 2011 SGEI Decision, were not fulfilled in the present case. Consequently, the RAS is incorrect in arguing that the Commission examined the disputed compensation measure solely in the light of the 2011 SGEI Decision.

147 The first part of the third plea must therefore be rejected.

– The second part of the third plea: errors of law and of assessment relating to the application of the principles and conditions of the 2011 SGEI Decision

148 Under the second part, the applicant submits that the principles and conditions of the 2005 and 2011 SGEI decisions were complied with. In that regard, it refers to the arguments it put forward under the second plea regarding the first two *Altmark* conditions. It also submits that the contested decision does not call into question the fact that the thresholds set out in Article 2(1)(a) and (c) of the 2005 SGEI Decision and Article 2(1)(d) of the 2011 SGEI Decision were complied with in the present case.

149 The Commission and CIN consider that that argument must be rejected.

150 As a preliminary point, that part of the RAS's argument relating to the principles and conditions of the 2005 SGEI Decision must be rejected as ineffective since, as held in paragraph 144 above, that decision was not applicable *ratione temporis* to the disputed compensation measure.

151 As to the remainder, it should be borne in mind that, under Article 2(1)(d) of the 2011 SGEI Decision, it applies, inter alia, to air or maritime links to islands on which the average annual traffic during the two financial years preceding that in which the SGEI was assigned does not exceed 300 000 passengers.

152 It should also be borne in mind that Article 4(a) and (d) to (f) of the 2011 SGEI Decision provides that the public service mandates must indicate:

— the content and duration of the public service obligations (Article 4(a));

— the description of the compensation mechanism and the parameters for calculating, monitoring and reviewing the compensation (Article 4(d));

— the arrangements for avoiding and recovering any overcompensation (Article 4(e));

— a reference to the 2011 SGEI Decision (Article 4(f)).

153 As is apparent from the wording of Articles 1, 3 and 4 of the 2011 SGEI Decision, interpreted in the light of recital 9 thereof, the abovementioned conditions are cumulative. Thus, in order for public service compensation to be deemed compatible with the internal market and not be subject to the obligation of notification, it is necessary that the public service mandates concerned satisfy at least all of those conditions.

154 Lastly, it is worth emphasising that, although the 2011 SGEI Decision does not expressly require that the public service in question serve a general economic interest presenting specific characteristics as compared with that served by other economic activities, it is, in any event, a precondition for the application of Article 106(2) TFEU arising from, inter alia, the not unlimited discretion the national authorities have in defining what constitutes public service, as referred to in paragraph 137 above.

155 In order to find that the conditions of the 2011 SGEI Decision were not fulfilled, the Commission based itself on the following grounds. First of all, in paragraph 255 of the contested decision, it referred principally to recitals 180 to 218 thereof, in which it had found that the RAS had not established either that there was genuine need for the public service or that there were sufficiently precise public service obligations. In paragraphs 256 and 257 of the contested decision, it stated that it was in any event clear in the present case that the public service mandates in question did not fulfil the conditions set out in Article 4(d) to (f) of that decision.

156 In that regard, it must first be emphasised that the RAS cannot successfully rely on the fact that the disputed compensation measure complies with the thresholds laid down in Article 2(1)(d) of the 2011 SGEI Decision. As is clear from the wording of that article and the overall scheme of the decision, the sole purpose of that provision is to define the scope of the decision, without prejudice to compliance with the conditions otherwise defined by it, in particular those in Article 4. Consequently, the only consequence that might have arisen in the present case from the fact that the disputed compensation measure came within the scope of that decision would have been for the Commission to be obliged to verify whether it fulfilled the conditions defined therein, which it did.

157 Moreover, as the Commission found in paragraphs 256 and 257 of the contested decision and contrary to the RAS's assertions, the conditions laid down in Article 4(d) and (e) of the 2011 SGEI Decision are clearly not met in the present case.

158 First of all, as observed in paragraphs 104 to 122 above, the RAS has not succeeded in establishing under the fourth part of its second plea that the Commission committed an error of law or a manifest error of assessment in finding, in paragraphs 174 to 177 of the contested decision, that the regional decisions referred to in paragraphs 6 to 9 above did not provide for the grant of public service compensation or, consequently, the definition of objective and transparent parameters for calculating that compensation. Thus, on that basis alone it may be held that the condition laid down in Article 4(d) of the 2011 SGEI Decision is not fulfilled, which is sufficient to conclude, given that the conditions laid down in that decision are cumulative, that the disputed compensation measure could not be deemed compatible with the internal market and exempt from notification under that decision.

159 Next and in any event, given that there is no provision whatsoever in the regional decisions in question providing for the grant of compensation, the Commission could, without erring, infer logically therefrom that nor was the condition laid down in Article 4(e) of that SGEI decision fulfilled. Article 4(e) requires that detailed provision be made beforehand for how potential overcompensation is to be recovered and for means of avoiding same. In failing to make provision in the regional decisions in question for payment of public service compensation in the event of budgetary balance not being achieved, the RAS necessarily omitted to include those rules and means. Moreover, and for the same reasons as set out in paragraphs 116 and 117 above, the absence of such rules cannot be remedied by the presence in those same regional decisions of elements facilitating the identification of relevant accounting entries for determining potential compensation and a separate accounting system.

160 Accordingly, irrespective of the RAS's examination of the arguments relating to the condition laid down in Article 4(f) under the third part, it follows from the foregoing that the second part of the third plea must be rejected.

– The third part of the third plea: misapplication of Article 4(f) of the 2011 SGEI Decision and, in the alternative, plea of illegality of that provision

161 The third part alleges, in essence, error of law in that the Commission found, incorrectly, that the condition laid down in Article 4(f) of the 2011 SGEI Decision was not purely formal. In the alternative, should that condition be found not to be purely formal, the applicant raises a plea of illegality against that provision under Article 277 TFEU, on the ground that that provision gives rise to an unlawful restriction on the scope of Article 106(2) TFEU.

162 The Commission, supported by CIN, submits, in essence, that that part of the third plea is ineffective and is, in any event, manifestly unfounded.

163 In that regard, it is clear that the arguments relied on by the RAS under the present part, both by way of principal argument and as put forward in the alternative, are ineffective. As held in paragraphs 158 and 159 above, the Commission was correct in finding the RAS's decisions did not comply with the conditions laid down in Article 4(d) and (e) of the 2011 SGEI Decision. Consequently, the argument that the condition laid down in Article 4(f) of that decision is not mandatory or that it is allegedly illegal have no bearing on the matter.

164 In any event, it must be noted, firstly, that there is nothing in either the wording of Article 4(f) of the 2011 SGEI Decision or in its context or objectives to indicate that the condition laid down therein is not mandatory in nature.

165 On the contrary, in the light of recital 14 of the 2011 SGEI Decision, the obligation to refer expressly to that decision in public service mandates, laid down in Article 4(f) of that decision, pursues an objective of transparency that carries a particular importance where there is no obligation for Member States to notify public service compensation measures fulfilling the conditions of the decision in question (see, to that effect and by analogy, Opinion of Advocate General Wahl in *Dilly's*

Wellnesshotel, C-493/14, EU:C:2016:174, point 58). Moreover, the fact, relied on in the reply, that non-compliance with that condition does not prevent the disputed compensation measure from being authorised under Article 106(2) TFEU, is irrelevant. As shown by recital 260 of the contested decision, the Commission merely inferred from its examination of the disputed compensation measure in the light of the 2011 SGEI Decision that that compensation could not be deemed compliant with Article 106(2) TFEU if it did not meet the conditions of that decision and that, consequently, it could not be held to be exempt from the obligation of notification. That conclusion did not, therefore, relieve the Commission of having to conduct an examination of the compatibility of that measure in the light of that provision of the TFEU, in the light of, in particular, the 2011 SGEI Framework, which examination was, moreover, carried out in paragraphs 282 to 296 of the contested decision.

166 Secondly, for the reasons set out in paragraph 165 above, the plea of illegality of Article 4(f) of the 2011 SGEI Decision, put forward in the alternative by the RAS, is, in any event, completely unfounded. As held above, in the present case the Commission did not infer from the non-compliance with that provision of the decision that the disputed compensation measure did not comply with Article 106(2) TFEU. Consequently, it cannot be inferred from the contested decision's application of Article 4(f) of the 2011 SGEI Decision that that provision gave rise to an unlawful restriction on the scope of Article 106(2) TFEU.

167 Accordingly, the third part of the third plea must be rejected, as must therefore the third plea in its entirety.

The fourth plea: errors of law and manifest errors of assessment made by the Commission concerning the classification as a firm in difficulty, infringement of Article 106(2) TFEU and plea of illegality of paragraph 9 of the SGEI Framework

168 The fourth plea comprises two parts. By the first part of this plea, the RAS submits that the Commission was incorrect in finding that, in the present case, the conditions were met for a finding that Saremar qualified as a firm in difficulty, in particular in the light of the elements listed in paragraphs 9 to 11 of the Guidelines on aid for rescuing and restructuring. By the second part of this plea, the RAS raises a plea of illegality against paragraph 9 of the 2011 SGEI Framework, pursuant to Article 277 TFEU. It submits, in that regard, that if that paragraph were to be interpreted as meaning that a firm in difficulty can never receive public service compensation, it would be vitiated as ultra vires and would infringe Article 106(2) TFEU.

169 In its statement in defence, the Commission, supported by CIN, challenges, first of all, the relevance of the points highlighted by the RAS under the first part, in order to demonstrate that, on the date of the facts under consideration, Saremar was not a firm in difficulty. Secondly, as regards the second part of this plea, it submits that paragraph 9 of the 2011 SGEI Framework does not restrict the scope of Article 106(2) TFEU but, on the contrary, enables the objectives of that article to be safeguarded.

170 It should be noted as a preliminary point that this plea refers to paragraphs 261 to 280 of the contested decision, in which the Commission examined whether the disputed compensation measure complied with Article 107(3)(c) TFEU, which provides that aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest may be considered to be compatible with the internal market. The Commission's examination comprised two stages. Firstly, in paragraphs 262 to 270 of the contested decision, the Commission considered whether Saremar could be regarded as being a firm in difficulty on the basis of paragraphs 10 and 11 of the Guidelines on aid for rescuing and restructuring and found that it could. Secondly, in paragraphs 271 to 280 of that decision, it considered whether the disputed compensation measure fulfilled the conditions of those same guidelines, which must be met

in order for aid to a firm in difficulty to be held to be compatible aid within the meaning of Article 107(3)(c) TFEU. That examination led to a conclusion that it did not (paragraph 280 of the contested decision).

171 Under both parts of the fourth plea, the RAS does not call into question, even in the alternative, the Commission's conclusion in paragraph 280 of the contested decision that the disputed aid was incompatible. In that plea, the RAS questions only the fact that Saremar may be held to be a firm in difficulty, that is to say, implicitly but necessarily, the fact that the disputed compensation measure comes within the scope of Article 107(3)(c) TFEU. Thus, by this plea, the RAS must be considered to be challenging, in reality, the fact that the compatibility of the disputed compensation measure falls to be assessed in the light of that provision and not in the light of Article 106(2) TFEU.

172 That being so, it should be noted that, whatever the Commission's position may be on this question, it in any event explored, in paragraphs 282 to 296 of the contested decision, in the event Saremar was held not to be a firm in difficulty, whether the disputed compensation measure could be held to comply with Article 106(2) TFEU in the light of the criteria of the 2011 SGEI Framework. It went on to conclude that it could not. Consequently, even if the Commission had not examined the compatibility of that measure in the light of Article 107(3)(c) TFEU and the Guidelines on aid for rescuing and restructuring, it in any event would have found it not to be compatible under Article 106(2) TFEU. In those circumstances, the RAS has not shown what could be the immediate impact of the Commission's errors as alleged in this plea on the lawfulness of the contested decision, in consequence of which this plea must be rejected as ineffective.

173 In any event, for the reasons set out in paragraphs 174 to 203 below, the arguments put forward by the RAS in support of each of those parts of this plea cannot be upheld.

174 As regards, on the one hand, the first part of that plea, it should be noted, contrary to the RAS's submissions, that the Commission did not misapply paragraphs 9 to 11 of the Guidelines on aid for rescuing and restructuring in finding that the conditions were met in order for Saremar to be classified as a firm in difficulty.

175 Firstly, the RAS argues, to no effect, that the loss in Saremar's capital is due to a factor that is external to the management of the undertaking and unforeseeable, namely the devaluation of Saremar's claim against Tirrenia.

176 According to the wording of paragraph 10(a) of the Guidelines on aid for rescuing and restructuring, in the case of a limited liability company, an undertaking is, 'in principle and irrespective of its size' considered to be in difficulty 'where more than half of its registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months'. The RAS does not dispute that, as found by the Commission in paragraph 264 of the contested decision, Saremar had experienced, over the 12 months preceding the date on which the disputed compensation measure was adopted, a loss in capital of over 80%. Consequently, the Commission's discretion for deciding whether or not to classify Saremar as a firm in difficulty was quite curtailed in the present case.

177 According to settled case-law, the Commission cannot, by adopting rules of conduct such as the Guidelines on aid for rescuing and restructuring, waive the exercise of the discretion conferred on it to assess the compatibility of State aid (see, to that effect, judgment of 19 July 2016, *Kotnik and Others*, C-526/14, EU:C:2016:570, paragraph 41). Moreover, the expression 'in principle', employed in paragraph 10(a) of those guidelines, indicates that there may be specific cases where, exceptionally, the Commission will find that an undertaking is not in difficulty even though it has experienced a loss in capital of the magnitude referred to in that paragraph.

178 However, it was not for the Commission, in the present case, to take into account the causes of Saremar's capital losses, relied on by the RAS. As evidenced by paragraph 9 of those same guidelines, the concept of 'firm in difficulty' is an objective notion that must be assessed solely in the light of the specific indices of the financial and economic situation of the undertaking in question, showing that it is 'unable … to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to going out of business in the short or medium term'. Moreover, if the Commission had to take account of circumstances such as those relied on by the RAS in order to dismiss classification as a firm in difficulty, the effectiveness of the derogation provided for in Article 107(3)(c) TFEU could be compromised as a result. It should be noted in that regard that, as the Commission in essence indicates, the devaluation of claims in the context of bankruptcy proceedings, inter alia those held against the undertaking's former parent company, are part of the uncertainties of doing business; they are in no way exceptional and nor do they cause insurmountable difficulties to the undertaking concerned,

179 Secondly, nor is the RAS's assertion to the effect that, without the devaluation of its claims against Tirrenia, Saremar would have recorded profits of EUR 134 000, relevant. For the reasons set out in paragraph 178 above, Saremar's allegedly external management style and extraordinary claim devaluation leading to the losses experienced by it in 2010 have no bearing on the finding of whether there were losses and their amount.

180 Thirdly, the Commission did not make an error of law or a manifest error of assessment in not taking into account the RAS's assertion that, in 2012, Saremar was able to obtain a line of credit from a banking institution. That fact is not a specific circumstance that ought to have led the Commission, by way of exception to paragraph 10(a) of the Guidelines on aid for rescuing and restructuring, to dismiss classification as a firm in difficulty. In fact, as observed by the Commission, that credit was granted at a time when the RAS had indicated its intention to intervene in support of Saremar, in particular by making provision in Regional Decision No 36/6 for effecting the disputed capital increase. In any event, it should be noted that the grant of that credit is a factor highlighting both Saremar's difficulty in financing its activity through its own resources and the confidence its creditors could then have as a result. Consequently, it was difficult for the Commission to draw any unequivocal conclusions therefrom.

181 Fourthly, contrary to the RAS's assertions, the Commission, in paragraph 267 of the contested decision, did not find that Saremar had experienced lower growth, but rather continuous losses. Although it is true that in 2011 Saremar recorded net profits of EUR 2 523 439, the Commission observed that those net profits did not afford coverage of the losses recorded in 2010, which were twice that amount and that, in 2012, the year in which the aid had been granted, Saremar had also recorded losses of EUR 1.7 million which, without the payment of the disputed compensation measure, amounted to EUR 13 million. Consequently, the finding of continuous losses over the period considered is not inaccurate. It is true that paragraph 11 of the Guidelines on aid for rescuing and restructuring does not mention continuous losses among the indices enabling a finding that an undertaking is in difficulty, but only increases in loss levels. However, it follows from the wording of paragraph 11 that the list of indices it contains is merely and purely indicative. Accordingly, the Commission did not make an error of law or a manifest error of assessment when it retained the presence of continuous losses as an indicator leading to a classification of Saremar as a firm in difficulty. For the same reasons, and contrary to the RAS's submissions, the absence in the case before it of some of the other indices listed in paragraph 11 does not make out proof of a manifest error of assessment. In any event, it follows from paragraphs 175 to 180 above that the Commission considered — without erring in law — that Saremar fulfilled the condition defined in paragraph 10(a) of those same guidelines to be classified as a firm in difficulty and that that finding alone was sufficient for it to be classified as such. Consequently, in so far as the aforementioned arguments are directed at the Commission's application of those guidelines, they are ineffective.

182 Fifthly and lastly, contrary to the RAS's assertions, the Commission's finding, in paragraphs 266 to 268 of the contested decision, that without the RAS's financial intervention Saremar's financial difficulties would have been greater and called into question whether it should continue pursuing its activities, does not equate with classifying as a firm in difficulty any undertaking experiencing losses associated with its public service obligations.

183 First of all, it follows from paragraphs 264 and 266 of the contested decision that the amount of the losses suffered by Saremar that would have occurred without the payment of the disputed compensation is merely a confirmation of Saremar's difficulties as found by the Commission on the basis of other indices. In particular, paragraph 264 of that decision indicates that it was Saremar's capital losses over the 12 months preceding the adoption of the disputed compensation measure that was, in the Commission's opinion, a decisive factor and sufficient on its own to classify Saremar as a firm in difficulty. As the RAS itself observes, those capital losses were not due to operating losses incurred by Saremar in carrying out the public service tasks with which it was entrusted at the time, but rather the devaluation of its claims against Tirrenia. The Commission also noted the continuous nature of Saremar's losses since 2010 as a further indication of its difficult situation.

184 Furthermore, as indicated in paragraph 178 above, the concept of firm in difficulty, as defined in paragraph 9 of the Guidelines on aid for rescuing and restructuring, is an objective notion that must be assessed solely in the light of the specific indices of the financial and economic situation of the undertaking in question. Consequently, the underlying reason for the undertaking's losses, in particular those associated with the performance of public service obligations, is not a decisive factor for determining whether or not the undertaking is in difficulty.

185 The RAS's argument is based on the incorrect postulate that Saremar's situation on the date of adoption of the disputed compensation measure may be compared to that of an undertaking whose losses originate from the failure to pay public service compensation granted beforehand as part of the defined terms of the corresponding public service task. Yet in the present case, as indicated in paragraphs 105 to 108 above, the terms of Saremar's public service tasks excluded payment of public service compensation and fixed as an objective for Saremar the maintenance of budgetary balance on the basis operating revenues alone. Thus, it was only on 7 August 2012, after recording Saremar's losses caused by its cabotage operations to and from the mainland, that the RAS adopted the disputed compensation measure as part of a regional law. It should also be noted that, as evidenced by paragraph 103 of the contested decision, during the formal investigation procedure the RAS had justified the decision to compensate in part Saremar's operating losses and to interrupt those operations on the ground that those measures were crucial for limiting the economic risks associated with the operations in question. In those circumstances, the Commission made no error of law nor any manifest error of assessment in finding that the necessity of the disputed compensation measure partly to offset Saremar's operating losses could be retained as an indication serving to classify Saremar as a firm in difficulty.

186 Consequently, it cannot be inferred from paragraphs 264 and 266 of the contested decision that, in all cases where the Commission finds that an undertaking has incurred losses due to its public service obligations, it necessarily classifies it as a firm in difficulty.

187 It follows from the foregoing that the first part of the fourth plea must in any event be dismissed as unfounded.

188 Regarding, on the other hand, the second part of the fourth plea, it should be noted, in any event, that paragraph 9 of the 2011 SGEI Framework cannot be regarded as placing an unlawful restriction on the scope of Article 106(2) TFEU.

189 In that regard, it should be borne in mind that, in paragraph 9 of the 2011 SGEI Framework, the Commission indicates that the assessment of the aid to SGEI providers in difficulty is governed by the Guidelines on aid for rescuing and restructuring.

190 In paragraph 269 of the contested decision, the Commission applied paragraph 9 of the 2011 SGEI Framework by stating as follows:

'According to paragraph 9 of the 2011 SGEI Framework, public service compensation granted to firms in difficulty must be assessed in the light of the Guidelines on aid for rescuing and restructuring. Given that the conditions laid down the 2011 SGEI Decision are not fulfilled, the compensation received by Saremar [to remedy the difficulties] relating to the two routes in question must be assessed in the light of [those guidelines], with a view to determining whether it may be declared compatible with the internal market under Article 107(3) TFEU.'

191 As a preliminary point, the conclusion is that, as observed moreover by the Commission in the rejoinder, the RAS itself restricted the scope of its plea of illegality. As stated by it in the reply, paragraph 9 of the 2011 SGEI Framework should, in its view, be regarded as illegal inasmuch as it does not afford an Article 106(2) TFEU assessment of compensation covering the losses of a firm in difficulty resulting from a difference between the costs borne to perform a public service and the subsidies received in connection therewith. By contrast, the RAS does not consider that paragraph illegal inasmuch as it should be interpreted as meaning that compensation granted to compensate for the losses of a firm in difficulty occasioned by activities other than those forming part of the public service tasks does not come within the scope of Article 106(2) TFEU.

192 That being so, whichever interpretation of paragraph 9 of the 2011 SGEI Framework is upheld, the plea of illegality put forward by the RAS is unfounded.

193 As observed in paragraph 137 above, the discretion the Member States have in defining a public service task and the conditions under which it is carried out cannot be used to allow the national authorities to misuse the concept of SGEI solely in order to enable undertakings to benefit from the derogation laid down in Article 106(2) TFEU.

194 In that regard, it is settled case-law that, in order for the conditions for the application of Article 106(2) TFEU to be fulfilled, it is sufficient that, in the absence of the rights or subsidies at issue, it would not be possible for the undertaking to perform the particular tasks entrusted to it or that the maintenance of those rights or subsidies is necessary to enable the holder of them to perform tasks of general economic interest which have been assigned to it under economically acceptable conditions (see judgment of 1 July 2010, *M6 and TF1* v *Commission*, T-568/08 and T-573/08, EU:T:2010:272, paragraph 138 and the case-law cited). Consequently, in order for the derogation provided for in that provision to be applicable, it is necessary that the economic and financial situation of the recipient undertaking of those rights or subsidies at the time they are granted to it actually place it in a position where it can perform the public service tasks entrusted to it. Otherwise the derogation provided for by Article 106(2) TFEU could be rendered ineffective and therefore without justification, which would make Member States' misuse of the concept of SGEI unavoidable.

195 As correctly pointed out by the Commission, referring to paragraphs 68 to 71 of the Guidelines on aid for rescuing and restructuring, a firm in difficulty within the meaning of those guidelines is threatened imminently at the level of its very existence, so that it cannot be considered capable of performing in an appropriate manner the public service tasks entrusted to it as long as its viability is not ensured. In those circumstances, the subsidy granted to such a firm in difficulty in order to compensate for the losses resulting from the performance of those public service tasks cannot come within the derogation laid down in Article 106(2) TFEU but only, where applicable, the one laid down in Article 107(3)(c) TFEU.

196 Under the conditions of application of Article 106(2) TFEU, which requires inter alia that the compensation be strictly proportional to the public service obligations, that compensation does not guarantee accomplishment of the corresponding tasks, due to the difficulties encountered by the undertaking. It may, however, be able to help the undertaking concerned to return to viability, provided that the conditions of application of Article 107(3)(c) TFEU, as explained in the Guidelines on aid for rescuing and restructuring, are fulfilled. Thus, the derogation from the rule prohibiting State aid laid down in that Treaty provision retains its effectiveness and, consequently, its justification.

197 Accordingly, in stating in paragraph 9 of the 2011 SGEI Framework that the assessment of aid to SGEI providers in difficulty is governed by the Guidelines on aid for rescuing and restructuring, the Commission did not place an unlawful restriction on the scope of Article 106(2) TFEU. Consequently, nor did the Commission exceed its powers.

198 The arguments put forward by the RAS in support of its plea of illegality do not call this conclusion into question.

199 First of all, the fact that the statement in paragraph 9 of the 2011 SGEI Framework is not found in the provisions of the 2011 SGEI Decision does not establish incoherence in the legal framework defined by the Commission for the application of Article 106(2) TFEU or discriminatory treatment by it. As observed by the Commission, that decision is aimed at defining the conditions under which public service compensation coming under Article 106(2) TFEU may be exempt from notification and may therefore be deemed compatible without the Commission's having to examine them. Consequently, the reference to the legal framework in which the Commission examines aid to SGEI providers in difficulty is pointless in the context of such a decision. Secondly and in any event, as stated in paragraph 195 above, aid granted to an undertaking in difficulty entrusted with a public service task is not suitable for meeting the objectives of the derogation laid down in Article 106(2) TFEU. Consequently, a fortiori nor can it be authorised under the 2011 SGEI Decision which, by definition, can relate only to public service compensation deemed to be in line with those objectives. For the same reasons, the public service compensation to which the 2011 SGEI Decision is applicable is not placed in a situation comparable to that of the aid granted to public service providers in difficulty.

200 Next, it follows from the case-law referred to in paragraph 113 above that the legality of paragraph 9 of the 2011 SGEI Framework must be assessed solely under Article 106(2) TFEU and Article 107(3)(c) TFEU and not in the light of earlier decision-making which, as the Commission points out, is susceptible to change over time. Consequently, the reference to the SNCM Decision in the present case is not relevant. Nor does the reference to paragraphs 55 to 71 of the judgment of 11 September 2012, *Corsica Ferries France* v *Commission* (T-565/08, EU:T:2012:415) assist the RAS here. In fact, in those paragraphs the Court did not examine the question whether the capital increase examined in the SNCM Decision fell to be assessed in the light of the Article 87(3)(c) EC or in the light of the Article 86(2) EC, in force at the time of the facts of that case, as that question had not been raised in that dispute.

201 In any event, as already held in paragraph 113 above, it follows in particular from paragraph 253 of the SNCM Decision that the measure classified by the Commission as public service compensation had been authorised under the agreement concluded between the SNCM and the French authorities and subsequently paid out under a restructuring plan. There is nothing in the SNCM Decision to indicate that, on the date when the agreement was concluded and therefore that measure authorised in principle, the SNCM could be classified as a firm in difficulty. The measure at issue in that decision was therefore not comparable to the disputed compensation measure, which was granted only after the RAS formally established Saremar's difficulties resulting from the performance of the operations on the route to and from the mainland.

202 Lastly, it follows from paragraphs 194 to 196 above that, contrary to the RAS's assertions, should the losses of the undertaking in question arise from the public service obligations entrusted to it, it does not necessarily follow that the compatibility of the compensation for those losses must always be assessed in the light of the Article 106(2) TFEU, failing which the operation of the subsidised public services will be rendered impossible.

203 It follows from the foregoing that paragraph 9 of the 2011 SGEI Framework is in any event not vitiated by illegality on the ground that, by that paragraph, the Commission is placing an undue restriction on the scope of Article 106(2) TFEU and, consequently, is acting outside its powers. Therefore, nor is the contested decision illegal on that ground.

204 Accordingly, the second part of the fourth plea must be rejected, as must this plea in its entirety.

The fifth plea: errors of law and manifest errors of assessment, in that the Commission considered that the disputed compensation measure did not comply with the criteria of the 2011 SGEI Framework

205 In support of its fifth plea, the RAS submits, firstly, that the principles laid down in paragraphs 14, 19, 20, 24, 39 and 60 of the 2011 SGEI Framework are not applicable to the disputed compensation measure and that, secondly and in any event, those principles were complied with in the present case.

206 In its statement in defence, the Commission, supported by CIN, submits that the fifth plea is directed at superfluous grounds and that, in the light of the arguments it has put forward previously under the other pleas, the disputed compensation measure cannot be deemed to comply with the 2011 SGEI Framework.

207 In that regard, since the arguments put forward by the RAS under the present plea are essentially arguments which have already been rejected in the examination of the second to fourth pleas, this plea must also be rejected as unfounded on the basis of the grounds set out below.

208 Firstly, as regards the considerations put forward by the RAS in order to establish that the second *Altmark* condition was fulfilled, reference is made to paragraphs 110 to 121 above, where the reasons justifying the dismissal of those considerations are set out.

209 Secondly, in order to establish that the conditions laid down in paragraphs 14, 19, 20, 24, 39 and 60 of the 2011 SGEI Framework are not applicable *ratione temporis* to the disputed compensation measure, the RAS refers to its line of argument set out under the first part of the third plea to substantiate its assertion that nor was the 2011 SGEI Decision applicable *ratione temporis* to that measure. In that regard, suffice it to refer to paragraphs 142 to 145 above, where the reasons for rejecting that line of argument are set out.

210 In the third place, the RAS does not appear to rely on paragraph 61 of the 2011 SGEI Framework which states that the principles laid down in paragraphs 14, 19, 20, 24, 39 and 60 of that framework do not apply to aid meeting the conditions laid down in Article 2(1) of the 2011 SGEI Decision. As observed in paragraph 156 above, the fact that the disputed compensation measure complied with the thresholds laid down in Article 2(1)(d) of the 2011 SGEI Decision served to confirm only that that measure came within the scope of that decision. It did not, however, establish compliance with its conditions. Consequently, paragraph 61 of that framework does not apply to such a measure and the Commission was correct in applying in the present case the principles laid down in paragraphs 14, 19, 20, 24, 39 and 60 of that same framework.

211 Fourthly and lastly, as regards compliance with the principles laid down in paragraphs 14, 19, 20, 24, 39 and 60 of the 2011 SGEI Framework, it should be noted that, in any event, in paragraphs 285 and 286 of the contested decision, the Commission found, correctly, that the disputed compensation

measure did not fulfil, inter alia, the requirements defined in paragraph 16(d) and (e) of that same framework. In fact, contrary to those requirements, the decisions of the RAS relating to public service tasks do not contain a description of the compensation mechanism and the parameters for calculating, monitoring and reviewing the compensation or arrangements for avoiding and recovering any overcompensation. Consequently, given the non-compliance with those requirements, which are essential for determining whether the disputed measure constitutes public service compensation that is compatible with the internal market in the light of the Article 106(2) TFEU, any compliance with the principles laid down in paragraphs 14, 19, 20, 24, 39 and 60 of that framework will not be decisive. Nor has the RAS demonstrated that the Commission made a manifest error of assessment in finding that the requirements for calculating the net cost of the public service obligations on the basis of the net avoided cost, set out in paragraph 24 of that framework, were not fulfilled in the present case. The same holds true of the absence, in the present case, of incentives for the efficient provision of SGEI as part of the determination of the compensation method, the requirement for which is set out in paragraph 39 the 2011 SGEI Framework.

212 It follows from the foregoing that the fifth plea must be rejected.

The first plea: infringement of Article 106(2) TFEU and incorrect assessment of the definition of the public service obligations imposed on Saremar

213 Under this first plea, the RAS submits, firstly, that the Commission, both in the application of the *Altmark* conditions and Article 106(2) TFEU, gave an incorrect definition of the public service obligations imposed on Saremar in finding that they related solely to fares. The RAS submits, secondly, that the Commission exceeded its powers as recognised by the case-law in the application of Article 106(2) TFEU in making assessments of the merits and appropriateness with regards to the needs to which those public service obligations corresponded, as opposed to a limited monitoring of the choices made by the RAS covering only the manifest error of assessment.

214 The Commission, supported by CIN, replies that it did not make an error of assessment concerning the public service obligations imposed on Saremar and that it did not exceed its powers.

215 It should be noted, as the applicant moreover acknowledged at the hearing, that the complaints set out under the present plea are, in essence, indistinguishable from the similar complaints set out under the second plea. In support of the first part of that plea, the RAS complains inter alia that the Commission, in the application of the first *Altmark* condition, made errors of law and manifest errors of assessment concerning the definition of the public service need and the public service obligations imposed on Saremar. For the reasons set out in paragraphs 122 to 132 above, those complaints are ineffective.

216 It is true that the scope of the present plea is not limited to the Commission's application of the first *Altmark* condition, but is also directed at the Commission's examination of the compatibility of the disputed compensation measure under Article 106(2) TFEU, in particular in the light of the 2011 SGEI Decision, on the one hand, and of the 2011 SGEI Framework, on the other. However, it follows from the examination of the third and fifth plea in paragraphs 133 to 167 and 205 to 212 above that the Commission was correct in finding that the disputed compensation measure did not comply either with the requirements of the 2011 SGEI Decision or those of the 2011 SGEI Framework, basing itself on other grounds than its assessment of the definition of the public service need in the present case and the public service obligations imposed on Saremar. Consequently, even if that assessment were found to be incorrect or vitiated by the Commission's having exceeded its powers, that would have no bearing on the lawfulness of the Commission's application of Article 106(2) TFEU in the present case.

217 It follows from the foregoing that the first plea is ineffective in its entirety and must be rejected.

The second part of the action, relating to the part of the contested decision concerning the disputed capital increase

218 In the second part of the action, the applicant formally puts forward a single plea alleging manifest errors of assessment and infringement of Article 107(1) TFEU and of Article 106(2) TFEU, as well as infringement of the obligation to state reasons, committed in the course of the assessment of whether the disputed capital increase complied with the criterion of the private investor operating in a market economy. Therefore, for the reasons set out in paragraph 69 above, the applicant must be regarded as in reality putting forth two pleas alleging: (i) infringement of the obligation to state reasons, and (ii) errors of law and manifest errors of assessment.

The first plea: infringement of the obligation to state reasons

219 Under the present plea, the RAS complains that the Commission failed to state the reasons why it did not take account of the fact that the disputed recapitalisation is merely the restitution of economic resources already forming part of Saremar's assets.

220 In that regard, it should be borne in mind that, as indicated in paragraph 79 above, it follows from the case-law that the Commission is not required to dismiss each and every one of the arguments put forward by the parties during the administrative procedure. In particular, the obligation to state reasons does not require the Commission to define its position on matters which are manifestly irrelevant or insignificant or plainly of secondary importance (see judgment of 1 July 2008, *Chronopost and La Poste* v *UFEX and Others*, C-341/06 P and C-342/06 P, EU:C:2008:375, paragraph 89 and the case-law cited

221 In the present case, firstly, it is clear from the Commission's analysis set out in paragraphs 235 to 245 of the contested decision that it considered that the disputed capital increase constituted a transfer of resources. Secondly, as will be discussed in paragraphs 225 to 237 below, the RAS's argument, to the effect that the disputed recapitalisation is merely the restitution of economic resources already forming part of Saremar's assets, is completely unfounded, inasmuch as even if the disputed capital contribution is a 'restitution' of Saremar's assets, it nevertheless — clearly — constitutes a financial contribution of public resources. Accordingly, the Commission could not be required to respond to that argument and, consequently, the first plea must be rejected.

The second plea: errors of law and of assessment

222 The second plea comprises in essence three parts. By the first part of this plea, the RAS submits that the Commission made a manifest error of assessment in relation to the nature of the resources corresponding to the disputed capital increase, thereby infringing Article 107(1) TFEU and Article 106(2) TFEU. The second part of this plea alleges manifest errors of assessment as regards the application in the present case of the criterion of the private investor operating in a market economy. The third part of this plea alleges manifest error of assessment relating to the compatibility of the disputed capital increase.

223 The Commission, supported by CIN, considers that this line of argument is unfounded.

– The first part of the second plea: manifest error of assessment with regards to the nature of resources corresponding to the disputed capital increase and infringement of Article 107(1) TFEU and Article 106(2) TFEU

224 Under the first part of the second plea, the RAS submits, firstly, that the Commission failed to consider that the amount of the disputed capital increase corresponded to Saremar's claims against Tirrenia and were therefore unrelated to the routes to and from the mainland operated by Saremar. Thus, according to the RAS, that capital increase is nothing other than the restitution of economic resources that had been taken from that company following Tirrenia's extraordinary placement under administration. That measure is therefore not a contribution of new public resources nor, consequently, State aid within the meaning of Article 107 TFEU.

225 This complaint is completely unfounded.

226 First of all, it should be borne in mind that, according to settled case-law, Article 107(1) TFEU defines State measures in relation to their effects (see judgment of 19 March 2013, *Bouygues and Bouygues Télécom* v *Commission and Others* and *Commission* v *France and Others*, C-399/10 P and C-401/10 P, EU:C:2013:175, paragraph 102 and the case-law cited). Consequently, in the present case, in order to determine whether there is an economic advantage in terms of the criterion of the private investor operating in a market economy, it was not relevant for the Commission to ascertain whether the disputed capital increase corresponded to one of Saremar's activities. In any event, as observed by the Commission, that capital increase was, by definition, liable to benefit all of the undertaking's activities. Lastly, the RAS does not explain why it considers that only the link with Saremar's operations on the routes to and from the mainland could justify use of the criterion of the private investor operating in a market economy in the present case. As those routes have been operated by Saremar for the purpose of performing a public service task entrusted to it by the RAS, financing of those routes by the RAS necessarily related to its role as a public authority and not as a shareholder of Saremar.

227 Secondly, there is no doubt that the disputed capital increase constituted a transfer of public resources to Saremar, even though that transfer was intended to compensate for the loss of earlier resources. In that regard, as observed in paragraph 226 above, Article 107(1) TFEU defines State measures in relation to their effects and not their purpose. The RAS does not dispute that, on the date when the decision on the disputed capital increase was taken, the resources which, in their view, were part of Saremar's assets and which the capital increase was intended to 'make restitution for' were no longer available. The very concept of 'restitution', as employed by the RAS, shows in that regard that the applicant is aware that there is a contribution of new resources in the present case. In any event, it should be noted that the RAS's argument to the effect that those resources already formed part of Saremar's assets, in that they were made up of claims against its former parent company, is factually and legally incorrect. In fact, as the RAS itself states under the present part, the disputed capital increase was intended to enable the undertaking to recover to its initial capitalisation level, following its decision to cover the devaluation of its claims against Tirrenia through a capital reduction corresponding to the amount of those claims, after use of the legal reserve and profits from previous years. Consequently, by definition, those devalued claims no longer formed part of Saremar's assets because they were no longer recoverable, but rather losses that were covered through the undertaking's capital reduction referred to above, which itself was compensated for by the disputed capital increase (see paragraph 8 above).

228 Lastly, as underscored by the Commission in its statement in defence, the disputed capital increase was liable to constitute a genuine economic advantage for Saremar, in that, without that intervention, Saremar would have recovered only partially the funds corresponding to the amount of the claims against Tirrenia, given the 50% devaluation of those claims in connection with Tirrenia's bankruptcy proceedings.

229 It follows from the foregoing that the Commission did not err in examining the disputed capital increase solely in terms of its effects and in finding that it had constituted a transfer of State resources to Saremar liable to confer an economic advantage on it and necessitating, for the verification of the latter condition, the application of the criterion of the private investor operating in a market economy.

230 The RAS's argument, to the effect that only a minimal part of the disputed capital increase was paid, that is to say, EUR 824309.69, clearly does not call this conclusion into question. As observed in paragraph 142 above, it is settled case-law that aid must be considered to be granted at the time that the competent national authorities adopt a legally binding act by which they undertake to pay the aid in question or when the right to receive it is conferred on the beneficiary under the applicable national rules. Accordingly, the fact that the RAS made only a payment corresponding to a reduced part of the disputed capital increase has no bearing on the classification of that capital increase as State aid.

231 The RAS's reference to paragraph 3.3 of the Commission's 1984 communication to the Member States entitled 'Public authorities' holdings in company capital' (Bull. EC. 9-1984) ('the 1984 Communication') is also irrelevant. Contrary to the RAS's assertions, the wording of paragraphs 3.2 and 3.3 of the 1984 Communication does not refer to the concept of 'contribution of new public resources', but to that of 'contribution of fresh capital'. It also follows from the wording of those paragraphs of the 1984 Communication that, in order to determine whether a contribution of fresh capital within the meaning of that communication constitutes State aid, it is necessary to apply the criterion of the private investor operating in a market economy, which runs precisely counter to the RAS's reasoning, to the effect that the Commission ought not to have found that criterion to be applicable in the present case

232 Secondly, the RAS submits that, in so far as the resources 'restituted' through the disputed capital increase were an integral part of a public service compensation measure, they came within the scope of Article 106(2) TFEU. The amount of that compensation had, moreover, already been approved by the Commission in an earlier decision.

233 This second complaint is also irrelevant.

234 In that regard, suffice it to observe that, as held above in paragraphs 227 to 229 in relation to the first complaint, contrary to the RAS's assertions, by the disputed capital increase, it did not merely make available to Saremar funds already forming part of that company's assets. Consequently, nor did the RAS merely state that in the present case it limited itself to restoring public service compensation which fell to be assessed in the light of the Article 106(2) TFEU. On this basis alone, this complaint can therefore be rejected.

235 It should also be borne in mind that, according to settled case-law, a distinction must be drawn between, the role of the Member State *qua* shareholder, on the one hand, and that of a State acting as a public authority, on the other. The applicability of the private investor test ultimately depends on the Member State concerned having conferred, in its capacity as shareholder and not in its capacity as public authority, an economic advantage on an undertaking (see judgment of 4 September 2014, *SNCM and France* v *Corsica Ferries France*, C-533/12 P and C-536/12 P, EU:C:2014:2142, paragraph 31 and the case-law cited). In the present case, it follows from the contested decision and from the application that, in order to justify the disputed capital increase, the RAS constantly referred to its role as shareholder of Saremar and not to its role as public authority. The RAS explains, in particular, under the first complaint, that, instead of passing on in Saremar's sale price, at the time of its privatisation, the losses resulting from the devaluation of its claim against Tirrenia, it opted to effect the disputed capital increase in order to obtain a better sale price for the company owing to its improved asset position. Consequently, in that context, the RAS cannot rely on its role as public authority to argue that Saremar did not obtain any economic advantage.

236 In any event, as acknowledged by the RAS, there is nothing in the case file to indicate that the disputed capital increase results from the performance of the commitments undertaken by it towards the Italian State when the latter transferred Saremar's property to it. In particular, it does not appear that the RAS was required, as part of that transfer of powers, to indemnify Saremar for that part of the amounts corresponding to public service compensation paid between 1998 and 2008 that it was not able to recover in connection with Tirrenia's bankruptcy proceedings. Thus, the only obligation to which the RAS referred in that regard in the course of the formal investigation procedure is that laid down in Article 2446 of the Italian Civil Code, relating to the capital contribution to be made by the shareholders of a company the share capital of which has dropped below a certain threshold, by which it was bound solely in its capacity as shareholder of a company and not in its capacity as public authority.

237 Consequently, even if the disputed capital increase was aimed at restoring to Saremar the funds corresponding to the public service compensation that Saremar was unable to recover in connection with Tirrenia's bankruptcy proceedings, it cannot be categorised as public service compensation coming within the derogation under Article 106(2) TFEU.

238 The first part of the second plea must therefore be rejected.

– The second part of the second plea: manifest errors of assessment as regards the application in the present case of the criterion of the private investor operating in a market economy

239 Under the second part of this plea, the RAS submits that, in any event, like any private investor, it adopted a very prudent line of conduct in the present case, taking care to make a minimal capital contribution so as to obtain a better sale price at the time of privatisation. That measure therefore contributed towards continued attainment of the previous business plan.

240 In that regard, the arguments set out under the present part do not establish that there was a manifest error of assessment by the Commission when it ascertained, in paragraphs 236 to 244 of the contested decision, whether the disputed capital increase had constituted an economic advantage for Saremar, in the light of the criterion of the private investor operating in a market economy.

241 The fact that the RAS made sure only to pay a minimal part of the disputed capital increase so as to obtain a better sale price at the time of Saremar's privatisation and to work towards continued attainment of the previous business plan does not call into question the Commission's conclusion in paragraph 242 of the contested decision, to the effect that the disputed capital increase does not appear to be founded on economic assessments similar to those a rational private investor would have carried out before making such as investment.

242 Thus, the RAS does not dispute that, as found by the Commission in paragraph 239 of the contested decision, the business plan for the years 2011-2022, approved in July 2010, was not updated to take account of the significant changes in the economic environment occurring subsequently to its approval, in particular Tirrenia's insolvency, its repurchase by CIN and the postponement of the privatisation of Saremar.

243 Similarly, the RAS does not dispute the Commission's finding in paragraph 240 of the contested decision, to the effect that the RAS, before effecting the disputed capital increase, did not take into account Saremar's prospects for profitability and did not examine options other than the capital increase, in particular liquidation of the undertaking. In that regard, it should be noted that the latter option would have been imposed on the RAS had it not effected the capital increase. It follows from Regional Decision No 36/6 that, given Saremar's capital levels, which were below the legal threshold fixed by Article 2446 of the Italian Civil Code, it would not have been able to continue operations. In

any event, the fact relied on by the RAS, that the payment of the disputed capital increase was only partial, is irrelevant, since it was the decision to grant the capital increase that had to be taken into account in order to determine whether there was State aid.

244 The second part of the second plea must therefore be rejected.

– The third part of the second plea: errors of law and manifest errors of assessment relating to the examination of the compatibility of the disputed capital increase

245 The third part concerns that part of the contested decision in which the Commission examined la compatibility with the internal market of the disputed capital increase (paragraphs 297 to 299 of that decision) in the light of the Guidelines on aid for rescuing and restructuring. It is directed more specifically at paragraph 299 of that decision, in which the Commission concluded that the conditions laid down in those guidelines were not fulfilled in the present case, referring to the grounds set out in paragraphs 271 to 278 of the same decision, which led it to a similar conclusion with regards to the disputed compensation measure. In order to substantiate the present complaint, however, the RAS refers only to the arguments it put forward under the fourth plea, without any further justification. Consequently, it suffices in that regard to conclude that, as follows from paragraphs 170 to 204 above, those arguments must be rejected.

246 It follows from the foregoing that the third part of the second plea must be rejected, as must therefore this plea in its entirety.

247 Accordingly, since none of the pleas put forward in the present action can be upheld, the action must be dismissed in its entirety.

Costs

248 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.

249 Since the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Commission and CIN.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders the Regione autonoma della Sardegna (Italy) to bear its own costs and to pay those incurred by the European Commission and Compagnia Italiana di Navigazione SpA.**

Gratsias Kancheva Półtorak

Delivered in open court in Luxembourg on 6 April 2017.

[Signatures]

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