# JUDGMENT OF THE COURT (Third Chamber)

9 June 2011 *

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* Language of the case: Italian.

In Joined Cases C-71/09 P, C-73/09 P and C-76/09 P,

THREE APPEALS under Article 56 of the Statute of the Court of Justice, brought on 11 (C-71/09 P) and 16 February 2009 (C-73/09 P and C-76/09 P) respectively,

**Comitato** 'Venezia vuole vivere', established in Venice (Italy), represented by A. Vianello, avvocato, with an address for service in Luxembourg (C-71/09 P),

**Hotel Cipriani Srl,** established in Venice (Italy), represented by A. Bianchini and F. Busetto, avvocati (C-73/09 P),

**Società Italiana per il gas SpA (Italgas),** established in Turin (Italy), represented by M. Merola, M. Pappalardo and T. Ubaldi, avvocati (C-76/09 P),

applicants,

the other parties to the proceedings being:

**Coopservice – Servizi di fiducia Soc. coop. rl,** established in Cavriago (Italy), represented by A. Bianchini, avvocato,

applicant at first instance,

**European Commission,** represented by V. Di Bucci and E. Righini, acting as Agents, assisted by A. Dal Ferro, avvocato, with an address for service in Luxembourg,

defendant at first instance,

**Italian Republic,** represented by I. Bruni, and subsequently by G. Palmieri, acting as Agents, assisted by P. Gentili, avvocato dello Stato, with an address for service in Luxembourg,

intervener at first instance,

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, R. Silva de Lapuerta, G. Arestis, J. Malenovský and T. von Danwitz (Rapporteur), Judges,

Advocate General: V. Trstenjak,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 16 September 2010,

after hearing the Opinion of the Advocate General at the sitting on 16 December 2010,

gives the following

## Judgment

1 By their appeals, the Comitato 'Venezia vuole vivere' ('the Comitato'), Hotel Cipriani Srl ('Hotel Cipriani') and Società italiana per il gas SpA ('Italgas') ask the Court of Justice to annul the judgment of the Court of First Instance (now the General Court) of 28 November 2008 in Joined Cases T-254/00, T-270/00 and T-277/00 *Hotel Cipriani and Others* v *Commission* [2008] ECR II-3269 ('the judgment under appeal'), whereby the General Court dismissed their actions for annulment against Commission Decision 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995 (OJ 2000 L 150, p. 50; 'the contested decision').

2 By its cross-appeal, Coopservice – Servizi di fiducia Soc. coop. rl ('Coopservice') asks the Court to annul the judgment under appeal.

3 By its cross-appeal, the European Commission asks the Court to annul the judgment under appeal in so far as it declares those actions admissible.

## Legal context

4 Articles 1(b)(iv) and 13 to 15 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88] of the EC Treaty (OJ 1999 L 83, p. 1) provide:

'*Article 1*

Definitions

For the purposes of this Regulation:

…

(b) "existing aid" shall mean:

…

(iv) aid which is deemed to be existing aid pursuant to Article 15;

…

*Article 13*

Decisions of the Commission

1. The examination of possible unlawful aid shall result in a decision pursuant to Article 4(2), (3) or (4). In the case of decisions to initiate the formal investigation procedure, proceedings shall be closed by means of a decision pursuant to Article 7. If a Member State fails to comply with an information injunction, that decision shall be taken on the basis of the information available.

…

*Article 14*

Recovery of aid

1. Where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary (hereinafter referred to as a "recovery decision"). The Commission shall not require recovery of the aid if this would be contrary to a general principle of Community law.

2. The aid to be recovered pursuant to a recovery decision shall include interest at an appropriate rate fixed by the Commission. Interest shall be payable from the date on which the unlawful aid was at the disposal of the beneficiary until the date of its recovery.

3. Without prejudice to any order of the Court of Justice of the European Communities pursuant to Article [242] of the Treaty, recovery shall be effected without delay and in accordance with the procedures under the national law of the Member State concerned, provided that they allow the immediate and effective execution of the Commission's decision. To this effect and in the event of a procedure before national courts, the Member States concerned shall take all necessary steps which are available in their respective legal systems, including provisional measures, without prejudice to Community law.

*Article 15*

Limitation period

1. The powers of the Commission to recover aid shall be subject to a limitation period of ten years.

2. The limitation period shall begin on the day on which the unlawful aid is awarded to the beneficiary either as individual aid or as aid under an aid scheme. Any action taken by the Commission or by a Member State, acting at the request of the Commission, with regard to the unlawful aid shall interrupt the limitation period. Each interruption shall start time running afresh. The limitation period shall be suspended

for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Communities.

3. Any aid with regard to which the limitation period has expired, shall be deemed to be existing aid.'

**Background to the dispute**

5 The facts which gave rise to the dispute are summarised as follows in paragraphs 1 to 11 of the judgment under appeal:

'A — *The scheme for relief from social security contributions under consideration*

1 The Italian Ministerial Decree of 5 August 1994, notified to the Commission, lays down the allocation criteria for the relief from social security contributions provided for in Article 59 of the Decree of the President of the Italian Republic of 6 March 1978 setting up a special scheme for relief from social security contributions owed by employers to the Istituto Nazionale de la Previdenza Sociale ("INPS") (National Institute of Social Insurance) in the Mezzogiorno for the period between 1994 and 1996 ("the Mezzogiorno scheme").

2 By Decision 95/455/EC of 1 March 1995 on the arrangements for reducing the social security contributions paid by firms in the Mezzogiorno and for assigning to the State some of those contributions (OJ 1995 L 265, p. 23), the Commission declared the Mezzogiorno scheme compatible with the common market, subject

to certain conditions. In particular, the decision of 1 March 1995 required the Italian authorities to notify to the Commission the measures adopted for implementing the plan for the progressive dismantling of the Mezzogiorno scheme, as provided for under that decision.

3 The scheme for relief from social security contributions at issue in the present case was introduced by Italian Law No 206/1995, which extended the Mezzogiorno scheme for 1995 and 1996, and widened it to cover undertakings established on the island territory of Venice and Chioggia. Later, Italian Law No 30/1997 extended the Mezzogiorno scheme for the year 1997, and again widened it to cover undertakings established on the island territory of Venice and Chioggia.

4 Article 1 of the Ministerial Decree of 5 August 1994 provides for a general reduction in the social security contributions owed by employers. Article 2 of the decree provides for an exemption from social security contributions for net job creation in undertakings for a period of one year from the date on which an unemployed worker is taken on.

5 It can be seen from [the contested decision] that, according to data supplied by INPS for the period under consideration between 1995 and 1997, the reductions in social security contributions accorded to undertakings located on the island territory of Venice and Chioggia pursuant to Article 1 of the Ministerial Decree of 5 August 1994 ("the social security reductions at issue") amounted to an annual average of ITL 73 billion (EUR 37.7 million), shared between 1 645 undertakings. The exemptions accorded to undertakings located on the island territory of Venice and Chioggia pursuant to Article 2 of that decree ("the social security exemptions at issue") amounted to ITL 567 million (EUR 292 831) per year, shared between 165 undertakings.

B — *Administrative procedure*

6 By letter dated 10 June 1997, the Italian authorities communicated the text of the abovementioned Law No 30/1997 to the Commission, in accordance with the provisions of Decision 95/455 (see paragraph 2 above). By letter of 1 July 1997, followed by a reminder dated 28 August 1997, the Commission asked for further information concerning the extension of the scope of the abovementioned scheme to undertakings located in Venice and Chioggia.

7 Since it received no reply, the Commission notified the Italian Republic by letter dated 17 December 1997 of its decision to initiate the procedure laid down in Article 88(2) EC regarding the aid provided for by Law No 206/1995 and Law No 30/1997, which extended to the island territory of Venice and Chioggia the scope of the reduction of social security contributions for the Mezzogiorno.

8 The Italian authorities suspended the scheme for relief from social security contributions under consideration with effect from 1 December 1997.

9 The decision to initiate the procedure was published in the *Official Journal of the European Communities* on 18 February 1998. By letter of 17 March 1998, … the Comitato …, an association which brings together the principal organisations of industry and commerce in Venice and which was formed following the initiation of the abovementioned formal investigation procedure in order to coordinate action intended to remedy the disadvantageous situation of traders located in Venice – submitted its comments and a report, accompanied by a study carried out by the Consorzio per la ricerca e la formazione ("COSES") (Consortium for Research and Training) dated March 1998 concerning the difficulties encountered by undertakings operating in the area of the lagoon as compared with those located on the mainland. On 18 May 1998, the City of Venice also submitted comments,

accompanied by an earlier study carried out by COSES on the same subject, dated February 1998. In its observations, the City of Venice explained that municipal undertakings providing public services of general economic interest were also beneficiaries of the scheme. It requested the application of Article 86(2) EC in favour of those undertakings. All of those comments were forwarded to the Italian Republic.

10 The Italian authorities notified their comments by letter dated 23 January 1999. By letter of 10 June 1999, they informed the Commission that they fully supported the comments submitted by the City of Venice.

11 By decision of 23 June 1999, the Commission gave the Italian Republic notice to provide it with all the documentation, information and data necessary to enable it to determine the role of the municipal undertakings and to assess the compatibility of the social security reductions at issue with the common market. The Italian authorities replied by letter of 27 July 1999. The Italian authorities met with the Commission's representatives at a meeting in Brussels on 12 October 1999.'

**The contested decision**

6 The enacting terms of the contested decision are worded as follows:

'*Article 1*

Except as provided by Articles 3 and 4 of this Decision, the aid which Italy has put into effect in favour of firms located in Venice and Chioggia, in the form of exemption from social security contributions provided for by Laws No 30/1997 and No 206/1995

which refer to Article 2 of the Ministerial Decree of 5 August 1994, is compatible with the common market where it is granted to the following firms:

(a) SMEs within the meaning of the Community guidelines on State aid for small and medium-sized enterprises;

(b) firms that do not comply with that definition but are located in an area eligible for exemption under Article 87(3)(c) of the Treaty;

(c) any other type of firm which hires groups of workers experiencing particular difficulties entering or re-entering the labour market as referred to in the Community guidelines on aid to employment.

Such aid is incompatible with the common market where it is granted to firms which are not SMEs and are located outside areas eligible for exemption under Article 87(3)(c) of the Treaty.

*Article 2*

Except as provided by Articles 3 and 4 of this Decision, the aid which Italy has put into effect in favour of firms located in Venice and Chioggia, in the form of reductions in social security contributions provided for by Article 1 of the Ministerial Decree of 5 August 1994, is incompatible with the common market.

*Article 3*

The aid measures which Italy has put into effect in four of the companies ASPIV and Consorzio Venezia Nuova are compatible with the common market since they qualify for exemption under Article 86(2) and Article 87(3)(d) of the Treaty respectively.

*Article 4*

The measures which Italy has put into effect in favour of the companies ACTV, Panfido SpA and AMAV do not constitute aid within the meaning of Article 87 of the Treaty.

*Article 5*

Italy shall take whatever steps are necessary to recover from the beneficiaries the incompatible aid referred to in the second paragraph of Article 1 and in Article 2 which has unlawfully been made available to them.

Repayment shall be made in accordance with the procedures of Italian law. The amounts to be repaid shall bear interest from the date on which the aid was made available to the beneficiaries until the date on which it is effectively repaid. The interest shall be calculated on the basis of the reference rate used to calculate the grant equivalent of regional aid.

…'

## The procedure before the General Court and the judgment under appeal

7 Fifty-nine actions against the contested decision were brought before the General Court.

8 The latter invited the Italian Republic to state, in respect of each of the applicants in those cases, whether it considered that it was required, in implementation of Article 5 of the contested decision, to recover the aid which had been granted.

9 Having regard to the replies of the Italian Republic, the Court declared 22 actions wholly inadmissible and 6 actions partly inadmissible, with regard to undertakings which could not show an interest in bringing proceedings inasmuch as the competent national authorities had considered, when implementing the contested decision, that those undertakings had not received aid incompatible with the common market which must be recovered pursuant to that decision (orders of the General Court of 10 March 2005 in Joined Cases T-228/00, T-229/00, T-242/00, T-243/00, T-245/00 to T-248/00, T-250/00, T-252/00, T-256/00 to T-259/00, T-265/00, T-267/00, T-268/00, T-271/00, T-274/00 to T-276/00, T-281/00, T-287/00 and T-296/00 *Gruppo ormeggiatori del porto di Venezia and Others* v *Commission* [2005] ECR II-787; Case T-266/00 *Confartigianato Venezia and Others* v *Commission*; Case T-269/00 *Baglioni Hotels and Sagar* v *Commission*; Case T-273/00 *Unindustria and Others* v *Commission*; and Case T-288/00 *Principessa* v *Commission*).

10 On 12 May 2005, an informal meeting took place before the Judge-Rapporteur, in which the representatives of the parties took part, in the 37 cases in which the action had not been declared wholly inadmissible. The parties represented submitted their observations and agreed to the choice of four test cases. Following that informal meeting, Cases T-254/00, T-270/00 and T-277/00, which gave rise to the judgment under appeal, and Case T-221/00 were designated as test cases, the latter having however subsequently been removed from the register following withdrawal by the applicant.

11 The said cases were joined, and it was decided that examination of the objections of inadmissibility raised by the Commission would be joined to the merits.

12 By the judgment under appeal, the General Court declared the actions admissible, for the reasons appearing in paragraphs 41 to 115 of that judgment. Those actions were, however, declared unfounded, having regard to the considerations appearing in paragraphs 117 to 398 of that judgment.

**Pleas of the parties to the appeal and the procedure before the Court of Justice**

13 The Comitato claims that the Court should:

— set aside the judgment under appeal;

— dismiss the Commission's cross-appeal;

— annul the contested decision;

— in the alternative, annul Article 5 of that decision in so far as it imposes the obligation to recover the amount of the reductions in social security contributions at issue and provides that the amounts concerned are to have interest added as from the date on which they were put at the beneficiaries' disposal up to the date of actual repayment;

— order the Commission to pay the costs at both instances.

14 Hotel Cipriani claims that the Court should:

— set aside the judgment under appeal;

— uphold its pleas made at first instance and therefore:

— as the main claim, annul the contested decision;

— in the alternative, annul Article 5 of that decision in so far as the repayment required by that provision includes aid allocated on the basis of the de minimis principle and/or in so far as it requires the payment of interest calculated at a higher rate than that actually borne by the undertaking for its own borrowings;

— order the Commission to pay the costs at both instances.

15 Italgas claims that the Court should:

— set aside the judgment under appeal;

— dismiss the Commission's cross-appeal as clearly unfounded or, in the alternative, as inoperative in respect of some of its pleas and unfounded in respect of others, or as unfounded in its entirety;

— annul Articles 1 and 2 of the contested decision in so far as they declare the reductions in social security contributions at issue incompatible with the common market and Article 5 of that decision;

— in the alternative, refer the case back before the General Court pursuant to Article 61 of the Statute of the Court of Justice;

— order the Commission to pay the costs at both instances or, in any event, to pay the additional costs engendered by the cross-appeal.

16 Coopservice claims that the Court should:

— set aside the judgment under appeal;

— uphold its pleas at first instance and therefore:

— as the principal claim, annul the contested decision in so far as reasonable and within the limits of the applicant's interest;

— in the alternative, annul the contested decision is so far as it imposes the obligation to recover the reductions of social security contributions granted and to increase the amount of those reductions by interest in respect of the periods considered by that decision;

— order the Commission to pay the costs at both instances.

17 The Italian Republic claims that the Court should:

— set aside the judgment under appeal, and

— annul the contested decision.

18 The Commission contends that the Court should:

— as the main claim, uphold its cross-appeal and therefore set aside the judgment under appeal in so far as it declared the actions admissible;

— in the alternative, dismiss the main pleas by modifying, in so far as necessary, the reasoning of the judgment under appeal;

— in any event order the applicants to pay the costs at both instances.

19 By order of the President of the Court of 8 April 2009, Cases C-71/09 P, C-73/09 P and C-76/09 P were joined for the purposes of the written and oral procedures and of the judgment.

## The Commission's cross-appeal

20 Since the Commission's cross-appeal concerns the admissibility of the actions before the General Court, which is a question preliminary to those on the merits raised by the main appeals and Coopservice's cross-appeal, it should be examined first.

21 In support of its cross-appeal, the Commission makes four pleas.

### *Objection of lis alibi pendens raised in the context of Case T-277/00*

#### Grounds for the judgment under appeal

22 Concerning the objection of *lis alibi pendens* raised against the action in Case T-277/00, the General Court found, first, that that objection could not validly be raised in relation to Case T-274/00, since the Comitato had withdrawn its action in that latter case (paragraph 43 of the judgment under appeal).

23 Moreover, as regards *lis alibi pendens* in relation to Case T-231/00, the General Court took the view that it was not required to examine the admissibility of the action brought by the Comitato in Case T-277/00 by reason of the fact that the latter had brought that action jointly with Coopservice (paragraph 43 of the judgment under appeal). In addition, it pointed out that the admissibility of an action meets the objection of *lis alibi pendens* only where that action is between the same parties, seeks annulment of the same decision and is based on the same pleas as another pending action. In this case, the actions in Cases T-277/00 and T-231/00 were based, in part, on different pleas (paragraphs 44 and 45 of the judgment under appeal). Moreover, the provisions of Article 48(2) of the Rules of Procedure of the General Court, which in principle prohibit the introduction of new pleas in the course of the proceedings, are irrelevant for the purposes of assessing the admissibility of an action with the same subject-matter as an earlier action, and between the same parties, but based on different pleas in law (paragraph 46 of the judgment under appeal).

Arguments of the parties

24 In the first limb of this plea, which contains three limbs, the Commission argues that the General Court wrongly dismissed the objection of inadmissibility for *lis alibi pendens* concerning the action in Case T-277/00 having regard to Case T-274/00. It argues that the admissibility of an action must be assessed in relation to the situation at the time the instrument initiating proceedings is lodged, so that the fact that the Comitato withdrew in the meantime from its action in Case T-274/00 could not have the consequence of making its action in Case T-277/00 become admissible. Otherwise, an applicant would be able to bring several actions and later choose, at his option, which he intended to pursue, which would be contrary to the principle of procedural economy.

25 By the second limb of this plea, the Commission complains that the General Court held, concerning *lis alibi pendens* in relation to Case T-231/00, that the identical nature of pleas between the earlier and later action constitutes a necessary condition

for *lis alibi pendens*. In the Commission's submission, it is apparent both from the procedural rules of the Member States and from Article 27 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1), that *lis alibi pendens* does not presuppose such a condition. In the third limb of this plea, the Commission argues that the General Court should, at the very least, have dismissed the action in Case T-277/00 for *lis alibi pendens* in so far as it coincided with the action in Case T-231/00.

26 The Comitato argues that the Commission has itself maintained, in its observations before the General Court, that that objection of inadmissibility presupposes that one action has been brought after another, between the same parties, having the same subject-matter and based on the same pleas. It cannot therefore henceforward argue, at the appeal stage, totally different pleas. Moreover, since the Commission did not bring an appeal against the order of the General Court in *Gruppo ormeggiatori del porto di Venezia* v *Commission*, it cannot raise that plea in the context of an appeal concerning the judgment of the General Court in Case T-277/00.

Findings of the Court

27 This plea is admissible, contrary to what the Comitato argues. The fact that, before the General Court, the Commission maintained in support of its objection of inadmissibility a different legal point of view from that submitted in its cross-appeal is irrelevant, since the present plea is based, like the arguments put forward by the Commission at first instance in the context of that objection, on alleged *lis alibi pendens* concerning Case T-277/00 in relation to Case T-274/00.

28 Even if the Commission maintains before the Court of Justice that it is not necessary for the pleas for annulment put forward by an applicant to be the same for a finding of *lis alibi pendens* to be made, whereas it acknowledged before the General Court that those pleas did need to be the same, its argument on *lis alibi pendens* is, in substance, the same as that which it put forward before the General Court, and is not therefore a new plea.

29 Nor does the order of the General Court in *Gruppo ormeggiatori del porto di Venezia and Others* v *Commission* prevent the Court from examining the plea submitted by the Commission as to the General Court's decision concerning the objection of *lis alibi pendens* raised by that institution in Case T-277/00, since that order did not contain any assessment as to the admissibility of the action in that latter case.

30 On the merits, concerning the first limb of the plea, concerning *lis alibi pendens* in relation to Case T-274/00, the General Court rightly held that, by reason of the withdrawal by the Comitato of its action in that case, its action in Case T-277/00 no longer faced the objection of *lis alibi pendens* in relation to Case T-274/00.

31 It is true that, as the Commission argues, the admissibility of an action must be assessed, as a general rule, with reference to the situation at the time when it is brought (see, to that effect, Joined Cases C-61/96, C-132/97, C-45/98, C-27/99, C-81/00 and C-22/01 *Spain* v *Council* [2002] ECR I-3439, paragraph 23). The fact remains, however, that, in accordance with the case-law, where an action is dismissed as inadmissible, the dispute arising from it, which was pending, ceases to exist, so that the situation of *lis alibi pendens* disappears (see, to that effect, Joined Cases 146/85 and 431/85 *Diezler and Others* v *ESC* [1987] ECR 4283, paragraph 12).

32 The same applies, as the Advocate General has pointed out in paragraph 50 of her Opinion, where, as in this case, the pending dispute disappears because the applicant has withdrawn his action. Contrary to what the Commission argues, the interest in avoiding the situation where parties use that possibility in a manner contrary to the principle of procedural economy does not require a situation of *lis alibi pendens* to persist even in relation to an action which the applicant has withdrawn. That interest is sufficiently protected by the applicant being ordered to pay the costs, in accordance with Article 69(5) of the Rules of Procedure of the Court of Justice or Article 87(5) of the Rules of Procedure of the General Court.

33 Therefore, the first limb of this plea must be dismissed.

34 Concerning the second and third limbs of this plea, with regard to *lis alibi pendens* in relation to Case T-231/00, it should be recalled that, according to settled case-law, a complaint directed against a ground included in a decision of the General Court purely for the sake of completeness cannot lead to the decision being set aside and is therefore nugatory (Case C-399/08 P *Commission* v *Deutsche Post* [2010] ECR I-7831, paragraph 75 and case-law cited).

35 In that regard, it is apparent from paragraph 43 of the judgment under appeal that the General Court considered it was not required to examine the admissibility of the action brought by the Comitato because the latter brought the action in Case T-277/00 jointly with Coopservice, so that, even if the alleged *lis alibi pendens* were established, it would have no impact on the admissibility of that action in that it was formed by Coopservice, and in particular on the pleas on the merits examined in this case by the General Court, since the latter were raised jointly by the two applicants.

36 Those considerations, which, moreover, have not been challenged by the Commission, are in accordance with the case-law arising from the judgment in Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125).

37 According to that case-law, which is based on reasons of procedural economy (order of the President of the Court of Justice of 24 March 2009 in Case C-60/08 P(R) *Cheminova and Others* v *Commission*, paragraph 34), if the same decision is challenged by several applicants and it is established that one of them has the capacity to bring an action, there is no need to examine the interest of the others in bringing an action.

38 That case-law is based on the consideration that, in such a situation, it is in any event necessary to examine whether the action is well founded, so that the question whether all the applicants actually have the capacity to bring an action is irrelevant.

39 The same logic applies to this case.

40 In that respect, it is important to note that a dismissal of the action by the Comitato, such as the Commission is seeking in these limbs of its plea, would have no impact on the need for the General Court to examine the pleas raised in support of the action in Case T-277/00. That action was brought jointly by the Comitato and Coopservice. There was no *lis alibi pendens* situation on the part of the latter, so that the General Court should in any event have examined all the said pleas, which rendered any dismissal of the Comitato's action irrelevant.

41 In consequence, even if the reasoning, set out for the sake of completeness in paragraphs 44 to 46 of the judgment under appeal, were erroneous in law, such a finding would have no impact on the foundation of the dismissal of the claims concerning the objection of *lis alibi pendens* in relation to Case T-231/00.

42 In those circumstances, the second and third limbs of this plea must be held to be ineffective.

43 Having regard to the above, the first plea of the Commission's cross-appeal must be dismissed.

*The capacity of the applicant undertakings to bring an action before the General Court*

Grounds of the judgment under appeal

44 The General Court ruled that the applicants in Cases T-254/00, T-270/00 and T-277/00 had the capacity to bring an action and found, in particular, that they were individually concerned by the contested decision, within the meaning of the fourth paragraph of Article 230 EC.

45 In that respect, the General Court held that they were sufficiently identified individually by reason of the particular detriment caused to their interests by the recovery obligation imposed by that decision, as perfectly identifiable members of a closed circle (paragraphs 76 to 92 of the judgment under appeal). Then, by examining the system for monitoring State aid (paragraphs 94 to 99 of that judgment) and the power of the national authorities to implement that decision (paragraphs 100 to 111 of the said judgment), the General Court confirmed the assessment, appearing in paragraph 92 of the same judgment, according to which the applicants are individually concerned (paragraph 93 of the latter).

Arguments of the parties

46 The Commission maintains that, where a decision declares a scheme of State aid incompatible with the common market, the fact that that decision orders recovery of the aid paid under that scheme cannot have the consequence of making the beneficiaries of that aid individually concerned. It argues that the General Court confused the concept of a beneficiary of the aid scheme with that of a beneficiary of advantages provided for by national legislation. At the time of the adoption of the contested decision, the beneficiaries required to repay aid by virtue of the latter had not been identified. For that purpose, it would have been necessary to determine whether the advantages which they obtained actually constituted State aid within the meaning of Article 87 EC and whether they were actually required, under that decision, to repay the aid received.

47 Moreover, the Commission argues that membership of an identifiable circle of beneficiaries at the time of the adoption of the contested decision is not sufficient to demonstrate an individual interest, the latter presupposing that the beneficiaries are in a particular situation of such a kind as to oblige the Commission to take it into account, which was not the case in this instance.

48 Next, it argues that the General Court's approach had the consequence of requiring beneficiaries of an aid scheme, under the case-law arising from the judgment in Case C-188/92 *TWD Textilwerke Deggendorf* [1994] ECR I-833, paragraphs 24 to 26, to challenge the Commission's decision before the General Court, even without any certainty that they would actually be required to repay the advantages received.

49 As for the reasoning set out in paragraph 94 et seq. of the judgment under appeal, the Commission maintains that the General Court wrongly dismissed the criterion, put forward by the Commission, that the beneficiaries of an aid are not individually concerned if the aid is granted automatically in application of a general system. Finally, concerning the grounds set out in paragraph 100 et seq. of that judgment, the

Commission considers that the General Court has misinterpreted the case-law of the Court of Justice. Where the Commission pronounces in a general and abstract way on a system of aids which it declares incompatible with the common market and orders recovery of the aid received under that system, it is then for the Member State to verify the individual situation of each undertaking concerned in order to carry out recovery of the unlawful aid.

50 According to the Comitato and Italgas, the General Court rightly recognised the applicant undertakings' capacity to bring an action.

Findings of the Court

51 The General Court was right to hold that the applicant undertakings had the capacity to bring an action in that they were individually concerned by the contested decision by reason of the particular detriment caused to their legal situation by the order for recovery of the aid concerned.

52 In the first place, and in accordance with consistent case-law, persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person addressed (Case 25/62 *Plaumann* v *Commission* [1963] ECR 95; Case C-298/00 P *Italy* v *Commission* [2004] ECR I-4087, paragraph 36 and case-law cited).

53 Secondly, the actual beneficiaries of individual aids granted under a system of aids of which the Commission has ordered recovery are, by that fact, individually concerned within the meaning of the fourth paragraph of Article 230 EC (see, to that effect, Joined Cases C-15/98 and C-105/99 *Italy and Sardegna Lines* v *Commission* [2000] ECR I-8855, paragraph 34, and *Italy* v *Commission*, paragraphs 38 and 39).

54 The arguments put forward by the Commission cannot undermine that conclusion.

55 The Court must dismiss at the outset the argument that the recovery obligation imposed by the contested decision did not sufficiently identify the applicants at the time that that decision was adopted. That argument is based, first, on the premiss that actual recovery will be implemented in a subsequent phase in which it is to be established whether the advantages received actually constitute State aid having to be repaid and, secondly, on the fact that the conditions allowing the beneficiaries to be regarded as forming part of a restricted circle were not met.

56 As the Advocate General has pointed out in points 71 to 82 of her Opinion, the order for recovery already concerns all the beneficiaries of the system in question individually in that they are exposed, as from the time of the adoption of the contested decision, to the risk that the advantages which they have received will be recovered, and thus find their legal position affected. Those beneficiaries thus form part of a restricted circle (see, to that effect, Case C-519/07 P *Commission* v *Koninklijke FrieslandCampina* [2009] ECR I-8495, paragraph 54), without it being necessary to examine additional conditions, concerning situations in which the Commission's decision is not accompanied by a recovery order. Moreover, the eventuality that, subsequently, the advantages declared illegal may not be recovered from their beneficiaries does not exclude the latter from being regarded as individually concerned.

57 The Court must also dismiss the Commission's argument that recognition of the admissibility of actions against a decision of the latter ordering the recovery of State aid had the 'paradoxical and perverse' effect of requiring the beneficiaries of the State aid to challenge that decision immediately, before even knowing whether it would lead to a recovery order concerning them. That argument has already been invoked in almost identical terms by the Commission in the case of *Italy* v *Commission* (paragraph 31), but was not accepted.

58 The possibility for a person to argue in the context of a national proceeding the invalidity of provisions contained in acts of the Union does, it is true, presuppose that the party in question had no right of direct action under Article 230 EC by which it could challenge provisions, the consequences of which it is suffering without having been able to seek their annulment (see, to that effect, *TWD Textilwerke Deggendorf*, paragraph 23, and Case C-550/09 *E and F* [2010] ECR I-6213, paragraphs 45 and 46). However, that same case-law shows that such a direct action must be admissible beyond any doubt (*E and F*, paragraph 48; Case C-494/09 *Bolton Alimentari* [2011] ECR I-647, paragraph 23).

59 Thus, persons in the position of the applicants are required to challenge a decision before the General Court to protect their interests only if it has to be concluded that such an action is admissible without any doubt. In so far as the admissibility of a direct action by such a person is not in doubt, it is reasonable to expect him to bring it within the time-limit of two months laid down by Article 230 EC.

60 Moreover, it is important to note that the grounds set out in paragraphs 76 to 92 of the judgment under appeal are in themselves capable of justifying to a sufficient legal standard the conclusion of the General Court, appearing in paragraph 92 of that judgment, that the applicants are individually concerned by the contested decision.

61 However, in so far as the judgment under appeal refers in paragraph 251 thereof to the reasoning developed in paragraphs 100 to 111 of the judgment under appeal and that reasoning is challenged by the Commission in the context of the present plea, it should be noted at the outset that that reasoning is vitiated by an error of law.

62 The General Court took the view in particular, in paragraph 106 of the judgment under appeal, that it could not be accepted that the Member State concerned might, when implementing the Commission's decision concerning an unlawful aid scheme, verify, in each individual case, whether the conditions for applying Article 87(1) EC are met.

63 It should be recalled that, in the case of an aid programme, the Commission may merely study the characteristics of the programme at issue in order to assess, in the grounds for its decision, whether, by reason of the arrangements provided for under the programme, the latter gives an appreciable advantage to beneficiaries in relation to their competitors and is likely to benefit in particular undertakings engaged in trade between Member States. Thus, in a decision which concerns such a programme, the Commission is not required to carry out an analysis of the aid granted in individual cases under the scheme. It is only at the stage of recovery of the aid that it is necessary to look at the individual situation of each undertaking concerned (Case C-310/99 *Italy* v *Commission* [2002] ECR I-2289, paragraphs 89 and 91).

64 The assessments by the General Court appearing in paragraphs 104 to 106 of the judgment under appeal thus fail to take account of the case-law according to which, where the Commission rules in a general and abstract way on a scheme of State aids, which it declares incompatible with the common market ordering recovery of the amounts received under that scheme, it is for the Member State to verify the individual situation of each undertaking concerned by such a recovery operation.

65 However, the Commission's claims concerning the reasoning of the General Court set out in paragraphs 100 to 111 of that judgment have, in any event, no relevance to the operative part of that judgment, and must therefore be regarded as ineffective (see to that effect, in particular, Joined Cases C-302/99 P and C-308/99 P *Commission and France* v *TF1* [2001] ECR I-5603, paragraphs 27 to 29).

66 The Commission's second plea cannot therefore be accepted.

*The capacity of the Comitato to bring an action*

Grounds for the judgment under appeal

67 The General Court took the view, in paragraph 114 of the judgment under appeal, that, having regard to the case-law under *CIRFS and Others* v *Commission*, it was not required to examine the Comitato's capacity to bring an action. It further held, in paragraph 115 of the judgment under appeal, that the Comitato had that capacity in any event, since it acted on behalf of its members, whose actions should have been declared admissible.

Arguments of the parties

68 By its third plea, the Commission accuses the General Court of wrongly transposing the case-law on associations of undertakings to an association of associations, such as the Comitato. Moreover, there was nothing to suggest that the associations in question had in fact entrusted the latter with the defence of their interests.

69 According to the Comitato, the Court of First Instance was right to recognise its capacity to bring an action.

Findings of the Court

70 It should be noted at the outset that, as recalled in paragraph 34 of this judgment, complaints directed against a ground included in a decision of the General Court purely for the sake of completeness cannot lead to the decision being set aside and are therefore nugatory.

71 In that respect, it is apparent from paragraph 114 of the judgment under appeal that the General Court considered that it was not required to examine the capacity of the Comitato to bring an action by reason of the fact that the applicant undertaking Coopservice has the capacity to act.

72 That consideration, based on the capacity of Coopservice to bring an action, which the Commission does not challenge before the Court, is in accordance with the case-law arising from the judgment in *CIRFS and Others* v *Commission*, as has been established in paragraphs 37 to 40 of this judgment.

73 Consequently, even if the reasoning in paragraph 115 of the judgment under appeal is erroneous in law, such a finding has no impact on the well-foundedness of the assessment of the complaint concerning the capacity of the Comitato to bring an action.

74 In those circumstances, the third plea must be held to be ineffective.

75 The Commission's third plea must therefore be dismissed.

*The interest of the applicants in bringing an action before the General Court*

76 By its fourth plea, the Commission accuses the General Court of failing to examine the interest of the applicants in bringing an action before the General Court, and complains that the General Court did not dismiss their actions as inadmissible for lack of such an interest.

77 That plea is unfounded. Contrary to what the Commission maintains, the interest of the applicants in bringing an action is not based on the mere possibility that a recovery order may be addressed to them by the national authorities. The adoption of the contested decision altered the legal position of each of them in that it declared aids granted under the aid scheme concerned, which they had already received, incompatible with the common market, and ordered their recovery. Thus, as from the time of the adoption of the contested decision, the applicant undertakings had to expect, in principle, to be obliged to repay the aids already received, thereby giving them an interest in bringing an action. The Commission has not put forward any evidence to suggest that the possibility of a repayment order being addressed to them was excluded.

78 Having regard to the foregoing, the Commission's cross-appeal must be dismissed in its entirety.

**The main appeals**

79 In support of the applicants' appeals, and in the context of the cross-appeal by Coopservice, the latter raise pleas which may, essentially, be divided into six groups, concerning, first, the compensatory nature of the advantages in question, second, the criteria of trade being affected and distortion of competition, in Article 86(2) EC, and the principle of non-discrimination, third, Article 87(3)(c) and (d) EC, fourth, Article 87(2)(b) and (3)(b) EC, fifth, Article 14 of Regulation No 659/1999 and, sixth and last, Article 15 of that regulation.

*Article 15 of Regulation No 659/1999 – classification as 'new aid'*

Grounds of the contested decision

80 In paragraphs 357 to 367 of the judgment under appeal, the General Court dismissed the pleas directed against the contested decision based on infringement of Article 15 of Regulation No 659/1999, according to which the advantages in question, granted under Laws Nos 206/1995 and 30/1997, had to be classified as 'existing aid', so that the time limitation of 10 years had expired. In that respect, the General Court based its argument in particular on the fact that the advantages provided for in Law No 590/1971, extended by Law No 463/1972, were no longer granted after 1 July 1973 and those provided for by Laws Nos 502/1978, 102/1977 and 573/1977 had been granted until 31 December 1981. Thus, the advantages forming the subject-matter of

the contested decision bore no relation to the advantages previously granted under those laws, which prevented the former from being classified as 'existing aid'.

Arguments of the parties

81 The Comitato and Hotel Cipriani, in their fifth plea, and Coopservice, in its seventh plea, argue that the General Court did not sufficiently examine when the scheme for relief from social security contributions was introduced and failed to take into account the continuity of that scheme, which had existed for decades. That scheme was introduced by Law No 463/1972. Next, Special Law No 171/1973, containing the decision in principle to grant relief from social security contributions, was applied in Venice. The reference to the provisions applicable to the Mezzogiorno determined the extent of that reduction. The decision in principle laid down by Special Law No 171/1973 was never revoked.

Findings of the Court

82 The said pleas, which should be examined first, must be dismissed. It should be noted that none of these applicants criticises the finding by the General Court in paragraph 360 of the contested decision, according to which the advantages provided for by Laws Nos 590/1971, 463/1972, 102/1977, 573/1977 and 502/1978 were no longer granted, respectively, after 1 July 1973 or 1 January 1982. Therefore, it must be held that those advantages and those granted under Laws Nos 30/1997 and 206/1995 did not exhibit a link of continuity, so that the latter cannot be classified as existing aid, and in reality constitute new aid.

*Compensatory character*

Grounds of the judgment under appeal

83 In paragraphs 179 to 198 of the judgment under appeal, the General Court dismissed the pleas according to which the contested decision wrongly classified the reduction in social security contributions at issue as 'aid', overlooking their compensatory character. It found, in particular, with reference to the case-law of the Court, that the fact that a Member State seeks to approximate, by unilateral measures, the conditions of competition in a particular sector of the economy to those prevailing in other Member States cannot deprive the measures in question of their character as aid (paragraphs 181 to 184 of that judgment).

Arguments of the parties

84 The first limb of the first plea of the Comitato, Hotel Cipriani and Coopservice and the first plea of Italgas are directed against the grounds of the judgment under appeal concerning the lack of compensatory character in the advantages granted, appearing in paragraphs 179 to 198 of that judgment.

85 In that respect, the applicants accuse the General Court of failing to take account of the compensatory nature of the measures in question. There was a close link between the objective of promoting employment, on the one hand, and the disadvantages and additional costs to which the operators concerned by those measures were exposed, on the other. The disadvantages confronting the beneficiaries of the reductions in

social security contributions at issue were to be assessed in relation to the costs which the undertakings concerned would bear if they operated on dry land, and not in relation to the average costs borne by Community undertakings.

86 Moreover, the General Court made an error of law in that it failed to point out the contradiction in reasoning vitiating the contested decision, which accepted, in point 92 of its grounds, that the measures reducing social security contributions were designed to compensate, as regards the undertaking ASPIV, for the extra costs borne by the latter. Similarly, the judgment under appeal was vitiated by an error in reasoning in that the General Court accepted that specific situations existed in which compensation for a disadvantage made a measure lose its character as an advantage, without however sufficiently explaining why that was not the case in this instance.

87 Hotel Cipriani adds that the General Court should have taken account of the fact that the reduction in social security contributions falls within the context of a policy for safeguarding the centre of Venice that is not capable of giving rise to an exact calculation of the advantages and disadvantages arising from the constraints in connection with the particular situation of that city. The General Court, instead of having due regard to two studies, one of which concerned in particular burdens on the hotel sector, accused Hotel Cipriani of not establishing the scale of the additional costs it had to face in relation to other hotels situated in Italy or abroad, having to be compensated for by the advantages granted.

88 The Italian Republic also considers that the General Court disregarded the compensatory character of the advantages granted. The granting of those advantages was justified by an economic criterion. Comparing the Italian authorities with a private undertaking and the social security contributions to insurance policies, that Member State argues that, in a case like the present, a private undertaking would have reduced the insurance premiums. Furthermore, there was a direct link between those advantages and the situation with which the undertakings concerned are confronted, characterised by the particularly high cost of manpower.

89 The Commission invites the Court to dismiss the present pleas as unfounded while making a substitution of grounds as regards the part of the General Court's reasoning in which the latter states that, in particular situations, the compensatory nature of the advantages might cause the character of aid within the meaning of Article 87 EC to disappear.

Findings of the Court

90 The General Court rightly held, in paragraphs 181 to 184 of the judgment under appeal, that the alleged compensatory character of the advantages granted under the scheme in question does not allow them to cease to be classified as aid within the meaning of Article 87 EC.

91 In that regard, it should be noted that, according to settled case-law, measures which, whatever their form, are likely directly or indirectly to favour certain undertakings or are to be regarded as an economic advantage which the recipient undertaking would not have obtained under normal market conditions are regarded as State aid (*Commission* v *Deutsche Post*, paragraph 40 and case-law cited).

92 The Court has, it is true, held that in so far as a State measure must be regarded as compensation for the services provided by undertakings entrusted with performing a service in the general public interest 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, that measure is not caught by Article 87(1) EC (see, to that effect, *Commission* v *Deutsche Post*, paragraph 41 and case-law cited).

93 However, neither Hotel Cipriani nor Italgas maintain, in their first plea, that they fulfil those conditions. On the other hand, they maintain that the fact that the advantages in question are designed to compensate for the additional costs linked with the particular conditions to which operators in Venice are exposed remove the character of aid from those advantages.

94 In that respect, it should first be noted that the grounds underlying an aid measure do not suffice to exclude the measure at the outset from classification as aid within the meaning of Article 87 EC. Article 87(1) does not distinguish between measures of State intervention by reference to their causes or their aims but defines them in relation to their effects (see, to that effect, Case C-172/03 *Heiser* [2005] ECR I-1627, paragraph 46 and case-law cited).

95 It should be added that, according to settled case-law, the fact that a Member State seeks to approximate, by unilateral measures, the conditions of competition in a particular sector of the economy to those prevailing in other Member States cannot deprive the measures in question of their character as aid (Case C-298/00 P *Italy* v *Commission*, paragraph 61 and case-law cited; *Heiser*, paragraph 54).

96 As the General Court correctly pointed out in paragraphs 183 and 184 of the judgment under appeal, that case-law also applies to measures designed to compensate for possible disadvantages to which undertakings established in a certain region of a Member State are exposed. The very wording of the EC Treaty, which in Article 87(3)(a) and (c) classifies 'aid to promote the economic development of areas' and 'aid to facilitate the development of certain areas' as compatible with the common market, indicates that advantages whose scope is limited to part of the territory of the Member State subject to aid discipline are capable of constituting selective advantages (Case C-88/03 *Portugal* v *Commission* [2006] ECR I-7115, paragraph 60).

97 Having regard to those considerations, the General Court could lawfully dismiss the pleas in support of actions for annulment based on the alleged compensatory nature of the advantages at issue without being required to examine hypothetical situations, other than those in this case, in which the compensatory nature of certain measures might possibly remove their character as aid.

98 Moreover, the General Court did not commit an error of law in failing to point out a contradiction in the reasoning of the contested decision, which acknowledges in point 92, concerning the undertaking ASPIV, that the reductions are designed to compensate for additional costs.

99 It should be noted that, in that point 92, the Commission did not decide that the compensatory nature of reductions in social security contributions removes their character as aid. On the contrary, it concluded that the derogation provided for in Article 86(2) EC applied. Therefore, it does not follow from point 92 of the contested decision that the alleged compensatory nature of the advantages granted removed from them, as regards ASPIV, the character of aid. Consequently, the Commission's decision is not vitiated by a contradiction in reasoning that the General Court should have sanctioned.

100 Having regard to the above, the finding of the General Court that the reductions in social security contributions at issue constitute aid within the meaning of Article 87(1) EC is already justified by the ground, set out in paragraphs 181 to 184 of the judgment under appeal, that the objective of compensating for competitive disadvantages of undertakings established in Venice and Chioggia, pursued by the reductions in social security contributions, cannot remove from those advantages their character as aid within the meaning of Article 87(1) EC. Therefore, the complaints against paragraphs 185 to 195 of that judgment are directed at grounds given for the sake of completeness only, and are therefore nugatory, in accordance with the case-law referred to in paragraph 65 of this judgment. For the same reason, there is no cause

to examine the need to carry out a substitution of grounds as regards the grounds set out in paragraph 185 to 187 of the said judgment, as the Commission asks the Court to do.

101 Finally, concerning the observation of the Italian Republic that the General Court should have used the criterion of the private investor, it is sufficient to note that comparison with such an operator is irrelevant because the latter would not pursue objectives such as those covered by the reductions in social security contributions in question, as has been pointed out by the Advocate General in point 121 of her Opinion.

102 In the light of all the above considerations, the first limb of the first plea of the Comitato, Hotel Cipriani and Coopservice and the first plea of Italgas must be dismissed.

*The criteria of the effect on intra-Community trade and distortion of competition, the procedural obligations of the Commission when examining the aid in question, the principle of non-discrimination and Article 86(2) EC*

Grounds of the judgment under appeal

103 In paragraphs 199 to 253 of the judgment under appeal, the General Court dismissed the pleas presented in support of the annulment actions based on infringement of Article 87(1) EC, the principle of non-discrimination and the duty to state reasons.

In that respect, the General Court based its reasoning, in particular, on the particularities characterising the examination of a multisectoral aid scheme and the lack of specific information regarding the applicants.

Arguments of the parties

104 The second limb of the first plea and the second plea of the Comitato, the second limb of the first plea of Hotel Cipriani, the second, third and fourth pleas of Italgas and the second limb of the first plea and the second plea of Coopservice are directed against the grounds set out in paragraphs 199 to 253 of the judgment under appeal.

105 The applicants and Coopservice and the Italian Republic accuse the General Court of infringing the principle of non-discrimination and disregarding the procedural obligations which the Commission was under when examining the aid scheme in question. The General Court acknowledged that the Commission might carry out, in relation to certain municipal undertakings, an individual analysis of the effect on intra-Community trade and the distortion of competition without being required to proceed in the same way with regard to other undertakings and sectors. However, those other undertakings and sectors were in identical situations, as shown by information provided in the examination phase, which the General Court distorted. Moreover, the latter infringed the duty to state reasons and the rules governing the burden of proof. Finally, the General Court erroneously interpreted the contested decision and failed to find that the latter was not sufficiently reasoned to allow it to be put into effect by the national authorities. In its second plea, Coopservice maintains that the judgment under appeal proceeds from an infringement of Article 86(2) EC, in that that provision was not applied in its regard.

106 According to the Commission, these pleas should be dismissed. However, as regards disregard of the burden of proof, it acknowledges that the case-law referred to in paragraphs 208 and 233 of the judgment under appeal is not relevant, and cannot therefore contribute to supporting the reasoning adopted. It therefore invites the Court to substitute other grounds, adopting a reasoning based on the particularities which characterise the examination of a multisectoral aid scheme.

Findings of the Court

107 In order to assess the pleas raised against the grounds of the judgment under appeal set out in paragraphs 199 to 253 of the latter, it is first necessary to examine the considerations adopted by the General Court as to the scope of the contested decision and, next, those concerning the procedural obligations which the Commission must comply with when examining a multisectoral aid scheme.

— Scope and reasoning of the contested decision

108 The applicants accuse the General Court, essentially, of misreading the contested decision and considering, wrongly, that it was sufficiently precise to allow it to be implemented by the national authorities.

109 In that latter respect, they argue that the contested decision does not indicate the criteria according to which the national authorities may determine whether a reduction in social security contributions actually constitutes, for its beneficiary, an aid incompatible with the common market. The Commission's letters dating from August and

October 2001, addressed to the Italian authorities in the context of the implementation of the contested decision, were necessary in order to supply the criteria required for carrying out that decision in relation to the undertakings benefiting from the aid scheme in question. The General Court, in taking the view that those letters fall only within the context of loyal cooperation between that institution and the national authorities, wrongly acknowledged that the Commission could, rather than indicating in its decision itself all the factors necessary for the implementation of the latter, have recourse for that purpose to mere letters.

110 Moreover, the applicants argue, the Commission could not adopt a decision limited, in general, to a very abstract assessment, but which proceeds, in certain cases, from an analysis of individual cases, without accompanying that decision with explanations concerning its scope allowing it to be implemented by the national authorities.

111 With regard to these complaints, it should be noted that the General Court held, in paragraph 251 of the contested decision, that it is not for the national authorities, at the time of implementation of the contested decision, to verify in each individual case whether the conditions for applying Article 87(1) EC are met. Moreover, it is apparent from paragraphs 100 to 111 of that judgment, to which paragraph 251 thereof refers, that the General Court interpreted the contested decision as excluding classification as aid, and thus recovery, only for reductions in social security contributions complying with the de minimis rule. Having regard to those considerations, the General Court held, as is clearly apparent from paragraphs 251 and 252 of that judgment, that the contested decision is sufficiently precise and supported by reasons to allow it to be implemented by the national authorities.

112 That analysis of the scope of the contested decision is, however, vitiated by an error of law.

113 Under Article 5 of the contested decision, the Italian Republic is to take all measures necessary to ensure the repayment, by the beneficiaries, of 'aid incompatible with the common market'. Performance of that obligation presupposes, therefore, that it has first been established that the advantages granted may be classified as State aid. Articles 1 to 3 of that decision designate aid which is compatible with the common market and aid which is not, and Article 4 of the said decision finds that, for the companies mentioned therein, the advantages granted do not constitute aid. Moreover, as has been relevantly pointed out by the General Court in paragraph 103 of the judgment under appeal, advantages complying with the de minimis rule are excluded from the classification as State aid.

114 It is apparent from a reading of recitals 49 and 50 thereof that the contested decision limited itself, as regards the criteria of the effect on intra-Community trade and distortion of competition, to an analysis of the characteristics of the aid scheme in question. The Commission limited itself to verifying whether certain undertakings benefiting from reductions in social security contributions under that scheme carried on economic activities likely to affect trade between Member States and distort competition, since such a verification was sufficient to establish its competence for the purposes of analysing the compatibility of that scheme with the common market.

115 Consequently, before proceeding to the recovery of an advantage, the national authorities were necessarily required to verify, in each individual case, whether the advantage granted was, in the hands of its beneficiary, capable of distorting competition and affecting intra-Community trade, as otherwise that additional verification, essential to the classification of individual advantages received as State aid, could not be made.

116 Similarly, the conclusion of the General Court that the contested decision is sufficiently supported by reasoning to allow it to be implemented by the national authorities is vitiated by an error of law. It is apparent from paragraphs 251 and 252 of the judgment under appeal that, in arriving at that conclusion, the General Court relied

precisely on its erroneous interpretation of the scope of that decision according to which national authorities are not required to verify in each individual case whether the advantage granted was, in the hands of its beneficiary, likely to distort competition and affect intra-Community trade.

117 As is apparent from paragraphs 61 to 64 of this judgment, that interpretation by the General Court misinterprets the case-law concerning the obligations of national authorities when implementing a decision of the Commission.

118 However, it should be noted that, if the grounds of a judgment of the General Court disclose an infringement of EU law but its operative part is shown to be well founded on other legal grounds, such an infringement is not capable of bringing about the annulment of that judgment, and a substitution of grounds must be made (see, to that effect, Joined Cases C-120/06 P and C-121/06 P *FIAMM and Others* v *Council and Commission* [2008] ECR I-6513, paragraph 187 and case-law cited).

119 Thus, it needs to be examined, having regard to the content and scope of the contested decision and taking account of paragraphs 61 to 64 and 113 to 117 of this judgment, whether the latter is supported by sufficient grounds to permit its implementation by the national authorities.

120 In that regard, it should be noted that the verification to be carried out by the national authorities of the individual situation of each beneficiary concerned must be carried out sufficiently within the framework of the Commission decision concerning an aid scheme which is accompanied by a recovery order. First, as is apparent from point 196 of the Opinion of the Advocate General, such a decision must allow its scope to be clearly identified. Secondly, as the applicants maintain, such a decision must contain in itself all the matters essential for its implementation by the national

authorities, thereby excluding the possibility that the actual content of that decision is not established until afterwards, by means of an exchange of letters between the Commission and the national authorities.

121 The contested decision appears, in the light of those principles, to be supported by sufficient reasoning. As the Advocate General has stated in points 197 and 198 of her Opinion, it is sufficiently clear from the grounds for that decision that, with regard to the question whether the reductions in social security contributions were capable of distorting competition and affecting intra-Community trade, the Commission clearly limited itself to an assessment of the aid scheme in question as such. Thus, the national authorities were required to examine in each individual case whether the advantages granted were capable of distorting competition and affecting intra-Community trade. On the other hand, as regards the possible compensatory nature of the advantages granted, the finding in the contested decision that that nature did not call into question the classification of those advantages as aid is generally valid, thus binding the national authorities.

122 Consequently, the Commission's letters dating from August and October 2001 cannot be regarded as demonstrating that the contested decision is not supported by sufficient reasoning.

123 Nor have those letters established the real content of the contested decision after the event.

124 It is true that, as Italgas argues, the Commission indicated in those letters that the advantages granted do not, for certain operators in given sectors, constitute State aid by reason of there being no effect on trade between Member States. However, such explanations, being designed to clarify the application of the conditions of the

concept of State aid to individual cases, are part of the framework established by the contested decision.

125 However, if it were required that the decision ordering the recovery of unlawful aid necessarily contain such specifications, the faculty granted to the Commission by the case-law referred to in paragraph 63 of this judgment to assess an aid scheme by reference to its general characteristics would be called into question. Moreover, the principle of loyal cooperation between the Commission and Member States would be endangered if the Commission were deprived of the possibility of providing information in order to facilitate the correct implementation of such a decision by the Member State concerned. The letters sent in this case by the Commission to the national authorities thus fall, as the General Court correctly acknowledged in paragraph 252 of the judgment under appeal, within the framework of loyal cooperation between the Commission and the national authorities.

126 Having regard to the above considerations, this Court finds that the General Court misinterpreted the scope of the contested decision, but that that error cannot bring about the annulment of the judgment under appeal, given that that decision is shown to be supported by sufficient reasoning to enable it to be implemented by the national authorities.

127 Therefore, the complaints made against this part of the judgment under appeal must be dismissed.

— Procedural obligations of the Commission

128 The applicants accuse the General Court of erroneously taking the view that the Commission had complied with its procedural obligations when examining the aid scheme in question. They argue in particular that the Commission ignored the local

character of the services and infringed Article 86(2) EC and the principle of non-discrimination by examining the individual situation of the municipal undertakings without proceeding in the same way for private undertakings in similar situations. They further accuse the General Court of distorting the evidence.

129 In order to assess these complaints, it should be noted, as a preliminary observation, that the General Court based its reasoning, in paragraphs 209 and 228 to 231 of the judgment under appeal, on the case-law concerning the examination of aid schemes, to conclude that the Commission was not, in principle, required to carry out an examination of the various sectors enjoying the scheme in question.

130 Those considerations are in accordance with the case-law of the Court of Justice, according to which the Commission may, in the case of an aid scheme, confine itself to examining the general characteristics of the scheme in question without being required to examine each particular case in which it applies (see, in particular, *Italy and Sardegna Lines* v *Commission*, paragraph 51, Case C-278/00 *Greece* v *Commission* [2004] ECR I-3997, paragraph 24, and Case C-148/04 *Unicredito Italiano* [2005] ECR I-11137, paragraph 67), in order to determine whether that scheme comprises aid elements.

131 Firstly, the applicants accuse the General Court of holding, wrongly, as shown by paragraphs 224, 235 and 249 of the judgment under appeal, that the Commission may rely, when examining an aid scheme, upon a presumption as to the existence of the conditions for applying the concept of State aid, namely, in this case, intra-Community trade being affected and distortion of competition.

132 It is, admittedly, undisputed that the concept of State aid is a legal concept by nature and must be interpreted on the basis of objective elements and that the Commission does not have a discretion as to the classification of a measure as 'State aid' within the meaning of Article 87(1) EC, but is subject to judicial review, in principle to the full extent (see, to that effect, Case C-487/06 P *British Aggregates* v *Commission* [2008] ECR I-10515, paragraphs 111 and 112).

133 However, the considerations adopted by the General Court concerning both the particularities of the examination of a State aid scheme and the nature of the advantages granted as operating aid are, in themselves, capable of justifying to a sufficient legal standard the conclusions appearing in paragraphs 249 and 250 of the judgment under appeal, so that this complaint is, in any event, ineffective.

134 In the first place, according to the case-law, the Commission is not required to establish the existence of a real impact of the aid on trade between Member States and an actual distortion of competition, but is required only to examine whether that aid is capable of affecting such trade and distorting competition (Case C-66/02 *Italy* v *Commission* [2005] ECR I-10901, paragraph 111).

135 Secondly, the General Court based its reasoning both on the particularities of the examination of an aid scheme and on the nature of the advantages granted as operating aid. As to the first point, the General Court, in assessing the scheme in question with regard to its general characteristics, found in paragraphs 246 to 250 of the judgment under appeal, in accordance with the case-law there cited, that the small amount of the aid or the fact that most of the beneficiaries carried on their business at a local level could not have as their consequence that aid granted under that scheme was not capable of affecting trade between Member States and resulting in a distortion of competition.

136 As to the second point, it should be borne in mind that operating aid – that is to say, aid which, like that at issue here, is intended to release an undertaking from costs which it would normally have to bear in its day-to-day management or normal activities – in principle distorts the conditions of competition (see Case C-156/98 *Germany* v *Commission* [2000] ECR I-6857, paragraph 30).

137 Therefore, the complaint that the General Court wrongly acknowledged that the Commission had the possibility of recourse to a presumption as regards trade between Member States being affected and the distortion of competition is, in any event, irrelevant to the operative part of the judgment under appeal and must therefore be regarded as ineffective, in accordance with the case-law referred to in paragraph 65 of this judgment.

138 Secondly, the applicants accuse the General Court of wrongly taking the view that the burden of proof that the advantages in question did not constitute aid within the meaning of Article 87(1) EC lay with the Italian authorities.

139 However, the analytical scale set out in paragraphs 209 to 211 of the judgment under appeal and the subsequent examination show that, in arriving at the conclusions appearing in paragraphs 249 to 251 of that judgment, the General Court based its reasoning not on the contention that the burden of proof lay with the Italian Republic, but on the particularities of the examination of a State aid scheme and on the relevance of information received with a view to that examination. Therefore, the mere mention in paragraph 232 of that judgment that allocation of the burden of proof is subject to compliance with the respective procedural obligations of the Commission and the Member State concerned appears to be irrelevant to the examination as carried out by the General Court and does not therefore allow the judgment under appeal to be interpreted as attributing to Member States the burden of proving that the conditions characterising the concept of State aid are not fulfilled.

140 Therefore, the complaint alleging misapplication of the burden of proof is based on an erroneous reading of the judgment under appeal and must therefore be dismissed as unfounded.

141 Thirdly, the applicants argue that the judgment of the General Court and the contested decision are vitiated by an error of reasoning and an infringement of the principle of non-discrimination. The municipal undertakings on the one hand and the private undertakings on the other, which were in comparable situations, were treated in a discriminatory manner. Like the municipal undertakings, Italgas and Hotel Cipriani carried out strictly local activities, thereby excluding the possibility that the advantages which they enjoyed might cause intra-Community trade to be affected.

142 Having regard to the information supplied to the Commission, the latter was under an obligation to examine individually, concerning certain sectors or certain undertakings, whether the advantages in question could affect trade between Member States and distort competition or whether the derogation under Article 86(2) EC applied. At the very least, the Commission should have asked the national authorities for additional information, as it had done in relation to the municipal undertakings.

143 In that respect, the applicants refer in particular to the studies carried out by COSES in 1998, mentioned in paragraph 9 of the judgment under appeal, and to the letters from the City of Venice of 18 May 1998 and from the Italian Government of 23 January and 10 June 1999, sent to the Commission at the time of the examination of the aid scheme in question. The latter contained clear indications that the risk that intra-Community trade might be affected or competition distorted was non-existent for certain sectors and undertakings, having regard to the local character of their activities. In particular, concerning hotel-keeping, the applicants argue that the markets must be locally delimited, since tourists choose first the destination and then the hotel or restaurant. As there was no relationship of competition between the hotels of Venice and those of other cities, the reductions in social security contributions at issue could not have affected intra-Community trade. Coopservice further argues that

it carries out a service in the public economic interest and maintains, in its second plea, that the judgment under appeal is vitiated by an infringement of Article 86(2) EC.

144 With regard to these complaints, it should be noted that it is not a question in this case of determining whether the advantages granted to the applicant undertakings actually brought about a distortion of competition and an adverse effect on intra-Community trade. It merely needs to be examined whether the Commission, because of the fact that it carried out an analysis of the individual situation of the municipal undertakings, was required, by virtue of the principle of non-discrimination, to derogate from its approach based on an examination of the scheme in question according to its general characteristics in relation also to the applicant undertakings and the sectors in which they operate having regard to the information which it had received in respect of them.

145 In that respect, it is apparent from the judgment under appeal that, concerning, first, the situation of Hotel Cipriani, Italgas and Coopservice, the General Court examined the studies of COSES and the abovementioned letters, and found, in paragraphs 214 to 216 and 241 of the said judgment, that the Commission had not, during the examination procedure, received any specific information with regard to those undertakings which were capable of giving rise to the procedural obligation to take the individual situation of the latter into account.

146 As regards, secondly, the situation of the construction, commercial and hotel sectors and services in the public economic interest, it should be noted that the General Court, having examined the information supplied by those studies and those letters, held, in paragraph 240 of the judgment under appeal, that, for those sectors also, there was no specific information capable of giving rise, on the part of the Commission, to the procedural obligation to seek information with regard to those sectors from the Italian authorities.

147 By contrast, as the General Court found in paragraphs 244 and 245 of the judgment under appeal, information did exist as regards the municipal undertakings, which were incomplete but specific, requiring the Commission to seek information regarding them from those authorities.

148 Consequently, the General Court held, in paragraphs 242 to 245 and 249 and 250 of that judgment, that the Commission was not required to derogate, as regards Hotel Cipriani, Italgas and Coopservice, the construction, commerce and hotel sectors and services of public economic interest, from its approach consisting in examining the general characteristics of the scheme in question and, moreover, that the contested decision was sufficiently motivated in that respect and did not infringe the principle of non-discrimination.

149 In so far as the applicants challenge those assessments of the General Court, it should be noted that, according to consistent case-law, it is clear from Article 225 EC and the first paragraph of Article 58 of the Statute of the Court of Justice that the General Court has exclusive jurisdiction, first, to find the facts, except where the substantive inaccuracy of its findings is apparent from the documents submitted to it, and, second, to assess those facts. When the General Court has found or assessed the facts, the Court of Justice has jurisdiction under Article 225 EC to review the legal characterisation of those facts by the General Court and the legal conclusions it has drawn from them (*British Aggregates* v *Commission*, paragraph 96 and case-law cited).

150 By contrast, the Court of Justice does not have jurisdiction to ascertain the facts or, in principle, to examine the evidence which the General Court used in support of those facts (see, to that effect, *British Aggregates* v *Commission*, paragraph 97 and case-law cited).

151 Thus, the complaints that the General Court should, having regard to the specific information received by the Commission at the time of the examination procedure, have concluded that the Commission was under an obligation to carry out, for certain sectors or undertakings, an examination of individual cases or to apply to the Italian authorities for additional information must be dismissed as inadmissible in so far as they are directed against factual assessments made by the General Court.

152 In so far as Italgas accuses the General Court of distorting the evidence, it should be noted that, pursuant to Article 225 EC, the first paragraph of Article 51 of the Statute of the Court of Justice and Article 112(1)(c) of its Rules of Procedure, where an applicant alleges distortion of the evidence by the General Court, he must indicate precisely the evidence alleged to have been distorted and show the errors of appraisal which, in his view, led to such distortion (Case C-413/08 P *Lafarge* v *Commission* [2010] ECR I-5361, paragraph 16 and case-law cited).

153 Such distortion exists where, without recourse to new evidence, the assessment of the existing evidence is manifestly incorrect (*Lafarge*, paragraph 17).

154 Italgas refers in that respect to the letters of 23 January and 10 June 1999 of the Italian authorities, and of 18 May 1998 of the City of Venice.

155 Concerning, first, the letters of 23 January 1999 of the Italian authorities, and of 18 May 1998 of the City of Venice, it should be noted that Italgas does not submit in a sufficiently detailed manner that the General Court's assessment of those letters is at odds with their wording, so as to permit the Court of Justice to verify whether the assessment of those letters appears to be clearly incorrect (see, by analogy,

Case C-260/09 P *Activision Blizzard Germany* v *Commission* [2011] ECR I-419, paragraph 52).

156 In the first place, Italgas confines itself to stating, without any specific reference to the text of those letters, that their authors referred 'albeit in general terms' to the local character of certain sectors, excluding the possibility that the social advantages granted to those sectors might have an impact on intra-Community trade. In addition, it should be noted that the General Court took a position on precisely those documents in paragraphs 214 to 216 and 240 and 241 of the judgment under appeal without the affirmations of a general nature by Italgas being capable of demonstrating that that assessment appears clearly incorrect.

157 Concerning, secondly, the letter of 10 June 1999 of the Italian authorities, to which Italgas refers more precisely, reproducing word for word the part of that letter which it claims was distorted by the General Court, it should be noted that the General Court found, with regard to that letter, in paragraph 214 of the judgment under appeal, that 'the Italian Government … supported the request for a derogation under Article 86(2) EC in favour of the municipal undertakings …'.

158 Italgas does not challenge that finding by the General Court but challenges the conclusion drawn, in paragraphs 243 and 244 of the judgment under appeal, from the whole of the observations and documents sent to the Commission during the administrative procedure that the Commission was not required to obtain additional information from the national authorities in order to verify whether the conditions for applying Article 87(1) EC concerning the impact on intra-Community trade and competition were met, in the various sectors of activity concerned in which the applicant undertakings operated, in the absence of precise information in respect of them.

159 In those circumstances, it appears that the General Court has not distorted the evidence, but that, as the Advocate General has pointed out in point 174 of her Opinion, that Italgas is in reality seeking to obtain a new assessment of the latter, which is outside the jurisdiction of the Court.

160 Therefore, it must be concluded that the General Court did not commit an error of law by finding that the Commission, in the absence of specific information with regard to the applicant undertakings and the sectors in which they operated, was not required, by virtue of the principle of non-discrimination, to derogate from its approach based on an examination of the aid scheme in question according to its general characteristics and carry out an analysis of their individual situation. In the absence of such specific information, it is not necessary either to examine whether the Commission was obliged to derogate from that approach by virtue of its obligation to carry out a diligent and impartial examination.

161 Having regard to the above, the second limb of the first plea and the second plea of the Comitato, the second limb of the first plea of Hotel Cipriani, the second third and fourth pleas of Italgas and the second limb of the first plea and the second plea of Coopservice must be dismissed.

*Article 87(3)(c) and (d) EC and the duty to state reasons*

Grounds of the judgment under appeal

162 In paragraphs 280 to 314 of the judgment under appeal, the General Court dismissed the pleas submitted in support of the actions for annulment based on misapplication of Article 87(3)(c) EC and a failure to state reasons. While acknowledging that the

Commission might derogate, in particular cases, from its notices and guidelines, it found in particular that, in this case, it was not required to proceed in that way. The contested decision was supported by sufficient reasoning. In any event, the nature of the reductions in social security contributions, namely that of operating aid, precluded their being admitted into the context of such a derogation.

163 In paragraphs 322 to 329 of the judgment under appeal, the General Court dismissed the pleas that the Commission had wrongly refused to apply the exception concerning cultural policy laid down in Article 87(3)(d) EC. It based its reasoning, in that respect, particularly on the fact that the detailed rules for applying the reliefs from social security contributions in question do not guarantee the pursuit of objectives of cultural policy, taking the view, moreover, that the Commission did not infringe the principle of non-discrimination by applying that exception to Consorzio Venezia Nuova and not to the applicants.

Arguments of the parties

164 First, the Comitato and Hotel Cipriani, by their third and second pleas respectively, and Coopservice, by its third plea, argue that the General Court wrongly interpreted Article 87(3)(c) EC. The General Court did not effectively review the exercise of the Commission's discretion. It confined itself to examining the possible existence of 'specific' or 'new' grounds capable of justifying the granting of the advantages in question, without actually examining whether the Commission was obliged to carry out an ad hoc application of that provision. The objective of granting those advantages accorded fully with the objectives of the Community regional aid scheme. According to the Italian Republic, the General Court should have annulled the contested decision by

reason of an infringement of Article 253 EC. It would have been possible to grant the derogation provided for in Article 87(3)(c) EC without a modification of the guidelines formulated in that regard by the Commission being necessary.

165 Secondly, the Comitato and Hotel Cipriani, by their fourth and third pleas respectively, and Coopservice, by its fourth plea, argue that the General Court infringed Article 87(3)(d) EC. All economic operators in the historic centre of Venice were exposed to additional costs imposed by reason of the objective of safeguarding the heritage of that city. The reduction in social security contributions at issue reduced the cost of manpower, thereby facilitating the work necessary in order to safeguard that heritage. Moreover, the reasoning of the judgment under appeal was contradictory, since the General Court had acknowledged the application of that provision as regards Consorzio Venezia Nuova, which they argue was erroneously regarded as a municipal undertaking.

166 The Commission maintains that those pleas should be dismissed.

Findings of the Court

167 The pleas arguing that the General Court's interpretation of Article 87(3)(c) and (d) EC, set out in paragraphs 280 to 314 and 322 to 329 of the judgment under appeal, must be dismissed.

168 As regards, first, the interpretation of Article 87(3)(c) EC, it should be noted that, contrary to what the applicants claim, the General Court examined in a detailed manner, in paragraphs 307 to 309 of the judgment under appeal, the exercise of the discretion which the Commission enjoys in the context of an ad hoc application of that

provision. In that regard, the General Court examined the existence of possible errors of assessment and rightly concluded that the Commission could legitimately base its reasoning, when giving reasons for refusing to apply the derogation provided for in that provision, on the fact that this was a case of operating aid for undertakings. As the General Court rightly pointed out in paragraph 286 of that judgment, such aid, which in principle distorts the conditions of competition, can be authorised, in accordance with the Commission communication on the method for the application of [Article 87(3)(a) and (c) EC] to regional aid of 12 August 1988 (OJ 1988 C 212, p. 2) and the Guidelines on national regional aid, published in 1998 (OJ 1998 C 74, p. 9), only in exceptional circumstances. As the General Court indicated in paragraph 309 of that judgment, the applicants have not demonstrated the existence of particular circumstances allowing it to be held that, notwithstanding the nature of the aid in question as operating aid, their granting should have been allowed pursuant to the said derogation.

169 Moreover, the General Court rightly held, in paragraphs 310 and 311 of the judgment under appeal, that the contested decision was supported by a sufficient statement of reasons. As it pointed out, where, in the 73rd and 74th points of the grounds for that decision, the Commission indicated the reasons precluding a modification of the existing communications and guidelines, it relied on the reasons why, in this case, an application of Article 87(3)(c) CE was not justified.

170 Concerning, secondly, the application of Article 87(3)(d) EC, the General Court rightly dismissed the complaints made against the contested decision. In the first place, the finding of the General Court that the Commission could disapply that provision for lack of a sufficiently close link between the reduction in social security contributions and the preservation of the cultural heritage does not contain any error of law.

171 Secondly, the grounds of the judgment under appeal are not contradictory. As the General Court rightly pointed out in paragraph 327 of that judgment, the situation of Consorzio Venezia Nuova was not comparable to that of the applicants, that body having as its purpose the realisation of interventions decided upon by the State to ensure the safeguarding of the historical, artistic and architectural heritage of Venice. The question whether or not the General Court correctly classified Consorzio Venezia Nuova as a municipal undertaking is therefore irrelevant.

*Article 87(2)(b) and (3) EC*

Grounds of the judgment under appeal

172 In paragraphs 337 to 342 of the judgment under appeal, the General Court dismissed the pleas directed against the contested decision claiming infringement of Article 87(2)(b) and (3)(b) EC and Article 253 EC. In that respect, the General Court found that the Commission had not exceeded the limits of its discretion and that the contested decision was supported by sufficient reasoning.

Arguments of the parties

173 Coopservice maintains, in its fifth plea, that the General Court infringed the said provisions. The advantages granted formed part of a series of measures designed to safeguard Venice, an important project of European interest. Moreover, the General

Court disregarded the problem of 'acqua alta', which had to be regarded as a natural calamity or an extraordinary event within the meaning of Article 87(2)(b) EC.

174 The Commission has not adopted a position in that respect.

Findings of the Court

175 The complaints made by Coopservice in this plea must be dismissed. As regards Article 87(2)(b) EC, the General Court correctly held that the derogation provided for in that provision does not apply to this case, given that the reductions in social security contributions at issue are proportionate to the wage bill and are not designed to remedy damage caused by natural catastrophes or other events of an extraordinary nature, as the said provision requires. In accordance with the case-law, the only disadvantages which may be compensated for by virtue of that derogation are those directly caused by natural calamities or other extraordinary events (judgment of 11 November 2004 in Case C-73/03 *Spain* v *Commission*, paragraph 37; Joined Cases C-346/03 and C-529/03 *Atzeni and Others* [2006] ECR I-1875, paragraph 79).

176 With regard to Article 87(3)(b) EC, the General Court examined the exercise of the discretion which the Commission enjoys and rightly concluded that the latter had not exceeded the limits of its discretion by taking the view that the derogation designed to promote the realisation of an important project of common European interest should not be applied in this case, on the ground that only operators based in Venice benefit from the aid scheme in question.

177 Finally, contrary to what Coopservice maintains, the General Court duly examined the argument based on the particular situation of Venice, so that the judgment under appeal is not vitiated by an error of reasoning in that respect.

*Article 14 of Regulation No 659/1999*

Grounds of the judgment under appeal

178 In paragraphs 385 to 399 of the judgment under appeal, the General Court held that the contested decision did not infringe Article 14 of Regulation No 659/1999 by providing, in Article 5, for the recovery of aid declared to be unlawful. The General Court observes in particular that, by virtue of Article 14 of Regulation No 659/1999 and well-established case-law in that respect, where the Commission finds that aid is incompatible with the common market, it is required to order that it be recovered. In this case, the General Court found that no general principle of Community law stood against the recovery order.

Arguments of the parties

179 The Comitato and Hotel Cipriani, by their sixth and fourth pleas respectively, and Coopservice, by its sixth plea, accuse the General Court of ignoring the fact that the declaration by the Commission that aid is incompatible with the common market does not automatically entail its recovery. The Commission has a discretion in the context of which it must evaluate, going beyond legal considerations, a whole series

of factors such as confidence in the aid having been lawful, the nature of the aid, the particularity of the place in question, the specific situation of the beneficiaries and the financial impact.

180 The Commission observes that the General Court correctly acknowledged that recovery of the aid declared incompatible with the common market is the logical consequence of it being found unlawful and that, in this case, no general principle stood in the way of a recovery order.

Findings of the Court

181 These pleas must be dismissed as unfounded. The General Court acknowledged, in full conformity with the case-law of the Court of Justice, set out in paragraph 387 of the judgment under appeal, that an order for the recovery of unlawful aid is the logical consequence of it being found unlawful.

182 Moreover, examining the reasons put forward by the applicants, the General Court rightly held that, in this case, there was no cause for the Commission to refrain from ordering the recovery of the aid declared unlawful. The General Court pointed out, in paragraphs 391 to 394 of the judgment under appeal, that the applicants have not demonstrated the existence of particular circumstances to permit the conclusion that, notwithstanding the nature of the aid in question as operating aid, the Commission should have refrained from ordering its recovery.

183 Finally, it should also be noted that the order for recovery appearing in the operative part of the contested decision covers State aid declared incompatible with the common market by that decision, implying that it must first be established by the national authorities, having regard to the considerations set out in paragraphs 113 to 121 of this judgment, that the advantages granted constitute State aid in the hands of the beneficiaries.

184 In the light of the whole of the above considerations, the main appeals and the cross-appeal by Coopservice must be dismissed.

**Costs**

185 The first paragraph of Article 122 of the Rules of Procedure of the Court states that, where the appeal is unfounded, the Court is to make a decision as to costs. Under Article 69(2) of the Rules of Procedure, which applies to appeal proceedings pursuant to Article 118 thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. According to the second subparagraph of Article 69(2), where there are several unsuccessful parties the Court shall decide how the costs are to be shared. According to the first subparagraph of Article 69(3) of the Rules of Procedure, however, the Court may order that the costs be shared or that the parties bear their own costs, if each party succeeds on some and fails on other heads.

186 In this case, since the Comitato, Hotel Cipriani, Italgas and Coopservice have, each in relation to itself, been unsuccessful in their pleas, they must be ordered to bear in equal shares the costs in relation to the main pleas and in relation to the cross-appeal of Coopservice.

187 Since the Commission has pleaded unsuccessfully in relation to its cross-appeal, it must bear the costs in relation to the latter.

188 Finally, in accordance with the first subparagraph of Article 69(4) of the Rules of Procedure of the Court of Justice, the Italian Republic must bear its own costs.

On those grounds, the Court (Third Chamber) hereby:

**1. Dismisses the appeals of the Comitato 'Venezia vuole vivere', Hotel Cipriani Srl and Società Italiana per il gas SpA (Italgas) and the cross-appeal of Coopservice – Servizi di fiducia Soc. coop. rl;**

**2. Dismisses the cross-appeal of the European Commission.**

**3. Orders the Comitato 'Venezia vuole vivere', Hotel Cipriani Srl, Società Italiana per il gas SpA (Italgas) and Coopservice – Servizi di fiducia Soc. coop. rl to pay in equal shares the costs relating to the main appeals and to the cross-appeal of the latter;**

**4. Orders the European Commission to pay the costs in relation to its cross-appeal;**

**5. Orders the Italian Republic to bear its own costs.**

[Signatures]