

Appeal brought on 27 March 2018 by *Électricité de France (EDF)* against the judgment delivered on 16 January 2018 in Case T-747/15 *EDF v Commission*

(Case C-221/18 P)

(2018/C 182/20)

Language of the case: French

Parties

Appellant: *Électricité de France (EDF)* (represented by: M. Debroux, lawyer)

Other party to the proceedings: European Commission

Form of order sought

Principally:

- set aside the judgment under appeal;
- rule on the action at first instance, upholding it and, in consequence, annulling Articles 1 to 5 of Commission Decision (EU) 2016/154 of 22 July 2015 concerning State aid SA.13869 (C 68/2002) (ex NN 80/2002); ⁽¹⁾

In the alternative:

- rule definitively on the first plea in law and the first part of the second plea in law of the action at first instance, upholding the first part of the second plea and, in consequence, hold that the principle of the market economy operator applies to the contested measure;
- refer the dispute back to a differently-composed General Court for a ruling on the other pleas and arguments set out by the applicant in its application of 22 December 2015 and reserve the costs of the first instance;

In the further alternative:

- refer the dispute back to a differently-composed General Court for a ruling on all the pleas and arguments set out by the applicant in its application of 22 December 2015 (including the pleas in the alternative) and reserve the costs of the first instance;

In any event:

- order the Commission to pay all the costs of the present instance.

Pleas in law and main arguments

In support of the appeal, the applicant raises four principal grounds of appeal and one ground of appeal in the alternative.

The first ground of appeal alleges disregard of the force of *res judicata* attaching to the judgment delivered by the General Court on 15 December 2009, *EDF v Commission* (T-156/04). The judgment under appeal identifies the disputed measure as an alleged tax exemption, contrary to the judgment of 15 December 2009 delivered in that case which expressly rejected that approach. In order to justify that discrepancy in the identification of the disputed measure, the judgment under appeal appears impliedly, and wrongly, to point to the need to interpret the judgment of 15 December 2009 'in the light' of the confirmatory judgment of the Court of Justice of 5 June 2012 (C-124/10 P). In that judgment, however, the Court of Justice did not rule on the identification of the disputed measure, which is a finding of fact.

The second ground of appeal alleges a distortion of the evidence adduced before the General Court. That evidence describes the effectively implemented EDF capital restructuring measure and does not enable identification of the alleged tax exemption identified by the General Court.

The third ground of appeal alleges disregard of the nature and scope of the obligation to conduct a diligent and impartial examination laid down in the recent case-law of the Court, in particular the judgment in *Frucona Košice* of 20 September 2007 (C-300/16 P), which was in fact the subject matter of written observations before the General Court.

The fourth ground of appeal alleges disregard by the General Court of the obligation to state reasons, both as regards the identification of the measure at issue and the lack of discussion of the applicant's arguments based on the *Frucona Košice* judgment.

Finally, one ground of appeal raised in the alternative alleges an error of law in the identification of the alleged aid as new aid when it should have been classified as existing aid.

⁽¹⁾ OJ 2016 L 34, p. 152.

**Appeal brought on 9 April 2018 by the Italian Republic against the judgment of the General Court
(Fifth Chamber) delivered on 25 January 2018 in Case T-91/16, Italy v Commission**

(Case C-247/18 P)

(2018/C 182/21)

Language of the case: Italian

Parties

Appellant: Italian Republic (represented by: G. Palmieri, Agent, and P. Gentili, avvocato dello Stato)

Other party to the proceedings: European Commission

Form of order sought

The Italian Republic claims that the Court should:

- set aside, pursuant to Articles 56 and 58 of the Statute of the Court of Justice, the judgment of 25 January 2018, notified on 29 January 2018, delivered by the General Court of the European Union in Case T-91/16, concerning the annulment of Commission Decision C(2015) 9413 of 17 December 2015, notified on 18 December 2015, concerning the reduction of the European Social Fund contribution for the operational programme for the Region of Sicily, which forms part of the Community support framework for structural interventions in the Italian regions covered by objective No 1 (POR Sicily 2000-2006); and to annul that Commission decision.

Grounds of appeal and main arguments

The Italian Republic has appealed to the Court of Justice against the judgment of 25 January 2018 in Case T-91/16, by which the General Court of the European Union dismissed Italy's action brought against **Commission Decision C(2015) 9413 of 17 December 2015, notified on 18 December 2015, concerning the reduction of the European Social Fund contribution for the operational programme for the Region of Sicily, which forms part of the Community support framework for structural interventions in the Italian regions covered by objective No 1 (POR Sicily 2000-2006)**

First ground of appeal. Infringement of Article 39 of Regulation No 1260/99,⁽¹⁾ of Articles 4, 6 and 10 of Regulation No 438/[2001],⁽²⁾ of Article 317 TFEU, and of the principle of the burden of proof.

The General Court failed to find that the facts which it had accepted show that the audit reopened by the Commission in 2008 concerned the same expenditure as that which had already been the subject of a successful audit in 2005 and 2006, without new facts having emerged.