# JUDGMENT OF THE COURT (First Chamber)

21 June 2007 *

In Case C-158/06,

REFERENCE for a preliminary ruling under Article 234 EC, by the College van Beroep voor het bedrijfsleven, made by decision of 16 March 2006, received at the Court on 23 March 2006, in the proceedings

**Stichting ROM-projecten**

v

**Staatssecretaris van Economische Zaken**

THE COURT (First Chamber),

composed of R. Schintgen, President of the Fifth Chamber, acting for the President of the First Chamber, A. Tizzano, A. Borg Barthet, M. Ilešič (Rapporteur) and E. Levits, Judges,

* Language of the case: Dutch.

Advocate General: J. Mazák,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 1 February 2007,

after considering the observations submitted on behalf of:

— Stichting ROM-projecten, by J. Roeleveld, advocaat,

— the Netherlands Government, by C. ten Dam, acting as Agent,

— the Commission of the European Communities, by L. Flynn and A. Weimar, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 March 2007,

gives the following

## Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 6 of Commission Decision C(95) 1753 of 16 October 1995 concerning the grant of assistance from the European Regional Development Fund (ERDF) and the European Social Fund (ESF) for an operational programme within the framework of the SME Community initiative for the benefit of areas eligible under Objectives 1 and 2 in the Netherlands ('the grant decision') and Article 249 EC.

2 The reference was made in the context of proceedings between a foundation established under Netherlands law, Stichting ROM-projecten ('ROM-projecten') and the Staatssecretaris van Economische Zaken (State Secretary for Economic Affairs, 'the State Secretary'), concerning the cancellation and request for repayment of financial assistance granted within the framework of the Community initiative in favour of small and medium-sized enterprises.

## Legal context

3 On 1 July 1994, the Commission of the European Communities published the Notice to the Member States laying down guidelines for operational programmes or global grants which they are invited to propose in the framework of a Community initiative concerning the adaptation of small and medium-sized enterprises to the single market (OJ 1994 C 180, p. 10).

4 The grant decision provides as follows:

'*Article 1*

The SME operational programme for the Netherlands adopted in respect of the period from 30 November 1994 to 31 December 1999 and set out in the annexes below, which encompasses a coherent set of multiannual measures within the framework of the SME Community initiative for the benefit of areas eligible under Objectives 1 and 2 in the Netherlands, is hereby approved.

...

*Article 6*

The Community assistance concerns expenditure on operations under this programme which, in the Member State concerned, are the subject of legally binding commitments and for which the requisite finance has been specifically allocated no later than 31 December 1999. The final date for taking account of expenditure on these measures is 31 December 2001.

...

*Article 9*

This Decision is addressed to the Kingdom of the Netherlands.'

**The dispute in the main proceedings and the questions referred for a preliminary ruling**

5 By letter of 31 August 1999, ROM-projecten applied to the State Secretary for the grant of a subsidy, within the framework of the operational programme of the SME Initiative for the Netherlands, for the project entitled 'Kenniskaart Medische Technologie en Life Sciences' (Knowledge map in Medical Technology and Life Sciences, 'the project').

6 By decision of 29 December 1999, the State Secretary granted the ROM-projecten a subsidy, within the framework of the programme, totalling not more than NLG 200 000. One of the conditions laid down was that the project had to be implemented by 31 December 2000 and that costs incurred before 1 January 2000 and after 31 December 2000 would be ineligible.

7 In both 2000 and 2001 the State Secretary paid ROM-projecten, at the latter's request, an advance of NLG 80 000.

8 By decision of 11 July 2002, the State Secretary notified ROM-projecten that it had failed to fulfil the condition imposed by Article 6 of the grant decision, according to which commitments had to be entered into by the beneficiary of the subsidy no later than 31 December 1999 ('the time-limit'). The question whether the subsidy had consequently to be reduced to zero was put by the State Secretary to the Commission, which answered informally in the negative. Pending formal confirmation thereof by the Commission, the State Secretary fixed the subsidy at NLG 69 788, subject to a general reservation. The State Secretary also asked ROM-projecten to repay the amount of NLG 90 212.

9 By decision of 27 February 2003, the State Secretary fixed the subsidy at zero and called on ROM-projecten to repay the amount of NLG 69 788 as well, on the ground that the Commission considered that the commitments had to be entered into by the beneficiary of the subsidy no later than 31 December 1999.

10 By decision of 26 May 2003, the State Secretary dismissed the objection lodged against the decisions of 11 July 2002 and 27 February 2003.

11 By judgment of 23 January 2004 the Rechtbank te Roermond (Roermond District Court) set aside the decision of 26 May 2003. It directed the State Secretary to adopt a new decision on the objection.

12 By decision of 16 August 2004, the State Secretary fixed the subsidy at zero and required the repayment of EUR 72 604.84 on the ground that ROM-projecten had not complied with the time-limit.

13 An action having been brought against that decision by ROM-projecten before the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry), that Court asks whether the State Secretary can hold against ROM-projecten the fact that it failed to comply with the time-limit. In that regard, it points out that it is clear under Netherlands law that such a condition cannot be held against the beneficiary of a subsidy unless the beneficiary has been informed of it beforehand. That rule follows both from the principle of legal certainty and from Netherlands legislation. In the present case the time-limit does not appear in the State Secretary's decision of 29 December 1999 or in the conditions annexed to that decision. Nor does it appear in the application form for the subsidy or in the accompanying instructions.

14 The national court concludes that from the point of view of Netherlands law alone the time-limit cannot be held against ROM-projecten. It asks however whether that condition can be held against ROM-projecten by reason of Community law.

15 Against that background, the College van Beroep voor het bedrijfsleven has decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 6 of the ... [grant decision] unconditional and sufficiently precise to be directly applicable in the national legal order?

(2) If the answer to Question 1 is in the affirmative:

Must Article 249 EC be interpreted as meaning that Article 6 of that decision directly required an individual, as the ultimate beneficiary, to enter into the legally binding commitments referred to in that respect and to specifically allocate the requisite finance no later than 31 December 1999?

(3) If the answer to Question 2 is in the affirmative:

Does [the obligation of the Member States to take all necessary measures to recover any amounts lost as a result of an irregularity], viewed in the light of the principles of Community law, leave the Member States discretion to refrain from recovery on account of an infringement of a provision where the beneficiary of the subsidy was unaware of that provision and is not at fault for its lack of knowledge of that provision?'

## The questions referred for a preliminary ruling

### *Initial considerations*

16 In the procedure laid down by Article 234 EC providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the referring

court with an answer which will be of use to it and enable it to determine the case before it. To that end the Court of Justice may have to reformulate the question referred to it (Case C-210/04 *FCE Bank* [2006] ECR I-2803, paragraph 21, and the case-law cited).

17 In the present case, the national court has asked its third question in the alternative, in other words, assuming that the first and second questions will be examined first and answered in the affirmative.

18 It must be pointed out, however, that the third question can also be examined independently and that a reply in the affirmative would render the first and second questions irrelevant. If the conditions governing grant of the assistance, including the time-limit, must, in any event, be regarded as inapplicable to the ultimate beneficiary because the latter was not informed of them, it would not be necessary to examine whether that time-limit is unconditional, sufficiently precise and capable of directly imposing obligations on that beneficiary.

19 It is therefore appropriate to examine the third question first and to reformulate it as follows:

'Where the conditions for the grant of financial assistance by the Community to a Member State are set out in the grant decision but that Member State has neither published them nor made them known to the ultimate beneficiary of the assistance, is it contrary to Community law to apply the principle of legal certainty so as to preclude repayment by that beneficiary of amounts wrongly paid?'

*The third question*

Observations submitted to the Court

20 ROM-projecten maintains that it was not aware of Article 6 of the grant decision and that that lack of knowledge cannot be held against it. Consequently, the principles of protection of legitimate expectations and legal certainty preclude repayment of the financial assistance from which it benefited. It is not contrary to Community law for those principles to be applied in order to preclude such repayment, provided that the Community interest is taken into account and the good faith of the beneficiary is established.

21 The Netherlands Government states that citizens must be aware of Community law and that its application to them must be foreseeable. It infers from this that the time-limit cannot be held against ROM-projecten, as it was not informed of it.

22 The Commission also contends that the time-limit cannot be held against ROM-projecten. Since the national court found that that condition was not made known to ROM-projecten and its lack of knowledge cannot be held against it, the principle of legal certainty precludes that condition being relied on as against ROM-projecten.

The Court's answer

23 It follows from the case-law of the Court that, in the absence of provisions of Community law, disputes concerning the recovery of amounts wrongly paid under

Community law must be decided by national courts in application of their own domestic law, subject to the limits imposed by Community law, on the basis that the rules and procedures laid down by domestic law must not have the effect of making it practically impossible or excessively difficult to recover the aid not due and that the national legislation must be applied in a manner which is not discriminatory as compared to procedures for deciding similar national disputes (Joined Cases 205/82 to 215/82 *Deutsche Milchkontor and Others* [1983] ECR 2633, paragraph 19, Case C-366/95 *Steff-Houlberg Export and Others* [1998] ECR I-2661, paragraph 15, and Case C-336/00 *Huber* [2002] ECR I-7699, paragraph 55).

24 Accordingly, it cannot be regarded as contrary to Community law for national law, as far as the cancellation of administrative measures and the recovery of sums wrongly paid by public authorities are concerned, to take into account, in addition to the principle of legality, the principles of the protection of legitimate expectations and legal certainty, since those principles form part of the legal order of the Community (*Deutsche Milchkontor*, paragraph 30, Joined Cases C-80/99 to C-82/99 *Flemmer and Others* [2001] ECR I-7211, paragraph 60, and *Huber*, paragraph 56).

25 In particular, that principle of legal certainly requires that Community rules enable those concerned to know precisely the extent of the obligations which are imposed on them (Case C-209/96 *United Kingdom v Commission* [1998] ECR I-5655, paragraph 35; Case C-108/01 *Consorzio del Prosciutto di Parma and Salumificio S. Rita* [2003] ECR I-5121, paragraph 89, and Case C-255/02 *Halifax and Others* [2006] ECR I-1609, paragraph 72). Individuals must be able to ascertain unequivocally what their rights and obligations are and take steps accordingly (Case C-143/93 *Van Es Douane Agenten* [1996] ECR I-431, paragraph 27, and Case C-248/04 *Koninklijke Coöperatie Cosun* [2006] ECR I-10211, paragraph 79).

26 That imperative of legal certainty must be observed all the more strictly in the case of rules liable to have financial consequences (Case C-94/05 *Emsland-Stärke* [2006] ECR I-2619, paragraph 43, and *Koninklijke Coöperatie Cosun*, paragraph 79).

27 In the present case, first, as is clear from Article 9 of the grant decision, the Kingdom of the Netherlands is the sole addressee of that decision. Notwithstanding the fact that the decision was not published and that therefore only they were aware of it, the Netherlands authorities failed to convey the conditions of grant laid down in that decision to ROM-projecten.

28 Furthermore, in allocating a subsidy in the context of the grant decision to ROM-projecten on 29 December 1999, that is to say, only two days before the time-limit fixed by Article 6 of that decision expired, without informing ROM-projecten of that time-limit, the State Secretary created a situation which was almost bound to lead to a failure to comply with the conditions of grant.

29 It is clear that in such circumstances the ultimate beneficiary of Community financial assistance is not in a position to ascertain unequivocally what its rights and obligations are and take steps accordingly.

30 As ROM-projecten, the Netherlands Government and the Commission stated, in such a situation, characterised by the ultimate beneficiary's lack of knowledge of the conditions laid down in the grant decision, the principle of legal certainly precludes reliance on those conditions against that beneficiary.

31 That beneficiary is, however, in a position to challenge the cancellation and request for repayment only if he acted in good faith as regards the regularity of the use to which the financial assistance was put. It is for the national court to consider whether that condition has been fulfilled (see, to that effect, Case C-298/96 *Oelmühle and Schmidt Söhne* [1998] ECR I-4767, paragraph 29, and *Huber*, paragraph 58).

32 It is also necessary, finally, to point out that where the principle of legal certainly precludes the beneficiary of a Community financial assistance from being required to repay it, the Community's interest in recovering that assistance must nevertheless be taken into consideration (*Huber*, paragraph 57).

33 In a situation such as that in the case in the main proceedings, where non-repayment of the assistance by the beneficiary is due to the negligence of the national authorities, it follows from the principle of cooperation laid down in Article 10 EC that the Member State concerned may be held financially liable for the amounts not recovered in order to give effect to the Community's right to obtain repayment of the amount of the assistance.

34 Having regard to all of the foregoing, the answer to the third question must be that, where the conditions for the grant of financial assistance by the Community to a Member State are set out in the grant decision but that Member State has neither published them nor made them known to the ultimate beneficiary of the assistance, it is not contrary to Community law to apply the principle of legal certainty so as to preclude repayment by that beneficiary of the amounts wrongly paid, provided that it is possible to establish the beneficiary's good faith. In such a case, the Member State concerned may be held financially liable for the amounts not recovered in order to give effect to the Community's right to obtain repayment of the amount of the assistance.

*The first and second questions*

35 In view of the answer given to the third question, it is no longer necessary to reply to the question whether the time-limit is unconditional and sufficiently precise to be directly applicable in the national legal order, or the question whether that condition can impose obligations directly on the ultimate beneficiary of the financial assistance.

**Costs**

36 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

**Where the conditions for the grant of a financial assistance by the Community to a Member State are set out in the grant decision but that Member State has neither published them nor made them known to the ultimate beneficiary of the assistance, it is not contrary to Community law to apply the principle of legal certainty so as to preclude repayment by that beneficiary of the amounts wrongly paid, provided that it is possible to establish the beneficiary's good faith. In such a case, the Member State concerned may be held financially liable for the amounts not recovered in order to give effect to the Community's right to obtain repayment of the amount of the assistance.**

[Signatures]