Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

3 April 2014*

(Appeals — State aid — Aid in the form of an implied, unlimited guarantee in favour of La Poste as a result of its status as a publicly-owned establishment — Existence of the guarantee — Presence of State resources — Advantage — Burden and standard of proof)

In Case C-559/12 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 3 December 2012,

French Republic, represented by G. de Bergues, D. Colas and J. Gstalter and by J. Bousin, acting as Agents,

appellant,

the other party to the proceedings being:

European Commission, represented by B. Stromsky and D. Grespan, acting as Agents,

defendant at first instance,

THE COURT (First Chamber),

composed of A. Tizzano (Rapporteur), President of the Chamber, A. Borg Barthet, E. Levits, M. Berger and S. Rodin, Judges,

Advocate General: N. Jääskinen,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 11 September 2013,

after hearing the Opinion of the Advocate General at the sitting on 21 November 2013,

gives the following

* Language of the case: French.

Judgment

1 By its appeal, the French Republic requests the Court of Justice to set aside the judgment of the General Court of the European Union of 20 September 2012 in Case T-154/10 *France* v *Commission* [2012] ECR ('the judgment under appeal'), by which the General Court dismissed its action against Commission Decision 2010/605/EU of 26 January 2010 on State aid C 56/07 (ex E 15/05) granted by France to La Poste (OJ 2010 L 274, p. 1, 'the contested decision').

Background to the dispute

General context

2 Under the French Law No 90-568 of 2 July 1990 on the organisation of the public post and telecommunications service (loi française No 90-568, du 2 juillet 1990, relative à l'organisation du service public de la poste et des télécommunications) (JORF of 8 July 1990, p. 8069), the former Directorate-General for Posts and Telecommunications, which had hitherto been under the responsibility of the Ministry of Posts and Telecommunications, was converted, from 1 January 1991, into two legal entities governed by public law, namely France Télécom and La Poste. That law expressly authorised La Poste to develop, alongside its public service tasks, certain activities open to competition.

3 Under Article 1 of the Order of 31 December 1990 granting a State guarantee for PTT bonds and PTT savings bonds issued before 31 December 1990 (arrêté du 31 décembre 1990, accordant la garantie de l'État aux emprunts obligataires PTT et aux bons d'épargne PTT émis avant le 31 décembre 1990) (JORF of 18 January 1991, p. 917), '[s]ervice for interest, depreciation, premiums, commissions, fees and incidentals for PTT bonds and savings bonds issued before 31 December 1990 with a view to competing in the financing of the investment costs for the posts and telecommunications budget schedule, pursuant to Article L. 127 of the Posts and Telecommunications Code …, transferred to La Poste pursuant to Article 22 of the Law of 2 July 1990 …, is guaranteed unconditionally by the State'.

4 Furthermore, by judgment of 18 January 2001, the Cour de cassation (Court of cassation) (Second Civil Division) held that La Poste is to be deemed equivalent to an establishment of an industrial and commercial character (établissement public à caractère industriel et commercial) ('EPIC').

5 In French administrative law, EPICs are legal entities governed by public law which have distinct legal personality from the State, financial independence and certain special powers, including the performance of one or more public service tasks.

6 The status of EPIC entails a number of legal consequences, including the inapplicability of insolvency and bankruptcy procedures under ordinary law and applicability of Law No 80-539 of 16 July 1980 on the penalties imposed in administrative matters and on the execution of judgments by legal entities governed by public law (loi n° 80-539, du 16 juillet 1980, relative aux astreintes prononcées en matière administrative et à l'exécution des jugements par les personnes morales de droit public) (JORF of 17 July 1980, p. 1799).

The administrative procedure and the contested decision

7 By decision of 21 December 2005 the European Commission approved the transfer of the banking and financial business of La Poste to its subsidiary, La Banque Postale. In that decision, the Commission stated that the question of the unlimited state guarantee in favour of La Poste would be dealt with in separate proceedings.

8 On 21 February 2006, acting pursuant to Article 17 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88 EC] (OJ 1999 L 83, p. 1), the Commission informed the French authorities of its preliminary findings as to the existence of an unlimited State guarantee resulting from La Poste's status and which constituted State aid within the meaning of Article 87(1) EC.

9 Taking the view that that alleged guarantee was in effect before 1 January 1958, when the EC Treaty entered into force in France, the Commission applied the rules of procedure concerning existing aid and called on the French Republic, in accordance with Article 18 of Regulation No 659/1999, to withdraw, by 31 December 2008 at the latest, the guarantee given to La Poste.

10 After examining the explanations provided by the French authorities as regards the draft amendment to Decree 81-501 of 12 May 1981 for the application of Law No 80-539 (JORF of 14 May 1981, p. 1406), the Commission informed them of its decision to open the formal investigation procedure. In the publication of that decision in the *Official Journal of the European Union* on 3 June 2008 (OJ 2008 C 135, p. 7), the Commission called on interested parties to submit their comments on the contested decision.

11 Following a request from the Commission, by memorandum sent on 31 July 2009, the French authorities informed it that on 29 July 2009 the Council of Ministers had adopted draft legislation which scheduled La Poste's conversion, on 1 January 2010, into a public limited company, subject to the compulsory administration and winding-up procedures provided for under ordinary law. That draft led to the enactment of Law No 2010-123 of 9 February 2010 on the publicly-owned undertaking La Poste and postal activities (JORF of 10 February 2010, p. 2321), which entered into force on 1 March 2010.

12 On 27 February 2010 the Commission notified the French authorities of the contested decision.

13 In the first place, after inter alia describing the content of the contested decision (recitals 18 to 37 of that decision), the Commission established the existence of an unlimited guarantee from the French State in favour of La Poste because of certain particularities which were intrinsically linked to its status as a publicly-owned establishment (recitals 116 to 255 of that decision).

14 In that regard, the Commission observed, first of all, that La Poste was not subject to the ordinary law rules governing the administration and winding-up of firms in difficulty (recitals 116 to 147 of the contested decision).

15 Next, it showed that a creditor of La Poste can be sure that its claim will be repaid if that establishment were to be in financial difficulty and unable to meet its debts (recitals 148 to 229 of that decision).

16 Lastly, the Commission found that even if, after employing the specific recovery procedures described in recitals 150 to 229 of the contested decision, creditors of an EPIC did not succeed in obtaining settlement of their claim, they still had a guarantee that their unpaid claims would not be cancelled. In order to ensure continuity of the public service mandate, the rights and obligations of La Poste were always transferred to a legal entity governed by public law other than the State, or, failing that, to the latter (recitals 230 to 250 of that decision).

17 In those circumstances, the Commission stated that the unlimited State guarantee enjoyed by La Poste led to a transfer of State resources within the meaning of point 2.1 of the Commission Notice on the application of Articles 87 [EC] and 88 [EC] to State aid in the form of guarantees (OJ 2008 C 155, p. 10) (recital 254 of the contested decision), and was attributable to the State (recital 255 of that decision).

18 In the second place, the Commission stated, first, that the more favourable credit terms obtained by La Poste because of that unlimited guarantee constituted a selective advantage (recitals 256 to 300 of the contested decision) and by also taking account of a number of analyses and methodologies of ratings agencies which showed that that guarantee, as a determining factor of State support for La Poste, had a positive influence on its financial rating and, therefore, the credit terms that it was able to obtain (recitals 258 to 293 of the contested decision). Secondly, the Commission found that the measure examined was liable to distort competition and affect trade between Member States (recital 301 of that decision).

19 Subsequently, the Commission found that the guarantee at issue constituted State aid within the meaning of Article 107(1) TFEU (recital 302 of the contested decision) and that, even if it was amended as suggested by the French authorities, it did not fulfil any of the conditions to be able to be declared compatible with the internal market (recitals 303 to 315 of that decision).

20 Consequently, the Commission decided, in the words of Article 1 of the contested decision, that '[t]he unlimited guarantee given by France to La Poste constitutes State aid that is incompatible with the internal market [and that] France must withdraw it by 31 March 2010'.

The procedure before the General Court and the judgment under appeal

21 By application lodged at the Registry of the General Court on 2 April 2010, the French Republic brought an action seeking annulment of the contested decision, in support of which it put forward three pleas in law.

22 After rejecting, at paragraphs 35 to 48 of the judgment under appeal, the plea of inadmissibility of that action, according to which the contested decision did not adversely affect it, the General Court stated, at paragraph 53 of that judgment, that, as regards the substance, the three pleas related, in essence, to the determination of whether or not there was an advantage. Accordingly, at paragraphs 54 to 57 of the judgment, the General Court declared the argument alleging disregard of the requirement of a transfer of State resources to be inadmissible as it was out of time since it concerned a new plea in law which was raised at the stage of the reply.

23 Accordingly, at paragraphs 61 to 103 of the judgment under appeal, it first of all dismissed the second plea in law, alleging errors of fact and law committed by the Commission in that it had considered that under French law EPICs benefitted from an implied and unlimited State guarantee.

24 Next, at paragraphs 104 to 117 of the judgment under appeal, the General Court examined the third plea in law, relating to infringement of the notion of advantage under Article 107(1) TFEU, which is divided into two parts.

25 At paragraphs 105 to 112 of that judgment, the General Court rejected the first part of that plea in law, which alleged that the Commission had committed an error, in that it found, by also referring to the positions taken by the ratings agencies, that the existence of a State guarantee was such as to give rise to an advantage for La Poste. At paragraphs 113 to 116 of that judgment, it dismissed the second part of that plea in law, that the Commission was incorrect to find that the alleged State guarantee was liable to give rise to an advantage for La Poste, because of the positive influence it had on its financial rating.

26 Lastly, at paragraphs 118 to 125 of the judgment under appeal, the General Court rejected the first plea as being unfounded, concerning the alleged error of law committed by the Commission as regards its obligations in terms of the burden and level of proof in State aid matters, both as regards the demonstration of the existence of an implied guarantee by the French State in favour of La Poste and in that of the examination of whether there is an advantage.

27 In that regard, first, at paragraph 120 of the judgment under appeal, the General Court stated that 'the nature of the evidence the Commission must adduce depends, to a large extent, on the nature of the State measure at issue', and that proof of the existence of an implied State guarantee 'may be inferred from a bundle of converging facts having a certain degree of reliability and coherence, taken inter alia from an interpretation of the relevant provisions of national law and, in particular, be inferred from the legal effects flowing from the legal status of the recipient undertaking'.

28 Accordingly, at paragraph 121 of that judgment, the General Court observed that Commission had 'made a positive finding as to the existence of an unlimited State guarantee in favour of La Poste', in taking account of a number of concordant facts which provided a sufficient basis to establish that La Poste, by virtue of its status as an EPIC, enjoyed such a guarantee.

29 Secondly, at paragraph 123 of that judgment, the General Court held that the Commission had adduced sufficient evidence in order to establish that that guarantee constituted an advantage, since the Commission was not required, in respect of aid already granted, to demonstrate the actual effects of the disputed measure. It also stated that it was not necessary to draw any distinction whatsoever between existing aid and unlawful aid.

30 In support of that analysis, the General Court held, at paragraph 124 of the judgment under appeal, that 'the actual effect of an advantage conferred by a State guarantee may be presumed' and that 'such a guarantee enables the borrower to enjoy a lower interest rate or provide a lower level of security'.

31 In view of all those considerations, the General Court dismissed the action in its entirety.

Forms of order sought

32 By its appeal, the French Republic claims that the Court of Justice should:

— set aside the judgment under appeal;

— itself give a definitive ruling in the dispute by annulling the contested decision or refer the case back to the General Court;

— order the Commission to pay the costs.

33 The Commission contends that the Court of Justice should:

— dismiss the appeal as partially inadmissible and partially unfounded;

— order the French Republic to pay the costs of the proceedings.

The appeal

34 In support of its appeal, the French Republic raises four grounds of appeal.

The first ground of appeal

Arguments of the parties

35 By its first ground of appeal, the French Republic claims that the General Court infringed Articles 44(1)(c) and 48(2) of its Rules of Procedure, in that it held, at paragraphs 53 to 57 of the judgment under appeal, that all the pleas in law put forward in support of the action for annulment related to the determination of whether or not there was an advantage and that, consequently, the argument alleging disregard of the requirement that there be a transfer of State resources was inadmissible in so far as it constituted a new plea in law introduced in the course of the proceedings.

36 In that regard, it claimed that, as is clearly apparent from part 4.1.1 of the contested decision, entitled 'Unlimited State guarantee: State resources' and from recitals 161, 166, 183 and 254 in the preamble to that decision, the question whether or not there was a State guarantee was inseparable from the condition relating to the transfer of State resources. It follows that, by disputing the existence of an unlimited guarantee in favour of EPICs in its application before the General Court, it necessarily disputed the existence of a transfer of State resources.

37 The Commission counters that it is apparent from reading paragraph 57 of the judgment under appeal together with the minutes of the hearing before the General Court that the action for annulment did not contain any independent plea in law relating to the absence of a transfer of 'State resources'. In any event, the Commission states that the General Court properly determined that the guarantee at issue involved or used State resources.

Findings of the Court

38 It must be stated first of all that, in accordance with Article 44(1)(c) of the Rules of Procedure of the General Court, the subject-matter of the proceedings and a summary of the pleas in law on which the application is based constitute two essential elements which must be included in the application initiating proceedings. Furthermore, under Article 48(2) of those Rules of Procedure, no new plea in law may be introduced in the course of proceedings unless it is based on matters of law or fact which have come to light in the course of the procedure.

39 It must also be borne in mind that, according to settled case-law, statements regarding the subject-matter of the dispute and a summary of the pleas in law, contained in any application initiating proceedings must be sufficiently clear and precise to enable the defendant to prepare its defence and the EU judicative to rule on the application. Likewise the forms of order of such an application must be set out unambiguously so that that court does not rule *ultra petita* or indeed fail to rule on a complaint (see, to that effect, Case C-66/06 *Commission* v *Ireland* [2008] ECR I-637, paragraphs 30 and 31; Case C-165/08 *Commission* v *Poland* [2009] ECR I-6843, paragraph 43; and the order of 7 May 2013 in Case C-418/12 *TME* v *Commission* [2013] ECR, paragraph 33).

40 In the present case, although the application originating proceedings did not contain a plea in law seeking to formally call in question the condition requiring a transfer of State resources, the fact remains that the essential matters on which the argument alleging disregard by the Commission of such a condition and the summary of that argument are stated coherently and intelligibly in that application.

41 A reading of paragraphs 110 to 123 and 181 of that application, included in the plea alleging errors concerning the existence of an unlimited State guarantee in favour of La Poste, indicates clearly that the French Republic had already disputed, at that stage of the proceedings, the existence of a transfer of State resources.

42 First, the French Republic had claimed, at paragraphs 119 and 123 of the originating application, that the application of Law No 80-539 'does not mean that the State uses its own resources to support' a defaulting public establishment as that law 'does not involve any obligation on the State to guarantee the debts' of that establishment. Second, at paragraph 181 of that application, contrary to what the Commission states, it had specifically criticised paragraph 254 of the contested decision, stating that 'a guarantee that the debt would not be written off cannot constitute a guarantee of its repayment and involves a transfer of State resources'.

43 The way in which that application was structured was a direct consequence of the structure of the contested decision which in turn reflected the specific nature of the State measure analysed. It is moreover not in dispute that that decision, in part 4.1.1, was entitled 'Unlimited State guarantee: State resources', and that several of its recitals, inter alia recitals 161, 165, 174 to 179, 188 and 254, dealt with the question whether there actually was an implied State guarantee in favour of La Poste by examining whether a direct or indirect obligation on the State to use its own resources to cover the losses of a defaulting EPIC exists in French law.

44 Thus, contrary to what the General Court stated at paragraphs 53 to 56 of the judgment under appeal, the pleas in law raised in the originating application in support of the action for annulment were not solely related to determining the existence of an advantage and the arguments concerning the transfer of State resources did not constitute a new plea in law raised at the stage of the reply.

45 Nevertheless, it should be noted that, as the Commission also observed in its written observations, the incorrect categorisation of the new plea in law cannot lead to the judgment under appeal being set aside.

46 It must be noted that, in the context of the response given to the second ground of that application, in particular to paragraphs 85 to 87 and 92 to 98 of the judgment under appeal, the General Court in any event fully and completely reviewed the merits of the argument put forward by the French Republic alleging disregard of the requirement that there be a transfer of State resources.

47 Having regard to those considerations, the first ground of appeal must therefore be declared ineffective.

The principal arguments put forward in the second ground of appeal

Arguments of the parties

48 By the principal arguments put forward in the second ground of appeal, the French Republic claims that the General Court, by holding that the Commission had established to the requisite legal standard that a State guarantee existed, infringed the rules governing the burden and the level of proof.

49 In the first place, it submits that the General Court incorrectly confirmed, at paragraph 121 of the judgment under appeal, the overall reasoning followed by the Commission in the contested decision. That institution applied several negative presumptions and reversed the burden of proof by finding that it was for the French authorities to show the absence of a guarantee for the benefit of La Poste, on the ground that that EPIC was not subject to the ordinary law on compulsory administration and winding-up procedures for undertakings in difficulty.

50 In the second place, the applicant claims that the General Court committed an error of law when it held, at paragraphs 73 and 74 of the judgment under appeal, that the Commission could use presumptions and reverse the burden of proof, at recitals 126 and 131 of the contested decision. In its view, it is apparent from those recitals that it had assumed that a guarantee had been granted to La

Poste before determining whether or not that guarantee had been rendered inoperative by the entry into force, on 1 January 2005, of the Organic Law of 1 August 2001 governing the Finance Act (la loi organique du 1er août 2001 relative à la loi de finances) ('the LOLF').

51 In the third place, the French Republic notes that, at paragraph 119 of the judgment under appeal, the General Court incorrectly applied the principles governing the burden and level of proof laid down by Case C-520/07 P *Commission* v *MTU Friedrichshafen* [2009] ECR I-8555. It contends that those principles cover only decisions adopted by the Commission for the purposes of Article 13(1) of Regulation No 659/1999, on the basis of the information available, if a Member State fails to comply with a direction to provide information.

52 In the fourth place, the applicant submits that the General Court, at paragraph 120 of the judgment under appeal, incorrectly held that the implied nature of the State guarantee granted to La Poste, as an EPIC, could result in a lower requirement concerning proof and did not require a positive demonstration based on objective and concordant facts to definitively prove that the State would be legally required to repay a creditor in the event of default by an EPIC.

53 The Commission contends that the claims relating to the alleged use of negative presumptions or suppositions are inadmissible, in that they did not identify any error in law committed by the General Court, but constituted the repetition of arguments raised at first instance. In any event, the Commission contends that those claims are unfounded.

Findings of the Court

54 By the principal arguments made in the context of the second ground of appeal, the applicant complains that the General Court, first, considered that the Commission could reverse the burden of proof of the existence of the guarantee, on the ground that La Poste was not subject to the ordinary law on compulsory administration and winding-up procedures for undertakings in difficulty and, second, misconstrued the rules relating the level of proof required to demonstrate the existence of such a guarantee.

55 It must be stated that those arguments misinterpret the judgment under appeal.

56 In the first place, it must be noted that, at paragraph 121 of that judgment, the General Court specifically acknowledged that the Commission had 'made a positive finding as to the existence of an unlimited State guarantee in favour of La Poste' as it had taken account of several concordant facts, reiterated in detail at the same paragraph of that judgment, 'which provided a sufficient basis to establish that La Poste, by virtue of its status as an EPIC, enjoyed an implied, unlimited State guarantee', and amongst which bankruptcy or insolvency procedures for La Poste represented only the starting point of a complete and broader analysis of the national legal system at issue.

57 Accordingly, it is apparent from that paragraph that the General Court did not validate, in principle, any use of negative presumptions and reversal of the burden of proof by the Commission.

58 In the second place, the arguments relating to the errors which the General Court allegedly committed at paragraphs 73 and 74 of the judgment under appeal, in that it confirmed the reasoning by presumption and the reversal of the burden of proof made by the Commission at recitals 126 and 131 of the contested decision, are also unfounded.

59 In those recitals, the Commission merely rejected a number of arguments raised by the French Republic as to whether the implied guarantee in question, if it exists, had been rendered inoperative by the entry into force of the Organic Law of 1 August 2001 governing the Finance Act. The preliminary assumption of the existence of that guarantee, which is included in the contested decision,

is merely the repetition by the Commission of the applicant's reasoning. Consequently, when it confirmed, at paragraphs 73 and 74 of the judgment under appeal, the justification of the findings developed by the Commission in those recitals, the General Court manifestly did not approve the use of negative presumptions or the reversal of the burden of proof relating to demonstrating the existence of an implied and unlimited State guarantee in favour of La Poste.

60 In the third place, it is also necessary to reject the argument that, at paragraph 119 of the judgment under appeal, the General Court incorrectly interpreted *Commission* v *MTU Friedrichshafen*, as it concerned the adoption by the Commission of a final decision on State aid on the basis of incomplete or fragmented information, which was not the case in the present case.

61 First, the General Court cited that judgment solely for the purpose of responding to the applicant's argument, which relies thereon in order to assert that the Commission was still required to produce positive proof of the existence of aid.

62 Second, whilst reiterating such irrelevant case-law in the present case, the General Court in any event was right to find, at paragraph 119 of the judgment under appeal, that the Commission 'cannot assume that an undertaking has benefited from an advantage constituting State aid solely on the basis of a negative presumption, based on a lack of information enabling the contrary to be found, if there is no other evidence capable of positively establishing the actual existence of such an advantage'.

63 Such an assessment is consistent with the case-law of the Court relating to the principles on the administration of proof in the sector of State aid that the Commission is required to conduct a diligent and impartial examination of the contested measures, so that it has at its disposal, when adopting the final decision establishing the existence and, as the case may be, the incompatibility or unlawfulness of the aid, the most complete and reliable information possible for that purpose (see, to that effect, Case C-290/07 P *Commission* v *Scott* [2010] ECR I-7763, paragraph 90).

64 In the fourth and last place, it must be stated that the General Court also did not misconstrue the rules relating the level of proof required to demonstrate the existence of an implied and unlimited State guarantee in favour of a public establishment such as the EPIC and to establish accordingly that the condition relating to the presence of State resources was satisfied in this case.

65 As the Advocate General has stated at points 35 and 36 of his Opinion, in order to prove the existence of such a guarantee, which does not result expressly from any legislative or contractual document, it is permissible for the Commission to rely on the method of a firm, precise and consistent body of evidence to determine whether there is, in domestic law, a real obligation on the State to use its own resources for the purposes of covering losses of an EPIC in default and therefore, in accordance with settled case-law, a sufficiently concrete economic risk of burdens on the State budget (see Joined Cases C-399/10 P *Bouygues et Bouygues Télécom* v *Commission and Others* and C-401/10 P *Commission* v *France and Others* [2013] ECR, paragraph 106 and the case-law cited).

66 It follows that the General Court was correct to find, at paragraph 120 of the judgment under appeal, that, first, 'the nature of the evidence the Commission must adduce depends, to a large extent, on the nature of the State measure at issue' and, second, the existence of an implied State guarantee 'may be inferred from a bundle of converging facts having a certain degree of reliability and coherence, taken inter alia from an interpretation of the relevant provisions of national law'.

67 Having regard to those considerations, the entirety of the principal arguments put forward in the second ground of appeal must be dismissed.

The alternative arguments put forward in the second ground of appeal and the third ground of appeal

Arguments of the parties

68 By the arguments made in the context of the second ground of appeal and by its third ground of appeal, the French Republic claims that the General Court distorted the clear sense of the evidence, based, inter alia, on French law, put forward by the Commission and reiterated at paragraph 121 of the judgment under appeal, in that it found that the latter showed the existence of an unlimited State guarantee in favour of La Poste.

69 The third ground of appeal is in four parts.

70 By the first part of that ground of appeal, the applicant claims that, at paragraphs 69 to 77 of the judgment under appeal, the General Court distorted the case-law of the Conseil constitutionnel (decision No 2001-448 DC of 25 July 2001) and of the Conseil d'État (decision of 1 April 1938, Société de l'Hôtel d'Albe, *Recueil des décisions du Conseil d'État*, p. 341, and opinion of 8 September 2005, No 371558), and the 1995 memorandum from the Conseil d'État and the memorandum from the Minister for Economic Affairs, Finance and Industry of 22 July 2003, when it found that the Commission had correctly found that French law did not exclude the possibility for the State to grant an implied guarantee to EPICs.

71 The French Republic contends that, by the second part of that ground of appeal, at paragraphs 84 to 87 of the judgment under appeal, the General Court distorted French law when it approved the Commission's conclusions relating to the consequences arising from the application of Law No 80-539.

72 The third part of that ground of appeal alleges that the General Court distorted French law, at paragraphs 92 to 99 of the judgment under appeal, when it found that the Commission was able, correctly, to treat the conditions of engaging State liability in the same way as a guarantee mechanism, on the basis of the decision of the Conseil d'État of 18 November 2005, *Société fermière de Campoloro et autre* (*Recueil des décisions du Conseil d'État*, p. 515), of the 1995 memorandum of the Conseil d'État and of the judgment of the European Court of Human Rights of 26 September 2006 in *Société de gestion du port de Campoloro et Société fermière de Campoloro* v *France* (Case No 57516/00, '*Campoloro*').

73 Moreover, as for the applicability to the present case of the principles laid down in that judgment, the General Court failed to fulfil its obligation to state reasons, inter alia at paragraph 99 of the judgment under appeal.

74 By the fourth part of the third ground of appeal, the French Republic complains that the General Court considered, at paragraph 102 of that judgment, that the transfer of the rights and obligations attached to a public service task entails, in principle, the transfer of the rights and obligations of the establishment charged with that task.

75 In the alternative, the applicant claims that the General Court made an error in its legal classification of the facts when it found that French law granted an implied and unlimited guarantee to La Poste.

76 The Commission states that the arguments put forward in the second part of the second ground of appeal and in the third ground of appeal are inadmissible as they do not identify any distortion of evidence or error in the legal classification of the facts, the French Government limiting itself to calling into question the assessment of French law carried out by the General Court.

Findings of the Court

77 The alternative arguments put forward in the context of the second ground of appeal and those of the third ground of appeal, which are in essence equivalent, allege, first, that the General Court distorted or erred in its legal categorisation of French law, and, second, failed to state reasons affecting its interpretation of *Campoloro*.

78 As regards, in the first place, the arguments relating to errors in the analysis of French law, it must be borne in mind that, according to settled case-law, where the General Court has determined or assessed the facts, the Court of Justice has sole jurisdiction under Article 256 TFEU to review their legal characterisation and the legal conclusions which were drawn from them. The appraisal of the facts does not therefore constitute, save where the clear sense of the evidence produced before the General Court is distorted, a question of law which is subject, as such, to review by the Court of Justice (see, inter alia, Case C-551/03 P *General Motors* v *Commission* [2006] ECR I-3173, paragraphs 51 and 52, and Case C-352/09 P *ThyssenKrupp Nirosta* v *Commission* [2011] ECR I-2359, paragraphs 179 and 180).

79 Accordingly, as for the examination, in the context of an appeal, of the General Court's assessment with regard to national law, the Court of Justice has jurisdiction only to determine whether that law was distorted (Case C-82/01 P *Aéroports de Paris* v *Commission* [2002] ECR I-9297, paragraph 63, and judgment of 21 December 2011 in Case C-318/09 P *A2A* v *Commission*, paragraph 125).

80 In that regard it should nevertheless be noted that a distortion must be obvious from the documents on the Court's file, without there being any need to carry out a new assessment of the facts and the evidence (Case C-487/06 P *British Aggregates* v *Commission* [2008] ECR I-10515, paragraph 98; Case C-260/09 P *Activision Blizzard Germany* v *Commission* [2011] ECR I-419, paragraph 53; and *A2A* v *Commission*, paragraph 105).

81 In the present case, the French Republic did not claim such a distortion, in so far as it did not show that the General Court made findings going manifestly against the content of the provisions of French law at issue or even ascribed to one of them a scope which clearly it should not have received in relation to other aspects of the file.

82 In contrast, by the arguments set out at paragraphs 68 to 74 of the present judgment, the French Republic limited itself to criticising in reality the General Court's assessment of the evidence which was made up of the provisions of French law at issue or the national case-law related thereto, already analysed in detail at paragraphs 62 to 99 of the judgment under appeal and reiterated at paragraph 121 of that judgment.

83 Similarly, as regards the error of the legal classification of facts complained of in the alternative in the third ground of appeal, it is sufficient to note that, by that argument, the French Republic did not in fact dispute the consequences drawn from an incorrect legal categorisation of the provisions of French law at issue, having limited itself solely to calling into question the assessment of those provisions undertaken by the General Court.

84 In those circumstances, the entirety of those arguments relied on, in the alternative, in the context of the second ground of appeal and in the context of the third ground of appeal must be dismissed as being inadmissible.

85 As regards, in the second place, the argument relating to the failure to state reasons at paragraph 99 of the judgment under appeal as compared with the argument relating to the scope of *Campoloro* for the purposes of finding the existence of a State guarantee in favour of La Poste, in the context of an appeal, it is necessary to bear in mind that the purpose of review by the Court of Justice is, primarily, to

examine to what extent the General Court took into consideration, in a legally correct manner, all the arguments upon which the appellant relies (Case C-202/07 P *France Télécom* v *Commission* [2009] ECR I-2369, paragraph 41 and the case-law cited).

86 Nevertheless, according to settled case-law, the duty incumbent upon the General Court under Article 36 and the first paragraph of Article 53 of the Statute of the Court of Justice of the European Union to state reasons for its judgments does not require the General Court to provide an account that follows exhaustively and one by one all the arguments articulated by the parties to the case. The reasoning may therefore be implicit, on condition that it enables the persons concerned to understand the grounds of the General Court's judgment and provides the Court of Justice with sufficient evidence to exercise its powers of review on appeal (*A2A* v *Commission*, paragraph 97 and the case-law cited).

87 In the present case, it must be noted that, at paragraph 99 of the judgment under appeal, the General Court merely reiterated in a summary manner the appellant's argument concerning the probative value of *Campoloro*, to which, however, a clear, express and exhaustive response had already been provided at paragraphs 93, 94 and 97 of that judgment, in the analysis of passages of the contested decision which had equated the conditions triggering State liability in the event of default by an EPIC with an automatic, unlimited State guarantee mechanism for the latter's liabilities.

88 On that basis, the reasoning relating to that allegation being such as to enable both the French Republic to understand why the General Court rejected it and the Court of Justice to have sufficient information to carry out its review, the argument that the General Court failed to meet its obligation to state reasons must be dismissed as unfounded.

89 It follows that the alternative arguments put forward in the context of the second ground of appeal and those of the third ground of appeal must be rejected in their entirety as being inadmissible in part and unfounded in part.

The fourth ground of appeal

Arguments of the parties

90 By the fourth ground of appeal, the French Republic claims, principally, that the General Court, when it in essence found, at paragraphs 106 and 108 and 123 and 124 of the judgment under appeal, that the Commission had established to the requisite legal standard the existence of an advantage arising from the State guarantee granted to La Poste, misconstrued the rules governing the relevant burden and the level of proof and, therefore, committed an error of law. Contrary to what is apparent from those paragraphs, the Commission is required to show the genuine, not potential, effects of existing aid, and in any event cannot presume any type of effect.

91 In the alternative, the French Republic claims that the General Court distorted the evidence which had been submitted to it when it found, first, at paragraph 110 of the judgment under appeal, that the Commission was right to refer to the methods of rating agencies to confirm and not to demonstrate the existence of an advantage. The same is true, secondly, when it found, at paragraphs 111, 116 and 123 of that judgment, that the Commission had accordingly provided sufficient information to establish that the guarantee granted to La Poste constituted an advantage, rejecting furthermore the French Government's arguments that the ratings agencies were not 'aware' of the legal status of La Poste.

92 The Commission considers that ground of appeal to be unfounded, in that it disputes the General Court's analysis relating to the nature of the effects which the Commission is required to show as regards existing aid, and inadmissible, in the part relating to the distortion, as it constitutes a mere request to reassess the evidence.

Findings of the Court

93 By its fourth ground of appeal, the French Republic principally complains that the General Court committed an error of law by finding that the Commission had established to the requisite legal standard the existence of an advantage arising from the State guarantee granted to La Poste, and, alternatively, a distortion of the evidence.

94 In that regard, it must be borne in mind that the concept of aid embraces not only positive benefits, but also measures which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which, therefore, without being subsidies in the strict sense of the word, are similar in character and have the same effect (*Bouygues et Bouygues Télécom* v *Commission and Others*, and *Commission* v *France and Others*, paragraph 101 and the case-law cited). Also, State 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 aid (Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747, paragraph 84, and Case C-279/08 P *Commission* v *Netherlands* [2011] ECR I-7671, paragraph 87).

95 Since State measures take diverse forms and must be analysed in terms of their effects, it cannot be ruled out that advantages given in the form of a State guarantee can entail an additional burden on the State (see, to that effect, *Ecotrade*, paragraph 43, and *Bouygues et Bouygues Télécom* v *Commission and Others*, point 107).

96 As the Court has already held, a borrower who has subscribed to a loan guaranteed by the public authorities of a Member State normally obtains an advantage inasmuch as the financial cost that it bears is less than that which it would have borne if it had had to obtain that same financing and that same guarantee at market prices (see Case C-275/10 *Residex Capital IV* [2011] ECR I-13043, paragraph 39).

97 From that point of view, moreover, the Commission Notice on the application of Articles 87 [EC] and 88 [EC] to State aid in the form of guarantees specifically provides, at points 1.2, 2.1 and 2.2, that an unlimited State guarantee in favour of an undertaking whose legal form rules out bankruptcy or other insolvency procedures grants an immediate advantage to that undertaking and constitutes State aid, in that it is granted without the recipient thereof paying the appropriate fee for taking the risk supported by the State and also allows better financial terms for a loan to be obtained than those normally available on the financial markets.

98 It is apparent, therefore, from those considerations that, as was noted by the Advocate General at point 58 of his Opinion, a simple presumption exists that the grant of an implied and unlimited State guarantee in favour of an undertaking which is not subject to the ordinary compulsory administration and winding-up procedures results in an improvement in its financial position through a reduction of charges which would normally encumber its budget.

99 Consequently, in the context of the procedure relating to existing schemes of aid, to prove the advantage obtained by such a guarantee to the recipient undertaking, it is sufficient for the Commission to establish the mere existence of that guarantee, without having to show the actual effects produced by it from the time that it is granted.

100 Having regard to those principles, it must be stated that all the arguments put forward by the French Republic in the fourth ground of appeal are unfounded.

101 In the first place, the principal arguments put forward relating to disregard of the rules governing the burden and the level of proof as regards showing the existence of an advantage resulting from an implied and unlimited State guarantee must be rejected.

102 In that regard, it must be noted that the General Court found that the Commission had not incorrectly established the existence of such an advantage, correctly ruling, at paragraphs 106 and 108 of the judgment under appeal, that such a guarantee 'is, as a rule, liable to confer an advantage', as it is granted without something in return and enables its recipient to obtain more favourable credit terms than what it would have obtained on its own merits alone, thereby easing the pressure on its budget.

103 It is true that, in the light of those considerations, as the applicant claims, the General Court adopted contradictory and insufficient reasoning when it found, first, at paragraph 123 of the judgment under appeal, that the actual effects of existing aid do not have to be demonstrated, on the basis of case-law of the Court of Justice which was irrelevant, and stated, second, at paragraph 124 of that judgment, that '[m]oreover, the actual effect of an advantage conferred by a State guarantee may be presumed'.

104 However, as the Advocate General noted at point 69 of his Opinion, such an error cannot invalidate the judgment under appeal. Indeed, at paragraphs 123 and 124, the General Court correctly found that the Commission had observed the burden and the level of proof on it in order to establish whether an implied and unlimited State guarantee constitutes an advantage, specifying that such a guarantee enables the borrower 'to enjoy a lower interest rate or provide a lower level of security'.

105 In the second place, the alternative arguments alleging the distortion of evidence set out at paragraph 91 of the present judgment must be rejected.

106 In that regard, first of all it must be stated that, the French Republic not having claimed in fact any distortion of the evidence, those arguments are admissible only in so far as they are made in support of the error of law allegedly committed by the General Court when it validated the analysis undertaken by the Commission which solely confirmed the methods of the ratings agencies.

107 It must nevertheless be noted that, as the Advocate General stated at point 62 of his Opinion, having regard to the statement resulting from paragraphs 98 and 99 of the present judgment that the existence of an advantage which an implied and unlimited State guarantee grants its recipient may be presumed, it is open for the Commission to rely on the information provided by the ratings agencies for the sole purposes of confirming such an existence.

108 In those circumstances, the General Court was correct, at paragraph 110 of the judgment under appeal, to recognise the relevance of the reference made in the contested decision to the rating methods of those agencies.

109 Consequently, all of the arguments put forward in the context of the fourth ground of appeal must be rejected.

110 Therefore, it follows from all the foregoing considerations that the appeal must be dismissed in its entirety.

Costs

111 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded the Court shall make a decision as to the costs. Under Article 138(1) of those Rules, which applies to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the French Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the Court (First Chamber) hereby

1. Dismisses the appeal;

2. Orders the French Republic to pay the costs.

[Signatures]