Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

13 June 2013*

(Appeals — Regional State aid — Aid to the hotel industry in Sardinia — New aid — Alteration to an existing aid scheme — Corrective decision — Possibility of adopting such a decision — Regulation (EC) No 659/1999 — Articles 4(5), 7(6), 10(1), 13(2), 16 and 20(1) — Incentive effect of the aid — Protection of legitimate expectations)

In Joined Cases C-630/11 P to C-633/11 P,

APPEALS pursuant to Article 56 of the Statute of the Court of Justice of the European Union, lodged on 21 November 2011 (C-630/11 P) and 30 November 2011(C-631/11 P to C-633/11 P),

HGA srl, established in Golfo Aranci (Italy),

Gimar srl, established in Sassari (Italy),

Coghene Costruzioni srl, established in Alghero (Italy),

Camping Pini e Mare di Cogoni Franco & C. Sas, established in Quartu Sant'Elena (Italy),

Immobiliare 92 srl, established in Arzachena (Italy),

Gardena srl, established in Santa Teresa di Gallura (Italy),

Hotel Stella 2000 srl, established in Olbia (Italy),

Vadis srl, established in Valledoria (Italy),

Macpep srl, established in Sorso (Italy),

San Marco srl, established in Alghero,

Due lune SpA, established in Milan (Italy),

Hotel Mistral di Bruno Madeddu & C. Sas, established in Alghero,

L'Esagono di Mario Azara & C. Snc, established in San Teodoro (Italy),

Le Buganville srl, formerly Le Buganville di Cogoni Giuseppe & C. Snc, established in Villasimius (Italy),

Le Dune srl, formerly Le Dune di Stefanelli Vincenzo & C. Snc, established in Arbus (Italy) (C-630/11 P),

* Language of the case: Italian.

represented by G. Dore, F. Ciulli and A. Vinci, avvocati,

Regione autonoma della Sardegna, represented by A. Fantozzi and G. Mameli, avvocati (C-631/11 P),

Timsas srl, established in Arezzo (Italy), represented by D. Dodaro and S. Pinna, avvocati (C-632/11 P),

Grand Hotel Abi d'Oru SpA, established in Olbia, represented by D. Dodaro and R. Masuri, avvocati (C-633/11 P),

appellants,

the other party to the proceedings being:

European Commission, represented by D. Grespan, C. Urraca Caviedes and G. Conte, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, G. Arestis, J.-C. Bonichot, A. Arabadjiev (Rapporteur) and J.L. da Cruz Vilaça, Judges,

Advocate General: Y. Bot,

Registrar: A. Impellizzeri, Administrator,

having regard to the written procedure and further to the hearing on 28 February 2013,

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

gives the following

Judgment

1 By their appeals, HGA srl, Gimar srl, Coghene Costruzioni srl, Camping Pini e Mare di Cogoni Franco & C. Sas, Immobiliare 92 srl, Gardena srl, Hotel Stella 2000 srl, Vadis srl, Macpep srl, San Marco srl, Due lune SpA, Hotel Mistral di Bruno Madeddu & C. Sas, L'Esagono di Mario Azara & C. Snc, Le Buganville srl, Le Dune srl ('HGA'), the Regione autonoma della Sardegna, Timsas srl ('Timsas') and Grand Hotel Abi d'Oru SpA ('Grand Hotel Abi d'Oru') are asking to have set aside the judgment of the General Court in Joined Cases T-394/08, T-408/08, T-453/08 and T-454/08 *Regione autonoma della Sardegna and Others* v *Commission* [2011] ECR II-6255 ('the judgment under appeal'), by which it dismissed their actions for annulment of the Commission Decision 2008/854/EC of 2 July 2008 on a State aid scheme (C 1/04 (ex NN 158/03 and CP 15/2003)): Misuse of aid measure N 272/98, Regional Act No 9 of 1998 (OJ 2008 L 302, p. 9), declaring the aid granted illegally by the Regione autonoma della Sardegna towards initial investment in the hotel industry in Sardinia incompatible with the common market and ordering the recovery of that aid from the recipients ('the contested decision').

Legal context

Regulation (EC) No 659/1999

2 Article 1(c) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [108 TFEU] (OJ 1999 L 83, p. 1) defines 'new aid' as 'all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid'.

3 Article 1(g) of that regulation defines 'misuse of aid' as 'aid used by the beneficiary in contravention of [the approval] decision'.

4 Chapter II of that regulation, entitled 'Procedure regarding notified aid', provides in Article 4(5):

'The decisions referred to in paragraphs 2, 3 and 4 [delivered following a preliminary examination of the notified measure] shall be taken within two months. That period shall begin on the day following the receipt of a complete notification. …'

5 Article 7, entitled 'Decisions of the Commission to close the formal investigation procedure', which is also found under Chapter II of that regulation, states in paragraph 6 that the Commission is to 'endeavour to adopt a decision within a period of 18 months from the opening of the procedure'.

6 Under Chapter III of Regulation No 659/1999, entitled 'Procedure regarding unlawful aid', Article 10(1) provides that when the Commission has in its possession information from whatever source regarding alleged unlawful aid, it is to 'examine that information without delay'.

7 Under Article 13(2) of that regulation, in cases of possible unlawful aid, the Commission is not to be bound by the time-limit set out inter alia in Articles 4(5) and 7(6).

8 Article 16 of that same regulation provides, inter alia, that Articles 7, 10 and 13 are to apply mutatis mutandis during the formal investigation procedure into misuse of aid.

9 Article 20 of Regulation No 659/1999 is worded as follows:

'1. Any interested party may submit comments pursuant to Article 6 following a Commission decision to initiate the formal investigation procedure. Any interested party which has submitted such comments and any beneficiary of individual aid shall be sent a copy of the decision taken by the Commission pursuant to Article 7.

...

3. At its request, any interested party shall obtain a copy of any decision pursuant to Articles 4 and 7, Article 10(3) and Article 11.'

Regulation (EC) No 794/2004

10 Article 4(1) of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation No 659/1999 (OJ 2004 L 140, p. 1) provides that an alteration to existing aid for the purposes of Article 1(c) of Regulation No 659/1999 is to mean any change, other than modifications of a purely formal or administrative nature, which cannot affect the evaluation of the compatibility of the aid measure with the common market.

The 1998 Guidelines

11 Point 4.2 of the Information from the Commission - Guidelines on national regional aid (98/C 74/06) (OJ 1998 C 74, p. 9) ('the 1998 Guidelines') provides, inter alia, that 'aid schemes must lay down that an application for aid must be submitted before work is started on the projects'.

12 According to point 6.1 of those guidelines, except for the transitional provisions set out in points 6.2 and 6.3 thereof, the Commission is to assess the compatibility of regional aid with the common market on the basis of those guidelines as soon as they are applicable.

Background to the dispute and the contested decision

13 The facts which gave rise to the dispute in this case, as set out in paragraphs 1 to 23 of the judgment under appeal, may be summarised as follows.

14 On 11 March 1998, the Regione autonoma della Sardegna adopted Regional law No 9 on incentives for renovation and adaptation of hotel structures and amending and completing Regional law No 40 of 14 September 1993 (Legge regionale No 9, incentivi per la riqualificazione e l'adeguamento delle strutture alberghiere e norme modificative e integrative della legge regionale 14 settembre 1993, *Bollettino ufficiale della Regione Autonoma della Sardegna* No 9 of 21 March 1998) ('Law No 9/1998'), which entered into force on 5 April 1998.

15 Article 2 of that law introduced, for the undertakings in the hotel sector established in Sardinia, initial investment aid in the form of grants and subsidised loans and operating aid falling under the *de minimis* rule ('the initial aid scheme').

16 By letter of 6 May 1998, the Italian authorities notified the Commission of Law No 9/1998, whilst undertaking not to apply it until it was approved by the Commission.

17 By letter of 22 June 1998, the Italian authorities, in response to a request for additional information from the Commission, informed it that the provisions for the implementation of the aid scheme would be adopted only after the Commission had given its approval for the scheme.

18 By letter of 28 September 1998, the Italian authorities also informed the Commission that aid provided for by Law No 9/1998 could be granted only for projects to be carried out 'subsequently' and that that condition was confirmed by the provisions for the implementation of that law.

19 By Decision SG(98) D/9547 of 12 November 1998, the Commission found that aid scheme 'N 272/98 – Italy – aid for the hotel industry', introduced by Law No 9/1998, was compatible with the common market under Article 92(3)(a) EC ('the approval decision').

20 On 29 April 1999, the Assessore del Turismo, Artigianato e Commercio (Councillor for tourism, arts and crafts and trade) of the Regione autonoma della Sardegna adopted Decree No 285 implementing Law No 9/1998 (*Bollettino ufficiale della Regione Autonoma della Sardegna* No 15 of 8 May 1999) ('Decree No 285/1999').

21 Articles 4 and 5 respectively of that decree provided that aid granted had to be for projects carried out after the submission of applications for aid and that eligible expenditure had to postdate those applications. However, under Article 17 of that decree, entitled 'Transitional provision', expenditure and work carried out or undertaken after 5 April 1998, when Law No 9/1998 entered into force, were eligible at the first implementing stage of the Decree.

22 On 27 July 2000, the Regione autonoma della Sardegna adopted Resolution No 33/3, repealing Decree No 285/1999 due to formal defects vitiating that decree, and Resolution No 33/4 laying down new provisions for the implementation of the aid scheme.

23 On the same day, the Regione autonoma della Sardegna also adopted Resolution No 33/6, which provided that, in so far as the publication of Decree No 285/1999, which contained provisions which were not compatible with European Union law, may have given rise to an expectation among potential recipients of aid that all work done after 5 April 1998 was to be considered eligible for the aid scheme, during the first implementing stage of Law No 9/1998 work done after that date would be taken into consideration provided that it was covered by an application for aid submitted as part of the first annual call for submissions of applications.

24 By letter of 2 November 2000, the Italian authorities informed the Commission of the provisions for the implementation of Law No 9/1998, providing it with a copy of Resolution No 33/4, although it did not mention Resolution No 33/6.

25 In response to a request for information, the Italian authorities, by letter of 25 April 2001, to which was again attached Resolution No 33/4, confirmed that the aid scheme as applied complied with the 1998 Guidelines.

26 Following a complaint denouncing the misuse of the initial aid scheme, on 26 February 2003 the Commission requested additional information from the Italian authorities.

27 In their reply of 22 April 2003, the Italian authorities mentioned Resolution No 33/6 for the first time.

28 By letter of 3 February 2004, the Commission notified the Italian Republic of its decision entitled 'State aid — Italy — Aid C 1/04 (ex NN 158/03) — Misuse of aid N 272/98 — Regione Sardegna — Invitation to submit comments pursuant to Article 88(2) of the EC Treaty' (OJ 2004 C 79, p. 4) ('the opening decision') concerning the misuse of the initial aid scheme. In that decision, the Commission stated that, in authorising the grant of aid for investment projects undertaken before the date of the application for aid, the Italian authorities had not complied with the obligation laid down in the approval decision or with the conditions set out in the 1998 Guidelines. The Commission inferred therefrom that there could be misuse of the initial aid scheme within the meaning of Article 16 of Regulation No 659/1999 and expressed doubts as to the compatibility of the aid granted for investment projects undertaken before the date of the application for aid.

29 After having received observations from the Italian authorities and the Grand Hotel Abi d'Oru, on 22 November 2006 the Commission adopted a decision entitled 'State aid — Italy — State aid No C 1/2004 — Regional Law No 9/98 Corrigendum and extension of the pending procedure C 1/2004 pursuant to Article 88(2) of the EC Treaty — Invitation to submit comments pursuant to Article 88(2) of the EC Treaty' (OJ 2007 C 32, p. 2) ('the corrective decision'), correcting and extending the procedure commenced in accordance with the opening decision. In that corrective decision, under the title 'Reasons for correcting and extending the procedure', the Commission stated inter alia that Resolution No 33/6 was not referred to in the opening decision, yet it was on the basis of that resolution, and not on the basis of Resolution No 33/4, as incorrectly stated in the opening decision, that aid had been granted - in 28 cases - for investment projects undertaken before the date of the application for aid. The Commission further stated that the concept of 'misuse of aid' within the meaning of Article 16 of Regulation No 659/1999, to which the opening decision referred, covered those situations where the recipient of authorised aid uses it in a manner contrary to the conditions laid down in the decision to grant the aid and not those situations where a Member State, in altering an existing aid scheme, introduced new, unlawful aid.

30 On 2 July 2008, the Commission adopted the contested decision. In that decision, the Commission observed inter alia that Resolution No 33/6 introduced alterations to the notified measure which were incompatible with the terms of the approval decision. Moreover, the Commission had not been notified of that resolution, contrary to Article 88(3) EC and contrary to the Italian Republic's obligation of cooperation under Article 10 EC. Consequently, in the Commission's view, the aid scheme as actually applied did not comply with the approval decision and the aid projects on which work had commenced prior to the submission of any applications for aid fell accordingly to be deemed unlawful.

31 Regarding the compatibility of the aid in question with the internal market, it is apparent from the contested decision that the Commission considered that the State aid granted under Law No 9/1998, as unlawfully applied by the Italian Republic through Resolution No 33/6, was incompatible with the common market, unless the aid recipient had submitted an application for aid on the basis of that scheme before the commencement of the work relating to an initial investment project. Under Articles 2 and 3 of that decision, the Italian Republic was to proceed immediately with actual recovery from the recipients of all incompatible aid granted under that scheme, with implementation of the decision to be achieved within four months of the date of notification thereof.

The judgment under appeal

32 The applicants at first instance brought actions for annulment of the contested decision before the General Court. They put forward 13 pleas in law in support of their action, three of which related to procedural defects and alleged: (1) infringement of Article 108(2) TFEU and of Regulation No 659/1999; (2) infringement of third subparagraph of Article 297(2) TFEU and of Article 20(1) of Regulation No 659/1999; and (3) a failure to state reasons in the contested decision. The 10 other pleas concerned substantive defects and alleged: (1) a lack of legal basis for the corrective decision; (2) misuse of powers in the adoption of that decision; (3) the absence in the approval decision of any reference to the requirement that applications had to be submitted beforehand; (4) incorrect characterisation of the aid in question as unlawful; (5) the inapplicability of the 1998 Guidelines; (6) manifest error of assessment as to the existence of an incentive effect; (7) infringement of Article 107(3) TFEU; (8) infringement of the principles of impartiality and protection of competition; (9) infringement of the principle of protection of legitimate expectations; and (10) infringement of the provisions relating to de minimis aid.

33 The General Court rejected all of those pleas in law.

34 The General Court examined first the legal nature of the corrective decision. After finding, in paragraph 69 of the judgment under appeal that the legislation governing procedure in State aid matters does not provide expressly for a corrective decision and extension of a pending procedure, the General Court held as follows in paragraphs 71 to 73 of the judgment under appeal:

> '71. [I]t is logical and, moreover, in the interest of potential recipients of an aid scheme that, should the Commission discover, after the adoption of a decision to open the formal investigation procedure, that that procedure is based either on an incomplete set of facts or on an incorrect legal characterisation of those facts, it has the possibility of adapting its position by adopting a corrective decision. A corrective decision, comprising a fresh call on interested parties to submit their comments, affords them the opportunity to react to the changed position as set out in the Commission's preliminary assessment of the measure in question and to put forward their viewpoint on the matter.
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> 72. It should also be observed that the Commission could equally have chosen to adopt first of all a decision closing the procedure definitively and then a fresh decision to open the formal investigation procedure, on the basis of its revised legal assessment, which would have had the

same substantive content as the corrective decision. In those circumstances, considerations of procedural economy and the principle of sound administration highlight the preferability of the adoption of a corrective decision over the closure of the procedure and opening of a fresh procedure. It should be noted in that context that the correction of the subject-matter of the procedure enabled the Commission to take account, for the purposes of the contested decision, of the observations submitted by Grand Hotel Abi d'Oru following the opening decision, which would not have been the case had it closed the formal investigation procedure in order to open a new one.

73. As regards the legal characterisation of such a corrective decision, given that it is in addition to the opening decision and together with it forms the revised opening decision, it accordingly shares the same legal status. It should be remembered in that regard that the sole aim of the notification of the opening of the formal investigation procedure is to obtain from persons concerned all information required for the guidance of the Commission with regard to its future action (Case 70/72 *Commission* v *Germany* [1973] ECR 813, paragraph 19, and Case T-266/94 *Skibsværftsforeningen and Others* v *Commission* [1996] ECR II-1399, paragraph 256).'

35 The General Court turned its attention, secondly, to the pleas alleging non-compliance with the time-limits provided for by Regulation No 659/99. It held, first, in paragraph 96 of the judgment under appeal, that Article 4(5) of that regulation, which provides for a time period of two months in which to close the preliminary examination phase, which begins to run on the day following the receipt of complete notification, was not applicable in the case before it because the Commission had not been notified of the aid in question. Next, regarding Article 10 of that regulation, which provides that where the Commission has in its possession information from whatever source regarding alleged unlawful aid, it is to examine that information without delay, the General Court held, in paragraphs 97 to 100 of the judgment under appeal, that that provision was to be construed not as referring to the close of the preliminary examination phase but rather as relating to the beginning of the preliminary examination and that, in the case before it, the time period of just over 11 months which had run between the receipt of the complaint and the adoption of the opening decision was not excessive. Lastly, the General Court held, in paragraph 101 of the judgment under appeal, that under Articles 13(2) and 16 of Regulation No 659/1999, in the case of aid presumed to be unlawful, just as in the case of aid presumed to have been misused, the Commission is not bound, inter alia, by the time-limit laid down in Article 7(6) of that same regulation.

36 Thirdly, the General Court rejected the plea alleging infringement of Article 254(3) EC, now the third subparagraph of Article 297(2) TFEU, and of Article 20(1) of Regulation No 659/1999, noting, in paragraphs 106 and 107 of the judgment under appeal, that decisions adopted by the Commission in State aid cases are always addressed to the Member States concerned, that the corrective decision was addressed solely to the Italian Republic and not the recipients under the scheme in question and that, consequently, Article 297(3) TFEU did not require the Commission to notify the Grand Hotel Abi d'Oru of the corrective decision.

37 Fourthly, the General Court examined the pleas alleging the incorrect characterisation of the aid as unlawful, rather than as misused. The General Court found in that regard, in paragraphs 175 and 180 of the judgment under appeal, that the aid granted on a legal basis which was substantively different from that of the scheme approved by the approval decision had to be considered new aid within the meaning of Article 1(c) of Regulation No 659/1999. Moreover, the changes brought about by Resolution No 33/6 could hardly be considered minor or trivial since, as is apparent from point 4.2 of the 1998 Guidelines, the Commission regularly makes its approval of regional aid schemes subject to the condition that the application for aid must precede the commencement of work on the projects. Furthermore, that new aid must be characterised as unlawful within the meaning of Article 1(f) of Regulation No 659/1999, since the Commission was not notified of the alteration to the approved scheme effected by the Regione autonoma della Sardegna through the adoption of Resolution No 33/6.

38 Fifthly, the General Court examined the plea alleging manifest error of assessment as to the existence of an incentive effect. After observing, in paragraph 215 of the judgment under appeal, that the requirement that the application for aid must be submitted before work on the investment project commences is a simple, relevant and suitable criterion which enables the Commission to presume that an aid scheme has incentive effect, the General Court added, in paragraph 226 of the judgment under appeal, that it was necessary to ascertain whether the applicants before it had demonstrated that the scheme was suitable for ensuring the incentive effect even when the application for aid had not been submitted prior to the commencement of work on the investment project. Then, in paragraph 227 of the judgment under appeal, the General Court rejected the arguments of the applicants before it relating to the recipients' specific situation or conduct as entirely irrelevant, since the contested decision was directed at an aid scheme and not at individual cases of aid. In paragraphs 231 to 237 of the judgment under appeal, the General Court rejected the arguments of the applicants before it to the effect that the mere entry into force of Law No 9/1998 gave rise to certainty amongst the undertakings that they would receive aid. The General Court observed in particular, in paragraph 232 and 233 of the judgment under appeal, that, if there has been no decision from the Commission on the compatibility of notified aid, the mere fact that national authorities have adopted legal provisions providing for the introduction of an aid scheme is not such as to give potential recipients any certainty that they will receive aid under that scheme.

39 Sixthly, the General Court rejected the plea alleging infringement of the principles of impartiality and protection of competition, observing, in paragraph 255 of the judgment under appeal, that the 10 undertakings referred to by the applicants before it which had submitted applications for aid under the procedure provided for by Decree No 285/1999, subsequently repealed, were not in a comparable situation to that of the applicants before it because the latter had not submitted any application for aid before the commencement of the work relating to their investment projects, whereas the 10 undertakings in question had in fact submitted applications, although on the basis of a decree which was subsequently repealed.

40 Lastly, the General Court examined the plea alleging infringement of the principle of protection of legitimate expectations. In that regard it began by observing, in paragraph 274 of the judgment under appeal, that, save in exceptional circumstances, a legitimate expectation that State aid is lawful may be relied on only if that aid was granted in accordance with the procedure provided for in Article 88 EC, now Article 108 TFEU. A diligent economic operator should normally be able to determine whether that procedure has been followed. The General Court then observed, in paragraph 275 of the judgment under appeal, that, in the case before it, the recipients of the aid in question could not, in principle, entertain a legitimate expectation that that aid was lawful, given that the approval decision stated clearly that the Commission's approval concerned only aid for projects undertaken after submission of the application for aid. Lastly, the General Court considered that none of the circumstances put forward in the case before it by the applicants and the interveners at first instance were such as to justify annulment of the contested decision. In particular, as regards assurances given by and the conduct of the national authorities, the General Court concluded, in paragraph 281 of the judgment under appeal, that interested parties may entertain their legitimate expectations only on the basis of assurances from the competent EU authorities.

Forms of order sought and procedure before the Court

41 By their appeal, the appellants claim that the Court should:

— set aside the judgment under appeal;

— annul the contested decision; and

— order the Commission to pay the costs (Cases C-632/11 P and C-633/11 P).

42 The Commission contends that the Court should dismiss the appeals and order the appellants to pay the costs.

43 By order of the President of the Court of 29 March 2012, Cases C-630/11 P to C-633/11 P were joined for the purposes of the written and oral procedures and of the judgment.

Consideration of the appeals

44 The appellants put forward seven grounds in support of their appeals: (1) unlawfulness of the corrective decision; (2) infringement of Article 297 TFEU and of Article 20(1) of Regulation No 659/1999; (3) non-compliance with the time-limits laid down in Regulation No 659/1999; (4) incorrect characterisation of the aid as new and unlawful; (5) manifest error of assessment as to the existence of an incentive effect of the aid in question; (6) infringement of the principles of impartiality and protection of competition; and (7) infringement of the principle of the protection of legitimate expectations.

Consideration of the ground of appeal alleging unlawfulness of the corrective decision

Arguments of the parties

45 HGA criticises the General Court for having held, in paragraph 71 of the judgment under appeal, that the Commission could legitimately correct and extend the formal investigation procedure when no formal provision is made for so doing in Regulation No 659/1999. Moreover, the General Court acted in a manner contrary to Article 81 of its own Rules of Procedure in failing to address the argument to the effect that the Commission cannot be authorised to correct the decision to open the procedure on the basis of a document such as Resolution No 33/6, which was already in its possession at the time that procedure was opened. Such a correction, even if it could be made, had to be based on evidence obtained subsequently to the initial characterisation of the aid in question.

46 The Commission submits that this ground is inadmissible inasmuch as the appellants are thereby asking the Court to examine anew the substance of the arguments put forward at first instance and that it is, in any event, unfounded.

Findings of the Court

47 Where an appellant challenges the interpretation or application of EU law by the General Court, the points of law examined at first instance may be discussed again in the course of an appeal. Indeed, if an appellant could not thus base his appeal on pleas in law and arguments already relied on before the General Court, an appeal would be deprived of part of its purpose (see, inter alia, judgment of 9 June 2011 in Joined Cases C-465/09 P to C-470/09 P *Diputación Foral de Vizcaya and Others* v *Commission*, paragraph 79).

48 In the present case, HGA has put forward legal arguments directing specific criticism at paragraphs 69 to 72 of the judgment under appeal, asserting that the General Court held, incorrectly, that the Commission could lawfully adopt the corrective decision.

49 The Commission's argument that the ground is inadmissible must accordingly be rejected.

50 As regards the substance, firstly, it is true, as argued by HGA and observed by the General Court in paragraph 69 of the judgment under appeal, that the legislation governing procedure in State aid cases does not provide expressly for the possibility of adopting a corrective decision and extending a pending procedure.

51 That finding does not mean, however, that the Commission may not correct or, where necessary, extend the formal investigation procedure, if it discovers that the initial decision to open the procedure was based on an incomplete set of facts or on an incorrect legal characterisation of those facts. In that regard the General Court was correct in holding, in paragraph 72 of the judgment under appeal, that considerations of procedural economy and the principle of sound administration highlight the preferability of the adoption of a corrective decision over the closure of the procedure and the subsequent opening of a fresh procedure, which would have led, in essence, to the adoption of a decision having the same content as the corrective decision

52 Such a correction or extension must not, however, undermine the procedural rights of the parties concerned.

53 In the present case, the General Court observed in paragraph 74 of the judgment under appeal, that the corrective decision included a fresh call to the interested parties to submit their observations, thereby affording them the opportunity to react to the changed position created by the correction.

54 In those circumstances, the argument alleging a lack of express legal basis for the adoption of a corrective decision cannot be accepted.

55 Secondly, HGA criticises the General Court for having failed to address the argument to the effect that the Commission cannot be authorised to correct the decision to open the procedure on the basis of a document such as Resolution No 33/6, which was already in its possession at the time that procedure was opened.

56 In that regard, it should be remembered that, according to settled case-law, the General Court's obligation to state reasons under Article 36 of the Statute of the Court of Justice of the European Union, applicable to the General Court by virtue of the first paragraph of Article 53 of that statute and Article 81 of the Rules of Procedure of the General Court, does not require the General Court to provide an account which follows exhaustively and one by one all the arguments put forward by the parties to the case. The General Court's reasoning may therefore be implicit on condition that it enables the persons concerned to know why the General Court has not upheld their arguments and provides the Court of Justice with sufficient material for it to exercise its power of review (see, inter alia, Case C-440/07 P *Commission* v *Schneider Electric* [2009] ECR I-6413, paragraph 135).

57 In the present case, the General Court stated, in paragraph 71 of the judgment under appeal, that a corrective decision may be adopted in order to remedy both an incomplete set of facts initially relied on and an incorrect legal characterisation of those facts. It is, moreover, clear from paragraph 74 of the judgment under appeal, that the corrective decision in question in the present appeal was intended to correct the legal assessment of the scheme in question contained in the initial opening decision, by stating that it was not a case of misuse of an approved scheme, but rather of an unlawful scheme.

58 Furthermore, in the specific area of procedure in State aid cases, it is logical that the legal assessment initially relied on may be corrected not only following the discovery of a hitherto-unknown fact, as acknowledged by HGA, but also following a more in-depth examination of the evidence already in the Commission's possession.

59 It follows that the General Court, implicitly but necessarily, enabled the applicants before it to know why it had not upheld their arguments and, in so doing, also provided this Court with sufficient material for it to exercise its power of review.

60 Accordingly and for the reasons set out above, the appellants may not seek to have the judgment under appeal, which does contain a proper statement of reasons, set aside.

61 In those circumstances, the ground of appeal alleging unlawfulness of the corrective decision must be rejected as unfounded.

Consideration of the ground of appeal alleging infringement of Article 297 TFEU and Article 20(1) of Regulation No 659/1999

Arguments of the parties

62 Grand Hotel Abi d'Oru submits, in essence, that it ought to have been notified of the corrective decision because it had submitted observations relating to the scheme in question following the call to do so in the opening decision. Moreover, the reasons given in the judgment under appeal are vitiated by a contradiction, as the General Court held in paragraphs 71 and 72 of that judgment that the corrective decision was justified by the need to safeguard the recipients' interest in submitting observations, whilst in paragraphs 106 and 107 it held that Grand Hotel Abi d'Oru was not to be considered the addressee of the corrective decision. In holding that only the Member States need be notified of the corrective decision, just as in the case of a decision to open the formal investigation procedure, the General Court also disregarded the third subparagraph of Article 297(2) TFEU and Article 20(1) of Regulation No 659/1999.

63 The Commission takes the view that there is no contradiction or error in law in the reasons contained in the judgment under appeal because decisions adopted by the Commission in State aid cases are addressed solely to the Member State concerned. Moreover, Article 20(1) of Regulation No 659/1999 does not apply to the present case.

Findings of the Court

64 In paragraphs 105 to 107 of the judgment under appeal, the General Court stated, firstly, that under Article 254(3) EC, now third subparagraph of Article 297(2) TFEU, that notice of decisions is given to their addressees; secondly, that Commission decisions in State aid cases are always addressed to the Member States concerned; and, thirdly, that the corrective decision was addressed not to the recipients of the scheme in question, but solely to the Italian Republic. In so doing, the General Court then went on to conclude, without erring in law, that Article 254(3) EC did not require the Commission to notify Grand Hotel Abi d'Oru of the corrective decision.

65 There is, moreover, no contradiction between that conclusion and the one in paragraphs 71 and 72 of the judgment under appeal, to the effect that the corrective decision afforded the parties concerned the opportunity to react to the changes in the Commission's preliminary assessment of the scheme in question. The fact that the parties concerned were not notified of the corrective decision did not prevent them from submitting their observations, since it is common ground that that decision, which included a call on those parties to submit their observations, was published in the *Official Journal of the European Union*.

66 As to Article 20(1) of Regulation No 659/1999, it clearly does not apply to the present case, as observed by the General Court in paragraphs 110 and 111 of the judgment under appeal. Under that provision, any party which submitted observations following a decision by the Commission to open

the formal investigation procedure is to receive a copy of the decision taken by the Commission 'pursuant to Article 7' of that regulation. Article 7 covers solely Commission decisions closing the formal investigation procedure.

67 It follows that the corrective decision is not a 'decision taken pursuant to Article 7 of Regulation No 659/1999'.

68 Therefore, the ground of appeal alleging infringement of Article 297 TFEU and of Article 20(1) of Regulation No 659/1999 must be held to be unfounded.

Consideration of the ground of appeal alleging non-compliance with the time-limits laid down in Regulation No 659/1999

Arguments of the parties

69 HGA criticises the General Court, firstly, for having found, incorrectly, in paragraphs 99 to 101 of the judgment under appeal, that the two-month time period referred to in Article 4(5) of Regulation No 659/1999 applies only to notified aid. Since the ratio legis of that provision is to ensure certainty in the procedural schedule, that time-limit should also apply where the procedure was instituted following a complaint.

70 Secondly, the General Court disregarded the scope of Article 10(1) of that regulation, which requires the Commission to examine the information in its possession without delay. That provision must, in HGA's submission, be interpreted by analogy with Articles 263 TFEU and 265 TFEU as meaning that, in the case of non-notified aid, the Commission is required to open the formal investigation procedure within two months from the time of receipt of the relevant information. Yet in the present case the Commission took nine months, from the time of receipt of Resolution No 33/6, to open the formal investigation procedure, contrary to Article 10(1) TFEU of Regulation No 659/1999.

71 Thirdly, Article 7(6) of Regulation No 659/1999 was also disregarded because the formal investigation procedure had still not been completed after 18 months, contrary to what is provided for in that article. Since the procedure had initially been opened to investigate the misuse of aid, Article 16 of that regulation, which refers to Article 7, applies. In any event, given that the procedure lasted four and a half years, any reasonable time period has been exceeded.

72 The Commission submits that the ground of appeal alleging infringement of Article 7(6) of Regulation No 659/1999 is inadmissible because HGA failed to specify which paragraphs of the judgment under appeal it is challenging. In any event, neither that provision of Regulation No 659/1999 nor Article 4(5) thereof applies to a case of unlawful aid. Moreover, the General Court's interpretation of Article 10(1) of that regulation is not vitiated by any error of law.

Findings of the Court

73 The objection of inadmissibility put forward by the Commission against the ground of appeal alleging infringement by the General Court of Article 7(6) of Regulation No 659/1999 must be rejected. The legal arguments put forward specifically in support of this ground are clear as to the aspects of the judgment under appeal are being challenged by HGA in the present proceedings.

74 As to the substance, as a preliminary point, it is unequivocally clear from the wording of Articles 4(5) and 7(6) of Regulation No 659/1999 that they apply only in the case of aid which has been notified. Moreover, Article 13(2) of that regulation provides expressly that, in cases of possible unlawful aid the Commission is not bound by the time-limits set out in, inter alia, Articles 4(5) and 7(6) of that regulation.

75 That conclusion is also clear in the light of the Court of Justice's case-law to the effect that, where the scheme in question has not been notified, the Commission is not bound by the two-month time period provided for in Article 4(5) of Regulation No 659/1999 (judgment of 28 July 2011 in Joined Cases C-471/09 P to C-473/09 P *Diputación Foral de Vizcaya and Others* v *Commission*, paragraph 129).

76 Therefore, the General Court made no error of law in holding, in paragraphs 96 and 101 of the judgment under appeal, that the Commission was not bound by the time-limit set out in Articles 4(5) and 7(6) of Regulation No 659/1999, because the scheme in question had not been notified.

77 Nor did it err in law in holding, in paragraph 101 of the judgment under appeal, that, in cases of misuse of aid, Article 13(2) of Regulation No 659/1999 applies *mutatis mutandis*, as is clear from Article 16 of that regulation.

78 Secondly, as regards the complaint alleging infringement of Article 10(1) of Regulation No 659/1999, it must be borne in mind that, under that provision, when the Commission has in its possession information from whatever source concerning allegedly unlawful aid, it is to examine that information without delay.

79 That requirement cannot be interpreted as HGA suggests, relying on an alleged analogy with Articles 263 TFEU and 265 TFEU, as imposing on the Commission an obligation to close its examination of allegedly unlawful aid within a period of two months: see paragraphs 74 to 76 above.

80 Turning to the argument that Article 10(1) of Regulation No 659/1999 was infringed because the Commission allowed nine months to pass between the notification from the Regione autonoma della Sardegna of Resolution No 33/6 and the opening decision, whilst Article 10(1) requires the Commission to examine the information in its possession without delay, it should be noted that the General Court considered, in paragraph 97 of the judgment under appeal, that Article 10(1) of that regulation must be construed not as referring to the closing of the preliminary examination phase but rather as relating to the beginning of the preliminary examination. Therefore, the fact that that time period was exceeded does not mean, in the absence of any indications to the contrary, that the Commission disregarded its obligation to undertake the examination of the file without delay, as required by Article 10(1).

81 It should be remembered, however, that the Commission is required to act within a reasonable time in procedures for examining State aid and that it is not allowed to persist in refraining from taking action during the preliminary examination phase (see Joined Cases C-471/09 P to C-473/09 P *Diputación Foral de Vizcaya and Others* v *Commission*, paragraph 129 and the case-law cited).

82 Moreover, the reasonableness of the period taken up by proceedings is to be appraised in the light of the circumstances specific to each case, such as its complexity and the conduct of the parties (see, to that effect, Joined Cases C-403/04 P and C-405/04 P *Sumitomo Metal Industries and Nippon Steel* v *Commission* [2007] ECR I-729, paragraph 116 and the case-law cited).

83 In the present case, slightly over 11 months passed between the receipt of the complaint and the adoption of the opening decision; this cannot be considered excessive in circumstances such as these which, moreover, included the time necessary to provide additional information, as correctly observed by the General Court in paragraph 100 of the judgment under appeal.

84 Thirdly and lastly, regarding the allegedly unreasonable length of the administrative procedure as a whole, which was over four and a half years from the time of the opening decision, the General Court observed, in paragraph 162 of the judgment under appeal, that although the formal investigation procedure in the present case may appear to have been lengthy, the Commission was not bound by the 18-month time-limit laid down in Article 7(6) of Regulation No 659/1999.

85 In the light of all of the foregoing considerations, the ground of appeal alleging non-compliance with the time-limits laid down in Regulation No 659/1999 must be rejected as unfounded.

Consideration of the ground of appeal relating to the incorrect characterisation of the aid as new and, therefore, unlawful

Arguments of the parties

86 HGA complains that the General Court, in paragraphs 175 to 180 of the judgment under appeal, characterised the scheme in question as new, unlawful aid, rather than as existing aid. Given that Law No 9/1998 did not preclude aid from being granted to undertakings which began work before submitting their application for aid, Resolution No 33/6 did not alter that aid and, *a fortiori*, did not alter it substantially.

87 The Commission submits that this ground of appeal is inadmissible inasmuch as HGA is asking the Court to conduct a fresh assessment of the factual context, which it may not do on appeal. At the very least, the ground of appeal is ineffective because the General Court held, in paragraph 186 of the judgment under appeal, that the provision which makes the scheme in question unlawful and incompatible with the common market is not to be found in Law No 9/1998. The ground is, in any event, unfounded, since Resolution No 33/6 brought about a substantial alteration to an existing aid scheme, thereby introducing a new, unlawful aid scheme.

Findings of the Court

88 According to settled case-law, when the General Court has found or assessed the facts, the Court of Justice has jurisdiction under Article 256 TFEU to review the legal characterisation of those facts by the General Court and the legal conclusions it has drawn from them (see Case C-551/03 P *General Motors* v *Commission* [2006] ECR I-3173, paragraph 51, and Case C-266/06 P *Evonik Degussa* v *Commission*, judgment of 22 May 2008, paragraph 72).

89 HGA criticises, in essence, the legal characterisation made by the General Court in respect of the scheme in question as being new, unlawful aid. This ground of appeal is therefore admissible.

90 Article 1(c) of Regulation No 659/1999 defines new aid as 'all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid'. Article 4(1) of Regulation No 794/2004 provides that, for the purposes of Article 1(c) of Regulation No 659/1999, an alteration to existing aid is to mean any change, other than modifications of a purely formal or administrative nature which cannot affect the evaluation of the compatibility of the aid measure with the common market.

91 In the present case, the General Court concluded, in paragraphs 178 and 179 of the judgment under appeal, that the alteration to the aid scheme introduced by Resolution No 33/6 was not minor or trivial and that, accordingly, the scheme in question fell to be considered as new aid within the meaning of Article 1(c) of Regulation No 659/1999 and not as existing aid.

92 The argument that Resolution No 33/6 did not bring about any alterations to the scheme introduced by Law No 9/1998 or, in any event, that that alteration was not substantial and did not, therefore, make the aid in question new, cannot be accepted.

93 First of all, HGA cannot argue that the adoption of Resolution No 33/6, which allows certain projects commenced before the submission of the application for aid to be taken into account, did not alter the scheme introduced by Law No 9/1998. As observed by the General Court in paragraph 186 of the judgment under appeal, that law is silent on the point of the temporal relationship between the submission of the application for aid and the commencement of work. Moreover, as pointed out in paragraph 5 of the judgment under appeal, the Italian authorities did inform the Commission that the grant of the aid provided for by that law could relate only to projects to be carried out 'subsequently' and that that condition was confirmed in the provisions for the implementation of that law.

94 Secondly, that alteration cannot be characterised as being of a purely formal or administrative nature within the meaning of Article 4(1) of Regulation No 794/2004, since it was liable to affect the evaluation of the compatibility of the aid measure with the common market. The General Court observed in that regard, in paragraph 178 of the judgment under appeal, that the approval decision referred expressly to the condition that the application for aid had to precede the commencement of work on the investment projects, a condition which the Commission regularly imposes for its approval of regional aid schemes, as is apparent from point 4.2 of the 1998 Guidelines.

95 Therefore, the General Court did not err in law in characterising the aid in question as new and unlawful. This ground of appeal must therefore be rejected as unfounded.

Consideration of the ground of appeal alleging manifest error of assessment as to the existence of an incentive effect

Arguments of the parties

96 HGA and the Regione autonoma della Sardegna criticise the General Court, firstly, for having committed an error of law in holding that the requirement that the application for aid be submitted before commencement of the work constituted an irrebuttable presumption of the incentive effect of the aid. That criterion, which favours a purely formalistic approach, arises from an instrument of 'soft law', which has no binding legal effect. The General Court thereby denied, in paragraph 226 of the judgment under appeal, the incentive effect of the aid, without taking account of the other facts of the case.

97 Secondly, HGA and the Regione autonoma della Sardegna criticise paragraphs 232 and 233 of the judgment under appeal, where the Court stated that an aid scheme declared compatible by the Commission could have an incentive effect. According to HGA and the Regione autonoma della Sardegna, it is apparent from Case T-126/99 *Graphischer Maschinenbau GmbH* v *Commission* [2002] ECR II-2427 that a non-notified aid scheme can also have an incentive effect.

98 Thirdly, all of the appellants submit that the General Court was incorrect in refusing to recognise the relevance of a series of facts showing that the appellants had been encouraged to undertake the work in question, namely:

— the certainty of obtaining the aid in question, given that they fulfilled all the conditions set out in Law No 9/1998;

— the fact that the Regione autonoma della Sardegna is one of the regions referred to in Article 107(3)(a) TFEU;

— the fact that they had received aid under a previous aid scheme equivalent to the scheme in question, and

— the fact that they refrained from claiming various forms of aid in order to receive the aid in question.

99 Fourthly, the Regione autonoma della Sardegna criticises the General Court for having failed to rule on the argument that it would have been chronologically impossible to take account of the requirement that the work had to be undertaken after submission of the application for aid, as that requirement was first introduced only in the 1998 Guidelines.

100 Fifthly, Grand Hotel Abi d'Oru and Timsas complain that paragraphs 226 to 228 of the judgment under appeal do not contain a statement of reasons or, at the very least, that what reasons are given are insufficient and even contradictory. The specific circumstances of the present case, including the fact that Grand Hotel Abi d'Oru and Timsas had received aid under a previous aid scheme equivalent to the scheme in question, tend to show not that the aid had had an incentive effect on them, but that the aid scheme as a whole had such an effect.

101 The Commission replies that the Court of Justice has confirmed the applicability of the 1998 Guidelines to non-notified aid schemes, including when those schemes were implemented before the adoption of the Guidelines. The Commission adds that the 1998 Guidelines were published in the *Official Journal of the European Union* on 10 March 1998, which is the day before Law No 9/98 was enacted and almost one month before it entered into force. They were therefore perfectly accessible to the recipients under the scheme in question.

102 Moreover, the fact that an applicant may fulfil the conditions for the grant of aid laid down in Law No 9/1998 gives no certainty as to whether that aid will be granted as long as the Commission has not given its approval. Thus, although the Regione autonoma della Sardegna is an entity which may, as a rule, receive regional aid, the fact remains that any aid granted to that region will not automatically be characterised as being compatible with the internal market. In any event, in paragraphs 232 and 233 of the judgment under appeal, the General Court merely addressed an argument put forward by the applicants before it, to the effect that the mere entry into force of Law No 9/1998 gave the undertakings the certainty that it would receive the aid in question.

Findings of the Court

103 Article 107(3)(a) TFEU provides that aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment may be considered to be compatible with the internal market.

104 Thus, the Commission is entitled to refuse the grant of aid where that aid does not induce the recipient undertakings to adopt conduct likely to assist attainment of one of the objectives referred to in Article 107(3) TFEU. Such aid must thus be necessary for the attainment of the objectives specified in that provision, with the result that, without it, market forces alone would not succeed in getting the recipient undertakings to adopt conduct likely to assist attainment of those objectives (see, to that effect, Case 730/79 *Philip Morris Holland* v *Commission* [1980] ECR 2671, paragraphs 16 and 17). Aid which improves the financial situation of the recipient undertaking without being necessary for the attainment of the objectives specified in Article 107(3) TFEU cannot be considered compatible with the internal market (see Case C-390/06 *Nuova Agricast* [2008] ECR I-2577, paragraph 68).

105 It follows from the foregoing that, in the context of Article 107(3)(a) TFEU, in order to be compatible with the internal market, the planned aid must be necessary for the development of less favoured areas. To that end, it must be shown that, without the planned aid, the investment intended to support the

development of the region in question would not take place. If, on the other hand, it appears that that investment would take place even without the planned aid, the conclusion must be that the aid serves merely to improve the situation of the recipient undertakings, without however meeting the requirement in Article 107(3)(a) TFEU that it be necessary for the development of less favoured areas.

106 As regards the criteria in the light of which the necessary nature of regional aid fell to be assessed, the General Court held, in paragraph 215 of the judgment under appeal, that the requirement that the investment project be commenced before the submission of the application for aid is a simple, relevant and suitable criterion enabling the Commission to presume that the planned aid is necessary.

107 That finding has not been called into question in the present appeal proceedings.

108 Moreover, in paragraph 226 of the judgment under appeal, the General Court considered it appropriate to examine whether the applicants in the case before it had made out proof of facts liable to show that the scheme in question was necessary, even where the application for aid had been submitted prior to the commencement of work on the projects in question.

109 It follows, as a first point, that the complaint that the General Court made the requirement that the application for aid come first into an irrebuttable presumption for the purposes of assessing whether the aid was necessary follows from a manifestly incorrect reading of the judgment under appeal. In fact the General Court expressly acknowledged that other criteria than this one could be used to establish that the aid was necessary.

110 For that same reason, the complaints about the formalist nature of that criterion and the lack of binding legal effect of a soft law instrument such as the Guidelines are ineffective.

111 As a second point, regarding the aspects referred to in paragraph 98 above, which, in the appellants' submission, tend to show that the scheme in question played an incentive role in the projects they carried out, it is appropriate to examine, first, the argument that the Regione autonoma della Sardegna is one of the regions referred to in Article 107(3)(a) TFEU.

112 Although that requirement is an indispensable condition in order for the exception in Article 107(3)(a) TFEU to apply, the fact remains that it does not mean, as the Commission suggests, that any aid project which might be carried out in the Regione autonoma della Sardegna will automatically be considered necessary for its development. Therefore, that factor alone will not define the scheme in question as being necessary for the development of that region.

113 Secondly, as regards the reliance placed by all the appellants on the fact that they received aid under a previous aid scheme equivalent to the scheme in question and that they refrained from claiming various forms of aid in order to receive the aid in question, it must be remembered, as observed by the General Court in paragraph 227 of the judgment under appeal, that the contested decision was directed not at individual aid but at an aid scheme. The General Court inferred therefrom that the Commission was therefore not bound to assess the specific circumstances pertaining to the individual recipients of the scheme in question. Consequently, it rejected as irrelevant the arguments relating to the specific situation or conduct of the aid recipients.

114 In so doing, the General Court made no error in law. According to the Court of Justice's case-law, in the case of an aid scheme, the Commission may merely study the characteristics of the scheme at issue in order to assess, in the grounds for its decision, whether that scheme is necessary for the attainment of one of the objectives specified in Article 107(3) TFEU. Thus, in a decision which concerns such a scheme, 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 (see Joined Cases C-71/09 P, C-73/09 P and C-76/09 P *Comitato 'Venezia vuole vivere'* v *Commission* [2011] ECR I-4727, paragraph 63 and the case-law cited).

115 Moreover, the fact that some of the recipients both benefited from a previous aid scheme equivalent to the scheme in question and refrained from claiming various forms of aid in order to receive the aid in question relates to the specific situation of some of the recipients and not the general features of the scheme in question. The General Court therefore made no error in law in finding those facts to be completely irrelevant for the purposes of assessing whether or not an aid scheme was necessary.

116 Thirdly, as regards the argument that the entry into force of Law No 9/1998 was enough by itself to encourage the appellants to make the investments in question, given that they fulfilled all the basic conditions provided for by that law for obtaining aid, it should be noted that the legal framework introducing the scheme in question was not made up solely of Law No 9/1998 but was completed first by Decree No 285/1999 and then by Resolutions No 33/3, No 33/4 and No 33/6, as evidenced by the findings made by the General Court in the judgment under appeal.

117 Those additions to the legal framework surrounding the scheme in question are of very particular importance in the present case. First, as is apparent from paragraph 169 of the judgment under appeal, the Regione autonoma della Sardegna never, either in its correspondence with the Commission or before the General Court, denied having undertaken to grant aid only to projects undertaken after applications for aid were submitted. Moreover, as observed in paragraph 5 of the judgment under appeal, the Italian authorities assured the Commission that the scheme in question related only to projects to be carried out 'subsequently' and that that condition is confirmed in the provisions for the implementation of Law No 9/1998.

118 Second, as observed by the General Court in paragraph 235 of the judgment under appeal, the eligibility of the investment projects in question was completely unrelated to the scheme provided for under that law.

119 Therefore, the General Court was correct in rejecting the argument relating to the entry into force of Law No 9/1998 in paragraph 236 of the judgment under appeal.

120 Turning, fourthly, to the argument that the General Court did not examine the alleged impossibility for the Italian authorities and the aid recipients to take account of the 1998 Guidelines, reference is made to paragraph 186 of the judgment under appeal, where the General Court held that the provision vitiating the scheme in question, making it unlawful and incompatible with the internal market, was to be found not in Law No 9/1998, but rather in Resolution No 33/6, since the latter was clearly adopted subsequently to the date of full application of the 1998 Guidelines.

121 As regards, fifthly, the complaints put forward by Grand Hotel Abi d'Oru and Timsas, referred to in paragraph 100 above, the General Court's answer, set out in paragraphs 226 to 228 of the judgment under appeal and as evidenced by the discussion in paragraphs 113 to 115 above, does not suffer from any lack or deficiency of, or contradiction in, reasoning.

122 Lastly, the criticisms expressed by HGA and the Regione autonoma della Sardegna, to the effect that paragraphs 232 and 233 of the judgment under appeal are vitiated by an error of law are ineffective, inasmuch as they cannot lead to the judgment under appeal, which contains a sufficient statement of reasons as outlined in paragraphs 111 to 121 above, being set aside.

123 Consequently, this ground of appeal must be rejected as partly unfounded and partly ineffective since, in any event, the approval decision precludes aid from being granted when the application for aid is submitted subsequently to the commencement of the work.

Consideration of the ground of appeal alleging infringement of the principles of impartiality and protection of competition

Arguments of the parties

124 HGA complains that the General Court disregarded the principles of impartiality and protection of competition, in failing to hold that the appellants ought to have enjoyed the same treatment as the 10 undertakings which had submitted their applications before the commencement of work but before the adoption of Resolutions No 33/4 and No 33/6.

125 The Commission puts forward an objection of inadmissibility to this ground of appeal.

Findings of the Court

126 It follows from Article 256 TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and from Article 168(1)(d) of the Court of Justice's Rules of Procedure that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal (Joined Cases C-465/09 P to C-470/09 P *Diputación Foral de Vizcaya and Others v Commission*, paragraph 78).

127 Yet in the present case HGA merely reproduces the arguments it put forward at first instance, without identifying specifically the aspects of the judgment under appeal it is challenging and the reasons why the General Court erred in law in rejecting those arguments.

128 Therefore, this ground of appeal must be rejected as inadmissible.

Consideration of the ground of appeal alleging infringement of the principle of the protection of legitimate expectations

Arguments of the parties

129 HGA criticises the General Court for having held, in paragraphs 274, 275 and 281 of the judgment under appeal, that the recipients could not entertain any legitimate expectations because the approval decision specifically required that the application for aid had to be submitted before the commencement of work. Yet most of the appellants learned only that the Commission had been notified of Law No 9/1998 and had approved it. The Regione autonoma della Sardegna did not inform them of the requirement that the application for aid had to be submitted beforehand and provided them with a copy of the approval decision in which no reference was made to that requirement. Moreover, the publication of that decision in the *Official Journal of the European Union* did not mention the requirement. In those circumstances, the assurances received from the national authorities were such as to provide a basis for legitimate expectations on the part of the appellants.

130 The Regione autonoma della Sardegna adds that the recipients could entertain legitimate expectations as to the compatibility of the measure with the internal market, given that they commenced work only after notification of the aid in question had been given to the Commission. It was only if the aid had not been notified - which is not the case here – that they would be precluded from entertaining any legitimate expectations.

131 The Commission takes the view that this ground of appeal is based on a partial, incorrect reading of the judgment under appeal, given that it has never been notified of the scheme resulting from Law No 9/1998, as amended by Resolution No 33/6. Nor has the Commission provided the slightest assurance as to the compatibility of the scheme with the internal market.

Findings of the Court

132 As correctly observed by the General Court in paragraph 273 of the judgment under appeal, the right to rely on the principle of the protection of legitimate expectations presupposes that precise, unconditional and consistent assurances originating from authorised, reliable sources have been given to the person concerned by the competent authorities of the European Union. In accordance with the Court of Justice's settled case-law, that right applies to any individual in a situation in which an EU institution, body or agency, by giving that person precise assurances, has led him to entertain well-founded expectations. Precise, unconditional and consistent information, in whatever form it is given, constitutes such an assurance (see, inter alia, Case C-537/08 P *Kahla Thüringen Porzellan* v *Commission* [2010] ECR I-12917, paragraph 63 and the case-law cited).

133 Yet in the present case there is nothing in the evidence submitted to the General Court establishing that any precise, unconditional and consistent assurances were given by an EU institution, body or agency as to the compatibility of the scheme in question.

134 It should also be noted that, as rightly observed by the General Court in paragraphs 274 and 275 of the judgment under appeal, a legitimate expectation that aid granted is lawful cannot, barring exceptional circumstances, be entertained unless it has been granted in compliance with the procedure laid down in Article 108 TFEU. In the present case, the approval decision indicated that the Commission's approval concerned only aid for projects commenced after the application for aid had been submitted and that the aid in question, which did not comply with that requirement, had not been granted in compliance with the procedure provided for in Article 108 TFEU. The recipients of the aid in question cannot therefore entertain a legitimate expectation that that aid was lawful.

135 Next, the aspect that, first, the national authorities allegedly did not provide the recipients of the aid in question with a copy of the approval decision and, second, that the publication of that decision in the *Official Journal of the European Union* did not refer to the requirement that the application for aid must be submitted beforehand, is entirely irrelevant for the purposes of assessing the present ground of appeal. Under Article 20(3) of Regulation No 659/1999, any interested party may, on request, obtain a copy of any decision taken by the Commission pursuant to Articles 4, 7, 10(3) and 11 of that regulation.

136 Lastly, the argument put forward by the Regione autonoma della Sardegna, to the effect that the commencement of work after notification of the aid was a sufficient basis for the recipients' legitimate expectations as to the compatibility of the measure is, in any event, ineffective inasmuch as, in the present case, the Commission was not notified of the scheme in question, as noted by the General Court in paragraph 188 of the judgment under appeal.

137 Therefore, the ground of appeal alleging infringement of the principle of the protection of legitimate expectations must be rejected as unfounded.

138 In the light of the foregoing considerations, the appeal must be dismissed in its entirety.

Costs

139 The first paragraph of Article 184(2) 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 138(1) of the Rules of Procedure, which applies to appeal proceedings pursuant to 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 appellants have been unsuccessful, the appellants must be ordered, jointly and severally, to pay the costs.

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

1. Dismisses the appeals;

2. Orders the appellants, jointly and severally, to pay the costs.

[Signatures]