Judgment of the Court (Third Chamber) of 6 December 2007 — Commission v Italy

(Case C-280/05)

Failure of a Member State to fulfil obligations — State aid — Incompatibility with the common market — Duty to recover — Non-fulfilment

1. *Actions for failure to fulfil obligations — Non-compliance with a Commission decision concerning State aid — Defences (Art. 10 EC and 88(2) EC) (see paras 19, 20, 25)*

2. *State aid — Recovery of unlawful aid (Art. 88(2) EC) (see para. 28)*

Re:

FAILURE of a Member State to fulfil obligations — Infringement of Articles 2, 3 and 4 of Commission Decision 2004/800/EC of 30 March 2004 declaring incompatible with the common market the aid scheme put into effect by Italy providing for urgent measures to assist employment in firms in financial difficulty, in special administration, and having at least 1 000 employees (Aid No CR 62/2003, ex NN 7/2003 — Italy) (OJ 2004 L 352, p. 10) — Failure to adopt, within the prescribed period, the measures necessary to recover the aid declared incompatible with the common market.

Operative part

The Court:

1. Declares that, by failing to adopt, within the prescribed period, the measures necessary to recover from the beneficiaries the aid declared unlawful and

incompatible with the common market by Commission Decision 2004/800/EC of 30 March 2004 on the State aid scheme put into effect by Italy providing for urgent measures to assist employment, the Italian Republic has failed to fulfil its obligations under Articles 2 and 3 of that decision;

2. Orders the Italian Republic to pay the costs.

Judgment of the Court (Second Chamber) of 6 December 2007 — Marcuccio v Commission

(Case C-59/06 P)

Appeal — Officials — Employment in a non-Member State — Reassignment of post and post holder — Duty to respect the rights of the defence — Scope — Burden of proof

Officials — Principles — Rights of the defence — Scope — Obligation to hear the person concerned before adopting a decision involving his reassignment against his wishes — Burden of proof (see paras 45-48, 55-58, 67, 71)

Re:

APPEAL against the judgment of the Court of First Instance (Fifth Chamber) of 24 November 2005 in Case T-36/02 *Marcuccio* v *Commission* by which that Court dismissed an action seeking annulment of the Commission decision reassigning the appellant's post at the delegation of the Commission in Luanda (Angola) to the Commission's headquarters in Brussels and a claim for damages.