Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

20 September 2018 *

(Reference for a preliminary ruling — State aid — Article 108(3) TFEU — Regulation (EC) No 794/2004 — Notified aid schemes — Article 4 — Alteration to existing aid — Significant increase in revenue from taxes allocated to financing of aid schemes compared to the projection notified to the European Commission — 20% threshold of the original budget)

In Case C-510/16,

REQUEST for a preliminary ruling under Article 267 TFEU by the Conseil d'État (Council of State, France), made by decision of 21 September 2016, received at the Court on 29 September 2016, in the proceedings

Carrefour Hypermarchés SAS,

Fnac Paris,

Fnac Direct,

Relay Fnac,

Codirep,

FNAC Périphérie,

v

Ministre des Finances et des Comptes publics

THE COURT (Fourth Chamber),

composed of T. von Danwitz (Rapporteur), President of the Chamber, C. Vajda, E. Juhász, K. Jürimäe and C. Lycourgos, Judges,

Advocate General: N. Wahl,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 21 September 2017,

after considering the observations submitted on behalf of

* Language of the case: French.

– Carrefour Hypermarchés SAS, Fnac Paris, Fnac Direct, Relais Fnac, Codirep and Fnac Périphérie, by C. Rameix-Seguin and É. Meier, avocats,

– the French Government, by D. Colas and J. Bousin, acting as Agents,

– the Greek Government, by S. Charitaki and S. Papaioannou, acting as Agents,

– the Italian Government, by G. Palmieri, acting as Agent, assisted by S. Fiorentino, avvocato dello Stato,

– the European Commission, by B. Stromsky and K. Blanck-Putz, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 November 2017,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 108(3) TFEU and of Article 4 of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article [108 TFEU] (OJ 2004 L 140, p. 1 and corrigendum OJ 2005 L 25, p. 74).

2 This request has been made in proceedings between Carrefour Hypermarchés SAS, Fnac Paris, Fnac Direct, Relais Fnac, Codirep, and Fnac Périphérie, on the one hand, and the ministre des Finances et des Comptes publics (Minister of Finance and Public Accounts, France), on the other, concerning the reimbursement of a tax on the sale or hire of video recordings paid by those companies.

Legal context

Regulation (EC) No 659/1999

3 Article 1 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), provides:

‘For the purposes of this Regulation:

(a) “aid” shall mean any measure fulfilling all the criteria laid down in Article [107(1) TFEU];

(b) “existing aid” shall mean:
‘(i) … all aid which existed prior to the entry into force of the Treaty in the respective Member States, that is to say, aid schemes and individual aid which were put into effect before, and are still applicable after, the entry into force of the Treaty;
(ii) authorised aid, that is to say, aid schemes and individual aid which have been authorised by the Commission or by the Council;

…

(c) “new aid” shall mean all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid;

…’

Regulation No 794/2004

4 According to recital 4 of Regulation No 794/2004:

'In the interests of legal certainty it is appropriate to make it clear that small increases of up to 20% of the original budget of an aid scheme, in particular to take account of the effects of inflation, should not need to be notified to the Commission as they are unlikely to affect the Commission's original assessment of the compatibility of the scheme, provided that the other conditions of the aid scheme remain unchanged.'

5 Article 4 of that regulation, entitled 'Simplified notification procedure for certain alterations to existing aid', provides:

'1. For the purposes of Article 1(c) of Regulation (No 659/1999), an alteration to existing aid shall 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. However an increase in the original budget of an existing aid scheme by up to 20% shall not be considered an alteration to existing aid.

2. The following alterations to existing aid shall be notified on the simplified notification form set out in Annex II:

(a) increases in the budget of an authorised aid scheme exceeding 20%;

…'

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

6 By Decision C(2006) 832 final of 22 March (State aid NN 84/2004 and N 95/2004 — France, Aid schemes for the film and audiovisual industry) ('the 2006 Decision'), the Commission declared several French aid schemes for the film and audiovisual industry established by the French Republic to be compatible with the internal market. These schemes are financed by the Centre national du cinéma et de l'image animée (National Centre for Cinema and the Moving Image, 'the CNC'); the budget of this body is mainly derived from three taxes, namely the tax on cinema tickets, the tax on television services and the tax on the sale or hire of video recordings for the private use of the public (together, 'the three taxes').

7 By Decision C(2007) 3230 final of 10 July 2007 (State aid N 192/2007 — France, Amendment of NN 84/2004 — Support for cinema and audiovisual production in France — Modernisation of the TV sector contribution to support the cinema and audiovisual industry) ('the 2007 decision'), the Commission approved an amendment to the method of financing such aid schemes following a reform of the tax on television services.

8 The applicants in the main proceedings sought the repayment of tax paid on the sale or hire of video recordings for the private use of the public; Carrefour Hypermarchés did so in respect of 2008 and 2009 and the other companies in respect of the years 2009 to 2011. They maintain that the tax was levied in breach of Article 108(3) TFEU, in so far as the French Republic did not notify the Commission of the increase between 2007 and 2011 in the aggregate revenue from the three taxes ('the material period'). According to the applicants in the main proceedings, who rely on a report by the Cour des comptes (Court of Auditors, France) drawn up in August 2012 on the management and financing of the CNC ('the Court of Auditors' report'), that increase resulted in a substantial change in the method for financing aid schemes, exceeding the 20% threshold fixed in Article 4 of Regulation No 794/2004.

9 In this context, the referring court states that, while the 2007 decision refers to projections according to which the reform of the tax on television services, the primary cause of the increase in CNC resources during the material period, could, at best, lead to an increase of EUR 16.5 million per year in the revenue from that tax, this increase, in reality, according to the Court of Auditors, amounted to an average of EUR 67 million during that period. The Commission thus based the 2007 decision on projections which subsequently proved to be inaccurate.

10 It is in that context that the Conseil d'État (Council of State, France) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) In a situation in which an aid scheme is financed by allocated resources, where a Member State has regularly notified the Commission of legal changes having a significant impact on that scheme prior to their implementation, and in particular of changes relating to the method by which the scheme is financed, does a substantial increase in revenue from fiscal resources allocated to the scheme, compared to the projections submitted to the European Commission, constitute a significant change within the meaning of Article 88(3) of the EC Treaty, now Article 108 TFEU, which would require a new notification to be made?

(2) In the same situation, how is Article 4 of Regulation No 794/2004 to be applied, pursuant to which an increase in the original budget of an existing aid scheme exceeding 20% constitutes a change to that aid scheme and, in particular:
(a) how does it combine with the obligation to notify the Commission in advance of an aid scheme, laid down in Article 88(3) of the EC Treaty, now Article 108 TFEU;
(b) if exceeding the 20% threshold of the original budget of an existing aid scheme provided for under Article 4 of Regulation No 794/2004 requires a new notification, must that threshold be assessed in relation to the amount of expenditure allocated or to the expenditure actually granted to the beneficiaries, excluding the sums placed in the reserve or those having been made subject to a levy for the benefit of the State;
(c) assuming that compliance with the 20% threshold must be assessed in relation to the expenditure dedicated to the aid scheme, must such an assessment be made by comparing the overall level of expenditure in the approval decision with the overall budget subsequently allocated to all aid schemes granted by the body responsible for such allocations, or by comparing the levels notified under each of the categories of aid identified in that decision with that body's corresponding budget heading?'

Consideration of the questions referred

Admissibility

11 The Italian Government argues that the questions are hypothetical and, therefore, inadmissible.

12 By those questions, the referring court seeks, in essence, to determine whether the three taxes were levied, during the period at issue, in breach of Article 108(3) TFEU. Those questions arose in the course of a dispute concerning a claim for a refund of one of those taxes, namely the tax on the sale or hire of video recordings for the private use of the public. That court starts, moreover, from the premiss that the tax in fact constitutes an integral part of an aid measure within the meaning of Article 107(1) TFEU. In those circumstances, those have a direct connection with the subject matter of the dispute in the main proceedings and are therefore not purely hypothetical. Accordingly, the questions referred for a preliminary ruling are admissible.

Substance

13 By its questions, which must be examined together, the referring court asks, in essence, whether a significant increase in taxes to fund various authorised aid schemes when compared to projections notified to the Commission, such as that at issue in the main proceedings, constitutes an alteration to existing aid, within the meaning of Article 1(c) of Regulation No 659/1999 and of the first sentence of Article 4(1) of Regulation No 794/2004, read in the light of Article 108(3) TFEU. In that regard, it asks the Court, in particular, how the 20% threshold laid down in the second sentence of Article 4(1) of that regulation should be assessed and whether that threshold must be assessed in relation to the revenue earmarked for the aid schemes concerned or in relation to the aid actually allocated.

14 It should be noted at the outset that the Court has consistently held that taxes do not fall within the scope of the provisions of the Treaty relating to State aid unless they constitute the method of financing an aid measure, so that they form an integral part of that measure. Where the method of financing aid by means of a tax forms an integral part of the aid measure, the consequences of a failure by national authorities to comply with the last sentence of Article 108(3) TFEU must also apply to that aspect of the aid, so that the national authorities are required, in principle, to repay taxes levied in breach of EU law (see, to that effect, judgments of 13 January 2005, *Streekgewest*, C-174/02, EU:C:2005:10, paragraphs 16, 24 and 25; of 27 October 2005, *Distribution Casino France and Others*, C-266/04 to C-270/04, C-276/04 and C-321/04 to C-325/04, EU:C:2005:657, paragraph 35; of 7 September 2006, *Laboratoires Boiron*, C-526/04, EU:C:2006:528, paragraph 43 and the case-law cited, and of 10 November 2016, *DTS Distribuidora de Televisión Digital* v *Commission*, C-449/14 P, EU:C:2016:848, paragraph 65 and the case-law cited).

15 In so far as the referring court refers, in the wording of its questions to the Court, to 'an aid scheme' which is 'financed by resources', it is necessary to understand the questions referred as being based on the premiss that the three taxes formed, during the period at issue, an integral part of the aid schemes concerned.

16 Admittedly, in its second question, the referring court distinguishes between CNC revenue earmarked for the aid schemes concerned in the main proceedings and the expenditure actually allocated to the beneficiaries of these schemes, and refers to reserve funds and levies for the benefit of the general budget of the State. However, while such items might also prove to be relevant for examining whether the three taxes formed, during the period at issue, an integral part of those schemes, the referring court only raises them in order to ask the Court as to their relevance in the context of the examination of compliance with the 20% threshold provided for in the second sentence of Article 4(1) of Regulation No 794/2004.

17 In that regard, it should be recalled that, in the context of the cooperation between the Court and the national courts established by Article 267 TFEU, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court (judgments of 23 January 2018, *F. Hoffmann-La Roche and Others*, C-179/16, EU:C:2018:25, paragraph 44, and of 29 May 2018, *Liga van Moskeeën en Islamitische Organisaties Provincie Antwerpen and Others*, C-426/16, EU:C:2018:335, paragraph 30 and the case-law cited). The Court may, however, provide the referring court with an interpretation of EU law that may be of use to it in assessing the validity of the premiss on which those questions are based (see, to that effect, judgment of 26 May 2016, *Bookit*, C-607/14, EU:C:2016:355, paragraphs 22 to 28).

18 Before the Court, the French Government has argued that, during the period at issue, the three taxes did not form an integral part of the aid schemes at issue in the main proceedings on the grounds, in particular, that there was no correlation between the revenue from those taxes and the amount of aid allocated and that, unlike that revenue, that amount had not increased. While accepting that national

law lays down a binding provision hypothecating that revenue to the budget of the CNC, the body which aims to finance such schemes, the French Government further argued, inter alia, that the surplus resulting from the difference between the revenue generated by the three taxes and the aid actually allocated was used to replenish a reserve fund, and was used by the CNC for purposes other than the financing of such schemes and gave rise to levies, pursuant to a vote of the French Parliament, accruing to the general budget of the State. The applicants in the main proceedings and the Commission dispute that argument.

19 It should be noted that, according to settled case-law, for a tax to be regarded as forming an integral part of an aid measure, it must be hypothecated to the aid under the relevant national rules, in the sense that the revenue from the tax is necessarily allocated to the financing of the aid and has a direct impact on the amount of the aid and, consequently, on the assessment of the compatibility of that aid with the internal market (judgments of 22 December 2008, *Régie Networks*, C-333/07, EU:C:2008:764, paragraph 99 and the case-law cited, and of 10 November 2016, *DTS Distribuidora de Televisión Digital* v *Commission*, C-449/14 P, EU:C:2016:848, paragraph 68).

20 The Court has, moreover, already held that, where the body responsible for granting aid financed by a tax has the discretion to allocate the revenue from that tax to measures other than those having all the features of aid within the meaning of Article 107(1) TFEU, such a circumstance is likely to exclude the existence of hypothecation between the tax and the aid. In cases involving such discretion, the revenue from the tax does not directly affect the amount of the advantage granted to the beneficiaries of that aid. However, such a hypothecation may exist where the revenue from the tax is wholly and exclusively allocated for the grant of aid, even where that aid is of different types (see, to that effect, judgments of 13 January 2005, *Pape*, C-175/02, EU:C:2005:11, paragraph 16; of 27 October 2005, *Distribution Casino France and Others*, C-266/04 to C-270/04, C-276/04 and C-321/04 to C-325/04, EU:C:2005:657, paragraph 55, and of 22 December 2008, *Régie Networks*, C-333/07, EU:C:2008:764, paragraphs102 and 104).

21 It is also apparent from the case-law of the Court that there may be no such hypothecation when the amount of aid is determined solely on the basis of objective criteria, not related to the allocated revenue, and subject to an absolute statutory ceiling (see, to that effect, judgment of 27 October 2005, *Distribution Casino France and Others*, C-266/04 to C-270/04, C-276/04 and C-321/04 to C-325/04, EU:C:2005:657, paragraph 52).

22 Thus, the Court has held, in particular, that there was no hypothecation between the tax and the aid granted in a case where the amount of the aid was determined according to criteria unrelated to the allocated tax revenue and where national legislation provided that any surplus in relation to this aid had to be reallocated, as appropriate, to a reserve fund or the treasury, that revenue also being the subject of an absolute ceiling, with the result that any surplus is also reallocated to the State's general budget (see, to that effect, judgment of 10 November 2016, *DTS Distribuidora de Televisión Digital* v *Commission*, C-449/14 P, EU:C:2016:848, paragraphs 70 to 72).

23 In the present case, it is for the referring court to verify the validity of its assumption that the three taxes formed, during the period at issue, an integral part of the aid schemes at issue in the main proceedings in the light of the elements set out in paragraphs 16 to 22 above. In that regard, that court must, in particular, examine whether the placing in reserve of part of the revenues of the CNC had the effect of re-allocating the amount concerned to a measure other than those having all the features of aid within the meaning of Article 107(1) TFEU and assess the potential impact of the reallocation of part of these revenues to the general State budget during the period in question on the existence of hypothecation between the taxes and these schemes.

24 That having been clarified, the questions referred will be examined on the assumption that the three taxes formed, during the period at issue, an integral part of the aid schemes at issue in the main proceedings (see, by analogy, judgments of 25 October 2017, *Polbud — Wykonawstwo*, C-106/16, EU:C:2017:804, paragraphs 26 to 28, and of 17 April 2018, *B and Vomero*, C-316/16 et C-424/16, EU:C:2018:256, paragraph 42).

25 In that respect, it must be noted that, in the context of the State aid control system established by Articles 107 and 108 TFEU, the procedure differs according to whether the aid is existing aid or new aid. Whereas existing aid may, in accordance with Article 108(1) TFEU, be lawfully implemented so long as the Commission has made no finding of incompatibility, Article 108(3) TFEU provides that plans to grant or alter existing aid must be notified, in due time, to the Commission and may not be implemented until the procedure has led to a final decision (see, to that effect, judgments of 18 July 2013, *P*, C-6/12, EU:C:2013:525, paragraph 36 and the case-law cited; and of 27 June 2017, *Congregación de Escuelas oficiales Pías Provincia Betania*, C-74/16, EU:C:2017:496, paragraph 86).

26 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'. On the other hand, 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 shall 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 [internal] market'. The second sentence of Article 4(1) of that regulation provides: 'however an increase in the original budget of an existing aid scheme by up to 20% shall not be considered an alteration to existing aid'.

27 In order to provide a useful answer to the referring court, it is therefore necessary to determine what is to be understood by the expression 'original budget of an existing aid scheme', within the meaning of that provision, and whether, in the present case, the increase in the aggregate revenue from the three taxes must be regarded as an increase in the original budget of aid schemes requiring that it be notified to the Commission.

28 In this respect, the concept of 'budget of an aid scheme' within the meaning of Article 4(1) of Regulation No 794/2004, in the absence of a definition in the relevant legislation, must be determined by referring to the usual meaning of that concept in everyday language, while also taking into account the context in which it is used and the objectives pursued by the rules of which it is part (see, by analogy, judgment of 12 June 2018, *Louboutin and Christian Louboutin*, C-163/16, EU:C:2018:423, paragraph 20 and the case-law cited).

29 According to its usual meaning, the term 'budget' means the amounts available to an entity for the purposes of its expenditure.

30 As regards the context in which the concept is used and the objective pursued by Article 4(1) of Regulation No 794/2004, it must be stated that that provision implements the system of prior control established by Article 108(3) TFEU over proposals for alterations to existing aid, under which the Commission is required to examine the compatibility of the planned aid with the internal market (see, to that effect, judgment of 12 February 2008, *CELF and Ministre de la Culture et de la Communication*, C-199/06, EU:C:2008:79,, paragraphs 37 and 38). The aim of that system of prior control is that only aid that is compatible with the internal market should be implemented (see, to that effect, judgments of 21 November 2013, *Deutsche Lufthansa*, C-284/12, EU:C:2013:755, paragraphs 25 and 26, and of 19 July 2016, *Kotnik and Others*, C-526/14, EU:C:2016:570, paragraph 36).

31 In that regard, the Court has already held that, in order to be able to examine whether an aid scheme planned by a Member State can be considered compatible with the internal market, the Commission must be able to assess the effects of the scheme on competition on the basis, in particular, of the budget allocated by the Member State to that scheme, and that, therefore, the obligation to mention,

in the notifications, the estimates of the total amounts of the planned aid is inherent in the system of prior review of State aid measures (see, to that effect, order of 22 March 2012, *Italy* v *Commission*, C-200/11 P, not published, EU:C:2012:165, paragraphs 47 to 49).

32 In addition, it should be recalled that, according to the Court's settled case-law, the Commission may, in the case of an aid scheme, confine itself to examining the general characteristics of the scheme in question and is not required to examine each particular case in which it applies (judgments of 9 June 2011, *Comitato 'Venezia vuole vivere' and Others* v *Commission*, C-71/09 P and C-73/09 P and C-76/09 P, EU:C:2011:368, paragraph 130, and of 15 November 2011, *Commission and Spain* v *Government of Gibraltar and United Kingdom*, C-106/09 P and C-107/09 P, EU:C:2011:732, paragraph 122).

33 Thus, even in the case of an aid granted in breach of Article 108(3) TFEU, the Commission's review may be confined to general features of this scheme and need not cover the aid which was actually paid (see, to that effect, judgment of 29 April 2004, *Greece* v *Commission*, C-278/00, EU:C:2004:239, paragraphs 21and 24).

34 In those circumstances, the concept of 'budget of an aid scheme' within the meaning of Article 4(1) of Regulation No 794/2004 cannot be regarded as being limited to the amount of aid actually allocated, since that amount is known only after the implementation of the aid scheme concerned. In the light of prior control established by Article 108(3) TFEU, that concept must, on the contrary, be interpreted as referring to the budgetary provision (see, to that effect, judgment of 20 May 2010, *Todaro Nunziatina & C.*, C-138/09, EU:C:2010:291, paragraphs 40 and 41), that is to say, the amounts available to the body responsible for granting aid for that purpose, as notified to the Commission by the Member State concerned and approved by the Commission.

35 In the case of aid schemes financed by allocated taxes, it is the revenue from those taxes that is made available to the body responsible for the implementation of the scheme concerned which thus constitutes the 'budget' of the scheme, within the meaning of Article 4(1) of Regulation No 794/2004.

36 Since the aid schemes at issue in the main proceedings, which have been authorised by the decisions of 2006 and 2007, fall within the concept of 'existing aid', within the meaning of Article 1(b)(ii) of Regulation No 659/1999, it is necessary to determine whether the Commission, by those decisions, approved the increase in the aggregate revenue from the three taxes during the period in question.

37 In this respect, it should be noted that, as they are derogations from the general principle of incompatibility of State aid with the internal market, laid down in Article 107(1) TFEU, Commission decisions authorising an aid scheme must be interpreted strictly (see, to that effect, judgments of 29 April 2004, *Germany* v *Commission*, C-277/00, EU:C:2004:238, paragraphs 20 and 24, and of 14 October 2010, *Nuova Agricast and Cofra* v *Commission*, C-67/09 P, EU:C:2010:607, paragraph 74).

38 Furthermore, according to the settled case-law of the Court, in order to interpret such Commission decisions, it is appropriate not only to examine their actual text, but also to refer to the notification made by the Member State concerned (see, to that effect, judgments of 20 May 2010, *Todaro Nunziatina & C.*, C-138/09, EU:C:2010:291, paragraph 31, and of 16 December 2010, *Kahla Thüringen Porzellan* v *Commission*, C-537/08 P, EU:C:2010:769, paragraph 44, and order of 22 March 2012, *Italy* v *Commission*, C-200/11 P, not published, EU:C:2012:165, paragraph 27). Thus, the Court has already held that the scope of a decision approving an aid scheme is, in principle, limited by the budget indicated by the Member State in its notification letter, even if the budget has not been included in the text of the decision itself (see, to that effect, order of 22 March 2012, *Italy* v *Commission*, C-200/11 P, not published, EU:C:2012:165, paragraphs 26 and 27).

39 In the present case, the 2006 and 2007 decisions expressly reproduce the projections of the revenue generated by the three taxes which were notified by the French authorities to the Commission as the budget of the aid schemes in question. As regards, more specifically, the decision of 2007, that decision explicitly refers to the estimates of those authorities regarding the consequences of the reform of the tax on television services, which is the primary cause of the overall increase in the revenue from the three taxes during the period at issue. Paragraph 9 of that decision states that, according to those estimates, the reform 'might ultimately yield, for [the] period [2009 to 2011], an increase in the support account of 2 to 3% (between EUR 11 million and EUR 16.5 million) per year'. Similarly, in paragraph 20 of that decision, those estimates were again referred to by the Commission when it assessed the impact of that reform on the compatibility of the aid scheme at issue with the internal market.

40 In those circumstances, it is clear from the 2006 and 2007 decisions that the revenue generated by the three taxes is an element on which the Commission based its approval of the aid schemes at issue and that it did not authorise an increase in that revenue beyond that contained in the projections notified to the Commission. Accordingly, having regard to the case-law cited in paragraphs 31, 37 and 38 above, it must be held that the scope of the authorisations to implement those same schemes granted by those decisions is limited, as regards the revenue from the three taxes, to the increase as notified to the Commission.

41 According to the information provided by the referring court, the actual increase in the overall revenue from the three taxes during the period in question was well in excess of the projections submitted to the Commission, namely EUR 16.5 million per year, and increased, according to the report of the Court of Auditors cited by that court, to an average of EUR 67 million during this period. In so far as such an increase in the budget compared to the budget approved by the Commission is capable of influencing the assessment of the compatibility of the aid in question with the internal market, it constitutes an alteration other than a modification of a purely formal or administrative nature within the meaning of the first sentence of Article 4(1) of Regulation No 794/2004. Such an alteration, save where it remains below the 20% threshold laid down in the second sentence of Article 4(1) of that regulation, is, therefore, an alteration to existing aid, within the meaning of Article 1(c) of Regulation No 659/1999.

42 Since the referring court has doubts, in that regard, as to the relevance of the fact that that increase is not due to a statutory alteration to the aid schemes at issue in the main proceedings, it must be recalled that the first sentence of Article 4(1) of Regulation No 794/2004 defines the concept of 'alterations to existing aid' broadly, as covering '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 [internal] market'. As follows from the words 'any change', that definition cannot be limited to statutory alterations to State aid schemes.

43 Furthermore, that provision must be interpreted in the light of the objective of the system of prior control that it implements, which is, as has been recalled in paragraph 30 above, to ensure that only compatible aid be implemented. However, an increase in the budget of a scheme may have an influence on the assessment of its compatibility with the internal market, irrespective of whether or not this alteration is due to a statutory alteration to the aid scheme concerned.

44 Nor does the need to observe the principle of legal certainty preclude that an increase in the budget of an aid scheme, compared to the budget approved by the Commission, be considered, in circumstances such as those at issue in the main proceedings, to be an alteration to existing aid within the meaning of Article 108(3) TFEU.

45 Indeed, it is apparent from recital 4 of Regulation No 794/2004 that it is precisely for reasons of legal certainty that the second sentence of Article 4(1) of the Regulation lays down a precise threshold below which an increase in the budget of an aid scheme is not considered to be an alteration to existing aid.

In fixing this threshold at the fairly high level of 20%, this provision provides for a safety margin that takes sufficient account of uncertainties related to the application of prior control established by Article 108(3) TFEU to aid schemes whose budget fluctuates, such as those at issue in the main proceedings.

46 Moreover, the Court has already held that a Member State may not rely on the principle of legal certainty to disregard information it has provided to the Commission in the framework of the notification of an aid scheme and which determines the scope of the Commission decision authorising that scheme, but must, on the contrary, take this information into account and ensure that the scheme is implemented in accordance with it (see, to that effect, judgment of 16 December 2010, *Kahla Thüringen Porzellan* v *Commission*, C-537/08 P, EU:C:2010:769, paragraph 47).

47 In addition, it should be noted that, in the present case, in the Commission document entitled 'Authorisation for State aid pursuant to Articles 87 and 88 of the EC Treaty — Cases where the Commission raises no objections' and published in the *Official Journal of the European Union* (OJ 2007 C 246, p. 1), the projections of the French authorities regarding the increase of revenue generated by the three taxes following the reform of the tax on television services were presented as the budget of the authorised aid. In the system of prior control established by Article 108(3) TFEU, neither the Member State concerned nor the beneficiary of an aid scheme can reasonably plead a legitimate expectation that the authority of an authorisation decision will extend beyond the description of the measure as published in the *Official Journal of the European Union* (see, to that effect, judgment of 14 October 2010, *Nuova Agricast and Cofra* v *Commission*, C-67/09 P, EU:C:2010:607, paragraphs 72 to 74).

48 The referring court is also unsure what lessons should be drawn, for the present case, from the judgment of 9 August 1994, *Namur-Les assurances du crédit* (C-44/93, EU:C:1994:311), in which the Court held, in essence, that the extension of the field of activity of a public establishment which benefited from aid granted by the State under legislation predating the entry into force of the EEC Treaty could not be regarded as an alteration to existing aid, since the extension did not affect the system of aid established by that legislation.

49 However, that case-law cannot be applied by analogy to the case at issue in the main proceedings. Indeed, the extension of the scope of activities of the beneficiary of the aid in question in the case which gave rise to the judgment of 9 August 1994, *Namur-Les assurances du crédit* (C-44/93, EU:C:1994:311), which did not affect the aid scheme established by the legislation concerned, is not comparable to the budget increase of the aid schemes at issue in the main proceedings, since it was that increase alone that directly affected the aid schemes in question.

50 It follows that an increase in the revenue from taxes financing several authorised aid schemes when compared to the projections notified to the Commission, such as that at issue in the main proceedings, constitutes an alteration to existing aid, within the meaning of Article 1(c) of Regulation No 659/1999 and of the first sentence of Article 4(1) of Regulation No 794/2004, read in the light of Article 108(3) TFEU, unless such an increase remains below the 20% threshold laid down in the second sentence of Article 4(1) of the latter regulation.

51 As regards the calculation of that threshold in circumstances such as those at issue in the main proceedings, it is clear from the wording of the second sentence of Article 4(1) of Regulation No 794/2004 that an increase in the 'original budget' of an existing aid scheme by up to 20% is not to be considered an alteration to existing aid. Therefore, the 20% threshold provided for in that provision refers to the 'original budget' of the aid scheme concerned, namely the budget of the scheme as approved by the Commission.

52 Moreover, it is apparent from paragraphs 28 to 35 above that, where, as in the present case, an existing aid scheme is financed by allocated taxes, the original budget of that scheme is determined on the basis of the projections of the allocated tax revenue, as authorised by the Commission. Therefore, an excess over the 20% threshold provided for in that provision must be assessed in relation to that revenue and not to the aid actually allocated.

53 In the present case, it is clear from the 2006 and 2007 decisions that the Commission authorised, as regards the annual revenue from the three taxes, a maximum amount of approximately EUR 557 million. It is apparent from the report of the Court of Auditors, to which the referring court refers in its request for a preliminary ruling, that, during the period at issue, the amount of the annual revenue from these taxes increased to around EUR 806 million in 2011, in particular due to the significant increase in revenue from the tax on television services, which rose from EUR 362 million in 2007 to EUR 631 million in 2011. Thus, it is apparent that the increase in the budget for the aid schemes at issue in the main proceedings during that period, compared to the budget approved in the 2006 and 2007 decisions, is well above the 20% threshold; however, the year during which that threshold was exceeded must be determined by the referring court.

54 As regards, in that respect, the placing in reserve of part of the CNC's revenue, mentioned by the referring court, it seems clear from the documents available to the Court that it did not have the effect of re-allocating the amount concerned to a measure other than those having all the features of aid within the meaning of Article 107(1) TFEU; the referring court must nevertheless verify whether this is the case.

55 In the absence of such a reallocation which would allow the revenue from the three taxes to be withheld from the budget of the aid schemes involved, the placing in reserve of that aid leaves that revenue available to the body responsible for the implementation of those schemes for the purposes of payment of individual aid, the only effect of that placing in reserve being, as the Commission pointed out at the hearing, to postpone the payment. Since that revenue still comes from this budget, such a placing in reserve is not, in itself, capable of calling into question the exceeding of the 20% threshold provided for in the second sentence of Article 4(1) of Regulation No 794/2004.

56 As regards the levies for the benefit of the general budget of the State, also mentioned by the referring court, it should be noted that, according to the information in the file available to the Court, it appears that, during the period at issue, only EUR 20 million was reallocated to the budget by the French parliament in December 2010 in respect of the year 2011. In view of the information contained in the report of the Court of Auditors, referred to in paragraph 53 above, it seems that, even taking account of that reallocation, the increase in the budget for the aid schemes at issue in the main proceedings during that period, compared to the budget approved in the decisions of 2006 and 2007, would exceed the 20% threshold.

57 Therefore, subject to verification by the referring court, it appears that the mere placing in reserve of part of the revenue of the CNC, without reallocation of the amount concerned for purposes other than the granting of aid, and the levy for the benefit of the general State budget during the period at issue, are not such as to call into question the existence of an increase in the budget of the aid schemes at issue in the main proceedings during this period, compared to the authorised budget in the decisions of 2006 and 2007, which was greater than the 20% threshold laid down in the second sentence of Article 4(1) of Regulation No 794/2004.

58 As is apparent from paragraph 23 above, that conclusion is, however, without prejudice to any finding to be made by the referring court concerning the placing in reserve of part of the CNC's revenue and the levy for the benefit of the general State budget during the period at issue when it examines the existence of hypothecation between the three taxes and the aid schemes in question.

59 Thus, subject to that verification, under the system of prior control established by Article 108(3) TFEU, an increase in the budget of those schemes compared to the budget approved by the Commission, such as that at issue in the main proceedings, should have been notified to the Commission in due time, that is to say, as soon as the French authorities could reasonably have foreseen that the 20% threshold would be exceeded.

60 In the light of all the foregoing considerations, the answer to the questions referred is that an increase in the revenue from taxes financing several authorised aid schemes when compared to projections notified to the Commission, such as that at issue in the main proceedings, constitutes an alteration to existing aid, within the meaning of Article 1(c) of Regulation No 659/1999 and of the first sentence of Article 4(1) of Regulation No 794/2004, read in the light of Article 108(3) TFEU, unless that increase remains below the 20% threshold laid down in the second sentence of Article 4(1) of that regulation. This threshold must be assessed, in a situation such as that at issue in the main proceedings, in relation to the revenue earmarked for the aid schemes concerned and not to the aid actually allocated.

The limitation of the temporal effects of the present judgment

61 As regards the effects of a preliminary ruling, it should be noted that, in accordance with settled case-law, the interpretation which the Court, in the exercise of the jurisdiction conferred upon it by Article 267 TFEU, gives to a rule of EU law clarifies and, where necessary, defines the meaning and scope of that rule as it must be, or ought to have been, understood and applied from the time of its entry into force. It follows that the rule as thus interpreted may and must be applied by the courts to legal relationships arising and established before the judgment ruling on the request for interpretation, provided that in other respects the conditions are satisfied for bringing, before the courts having jurisdiction, an action relating to the application of that rule (judgment of 29 September 2015, *Gmina Wrocław*, C-276/14, EU:C:2015:635, paragraph 44 and the case-law cited).

62 It is only quite exceptionally that the Court may, in application of the general principle of legal certainty inherent in the EU legal order, be led to restrict the possibility for a person to rely on a provision which the Court has interpreted, with a view to calling into question legal relationships established in good faith. Two essential criteria must be fulfilled before such a limitation can be imposed, namely that those concerned acted in good faith and that there is a risk of serious difficulties (judgment of 29 September 2015, *Gmina Wrocław*, C-276/14, EU:C:2015:635, paragraph 45 and the case-law cited).

63 In the present case, the French Government does not demonstrate that a finding by the referring court, following the present judgment, that there is a breach of Article 108(3) TFEU would entail a risk of serious difficulties.

64 Accordingly, and without it being necessary to determine whether the criterion relating to the good faith of those concerned has been fulfilled, there is no need to limit the temporal effects of the present judgment.

Costs

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

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

An increase in the revenue from taxes financing several authorised aid schemes, when compared to projections notified to the Commission, such as that at issue in the main proceedings, constitutes an alteration to existing aid, within the meaning of 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] and of the first sentence of Article 4(1) of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation No 659/1999, read in the light of Article 108(3) TFEU, unless that increase remains below the 20% threshold laid down in the second sentence of Article 4(1) of that regulation. This threshold must be assessed, in a situation such as that at issue in the main proceedings, in relation to the revenue earmarked for the aid schemes concerned and not to the aid actually allocated.

[Signatures]