INFORMATION ON UNPUBLISHED DECISIONS

Reports of Cases

Judgment of the Court (Fifth Chamber) of 29 March 2012 — Commission v Italy

(Case C-243/10)

(Failure of a Member State to fulfil obligations — State aid — Aid in favour of the hotel industry in Sardinia — Recovery)

1. *State aid — Recovery of unlawful aid — Obligation — Duty to carry out immediately and effectively the Commission's decision (Art. 108(2) TFEU) (see paras 35, 36)*

2. *Actions for failure to fulfil obligations — Failure to fulfil the obligation to recover unlawful aid — Defences — Absolute impossibility of performance (Art. 4(3) TEU; Art. 108(2) TFEU) (see paras 40, 41, 45, 55)*

3. *Actions for failure to fulfil obligations — Failure to fulfil the obligation to recover unlawful aid — Defences — Legitimate expectations entertained by the recipients — Not included (Arts 107 TFEU and 108 TFEU) (see para. 47)*

4. *State aid — Recovery of unlawful aid — Application of national law — Adoption by the national court of provisional suspensory measures — Whether lawful — Conditions — An action before the General Court against a decision ordering the recovery of aid producing no suspensory effect (Council Regulation No 659/1999, Art. 14(3)) (see paras 48-50)*

Re:

Failure of a Member State to fulfil its obligations — Failure to adopt, within the prescribed period, all the measures necessary to comply with Articles 2, 3 and 4 of 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 (notified under document number C(2008) 2997) (OJ 2008 L 302, p. 9).

Operative part

The Court:

1. Declares that, by not taking within the prescribed period all the measures necessary to recover from the recipients the aid granted under the aid scheme considered unlawful and incompatible with the common market by 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, 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.