

Annex

List of preliminary reference cases where the Court of Justice of the European Union is questioned about the validity or interpretation of State aid decisions

NB: The cases highlighted in yellow concern preliminary rulings on validity, the others are rulings on interpretation

1. Case C-659/17, Azienda Napoletana Mobilità

Is European Commission Decision 2000/128/EC of 11 May 1999 applicable also to employers operating local public transport services — on a substantially non-competitive basis, given the exclusive nature of the service carried out — which have benefited from reductions in contributions after entering into training and work experience contracts since Law No 407 of 1990 came into force, with reference, in the present case, to the period from [May] 1997 to May 2001?

2. C-481/17, Yanchev

Is paragraph 16 of Decision C(2011) 863 final of the European Commission of 11 February 2011, adopted pursuant to Article 108(3) TFEU, declaring State aid No 546/2010 of the Republic of Bulgaria for investment in agricultural holdings in the form of corporate tax relief to be compatible with Article 107(3) TFEU to be interpreted as meaning that, in the light of the Commission's powers, on the one hand, and of the principles of procedural autonomy and legal certainty, on the other, it is permissible to apply a national rule under which the period laid down in that paragraph for reviewing whether the conditions governing the State aid granted have been met is to be construed only as being indicative and not as being an exclusionary period?

Are paragraphs 7, 8, 14 and 45 of the Commission Decision, taken together and construed teleologically and in the light of the principle of proportionality, to be interpreted as meaning that the lawful receipt/lawful claiming of the aid may be made dependent only on compliance with the national provisions concerning aid implementation specifically mentioned in that Commission Decision, or is it permissible also to require compliance with further conditions under national law which do not pursue the objectives served by the granting of the State aid?

3. Case C-135/16, Georgsmarienhütte and Others

Does the European Commission Decision of 25 November 2014 (Commission Decision of 25.11.2014 on the aid scheme SA.33995 (2013/C) (ex 2013/NN) implemented by Germany for the support of renewable electricity and of energy-intensive users, C(2014)8786 final) breach the Treaty on the Functioning of the European Union in so far as the Commission qualifies the limitation of the EEG-surcharge as aid within the meaning of Article 107 TFEU?

4. Case C-274/14, Banco de Santander

Must Article 1(2) of the European Commission Decision I of 28 October 2009 on the tax amortisation of financial goodwill for foreign shareholding acquisitions C 45/07 be interpreted to the effect that the legitimate expectations recognised in that paragraph and in the terms in which they are confined therein to deduction of the tax amortisation of financial goodwill under Article 12.5 TRLIS are to be considered applicable in relation to indirect foreign shareholding acquisitions made through the direct acquisition of a non-resident holding company?

If the answer to the first question is affirmative, is Decision C(2013) 4399 final of 17 July 2013 in State aid proceedings No SA. 35550 (2013/C) (ex 13/NN, ex 12/CP) — Tax amortisation of financial goodwill for foreign shareholding acquisitions, which decides to initiate the procedure provided for under Article 108(2) TFEU for infringement of Article 108 TFEU and of Council Regulation (EC) No 659/1999 of 22 March 1999 (now Article 108 TFEU), invalid?

5. Case C-202/14, Adiamix SAS v Direction départementale des finances publiques de l'Orne

The Court of Justice is requested to rule on the validity of European Commission Decision 2004/343/EC of 16 December 2003 on the exemption scheme established by Article 44 septies of the Code Général des Impôts concerning the takeover of firms in difficulty, I with respect to classification of that scheme as an existing aid scheme.

6. Case C-667/13, Estado português v Banco Privado Português SA and Massa Insolvente do Banco Privado Português SA

(1) Is the Decision vitiated by failure to state adequate reasons on the ground that:
(a) it failed to state the reason why the guarantee provided by the Portuguese State affects trade between Member States?

(b) it failed to specify the reason why the aid granted in the form of a guarantee, which was initially considered to be covered by Article 107(3) TFEU, was then declared to be incompatible with the common market?

(2) Is the Decision vitiated by a contradiction between its statement of reasons and its enacting terms as to the date from which the [aid] is to be considered unlawful: 5 December 2008 or 5 June 2009?

(3) Does the Decision infringe Article 107(1) TFEU, insofar as the aid granted did not affect trade between Member States, particularly in view of the purpose of the loan and the actual use made of it and the fact that the beneficiary has not carried out its activities since 1 December 2008?

(4) Does the decision infringe Article 107(3) TFEU, insofar as the aid was intended to remedy a serious disturbance in the economy of a Member State and, as such, is compatible with the common market?

7. Case C-69/13, Mediaset SpA v Ministero dello Sviluppo economico

Is the national court called upon to rule on the amount of State aid which the Commission has ordered to be recovered bound, as regards both the existence of the State aid and its amount, by the Commission's Decision of 24 January 2007 adopted upon the conclusion of procedure No C 52/2005 concerning State aid, as supplemented by the determinations which the Commission made in its notes of 11 June 2008 COMP/H4/EK/cd D(2008) 127 and 23 October 2009 COMP/H4/CN/si D(2009)230 and as confirmed by the Court of Justice in its judgment of 15 June 2010 in Case T-177/07?

If the first question should be answered in the negative: In affirming in its judgment of 15 June 2010 in Case T-177/07 that it is for the national court to rule on the amount of the State aid, did the Court of Justice intend to restrict that power to the quantification of an amount which, inasmuch as it relates to State aid actually implemented and received, must necessarily have a positive value and cannot therefore be nil, or

Did the Court of Justice, in affirming in its judgment of 15 June 2010 in Case T-177/07 that it is for the national court to rule on the amount of the State aid, instead mean to ascribe to the national court the power to assess the claim for the recovery of State aid insofar as concerns both the existence of the State aid and its quantum and also, therefore, the power to hold that there is no obligation to repay aid?

8. Case C-368/12 Adiamix v Ministre de l'Économie et des Finances

Is Commission Decision 2004/343/EC of 16 December 2003, on which the payment order at issue is necessarily contingent, valid?

9. Case C-129/12, Magdeburger Mühlenwerke GmbH v Finanzamt Magdeburg

Did Commission Decision C(1998) 1712 of 20 May 1998 grant the German legislature discretion in relation to the formulation of point 4 of the second sentence of Paragraph 2 of the Investitionszulagengesetz ('InvZulG 1996') (Law on investment grants of 1996) in the version of the Steuerentlastungsgesetz, 1999 (Law on tax relief of 1999) of 19 December 1998, whereby a scheme would be covered by that discretion if it promotes investments under that scheme, in relation to which the binding investment decision was made before the expiration of the period for the implementation of the Commission Decision or before the publication of the intended measures in the Bundessteuerblatt (Federal Tax Journal, 'BStBl'), but the delivery of the capital asset and the determination and disbursement of the grant take place afterwards?

10. Case C-262/11, Kremikovtzi AD

...If the answer given to the previous question is in the affirmative: Is the Commission Decision of 15 December 2009 produced to the Varhoven administrativen sad (Higher Administrative Court) to be considered a negative decision on unlawful aid within the meaning of Article 14 of Regulation No 659/1999?

11. Case C-88/10, Assessorato del Lavoro e della Previdenza Sociale

Interpretation of Commission Decision No 95/C 343/11 of 14 November 1995

12. Case C-138/09, Todaro Nunziatina & C. Snc

Interpretation of Decision 2003/195 on the scheme by which Italy plans to aid employment in the Region of Sicily

13. Case C-305/07, Radiotelevisione italiana SpA (RAI)

If Question (1) is answered in the affirmative: is the Commission decision notified to the Italian Foreign Minister on 20 April 2005 incompatible with Community law by reason of factual errors or misappraisal of the facts, inasmuch as it considers the

derogation under Article 86(2) EC to be applicable to the RAI licence fee but fails to take into consideration that: - the broadcaster holding the concession is providing a public radio and television service at regional level in the absence of any definition, contained in regional legislation and specific service contracts, of the tasks which the broadcaster is required to perform in relation to broadcasting time and network planning for the broadcast of programmes at regional level; - given the failure to define the public-service obligations, it is not possible to ascertain whether the State resources intended for public service at local level are being used exclusively for such public-service activities; - the broadcaster holding the concession has not been entrusted, by means of an official act, with the performance of specific public-service obligations but has merely been generally authorised to provide a regional public service?

14. Case C-390/06, Nuova Agricast srl v Ministero delle Attività Produttive

'The question concerns the validity of the EU Commission's decision of 12 July 2000, notified to the Italian Government by letter referenced SG(2000)D/105754 of 2 August 2000, solely with reference to the transitional provision which provides for exceptional derogation from the principle of "necessary aid" - on the occasion of the first implementation of the scheme in question - only for applications "made on the occasion of the last invitation to apply for support measures, organised on the basis of the preceding scheme and approved by the Commission until 31 December 1999, which were considered eligible for aid but were not cleared because insufficient financial resources were allocated to that invitation", with the consequent unjustified passing-over - in breach of the principle of equal treatment and of the obligation to state the reasons on which the decision was based pursuant to Article 253 EC - of applications made in connection with earlier invitations, which had not been supported because of a lack of funds and which were waiting to be included automatically in the next invitation or to be revised and resubmitted in the first "appropriate" invitation established under the new scheme'.

15. Case C-336/04, Banca Popolare Friuladria SpA

Is Commission Decision 2002/581/E of 11 December 2001 (OJ 2002 L 184, p. 27) invalid and incompatible with Community law, in that the provisions of Law 461/98 and the related Legislative Decree 153/99 regarding banks are compatible with the Common Market, contrary to the opinion of the European Commission, or do they in any case fall within the scope of the derogations provided for by Article 87(3)(b) and (c) of the EC Treaty?

2. In particular, is Article 4 of the above-mentioned decision invalid and incompatible with Community law, in that the Commission:

(a) failed in its duty to provide adequate reasons in accordance with Article 253 of the EC Treaty; and/or

*(b) infringed the principle of the protection of legitimate expectations;
and/or*

(c) infringed the principle of proportionality?

16. C-285/04, Ignazio Medda against the Banco di Napoli SpA and the Regione Autonoma della Sardegna

Reference has been made to the Court of Justice of the European Communities by order of the Tribunale di Oristano (Italy) of 14 June 2004, received at the Court Registry on 1 July 2004, for a preliminary ruling in the case of Ignazio Medda against the Banco di Napoli SpA and the Regione Autonoma della Sardegna on the validity of Commission Decision No 97/612/E having regard to the following defects:

(a) lack of competence on the part of the Commission to adopt the contested decision in infringement of the combined provisions of Article 36 EC;

(b) infringement of the provisions governing the procedure provided for under Article 88(1) EC;

(c) infringement of the provisions governing the procedure provided for under Article 88(2) and (3) EC;

(d) failure to state reasons for the decision in application of the combined provisions of Articles 253, 88(3) and 87(1) EC;

(e) infringement and failure to comply with the "practice for aid to farms in difficulty" and with the "Community guidelines on State aid for rescuing and restructuring firms in difficulty";

(f) breach of the principle of legitimate expectations.

16. C- 148/04, Unicredito italiano

Validity of Commission Decision 2002/581/EC of 11 December 2001 on banking and C-222/04 Cassa di Risparmio di Firenze (regarding the validity of Decision of the European Commission of 22 August 2002, in which the rules on State aid were held to be inapplicable to the foundations of banking origin)