



TRIBUNAL DE PRIMERA INSTANCIA DE LAS COMUNIDADES EUROPEAS  
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DE EUROPÆISKE FÆLLESSKABERS RET I FØRSTE INSTANS  
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COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES  
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IL-QORT TAL-PRIMĪSTANZA TAL-KOMUNITAJIET EWROPEJ  
GERECHT VAN EERSTE AANLEG VAN DE EUROPESE GEMEENSCHAPPEN  
SĄD PIERWSZEJ INSTANCIJ WSPÓLNOT EUROPEJSKICH  
TRIBUNAL DE PRIMEIRA INSTÂNCIA DAS COMUNIDADES EUROPEIAS  
SÚD PRVÉHO STUPŇA EURÓPSKYCH SPOLOČENSTEV  
SODIŠČE PRVE STOPNJE EVROPSKIH SKUPNOSTI  
EUROOPAN YHTEISÖJEN ENSIMMÄISEN OIKEUSASTEEN TUOMIOISTUIN  
EUROPEISKA GEMENSKAPERNAS FÖRSTAINSTANSRÄTT

## Press and Information

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Judgment of the Court of First Instance in Case T-171/02

*Regione Autonoma della Sardegna v Commission of the European Communities*

#### **STATE AID: THE COURT OF FIRST INSTANCE REVIEWS FOR THE FIRST TIME THE LEGALITY OF A DECISION TAKEN BY THE COMMISSION AFTER BEING REQUESTED TO DO SO WITHIN TWO MONTHS**

*Not having the necessary information available to it, the Commission was entitled to conclude within that period that the project was incompatible with the common market. The Court of First Instance accordingly dismissed the application.*

In 1998 Sardinia planned an aid scheme for restructuring small agricultural enterprises in difficulty.

The project concerned the protected crops sector, that is, greenhouse-cultivated vegetables, fruit, mushrooms, plants and flowers. The total amount of public resources involved in financing the project was ITL 60 billion, approximately EUR 30 million. The maximum grant to each enterprise to benefit from the aid was limited in turn to ITL 600 million, approximately EUR 300 000.

Italy informed the Commission of the project. In 2001, the Commission decided that it was incompatible with the common market.

Sardinia requested the Court of First Instance of the European Communities to annul the Commission's decision. Three Sardinian agricultural associations (Confederazione italiana agricoltori della Sardegna, Federazione regionale coltivatori diretti della Sardegna and Federazione regionale degli agricoltori della Sardegna) were given leave to intervene in the proceedings in support of Sardinia.

The Court of First Instance began by examining Sardinia's pleas. Sardinia complained that the Commission had taken the view that it was not certain that its project would benefit only enterprises in difficulty, restore their viability and would not create undue distortions of competition. According to Sardinia, the Commission ought to have confined itself to imposing certain conditions and obligations ('conditional decision') instead of prohibiting the project in its entirety ('negative decision').

First, the Court of First Instance found that the Commission is required to check that planned aid schemes are set up in such a way as to ensure that the individual aid measures provided for will be limited to enterprises which are actually eligible for them. Where that is not the case, **it is for the Commission, in the exercise of its wide discretion, to assess whether it is appropriate to adopt a conditional or negative decision, in so far as it can do so from the information available to it.**

Second, the Court of First Instance pointed out that **authorisation of aid plans for restructuring enterprises in difficulty is subject to compliance with the following cumulative conditions:** the restoration of the beneficiary firms to viability; the absence of undue distortions of competition; and proportionality. If one of those conditions has not been satisfied, the Commission therefore cannot authorise those projects.

Lastly, the Court of First Instance noted that on the expiry of the indicative period of 18 months within which the Commission endeavours in principle to take a decision, **Italy requested that the Commission take a decision within two months.**<sup>1</sup> In such a case, the Commission must take a decision in the light of the information available to it and, if that information is not sufficient to establish the compatibility of the project submitted for its examination, the Commission must take a negative decision.

In this case, the Commission was entitled to take the view that it was not certain that the benefit of the proposed aid would be limited to enterprises in difficulty. Further, it tried to obtain economic documentation to enable it to assess the effects of the project on the enterprises intended to benefit from it and on competition, but Italy failed to provide that documentation.

**As the information available was thus not sufficient to establish that the project was compatible with the common market, the Court of First Instance concluded that the Commission was entitled to adopt a negative decision.**

The Court of First Instance then went on to examine the pleas of the agricultural associations in support of Sardinia. The Commission argued that interveners such as those associations are not entitled to rely on pleas which differ from those of the main party (applicant or defendant) being supported.

However, the Court of First Instance ruled that **an intervener has the right to rely on its own pleas, provided that they support the claims of one of the main parties and do not change the subject-matter of the dispute.**

In the present case, some of the agricultural associations' pleas, albeit distinct from those of Sardinia, were connected to the subject-matter of the dispute. They could for that reason be relied upon before the Court of First Instance. However, in the event those pleas were unfounded.

The Court of First Instance accordingly dismissed the application in its entirety.

**REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.**

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<sup>1</sup> That option is provided in Article 7(7) of Council Regulation No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 EC (OJ 1999 L 83, p. 1).

*Unofficial document for media use, not binding on the Court of First Instance.*

*Languages available: FR, EN, IT*

*The full text of the judgment may be found on the Court's internet site*

*<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

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