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COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES
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Judgments of the Court of Justice in Cases C-66/02 and C-148/04

Italy v Commission of the European Communities
Unicredito Italiano v Agenzia delle Entrate, Ufficio di Genova I

**THE COURT OF JUSTICE CONFIRMS THE COMMISSION'S DECISION ON THE
INCOMPATIBILITY WITH THE COMMON MARKET OF AID BENEFITING THE
ITALIAN BANKING SECTOR**

The aid is likely to have an effect on trade between Member States and to distort competition

In the 1990s the Italian authorities initiated a process of privatisation of the Italian banking system¹. In the context of that reform they adopted Law No 461/98² in order to encourage the restructuring and consolidation of the banking sector. In implementation of that law Legislative Decree No 153/99 granted tax advantages for certain restructuring operations in the banking sector.

In a decision of 11 December 2001³ the Commission took the view that the Italian legislation had introduced an aid scheme incompatible with the common market and ordered recovery of the aid granted unlawfully to the beneficiary banks, which had to pay an amount equal to the tax not paid as a result of that scheme⁴.

Italy requested the Court of Justice of the European Communities to annul the Commission's decision (Case C-66/02). It claimed in particular that the contested measures did not amount to State aid since they did not give rise to a transfer of State resources, were of a general

¹ Law No 218 of 30 July 1990 on the capital restructuring and consolidation of credit institutions governed by public law (GURI No 182 of 6 August 1990).

² Law No 461 of 23 December 1998 delegating powers to the government to revise the civil and tax provisions applicable to the entities referred to in Article 11(1) of Legislative Decree No 356 of 20 November 1990, as well as the tax provisions applicable to restructuring operations in the banking sector (GURI No 4 of 7 January 1999).

³ Decision 2002/581/EC (OJ 2002 L 184, p. 27).

⁴ Legislative Decree No 282 of 24 December 2002 concerning urgent provisions in the context of Community and tax measures, revenues and accounting procedures (GURI No 301 of 24 December 2002), ratified by Law No 27 of 21 February 2003 (Suppl. Ord. No 44 to GURI of 22 February 2003).

character and not selective, and did not affect trade between Member States or distort competition.

In addition, the Commissione tributaria provinciale di Genova made a reference to the Court of Justice for a preliminary ruling (Case C-148/04) in the context of a dispute between an Italian bank, Unicredito Italiano, and the Agenzia delle Entrate, Ufficio di Genova (Revenue Agency, Genoa office), in respect of the latter's refusal of the bank's request for reimbursement of the sum of EUR 244 712 646.05 paid in the form of tax advantages from which it benefited between 1998 and 2000. The national court requested the Court of Justice to determine whether the Commission's decision was valid and whether the national law requiring repayment of the aid was in accordance with Community provisions and the principles of legal certainty, proportionality, and the protection of legitimate expectations.

The Court notes, first, that a tax measure which does not consist of a transfer of State resources but places the beneficiaries in a more favourable financial position than other tax payers amounts to State aid within the meaning of the EC Treaty.

The contested measures are forms of tax relief granted by means of State resources and, thus, amount to aid of that nature.

Next, the Court points out that the EC Treaty prohibits selective aid which favours certain undertakings. Aid may be selective even where it concerns a whole economic sector.

The Italian tax measures apply to undertakings which carry out certain operations in the banking sector and are not advantageous to undertakings in any other economic sectors. They are therefore selective. In addition, the advantage in terms of competitiveness brought about by those measures for operators established in Italy is of such a kind as to make it more difficult for operators in other Member States to penetrate the Italian market, or to facilitate the penetration of other markets for operators established in Italy. Consequently, the tax measures in question are liable to affect trade between the Member States and to distort competition.

Finally, the Court determines whether the aid is aimed at promoting the execution of an important project of common European interest or to facilitate the development of certain activities.

It finds that the contested measures seek essentially to improve the competitiveness of operators established in Italy in order to strengthen their competitive position solely in the internal market. Furthermore, a process of privatisation initiated by a Member State cannot be regarded as constituting a project of common European interest.

In addition, given that the Italian measures are aimed at strengthening the position of the beneficiaries of the aid in relation to their competitors which do not benefit from it, the Court finds that the aid scheme examined is not intended to further the development of the banking business in general.

Consequently, the Court dismisses the action brought by Italy.

As regards the references for a preliminary ruling made by the Commissione tributaria provinciale di Genova, the Court considers that **the examination of those references has revealed nothing which affects the validity of the Commission's decision.**

As for the national measure implementing the Commission's decision and providing for repayment of the aid, the Court notes that that measure would be unlawful if the Commission's decision were contrary to a rule of Community law, which is not the case in this instance.

The Court concludes that **the national measure implementing the Commission's decision is thus compatible with the Community provisions on State aid and with the principles of legal certainty, proportionality, and the protection of legitimate expectations.**

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Languages available: EN, FR, DE, ES, IT, NL, PL

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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