

- in the alternative, set aside in its entirety the judgment under appeal of the General Court and refer the case back to that Court for reconsideration, in accordance with the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice.

### Pleas in law and main arguments

The appellant claims that the General Court breached Article 8(1)(b) of Regulation No 207/2009 and Article 48(2) of its own Rules of Procedure.

With regard to the breach of Article 8(1)(b) of Regulation No 207/2009, the appellant submits that the General Court:

- committed a breach of law in failing to examine correctly whether the goods covered by the application for registration of the marks in conflict were similar;
- committed a breach of law in misapplying Article 8(1)(b) by finding that the marks in conflict were similar;
- committed a breach of law in finding that the word MARKO was the dominant element of the sign 'Walichnowy Marko';
- committed a breach of law in failing to define the relevant public in respect of whom there was a likelihood of confusion, and in indicating that that likelihood existed in the mind of the average Polish consumer;
- committed a breach of law in failing to have regard for the reputation of the trade mark 'Walichnowy Marko' and in failing to take account of the fact that it has enjoyed priority within Polish territory since as early as 1995;
- committed a breach of law in failing to have regard for the level of attention which the average consumer has for the goods to which the marks in conflict are attached and in failing to consider whether that level of attention might reduce the likelihood of confusion.

With regard to the breach of Article 48(2) of the Rules of Procedure of the General Court, the appellant submits that, in paragraph 26 of the judgment under appeal, the General Court erred in holding that it was not until the stage of the hearing that the present appellant stated that the mark applied for had been registered in Poland since 1995.

**Appeal brought on 12 April 2013 by Vetrai 28 srl, formerly Barovier & Toso Vetrerie Artistiche Riunite srl and Others against the order of the General Court (Fourth Chamber) delivered on 29 January 2013 in Case T-272/00 Barbini and Others v European Commission**

(Case C-180/13 P)

(2013/C 207/07)

*Language of the case: Italian*

### Parties

*Appellants:* Vetrai 28 srl, formerly Barovier & Toso Vetrerie Artistiche Riunite srl and Others (represented by: A. Vianello, A. Bortoluzzi and A. Veronese, avvocati)

*Other parties to the proceedings:* Alfredo Barbini srl and Others, Italian Republic, European Commission

### Form of order sought

- Set aside and/or vary the order of the General Court (Fourth Chamber) delivered on 29 January 2013 in Case T-272/00, and order the Commission to pay the costs.

### Pleas in law and main arguments

In support of their appeal, the appellants allege errors of law in the application of the principles outlined by the Court of Justice in its judgment in *Comitato 'Venezia vuole vivere' and Others v Commission*, regarding (i) the duty to state the reasons for decisions of the Commission relating to State aid and (ii) the allocation of the burden of proof concerning the conditions laid down in Article 107(1) TFEU.

In the order that is the subject of the present appeal, the General Court did not comply with the judgment delivered by the Court of Justice on 9 June 2011 in *Comitato 'Venezia vuole vivere'*, in so far as that judgment states that a decision of the Commission 'must contain in itself all the matters essential for its implementation by the national authorities'. However, even though the decision at issue in the present case lacked the matters essential for its implementation by the national authorities, the General Court failed to find any deficiency in the method used by the Commission in the contested decision, and consequently erred in law.

On the basis of the principles outlined by the Court in its judgment in *Comitato 'Venezia vuole vivere'*, when aid is being recovered, it is the Member State — and not, therefore, the individual beneficiary — which is required to show, in each individual case, that the conditions laid down in Article 107(1) TFEU are met. In the present case, however, in the contested decision the Commission failed to clarify the 'modalities' of any such verification; consequently, since it did not have available to it, at the time when the aid was to be recovered, the information necessary to show that the advantages granted constituted, in the hands of the beneficiaries, State aid, the Italian Republic — by Law No 228 of 24 December 2012 (Article 1, paragraph 351 et seq.) — decided to reverse the burden of proof, in breach of Community case-law. According to the Italian legislature, in particular, it is not for the State but for the individual beneficiaries of aid granted in the form of relief to prove that the advantages in question do

not distort competition or affect trade between Member States. In the absence of any such proof, there is a presumption that the advantage granted was likely to distort trade and affect trade between Member States. That presumption is clearly contrary to the principles outlined by the Court in *Comitato 'Venezia vuole vivere'*.

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**Request for a preliminary ruling from the Commissione tributaria provinciale di Latina (Italy) lodged on 12 April 2013 — Francesco Acanfora v Equitalia Sud SpA and Agenzia delle Entrate**

(Case C-181/13)

(2013/C 207/08)

*Language of the case: Italian*

**Referring court**

Commissione tributaria provinciale di Latina

**Parties to the main proceedings**

*Applicant:* Francesco Acanfora

*Defendants:* Equitalia Sud SpA — Agente di Riscossione Latina, Agenzia delle Entrate — Ufficio di Latina

**Question referred**

Does the 9 % commission premium ('aggio') [established by Legislative Decree No 112/1999, prior to the amendments which have been introduced] constitute State aid which is incompatible with the single market as regards fees for collection and with Community law pursuant to Article 107 TFEU?

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**Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 12 April 2013 — Anonima Petroli Italiana SpA (API) v Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo Economico**

(Case C-184/13)

(2013/C 207/09)

*Language of the case: Italian*

**Referring court**

Tribunale Amministrativo Regionale per il Lazio

**Parties to the main proceedings**

*Applicant:* Anonima Petroli Italiana SpA (API)

*Defendants:* Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo Economico

**Questions referred**

1. Is the protection of freedom of competition, free movement of undertakings, freedom of establishment and freedom to provide services (under Article 4(3) TEU, Article 101 TFEU, and Articles 49, 56 and 96 TFEU) compatible — and, if so, to what extent — with statutory provisions adopted by EU Member States which lay down minimum operating costs for the road haulage sector which involve the fixing by bodies external [to the contracting parties] of a component of the charge for the service concerned and, accordingly, of the contract price?
2. Are such limitations of those principles justifiable — and, if so, under what conditions — in the light of the need to safeguard the public interest in road traffic safety and, in terms of that functional consideration, is there a proper place for the fixing of minimum operating costs as provided for under Article 83a of Legislative Decree No 112/2008 (as subsequently amended and supplemented)?
3. Can the determination of minimum operating costs, to the above end, be left — in the absence of criteria predetermined by the legislation — to voluntary agreements between the types of trader concerned, failing which to bodies whose composition is characterised by the strong presence of persons representing private traders in that sector?

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**Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 12 April 2013 — ANCC-Coop Associazione Nazionale Cooperative di Consumatori and Others v Ministero delle Infrastrutture e dei Trasporti and Others**

(Case C-185/13)

(2013/C 207/10)

*Language of the case: Italian*

**Referring court**

Tribunale Amministrativo Regionale per il Lazio

**Parties to the main proceedings**

*Applicants:* ANCC-Coop Associazione Nazionale Cooperative di Consumatori, ANCD Associazione Nazionale Cooperative Dettaglianti, Sviluppo Discount SpA, Centrale Adriatica Soc coop, Coop Consorzio Nord Ovest Società Consortile arl, Coop Italia Consorzio Nazionale non Alimentari Società Cooperativa, Coop Centro Italia Società Cooperativa, Tirreno Logistica srl, Unicoop Firenze Società Cooperativa, CONAD — Consorzio Nazionale Dettaglianti — Soc. Coop., Conad Centro Nord Soc. Coop, Commercianti Indipendenti Associati Soc. Coop, Conad del Tirreno Soc. Coop, Pac2000A Soc. Coop, Conad Adriatico Soc. Coop, Conad Sicilia Soc. Coop, Sicilconad Mercurio Soc. Coop