

Defendants: Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo Economico, Consulta Generale per l'Autotrasporto e la Logistica, Osservatorio sulle Attività di Autotrasporto, Autorità Garante della Concorrenza e del Mercato — Antitrust

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?

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 12 April 2013 — Air Liquide Italia SpA and Others v Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo Economico

(Case C-186/13)

(2013/C 207/11)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicants: Air Liquide Italia SpA and Others

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?

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 12 April 2013 — Confederazione Generale Italiana dei Trasporti e della Logistica (Confetra) and Others v Ministero delle Infrastrutture e dei Trasporti and Others

(Case C-187/13)

(2013/C 207/12)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicants: Confederazione Generale Italiana dei Trasporti e della Logistica (Confetra) and Others

Defendants: Ministero delle Infrastrutture e dei Trasporti and Others

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?

Appeal brought on 15 April 2013 by Confindustria Venezia, formerly Unione degli Industriali della Provincia di Venezia (Unindustria) and Others against the order of the General Court (Fourth Chamber) delivered on 29 January 2013 in Case T-273/00 Unindustria and Others v European Commission

(Case C-191/13 P)

(2013/C 207/13)

Language of the case: Italian

Parties

Appellants: Confindustria Venezia, formerly Unione degli Industriali della Provincia di Venezia (Unindustria) and Others (represented by: A. Vianello, A. Bortoluzzi and A. Veronese, avvocati)

Other parties to the proceedings: European Commission, Siram SpA, Bortoli Ettore Srl, Arsenale Venezia SpA, Italian Republic

Form of order sought

— Set aside and/or vary the order of the General Court (Fourth Chamber) delivered in Case T-273/00, 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'*.

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 15 April 2013 — Esso Italiana srl v Ministero delle Infrastrutture e dei Trasporti, Ministero dello Sviluppo Economico

(Case C-194/13)

(2013/C 207/14)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: Esso Italiana srl

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