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JUDGMENT OF THE COURT (Fifth Chamber)

9 July 2015 (\*)

(Failure of a Member State to fulfil obligations — State aid — Illegal aid incompatible with the internal market — Obligation of recovery — Absolutely impossible — Compensation for a service additional to the basic service)

In Case C-63/14,

ACTION for failure to fulfil obligations under Article 108(2) TFEU brought on 10 February 2014,

**European Commission**, represented by B. Stromsky, acting as Agent, with an address for service in Luxembourg,

applicant,

v

**French Republic**, represented by G. de Bergues and D. Colas and N. Rouam and J. Bousin, acting as Agents,

defendant,

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Chamber, C. Vajda, A. Rosas, E. Juhász (Rapporteur) and D. Šváby, Judges,

Advocate General: M. Wathelet,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 5 February 2015, after hearing the Opinion of the Advocate General at the sitting on 26 March 2015, gives the following

## **Judgment**

- 1 By its application, the European Commission asks the Court to declare that, by failing to take, within the prescribed periods, all the measures necessary to recover from the recipient the State aid declared illegal and incompatible with the internal market by Article 2(1) of Commission Decision 2013/435/EU of 2 May 2013 on State aid SA.22843 (2012/C) (ex 2012/NN) awarded by France to Société Nationale Corse-Méditerranée and the Compagnie Méridionale de Navigation (OJ 2013 L 220, p. 20) ('the decision at issue'), by failing to cancel, within the prescribed periods, all the aid payments referred to in Article 2(1), and by failing to inform the Commission, within the prescribed period, of the measures taken to comply with that decision, the French Republic has failed to fulfil its obligations under Article 288 TFEU, fourth paragraph, and Articles 3, 4 and 5 of that decision.

### **Legal context**

- 2 Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [108 TFEU] (OJ 1999 L 83, p. 1), provides:
  1. Where negative decisions are taken in cases of illegal aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary (hereinafter referred to as a "recovery decision"). The Commission shall not require recovery of the aid if this would be contrary to a general principle of [European Union] law.
  2. The aid to be recovered pursuant to a recovery decision shall include interest at an appropriate rate fixed by the Commission. Interest shall be payable from the date on which the illegal aid was at the disposal of the beneficiary until the date of its recovery.
  3. Without prejudice to any order of the Court of Justice of the European Communities pursuant to Article [278 TFEU], recovery shall be effected without delay and in accordance with the procedures under the national law of the Member State concerned, provided that they allow the immediate and effective execution of the Commission's decision. To this effect and in the event of a procedure before national courts, the Member States concerned shall take all necessary steps which are available in their respective legal systems, including provisional measures, without prejudice to [European Union] law.'

### **Background to the dispute and the decision at issue**

### *Background to the dispute*

- 3 By decision of 7 June 2007, the Corsican Assembly awarded to the group constituted by Société Nationale Corse Méditerranée (SNCM) SA ('SNCM') and Compagnie méridionale de navigation SA ('CMN') the public service delegation for ferry services between the port of Marseille and the Corsican ports. By decision of the same day, the President of the Executive Council of the Corsican Regional Authorities was authorised to sign the public service delegation contract.
- 4 The public service delegation contract was concluded for the period from 1 July 2007 to 31 December 2013.
- 5 Article 1 of that contract defines the purpose of the public service delegation contract as the provision of scheduled maritime transport services on all lines of the public service delegation between the port of Marseille and the ports of Bastia, Ajaccio, Porto Vecchio, Propriano and Balagne.
- 6 The tender specifications in Annex 1 to the public service delegation contract, defines the nature of those services. In particular, it provides for
  - a permanent 'passenger and freight' service which the group constituted by SNCM and CMN must provide throughout the year ('the basic service') and
  - an additional passenger service to be provided by SNCM during peak periods, for approximately 37 weeks, on the Marseille-Ajaccio and Marseille-Bastia routes and during the period from 1 May to 30 September on the Marseille-Propriano route ('the additional service').
- 7 Pursuant to the public service delegation contract, the two concession holders are to receive an annual contribution from the Office des transports de Corse (Corsican Transport Board), in exchange for the basic service and the additional service. The final financial compensation for each concession holder for each year is limited to the amount of the operating deficit caused by the obligations resulting from the tender specifications, taking account of a reasonable return on nautical capital employed in proportion to the days when it was actually used for crossings corresponding to those obligations. If the revenue received is less than the forecast revenue fixed by the concession holders in their tender, that contract provides for an adjustment to the public compensation.
- 8 After it was signed, the public service delegation contract was amended, so that more than 100 crossings per year, between Corsica and Marseille were cancelled, the annual amounts of the reference compensation were reduced by EUR 6.5 million for both concession holders, and a ceiling was placed on the annual revenue adjustment mechanism for each concession holder.

### *The decision at issue*

- 9 Following a complaint made by Corsica Ferries France SAS ('Corsica Ferries'), concerning illegal aid incompatible with the internal market which SNCM and CMN allegedly received under the public service delegation contract relating to ferry services between Corsica and Marseille, the Commission informed the French Republic, by letter of 27 June 2012, of its decision to initiate the formal investigation procedure, pursuant to Article 108(2) TFEU, in respect of potential aid to SNCM and CMN contained in the public service delegation contract (OJ 2012 C 301, p. 1).
- 10 In the course of its investigation, the Commission carried out an assessment of the two services at issue, namely the basic service and the additional service.
- 11 The Commission found that the compensation received for the basic service by SNCM and CMN constituted illegal aid in so far as that compensation had been granted without the procedure provided for in Article 108(3) TFEU being observed. However, it found that that compensation was compatible with the internal market.
- 12 In reaching the decision that the compensation provided for by the public service delegation contract relating to the additional service provided by SNCM alone constituted illegal State aid incompatible with the internal market, the Commission considered that two of the four criteria laid down by the Court in the judgment in *Altmark Trans et Regierungspräsidium Magdeburg* (C-280/00, EU:C:2003:415) had not been met.
- 13 The Commission found, in the first place, that the additional service was neither necessary nor proportionate for the purpose of meeting a genuine public service need. In the second place, it considered that the specifications in the call for tender had failed to ensure effective competition and that the financial compensation had not been defined by reference to a base cost established in advance or by comparison with the cost structure of other comparable shipping companies.
- 14 In the light of the factors mentioned above, the Commission, by the decision at issue, notified the French Republic on 3 May 2013, held as follows

*Article 1*

The compensation awarded to SNCM and CMN under the Public Service Delegation Contract of 7 June 2007 constitutes State aid within the meaning of Article 107(1) TFEU. That aid was granted in breach of the obligations laid down in Article 108(3) TFEU.

*Article 2*

1. The compensation paid to SNCM for implementing the additional capacity provided for under sections I(a)(2), I(b)(2) and I(d)(1.4) of the specifications of the above-mentioned Public Service Delegation Contract is incompatible with the internal market.
2. The compensation paid to SNCM and CMN for the operation of other services provided under the above-mentioned Public Service Delegation Contract is compatible with the internal market.

### *Article 3*

1. France is required to make the beneficiaries repay the aid referred to in Article 2(1).
2. The sums to be recovered shall bear interest from the date on which they were made available to the recipient until the date of their actual recovery.
3. The interest is to be calculated on a compound basis in accordance with Chapter V of [Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 (OJ 2004 L 140, p. 1)] and [Commission Regulation (EC) No 271/2008 of 30 January 2008 amending Regulation (EC) No 794/2004 (OJ 2008 L 82, p. 1)].
4. France shall cancel all outstanding payments of the aid in Article 2(1) with effect from the date of adoption of this Decision.

### *Article 4*

1. The recovery of the aid specified in the second paragraph of Article 1 shall be immediate and effective.
2. France shall ensure that this Decision is implemented within four months of the date of its notification.

### *Article 5*

1. Within two months of the notification of this Decision France shall submit the following information to the Commission:
  - (a) the total amount (principal and recovery interests) to be recovered from the beneficiary;
  - (b) a detailed description of the measures already taken and planned to comply with this Decision;
  - (c) documents demonstrating that the beneficiary has been ordered to repay the aid;
  - (d) the date and the exact amount of monthly instalments and annual adjustments made from the entry into force of the contract until the date of adoption of this Decision.
2. France shall keep the Commission informed of the progress of the national measures adopted pursuant to this Decision until the recovery of the aid specified in the second paragraph of Article 1 has been concluded. At the Commission's request, it shall immediately submit information on the measures already adopted and planned for the purpose of complying with this Decision. It shall also provide detailed information concerning the amount of aid and interest already recovered from the beneficiary.

### *Article 6*

This Decision is addressed to the French Republic.’

- 15 According to the Commission, on the date on which the decision at issue was adopted, the amount of aid to be recovered was estimated to be approximately EUR 220 224 million.
- 16 By applications lodged at the Registry of the General Court of the European Union on 12 July and 26 August 2013 respectively, the French Republic and SNCM both brought an action for annulment of the decision at issue (*France v Commission*, T-366/13, and *SNCM v Commission*, T-454/13, which are pending before the General Court).
- 17 The same day, by document lodged at the Court Registry, the French Republic made an application for interim measures seeking the suspension of operation of the decision at issue until the General Court gave a ruling on the merits of the action for annulment. That application was rejected by order of the President of the General Court in *France v Commission* (T-366/13 R, EU:T:2013:396). The appeal brought by the French Republic against that order was dismissed by order of the Vice-President of the Court of Justice in *France v Commission* (C-574/13 P(R), EU:C:2014:36).
- 18 By letter of 20 June 2013, the President of the Corsican Regional Authorities sought the advice of the Vice-President of the Commission regarding ways to implement the decision at issue.
- 19 On 10 July 2013, the Prefect of Corsica sent a letter to the President of the Corsican Regional Authorities enclosing the decision at issue. In that letter, the Prefect of Corsica requested the President of the Corsican Regional Authorities to inform him of the action he would be taking as a result. The Prefect of Corsica also stated that French Republic was preparing to bring an action for annulment challenging the decision at issue and an application for interim measures.
- 20 On the same day, the Prefect of Corsica sent the President of SNCM a copy of the letter to the President of the Corsican Regional Authorities and a copy of the decision at issue.
- 21 By letter of 17 July 2013, the Vice-President of the Commission indicated to the President of the Corsican Regional Authorities that, in accordance with the decision at issue, the compensation payments granted to SNCM for additional services had to be suspended immediately, that the period prescribed by the decision at issue to send the information referred to in Article 5(1) thereof had already expired and that it was also important that the time-limit, set down in Article 4(2) of that decision was observed. In that letter, the Vice-President of the Commission stated that, in principle, the aid ‘must be recovered by the body which granted it, on the basis of an enforceable order issued by that body (provided that the latter was legally authorised to do so), or if not, by another public authority invested with such power. In the present case, the recovery obligation thus appears to fall to the Executive Council [of the Corsican Regional Authorities] ... since it is the latter which granted the incompatible aid, as stated in paragraph 28 of the decision [at issue]’.

- 22 By letter of 29 July 2013, the President of the Corsican Regional Authorities informed the Vice-President of the Commission that he had taken the measures necessary to cancel the payment of the compensation for the additional service. He added that he was experiencing difficulties with the French State authorities, in particular the Prefect of Corsica's department and the regional Audit Chamber, which disputed the validity of the decision at issue, denying that it is enforceable.

*The pre-litigation procedure*

- 23 By letter of 2 September 2013, the Commission requested the French Republic to notify it, within 10 days following the date of that letter, of the measures it had taken in order to implement the decision at issue. In that letter, the Commission reminded that Member State that, as long as a State aid recovery decision has not been legitimately suspended, it is fully and directly enforceable. Additionally, it requested the French Republic to clarify the consequences of the implementation of the decision at issue on SNCM's financial position since, according to the French Republic, the implementation of that decision would inevitably lead to the insolvency and compulsory liquidation of SNCM. On that basis, the Commission expressed its concerns about the fact that, according to the information available to it, the Corsican Executive Council was contemplating proposing, on the basis of a report by the Corsican Transport Board, that the Corsican Assembly sign a new public service delegation contract with the group comprising SNCM and CNM for transport of passengers and goods between Marseille and the Corsican ports for the period from 2014 to 2023.
- 24 By letter of 20 September 2013, the Commission 'again [requested] the [French Republic] to recover the aid immediately, including interest, to annul (and if appropriate to recover) all the aid to be paid for the additional service since the day of notification of the [decision at issue], and to provide a report on the state of the recovery, including an explanation of how interest has been calculated'. The Commission indicated to that Member State that it should send that information within 20 working days. Finally, the Commission stated that the further time-limit in no way altered the obligation immediately to implement the decision and that if that was not done, the Commission services would be obliged to suggest that proceedings be brought against the French Republic pursuant to Article 108(2) TFEU.
- 25 On 29 November 2013, the French Republic informed the Commission inter alia that the Corsican Regional Authorities had suspended the compensation payments for the service described as 'additional', with effect from the end of July 2013, on the basis of a provisional estimate calculated from the amounts mentioned in the decision at issue. As regards the total amount of compensation to be recovered from the recipient (capital and interest), that Member State expressed its difficulties in calculating such an amount, since it took the view that the distinction made by the Commission between the 'basic service' and the 'additional service' was artificial. According to the French Republic, those two services were inseparable and helped to achieve the objective of territorial continuity.
- 26 In those circumstances, taking the view that the French Republic had failed to take all the measures necessary to comply with the decision at issue, the Commission decided to bring the present action.

*Events subsequent to the initiation of proceedings*

- 27 A number of events took place between bringing the action and the hearing on 5 February 2015, at which the Commission and the French Republic submitted their observations.
- 28 At that hearing, the French Republic stated that Veolia-Transdev, which had granted a loan to SNCM, had requested the early repayment of that loan on 29 October 2014, leading the President of the Tribunal de commerce de Marseille (Commercial Court, Marseille) to declare the cessation of payments by SNCM and to place it in court-supervised administration for six months on 28 November 2014.
- 29 The French Republic added that on 7 and 19 November 2014 the Corsican Transport Board had issued two collection orders to recover the aid declared incompatible, but for a sum of around EUR 198 million which, according to the Commission, fell short of that set out in the decision at issue, of EUR 220.224 million.
- 30 The judgment ordering the commencement of the court-supervised administration was published on 14 December 2014, opening the two-month period for creditors to declare their claims.
- 31 On 9 January 2015, the French authorities recorded the aid declared to be incompatible as a liability of SNCM amounting to around EUR 198 million.
- 32 At the hearing, the French Republic also informed the Court that several offers to buy SNCM had been lodged at the Tribunal de commerce de Marseille on 2 February 2015, in the context of the court-supervised administration.

**The action**

- 33 In support of its action, the Commission relies on three pleas in law alleging infringement of Articles 3 to 5 of the decision at issue.
- 34 The Commission submits, in the first place, that the French Republic has failed to take the measures necessary to recover the illegal aid within the periods prescribed, in the second place, that while the payment of the aid actually ceased in July 2013, that cessation of payment occurred after the date fixed by the decision at issue, that is 3 May 2013, and finally, in the third place, that the information requested in the decision at issue was sent only from 29 November 2013, whereas it should have been sent two months after the notification of that decision on 3 May 2013.

*The first plea in law: failure to recover the illegal aid*

Arguments of the parties

- 35 The Commission claims that the French Republic has failed to take the measures necessary to recover the illegal aid within the periods prescribed.



- 36 It refutes the argument raised by the defendant that it was absolutely impossible for it to implement the decision at issue.
- 37 In particular, the Commission claims that there is no such impossibility where, as in the present case, no attempt to implement the decision at issue has actually been made by the addressee of that decision.
- 38 It adds that the social unrest relied on by the defendant in order to justify such impossibility must be put in perspective.
- 39 In that connection, the Commission states, first, that where there is a genuine emergency regarding a measure whose legality is seriously challenged, there is always a legal remedy enabling the Member States or economic operators concerned by that measure to request the suspension of its operation. Second, it is for the French Republic to ensure compliance with the law and to maintain public order in its territory, without giving in to mere threats of disruption to public order. Finally, third, the argument alleging a break in territorial continuity with Corsica as a result of the suspension of Corsican ferry services by SNCM must be put in perspective since, in particular, that service could be operated by other competing companies and, in any event, by air.
- 40 In its defence the French Republic contends that it is absolutely impossible for it to recover the EUR 220.224 million which is the subject of the decision at issue.
- 41 In that connection, it states that the recovery of such a sum would inevitably lead to the compulsory liquidation of SNCM, a process which would itself give rise to serious problems of public order, such as those which occurred during the strike in 2005 and, to a lesser extent in 2014. Such strikes might thus again block the port of Marseille for a long period, jeopardise the territorial continuity with Corsica and, ultimately, seriously affect the economic equilibrium of a whole region.
- 42 The French Republic states that the cessation, whether temporary or permanent, of SNCM's activities would, at least in the short term, significantly affect ferry services between the mainland and Corsica and, accordingly, territorial continuity between Corsica and the mainland, particularly as regards ferry services between Marseille and the various Corsican ports, since private operators cannot fill the gap left by SNCM.
- 43 The French Republic states that SNCM is responsible for a substantial share of the ferry services between Corsica and the mainland, since that company provides 34.2% of passenger traffic and 39% of freight on those services. It adds that CMN provides only 40% of services under the basic service. It states that Corsica Ferries was the only company to compete with SNCM and CMN in the call for tenders for the award of the public service delegation contract for the period from 2007 to 2013, which rules out the possibility of another private company operating the service provided by SNCM and that, in any event, the involvement of Corsica Ferries from the port of Marseille would require that company to transfer part of its activities from the ports from which it operates, namely Nice and Toulon, which would thus affect the territorial continuity with Corsica and those two ports.

## Findings of the Court

- 44 The Court has consistently held that recovery of illegal aid is the logical consequence of a finding that it is illegal. The decision requiring a Member State to recover illegal aid, adopted on the basis of Article 108(2) TFEU, is presumed to be lawful and, despite the existence of the action for annulment under Article 263 TFEU, remains binding in all respects on the addressee (see, to that effect, judgment in *Commission v France*, C-261/99, EU:C:2001:179, paragraphs 22 and 26 and the case-law cited). Therefore, the Member State which is the addressee of such a decision is required, pursuant to Article 288, fourth paragraph, TFEU, to take account of all the measures appropriate to ensure its implementation.
- 45 In accordance with Article 14(3) of Regulation No 659/1999, the recovery of aid must be carried out without delay or, if necessary, within the period laid down in the decision ordering its recovery. Delayed recovery, after the periods prescribed, cannot satisfy the requirements of the FEU Treaty (see, to that effect, judgment in *Commission v Italy*, C-353/12, EU:C:2013:651, paragraphs 31 and 32 and the case-law cited).
- 46 In the present case, it is not disputed that, on the expiry of the period prescribed by the decision at issue, that is 3 September 2013, the French Republic had failed to take the measures necessary to recover the illegal aid. It is only on 7 and 19 November 2014 that that Member State issued two recovery orders against SNCM in the amount of EUR 198 million, which is less than that indicated by the Commission, that is to say EUR 220.224 million, without any actual recovery of the illegal aid being made. The issue of those recovery orders alone cannot be regarded as recovery of the illegal aid (see, to that effect, judgment in *Commission v Slovakia*, C-507/08, EU:C:2010:802, paragraph 48).
- 47 The action for annulment brought by the French Republic and SNCM against the decision at issue has no effect on the present proceedings. As appears from Article 278 TFEU, in the absence of a decision of the General Court to the contrary, such an action does not have suspensory effect (see judgment in *Commission v France*, C-232/05, EU:C:2005:651, paragraph 60). Since the action for suspension of operation of the decision at issue brought by the French Republic was rejected on appeal by the Court of Justice, bringing an action for annulment by that Member State does not alter the enforceable nature of the decision at issue.
- 48 According to settled case-law, with the exception of cases in which a recovery decision has been annulled pursuant to Article 263 TFEU, the only defence available to a Member State in opposing an infringement action by the Commission under Article 108(2) TFEU is to plead that it was absolutely impossible for it to implement the decision of which it was an addressee (see to that effect, judgment in *Commission v Germany*, C-527/12, EU:C:2014:2193, paragraph 48 and the case-law cited).
- 49 The condition that it be absolutely impossible to implement a decision is not fulfilled where the defendant Member State merely informs the Commission of the legal, political or practical difficulties involved in implementing the decision, without taking any real step to recover the aid from the undertakings concerned, and without proposing to the Commission

any alternative arrangements for implementing the decision which could have enabled those difficulties to be overcome (see judgments in *Commission v Greece*, C-415/03, EU:C:2005:287, paragraph 43; *Commission v Poland*, C-331/09, EU:C:2011:250, paragraph 70; *Commission v Italy*, C-305/09, EU:C:2011:274, paragraph 33, and *Commission v Italy*, C-243/10, EU:C:2012:182, paragraph 41).

- 50 In the present case, the French Republic puts forward two kinds of arguments seeking a declaration by the Court that it is absolutely impossible to implement the decision at issue.
- 51 The first argument concerns the social unrest which might arise following the announcement of the compulsory liquidation of SNCM, unrest which might undermine public order and also cause a break in the territorial continuity between Corsica with the mainland. The second argument relates to the practical difficulties which, if SNCM ceased to operate, would require the conclusion of a new public service delegation contract with an economic operator other than SNCM, which would not necessarily have the material resources or manpower to satisfy the demands of public service delegation. The need to use such a procedure would thus be likely, at least for a certain period, to interrupt the territorial continuity in question.
- 52 As regards the possible outbreak of social unrest which might jeopardise public order, the Court has consistently held, as the Advocate General noted in paragraph 86 of his Opinion, that where such unrest is threatened, it is for the Member State to adopt all appropriate measures to guarantee the full scope and effect of EU law so as to ensure its proper implementation in the interests of all economic operators, concerned unless it can show that action on its part would have consequences for public order with which it could not cope by using the means at its disposal (see to that effect, judgment in *Commission v France*, C-265/95, EU:C:1997:595, paragraphs 56 and 57).
- 53 In the present case, the French Republic has failed to show that action taken by it to put an end to any alleged social unrest would have consequences with which it could not cope by using the means at its disposal. Even if a long-term blockade of ferry services with Corsica took place as a result of illegal acts, no evidence presented by the French Republic justifies the conclusion that the services between Corsica and the mainland by other maritime routes or by air which enable the island to be supplied with basic necessities would be impossible.
- 54 Furthermore, it should be observed that the issue of a recovery order for EUR 198 million, then the statement of liability presented by the French Government in the collective proceedings of which SNCM is the subject, have not given rise to any particular unrest.
- 55 Having regard to the foregoing, any social unrest or breakdown in public order, mentioned in the present case by the French Republic cannot be regarded as making it absolutely impossible to implement the decision at issue.
- 56 As far as concerns the risk alleged of a break in territorial continuity which might occur between the cessation of activities of SNCM and the conclusion of a new public service delegation contract, it is clear from all the evidence submitted by the French Republic that

any cessation of activities of SNCM might certainly be likely in the short term to result in a certain reduction in ferry services between Marseille and the Corsican ports. However, that Member State does not put forward any facts justifying the conclusion that such a reduction would have consequences on a scale which could be regarded as making it absolutely impossible to implement the decision at issue.

- 57 Accordingly, it must be held that the French Republic has not produced any evidence that it is absolutely impossible for it to recover the illegal aid and to conclude that that Member State has failed to fulfil its obligation to recover the aid illegally paid, as laid down in Article 3(1) to (3) and 4 of the decision at issue.

*The second plea in law: failure to cancel payment of the illegal aid within the periods prescribed*

- 58 Article 3(4) of the decision at issue lays down the obligation for the French Republic to cancel all payments of illegal aid from the date of notification of that decision on 3 May 2013.

- 59 It is clear from the information in the Commission's reply, which is not challenged by the French Republic, that the latter discharged that obligation only with effect from 23 July 2013 and, therefore, failed to fulfil its obligations between 3 May 2013 and 23 July 2013.

- 60 Accordingly, it must be held that the failure to fulfil that obligation is established.

*The third plea in law: failure to notify the Commission within the periods prescribed*

- 61 Article 5 of the decision at issue lays down the obligation for the French Republic to communicate certain information within two months from the notification of the decision.

- 62 The French Republic having failed to take the measures necessary to cancel future aid payments and to recover the amounts of aid already paid within the periods prescribed, it also failed to fulfil its obligation, set out in Article 5 of the decision at issue, to inform the Commission of the measures taken within two months of the notification of the decision at issue.

- 63 Therefore, it must be held that the failure to fulfil that obligation is established.

- 64 Having regard to all of the foregoing considerations, it must be held that, by failing to take all the measures necessary to recover from SNCM the State aid declared illegal and incompatible with the internal market by Article 2(1) of the decision at issue within the periods prescribed, by failing to cancel all the payments of aid referred to in Article 2(1) of that decision within the periods prescribed, and by failing to inform the Commission of the measures taken to comply with that decision within the period prescribed, the French Republic has failed to fulfil its obligations under Article 288, fourth paragraph, TFEU and Articles 3 to 5 of that decision.

## Costs

- 65 Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party must be ordered to pay the costs if they have been applied for in the other party's pleadings. Since the Commission has applied for costs and the French Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the Court (Fifth Chamber) hereby:

1. **Declares that, by failing to take all the measures necessary to recover from Société Nationale Corse-Méditerranée (SNCM) the State aid declared illegal and incompatible with the internal market by Article 2(1) of Commission Decision 2013/435/EU of 2 May 2013 on State aid SA.22843 (2012/C) (ex 2012/NN) within the periods prescribed, by failing to cancel all the payments of aid referred to in Article 2(1) of that decision within the periods prescribed, and by failing to inform the Commission of the measures taken to comply with that decision within the period prescribed, the French Republic has failed to fulfil its obligations under Article 288, fourth paragraph, TFEU and Articles 3 to 5 of that decision;**
2. **Orders the French Republic to pay the costs.**

[Signatures]

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\* Language of the case: French.