



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

24 November 2020*

(Reference for a preliminary ruling – State aid – Public-service broadcaster – Article 106(2) TFEU – Services of general economic interest – Aid compatible with the internal market – Article 108(3) TFEU – Notification – Failure to notify – Recipient’s obligation to pay interest in respect of the period during which that aid was unlawful – Calculation of interest – Amounts to be included)

In Case C-445/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Østre Landsret (High Court of Eastern Denmark, Denmark), made by decision of 29 May 2019, received at the Court on 6 June 2019, in the proceedings

Viasat Broadcasting UK Ltd

v

TV2/Danmark A/S,

Kingdom of Denmark,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, R. Silva de Lapuerta (Rapporteur), Vice-President, A. Arabadjiev, A. Prechal, E. Regan, M. Ilešič, L. Bay Larsen, N. Piçarra and A. Kumin, Presidents of Chambers, T. von Danwitz, C. Toader, I. Jarukaitis and N. Jääskinen, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Viasat Broadcasting UK Ltd, by P. Jakobsen and M. Honoré, advokater,
- TV2/Danmark A/S, by O. Koktvedgaard, advokat,
- the Danish Government, by M.S. Wolff and J. Nymann-Lindegren, acting as Agents, and by R. Holdgaard, advokat,
- the Netherlands Government, by M.K. Bulterman and J. Langer, acting as Agents,

* Language of the case: Danish.

- the Austrian Government, by J. Schmoll and F. Koppensteiner, acting as Agents,
- the European Commission, by B. Stromsky, acting as Agent, and by M. Niessen, advokat,

after hearing the Opinion of the Advocate General at the sitting on 3 September 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 106(2) TFEU and of Article 108(3) TFEU.

2 The request has been made in proceedings between Viasat Broadcasting UK Ltd ('Viasat'), on the one hand, and TV2/Danmark A/S ('TV2') and the Kingdom of Denmark, on the other, concerning the obligation for TV2 to pay interest in respect of the period during which the aid measures from which it benefitted were implemented unlawfully before the adoption of the final decision of the European Commission declaring those aid measures compatible with the internal market.

The dispute in the main proceedings and the questions referred for a preliminary ruling

3 TV2 is a Danish broadcasting company with a public-service mission of producing and broadcasting national and regional television programmes.

4 Following a complaint, the system for financing TV2 was examined by the Commission in Decision 2006/217/EC of 19 May 2004 on measures implemented by Denmark for TV2/Danmark (OJ 2006 L 85, p. 1, and corrigendum OJ 2006 L 368, p. 112). In that decision, the Commission found that those measures constituted State aid granted between 1995 and 2002 by the Kingdom of Denmark to TV2 in the form of licence fee resources and other measures, but that that aid was compatible with the internal market in accordance with Article 106(2) TFEU, with the exception of an amount of 628.2 million Danish kroner (DKK) (approximately EUR 85 million).

5 That decision having been annulled by the General Court on 22 October 2008, *TV2/Danmark and Others v Commission* (T-309/04, T-317/04, T-329/04 and T-336/04, EU:T:2008:457), the Commission re-examined the measures concerned.

6 Following that re-examination, the Commission, by Decision 2011/839/EU of 20 April 2011 on the measures implemented by Denmark (C 2/03) for TV2/Danmark (OJ 2011 L 340, p. 1), found that those measures taken between 1995 and 2002 in relation to TV2 in the form of licence fee resources and other measures which were the subject of that decision constituted State aid in accordance with Article 107(1) TFEU, which had been implemented unlawfully in breach of Article 108(3) TFEU, but that that aid was compatible with the internal market in accordance with Article 106(2) TFEU.

7 TV2 brought an action before the General Court seeking the annulment in part of that decision.

8 By its judgment of 24 September 2015, *TV2/Danmark v Commission* (T-674/11, EU:T:2015:684), the General Court annulled Decision 2011/839 in so far as the Commission had found that the advertising revenue for 1995 and 1996 paid to TV2 via the TV2 fund constituted State aid, and dismissed the action as to the remainder.

9 TV2, the Commission and Viasat lodged appeals against that judgment.

- 10 By its judgment of 9 November 2017, *TV2/Danmark v Commission* (C-649/15 P, EU:C:2017:835), the Court of Justice dismissed TV2's appeal.
- 11 By its judgments of 9 November 2017, *Commission v TV2/Danmark* (C-656/15 P, EU:C:2017:836), and of 9 November 2017, *Viasat Broadcasting UK v TV2/Danmark* (C-657/15 P, EU:C:2017:837), the Court of Justice set aside the General Court's judgment of 24 September 2015, *TV2/Danmark v Commission* (T-674/11, EU:T:2015:684), in so far as it had annulled Decision 2011/839 to the extent set out in paragraph 8 of the present judgment, and made a final ruling on the dispute, dismissing the action for annulment brought by TV2 against that decision.
- 12 Subsequently, Viasat brought an action before the referring court, the Østre Landsret (High Court of Eastern Denmark, Denmark) seeking to have TV2 pay illegality interest in respect of the period during which the aid concerned was unlawful, namely between 1995 and 2011, which TV2 would have paid on the amount in question of that aid, had it had to borrow that amount on the market pending the adoption of the Commission's final decision, as envisaged by Article 108(3) TFEU.
- 13 In those circumstances, the Østre Landsret (High Court of Eastern Denmark) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- (1) Does the obligation for a national court to order an aid recipient to pay illegality interest (see judgment of 12 February 2008, *CELF and Ministre de la Culture et de la Communication*, C-199/06, EU:C:2008:79) apply also in a situation such as that in the present case, in which the unlawful State aid constituted public service compensation which was subsequently found to be compatible with the internal market under Article 106(2) TFEU and in which approval was granted on the basis of an assessment of the whole public service undertaking's overall financial situation, including its capitalisation?
- (2) Does the obligation for a national court to order an aid recipient to pay illegality interest (see judgment of 12 February 2008, *CELF and Ministre de la Culture et de la Communication*, C-199/06, EU:C:2008:79) apply also in respect of amounts which, in circumstances such as those of the present case, are transferred from the aid recipient to affiliated undertakings pursuant to a public-law obligation but which are categorised by a final ... Commission decision as constituting an advantage for the aid recipient within the meaning of Article 107(1) TFEU?
- (3) Does the obligation for a national court to order an aid recipient to pay illegality interest (see judgment of 12 February 2008, *CELF and Ministre de la Culture et de la Communication*, C-199/06, EU:C:2008:79) apply also in respect of State aid which the aid recipient, in circumstances such as those of the present case, received from a publicly-controlled undertaking, given that the latter's resources are derived partly from sales of the aid recipient's services?

Procedure before the Court

- 14 The hearing, which had initially been set for 20 April 2020, and was subsequently postponed to 8 June 2020, was cancelled on account of the health crisis, and the questions which had been put for an oral response were converted into questions for a written response. The parties answered those questions within the prescribed period.

Consideration of the questions referred

The first question

- 15 By its first question, the referring court asks, in essence, whether Article 108(3) TFEU must be interpreted as meaning that the obligation incumbent on national courts to order a recipient of State aid implemented in breach of that provision to pay illegality interest in respect of that aid also applies where, by its final decision, the Commission finds that that aid is compatible with the internal market pursuant to Article 106(2) TFEU.
- 16 As a preliminary point, it must be recalled that the application of the European Union rules on State aid is based on an obligation of sincere cooperation between, on the one hand, the national courts and, on the other, the Commission and the Courts of the European Union, in the context of which each acts on the basis of the role assigned to it by the FEU Treaty (judgment of 15 September 2016, *PGE*, C-574/14, EU:C:2016:686, paragraph 33 and the case-law cited), their respective roles being complementary but separate (judgment of 21 November 2013, *Deutsche Lufthansa*, C-284/12, EU:C:2013:755, paragraph 27 and the case-law cited).
- 17 Whilst an assessment of the compatibility of aid measures with the internal market falls within the exclusive competence of the Commission, subject to review by the Courts of the European Union, it is for the national courts to ensure the safeguarding, until the final decision of the Commission, of the rights of individuals faced with a possible breach by State authorities of the prohibition laid down by Article 108(3) TFEU (judgment of 21 November 2013, *Deutsche Lufthansa*, C-284/12, EU:C:2013:755, paragraph 28 and the case-law cited).
- 18 The aim of prior control of plans to grant new aid established by that provision is that only aid compatible with the internal market should be implemented. In order to achieve that aim, the implementation of planned aid is to be deferred until doubt as to its compatibility is resolved by the Commission's final decision (judgments of 3 March 2020, *Vodafone Magyarország*, C-75/18, EU:C:2020:139, paragraph 19, and of 3 March 2020, *Tesco-Global Aruházak*, C-323/18, EU:C:2020:140, paragraph 31 and the case-law cited).
- 19 In that regard, the notification requirement is one of the fundamental features of the system of control put in place by the FEU Treaty in the field of State aid. Within that system, Member States are under an obligation, first, to notify to the Commission each measure intended to grant new aid or to alter aid within the meaning of Article 107(1) TFEU and, second, not to implement such a measure, in accordance with Article 108(3) TFEU, until that EU institution has taken a final decision on that measure (judgment of 5 March 2019, *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 56 and the case-law cited).
- 20 The prohibition laid down by Article 108(3) TFEU is designed to ensure that an aid cannot become operational before the Commission has had a reasonable period in which to study the proposed measures in detail and, if necessary, to initiate the procedure provided for in Article 108(2) TFEU (judgment of 12 February 2008, *CELF and Ministre de la Culture et de la Communication*, C-199/06, EU:C:2008:79, paragraph 36).
- 21 In a situation where the Commission has, in relation to aid implemented in breach of Article 108(3) TFEU, adopted a final decision finding that that aid is compatible with the internal market pursuant to Article 107 TFEU, the Court has held that the Commission's final decision does not have the effect of regularising, retrospectively, implementing measures which were invalid because they had been taken in disregard of the prohibition on implementation laid down by the last sentence of Article 108(3) TFEU. Any other interpretation would have the effect of according a favourable outcome to the

non-observance, by the Member State concerned, of that provision and would deprive it of its effectiveness (see, to that effect, judgment of 12 February 2008, *CELF and Ministre de la Culture et de la Communication*, C-199/06, EU:C:2008:79, paragraph 40).

- 22 In such a situation, EU law requires the national courts to order the measures that are appropriate effectively to remedy the consequences of the unlawfulness (see, to that effect, judgment of 12 February 2008, *CELF and Ministre de la Culture et de la Communication*, C-199/06, EU:C:2008:79, paragraph 46).
- 23 Indeed, if, for any particular proposed aid, whether compatible with the internal market or not, failure to comply with Article 108(3) TFEU carried no greater risk or penalty than compliance, the incentive for Member States to notify and await a decision on compatibility would be greatly diminished – as would, consequently, the scope of the Commission’s control (judgment of 5 October 2006, *Transalpine Ölleitung in Österreich*, C-368/04, EU:C:2006:644, paragraph 42).
- 24 In that respect, as is clear from the judgment of 12 February 2008, *CELF and Ministre de la Culture et de la Communication* (C-199/06, EU:C:2008:79), a distinction is to be drawn, in terms of the effects of implementation of aid in disregard of Article 108(3) TFEU, between the recovery of unlawful aid and the payment of illegality interest in respect of that aid.
- 25 First, as regards recovery of unlawful aid, premature payment of unlawful aid does not contradict the aim of ensuring that incompatible aid is never implemented, upon which Article 108(3) TFEU is based, where the Commission adopts a final decision finding that aid to be compatible with the internal market (see, to that effect, judgment of 12 February 2008, *CELF and Ministre de la Culture et de la Communication*, C-199/06, EU:C:2008:79, paragraphs 46 to 49). Therefore, the national courts are not bound to order recovery of that aid (judgment of 12 February 2008, *CELF and Ministre de la Culture et de la Communication*, C-199/06, EU:C:2008:79, paragraph 55).
- 26 Second, the national courts are bound, under EU law, to order the aid recipient to pay interest in respect of the period of unlawfulness of that aid (judgments of 12 February 2008, *CELF and Ministre de la Culture et de la Communication*, C-199/06, EU:C:2008:79, paragraphs 52 and 55, and of 5 March 2019, *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 134).
- 27 That obligation, which is incumbent on the national courts, stems from the fact that the implementation of aid in breach of Article 108(3) TFEU gives the aid recipient an undue advantage consisting, first, in the non-payment of the interest which it would have paid on the amount in question of the compatible aid, had it had to borrow that amount on the market pending the Commission’s final decision, and, second, in the improvement of its competitive position as against the other operators in the market while the aid concerned is unlawful (judgments of 12 February 2008, *CELF and Ministre de la Culture et de la Communication*, C-199/06, EU:C:2008:79, paragraph 51, and of 5 March 2019, *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 132). The unlawfulness of that aid will, first, expose those operators to the risk, in the result unrealised, of the implementation of incompatible aid, and, second, make them suffer, earlier than they would have had to, in competition terms, the effects of compatible aid (judgment of 12 February 2008, *CELF and Ministre de la Culture et de la Communication*, C-199/06, EU:C:2008:79, paragraph 50).
- 28 As stated, in essence, in points 23 to 25 and 35 and 49 of the Advocate General’s Opinion, that obligation, which was established by the Court in its judgment of 12 February 2008, *CELF and Ministre de la Culture et de la Communication* (C-199/06, EU:C:2008:79), in a situation where the Commission had adopted a final decision finding the unlawful aid to be compatible with the internal market in accordance with Article 107 TFEU, applies to any aid implemented in breach of Article 108(3) TFEU including where, in its final decision, the Commission finds that the aid concerned is compatible with the internal market on the basis of Article 106(2) TFEU.

- 29 It should be recalled that under Article 106(2) TFEU, first, undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them and, second, the development of trade must not be affected to such an extent as would be contrary to the interests of the European Union.
- 30 That provision, which seeks to reconcile the Member States' interests in using certain undertakings as an instrument of economic or social policy with the European Union's interest in ensuring compliance with the rules on competition and the preservation of the unity of the internal market (judgments of 20 April 2010, *Federutility and Others*, C-265/08, EU:C:2010:205, paragraph 28, and of 8 March 2017, *Viasat Broadcasting UK v Commission*, C-660/15 P, EU:C:2017:178, paragraph 31), must be interpreted taking account of the clarifications in Protocol (No 26) on Services of General Interest (OJ 2016 C 202, p. 307) and, having regard to the field at issue in the present case, in Protocol (No 29) on the System of Public Broadcasting in the Member States (OJ 2016 C 202, p. 311) (judgment of 8 March 2017, *Viasat Broadcasting UK v Commission*, C-660/15 P, EU:C:2017:178, paragraph 36).
- 31 In that regard, first, Article 1 of Protocol (No 26) on Services of General Interest states that the Member States enjoy a 'wide discretion' in providing, commissioning and organising services of general economic interest that are tailored as closely as possible to the needs of users (judgment of 7 November 2018, *Commission v Hungary*, C-171/17, EU:C:2018:881, paragraph 48).
- 32 Second, under Protocol (No 29) on the System of Public Broadcasting in the Member States, 'the provisions of the Treaties shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting in so far as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State, and in so far as such funding does not affect trading conditions and competition in the Union to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account'.
- 33 Accordingly, Member States are entitled, while complying with EU law, to define the scope and the organisation of their services of general economic interest, in particular the public broadcasting service, taking particular account of objectives pertaining to their national policy. In that respect, Member States enjoy a wide discretion, which can be called into question by the Commission only in the event of a manifest error (see, to that effect, judgment of 7 November 2018, *Commission v Hungary*, C-171/17, EU:C:2018:881, paragraph 49 and the case-law cited).
- 34 However, the Member States' power to define services of general economic interest must, in any event, be exercised in accordance with EU law (judgments of 20 December 2017, *Comunidad Autónoma del País Vasco and Others v Commission*, C-66/16 P to C-69/16 P, EU:C:2017:999, paragraph 71, and of 3 September 2020, *Vereniging tot Behoud van Natuurmonumenten in Nederland and Others v Commission*, C-817/18 P, EU:C:2020:637, paragraph 95).
- 35 The question whether a measure must be categorised as State aid arises upstream of the question which involves examining, where necessary, if incompatible aid, within the meaning of in Article 107 TFEU, is nevertheless necessary to the performance of the tasks assigned to the beneficiary of the measure at issue, under Article 106(2) TFEU (see, to that effect, judgment of 8 March 2017, *Viasat Broadcasting UK v Commission*, C-660/15 P, EU:C:2017:178, paragraph 34). Therefore, the Commission must, before any consideration of a measure under that provision, be in a position to review whether that measure constitutes State aid, which requires prior notification of the intended measure to that EU institution, in accordance with the first sentence of Article 108(3) TFEU.

- 36 Furthermore, any exception to the general rule that notification is required, which is binding on the Member States under the Treaties and is one of the fundamental features of the system of monitoring in the field of State aid, must be explicitly provided for (see, to that effect, judgment of 5 March 2019, *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraphs 59 and 60).
- 37 In that regard, in accordance with Article 109 TFEU, the Council of the European Union is permitted to make any appropriate regulations for the application of Article 107 TFEU and Article 108 TFEU and may in particular determine the conditions in which Article 108(3) TFEU is to apply and the categories of aid exempt from the procedure provided for in that provision. In that connection, according to Article 108(4) TFEU, the Commission may adopt regulations relating to the categories of State aid that the Council has, pursuant to Article 109 TFEU, determined may be exempt from the procedure provided for in Article 108(3) TFEU (judgment of 5 March 2019, *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 57 and the case-law cited).
- 38 Thus, Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles [107 and 108 TFEU] to certain categories of horizontal State aid (OJ 1998 L 142, p. 1) – in accordance with which Commission Regulation (EC) No 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles [107 and 108] TFEU (General block exemption Regulation) (OJ 2008 L 214, p. 3) was subsequently adopted, and then Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 [TFEU] (OJ 2014 L 187, p. 1) – had been adopted pursuant to Article 94 of the EC Treaty (subsequently Article 89 EC and now Article 109 TFEU) (see, to that effect, judgment of 5 March 2019, *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 58 and the case-law cited).
- 39 Accordingly, as is recalled in recital 7 of each of Regulation No 800/2008 and No 651/2014, State aid, within the meaning of Article 107(1) TFEU, which is not covered by those regulations remains subject to the notification requirement laid down in Article 108(3) TFEU (see, to that effect, judgment of 5 March 2019, *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 59 and the case-law cited).
- 40 In addition, it is clear from the wording of Article 106(2) TFEU that exemptions to the FEU Treaty rules are permitted under that provision solely where they are necessary for performance of the particular tasks assigned to an undertaking entrusted with the operation of a service of general economic interest (judgments of 8 March 2017, *Viasat Broadcasting UK v Commission*, C-660/15 P, EU:C:2017:178, paragraph 29, and of 3 September 2020, *Vereniging tot Behoud van Natuurmonumenten in Nederland and Others v Commission*, C-817/18 P, EU:C:2020:637, paragraph 97), which, in the field of State aid, must, as necessary, be reviewed by the Commission before such aid is implemented. As held in paragraph 35 of the present judgment, that review may be conducted only after the intended aid has been notified to that EU institution, in accordance with the first sentence of Article 108(3) TFEU, to enable it to review whether that measure constitutes State aid. Therefore, the performance of the tasks as an undertaking entrusted with the operation of a service of general economic interest cannot, in itself, justify an exemption from the notification requirement laid down in that provision.
- 41 Hence, State aid which is not expressly exempted from the general rule laid down in the first sentence of Article 108(3) TFEU that prior notification is required, remains subject to that obligation, including aid intended for undertakings entrusted with the operation of a service of general economic interest. Therefore, Member States are obliged not to implement such measures until the Commission has taken a final decision in relation to them.
- 42 Finally, it must also be pointed out that, in accordance with settled case-law, in view of the mandatory nature of the supervision of State aid by the Commission pursuant to Article 108 TFEU, undertakings to which aid has been granted may not, in principle, entertain a legitimate expectation that the aid is lawful unless it has been granted in compliance with the procedure laid down in that article, and

furthermore, an economic operator exercising due care should normally be able to determine whether that procedure has been followed. In particular, where aid is implemented without prior notification to the Commission, with the result that it is unlawful under Article 108(3) TFEU, the recipient of the aid cannot have at that time either a legitimate expectation that the grant of that aid is lawful (judgment of 5 March 2019, *Eesti Pagar*, C-349/17, EU:C:2019:172, paragraph 98 and the case-law cited), or, consequently, a legitimate expectation that the advantage it derives from the non-payment of interest, due in respect of the period during which the aid is unlawful, is itself lawful.

- 43 It follows that, in order to ensure the effectiveness of the notification requirement, laid down in that provision, as well as proper and full consideration of State aid by the Commission, national courts are bound to draw all the consequences from a breach of that obligation and to adopt the measures that are appropriate to remedy them, which, as set out in paragraph 26 of the present judgment, includes the obligation, for the recipient of unlawful aid, to pay illegality interest in respect of that aid, even if the recipient is an undertaking entrusted with the operation of a service of general economic interest in accordance with Article 106(2) TFEU.
- 44 Having regard to the considerations above, the answer to the first question is that Article 108(3) TFEU must be interpreted as meaning that the obligation incumbent on national courts to order a recipient of State aid implemented in breach of that provision to pay illegality interest in respect of that aid also applies where, by its final decision, the Commission finds that that aid is compatible with the internal market pursuant to Article 106(2) TFEU.

The second and third questions

- 45 By its second and third questions, which it is appropriate to consider together, the referring court asks, in essence, whether Article 108(3) TFEU must be interpreted as meaning that the obligation which is incumbent on national courts to order the recipient of State aid implemented in breach of that provision to pay illegality interest in respect of that aid also applies to aid which that recipient has transferred to affiliated undertakings and to aid received by it from a publicly controlled undertaking.
- 46 In particular, that court wishes to know whether – given that the aid received by TV2 includes, first, licence fee resources which, during the period 1997 to 2002, were paid to TV2, then transferred to its regional stations, and, second, advertising revenue which, in 1995 and 1996, was transferred from TV2 Reklame A/S to TV2 via the TV2 fund – the amounts of those resources and revenue must be included in the total aid amount on which the abovementioned interest must be calculated.
- 47 In that regard, it must be recalled that, first, by its judgment of 9 November 2017, *TV2/Danmark v Commission* (C-649/15 P, EU:C:2017:835), the Court of Justice dismissed TV2's appeal against the General Court's judgment of 24 September 2015, *TV2/Danmark v Commission* (T-674/11, EU:T:2015:684), and thereby confirmed that the General Court's review was correct in so far as, in paragraphs 165 to 174 of that judgment, it held that those resources constituted State aid granted to TV2.
- 48 Second, by its judgments of 9 November 2017, *Commission v TV2/Danmark* (C-656/15 P, EU:C:2017:836), and of 9 November 2017, *Viasat Broadcasting UK v TV2/Danmark* (C-657/15 P, EU:C:2017:837), the Court of Justice annulled the General Court's judgment of 24 September 2015, *TV2/Danmark v Commission* (T-674/11, EU:T:2015:684), in so far as it had annulled Decision 2011/839 to the extent that the Commission had concluded in that decision that the advertising revenues for 1995 and 1996 which were paid to TV2 via the TV2 fund constituted State aid, and made a final ruling on the dispute, dismissing the action for annulment brought by TV2 against that decision.

- 49 It follows that the EU Courts have confirmed that that decision is valid and have made a definitive ruling that the resources and revenue referred to in paragraph 46 of the present judgment constituted State aid, in accordance with Article 107(1) TFEU.
- 50 In those circumstances, having regard to the answer given to the first question and as stated in point 53 of the Advocate General's Opinion, the amounts of those resources and that revenue received by TV2 and which form part of the aid implemented in breach of Article 108(3) TFEU, must also give rise to the payment of illegality interest in respect of that aid.
- 51 Based on the considerations above, the answer to the second and third questions is that Article 108(3) TFEU must be interpreted as meaning that the obligation which is incumbent on national courts to order the recipient of State aid implemented in breach of that provision to pay illegality interest in respect of that aid applies also to aid which that recipient has transferred to affiliated undertakings and to aid received by it from a publicly controlled undertaking.

Costs

- 52 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

- 1. Article 108(3) TFEU must be interpreted as meaning that the obligation incumbent on national courts to order the recipient of State aid implemented in breach of that provision to pay illegality interest in respect of that aid also applies where, by its final decision, the European Commission finds that that aid is compatible with the internal market pursuant to Article 106(2) TFEU.**
- 2. Article 108(3) TFEU must be interpreted as meaning that the obligation which is incumbent on national courts to order the recipient of State aid implemented in breach of that provision to pay illegality interest in respect of that aid applies also to aid which that recipient has transferred to affiliated undertakings and to aid received by it from a publicly controlled undertaking.**

[Signatures]