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Joined Cases C-266/04 to C-270/04, C-276/04 and C-321/04 to C-325/04

Distribution Casino France SAS, formerly Nazairdis SAS, and Others

v

Caisse nationale de l'organisation autonome d'assurance vieillesse des travailleurs non salariés des professions industrielles et commerciales (Organic)

(Reference for a preliminary ruling from the Tribunal des affaires de sécurité sociale de Saint-Étienne)

(Concept of aid – Tax assessed on the basis of sales area – Hypothecation of the tax revenue)

Opinion of Advocate General Stix-Hackl delivered on 14 July 2005

Judgment of the Court (First Chamber), 27 October 2005

Summary of the Judgment

1. *State aid – Proposed aid – Prohibition of implementation before the Commission's final decision – Scope – Obligations of national courts*

(Arts 87(1) EC and 88(2) and (3) EC)

2. *State aid – Provisions of the Treaty – Scope – Taxes – Exclusion except in respect of taxes financing aid – Tax coupled with exemptions allegedly constituting aid – Lack of hypothecation of the tax to the exemption from that tax – Excluded*

(Arts 87(1) EC and 88(3) EC)

3. *State aid – Definition – Measures financed by an allegedly unlawful tax – Lack of hypothecation of that tax to the measures concerned – Excluded – Specific case*

(Arts 87(1) EC and 88(3) EC)

1. According to Article 88(3) EC, the Commission is to be informed of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market, it is without delay to initiate the procedure provided for in Article 88(2) EC, and the Member State concerned may not put its proposed measures into effect until that procedure has resulted in a final decision. An aid measure within the meaning of Article 87(1) EC which is put into effect in infringement of the obligations arising from Article 88(3) EC is unlawful. It is for the national courts to uphold the rights of the persons concerned in the event of a possible breach by the national authorities of the prohibition on putting aid into effect, taking all the consequential measures under national law as regards both the validity of decisions giving effect to aid measures and the recovery of the financial support granted.

(see paras 29-30)

2. Taxes do not fall within the scope of the Treaty provisions concerning State aid unless they constitute the method of financing an aid measure, so that they form an integral part of that

measure. If a tax effectively constitutes an integral part of an aid measure within the meaning of Article 87(1) EC, disregard on the part of the national authorities of the obligations arising from Article 88(3) EC affects not only the lawfulness of the aid measure but also that of the tax which constitutes the method of financing it.

For a tax to be regarded as forming an integral part of an aid measure, it must be hypothecated to the aid measure under the relevant national rules, in the sense that the revenue from the tax is necessarily allocated for the financing of the aid. In the event of such hypothecation, the revenue from the tax has a direct impact on the amount of the aid and, consequently, on the assessment of the compatibility of that aid with the common market. There is no hypothecation of a tax to aid which is constituted by an exemption from payment of that tax in favour of certain categories of undertakings, because a tax cannot be hypothecated to such an exemption from payment. Application of a tax exemption and its extent do not depend on the tax revenue. Thus businesses liable to pay a tax cannot rely on the argument that the exemption enjoyed by other businesses constitutes State aid in order to avoid payment of that tax. Accordingly, even if the tax exemption for some undertakings constitutes an aid measure within the meaning of Article 87(1) EC, the possible illegality of that aid is not such as to affect the legality of the tax itself, so that businesses which are liable to pay the tax cannot plead the possible illegality of the exemption before the national courts in order to avoid payment of that tax or to obtain reimbursement.

(see paras 34-35, 40-44)

3. There is no hypothecation of the tax to the measures financed by that tax, which is necessary for that tax to be regarded as an item of State aid, in the case of a cessation payment to some economic operators, since the amount actually paid in this respect is not dependent on the revenue from the tax, but is laid down, under a decree, within the limits determined by ministerial order on the basis of factors which characterise the situation of each applicant, in particular the state of his resources and his charges. Likewise, there is no hypothecation of the tax to the financing of basic old-age insurance schemes for certain professional groups, since, by virtue of the detailed rules according to which the contribution of the tax to that financing is determined, the tax revenue does not directly affect the amount of the advantage granted to the recipient schemes, which, however, do not carry out an economic activity. There is likewise no hypothecation as regards the allocation of a part of the tax revenue to an intervention fund and a trade committee, since those bodies and the competent Ministers have a discretion as regards that allocation.

(see paras 46, 48-49, 54-56)

JUDGMENT OF THE COURT (First Chamber)

27 October 2005 (*)

(Concept of aid – Tax assessed on the basis of sales area – Hypothecation of the tax revenue)

In Joined Cases C-266/04 to C-270/04, C-276/04 and C-321/04 to C-325/04,

REFERENCES for a preliminary ruling under Article 234 EC from the Tribunal des affaires de sécurité sociale de Saint-Étienne (Cases C-266/04 to C-270/04 and C-276/04) and from the Cour d'appel de Lyon (Cases C-321/04 to C-325/04) (France), made by decisions of 5 April and 24 February 2004, received at the Court on 24, 25 and 29 June and 27 July 2004, in the proceedings

Distribution Casino France SAS, formerly **Nazairdis SAS** (Case C-266/04),

Jaceli SA (Case C-267/04),

Komogo SA (Case C-268/04 and Case C-324/04),

Tout pour la maison SARL (Case C-269/04 and Case C-325/04),

Distribution Casino France SAS (Case C-270/04),

Bricorama France SAS (Case C-276/04),

Distribution Casino France 3 SAS (Case C-321/04),

Société Casino France, successor to **IMQEF SA**, successor to **JUDIS SA** (Case C-322/04),

Dechrist Holding SA (Case C-323/04),

v

Caisse nationale de l'organisation autonome d'assurance vieillesse des travailleurs non salariés des professions industrielles et commerciales (Organic),

THE COURT (First Chamber),

composed of K. Schiemann, President of the Fourth Chamber, acting for the President of the First Chamber, J.N. Cunha Rodrigues, K. Lenaerts (Rapporteur), E. Juhász and M. Ilešič, Judges,

Advocate General: C. Stix-Hackl,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 2 June 2005,

after considering the observations submitted on behalf of:

- Nazairdis SAS, Jaceli SA, Komogo SA, Tout pour la maison SARL, Distribution Casino France SAS, Distribution Casino France 3 SAS, Société Casino France, successor to IMQEF SA, successor to JUDIS SA, and Dechrist Holding SA, by E. Meier and C. Cassan, avocats,
- Bricorama France SAS, by B. Geneste, O. Davidson and C. Medina, avocats,
- Caisse nationale de l'organisation autonome d'assurance vieillesse des travailleurs non salariés des professions industrielles et commerciales (Organic), by R. Waquet, avocat,
- the French Government, by G. de Bergues and S. Ramet, acting as Agents,

– the Commission of the European Communities, by C. Giolito, acting as Agent, after hearing the Opinion of the Advocate General at the sitting on 14 July 2005, gives the following

Judgment

1 These references for a preliminary ruling concern the interpretation of Articles 87 EC and 88 EC.

2 The references have been made in the course of proceedings in which the lawfulness of the French tax to support the trade and craft sectors was challenged.

National law

The tax to support the trade and craft sectors

3 Article 3(2) of Law No 72-657 of 13 July 1972 establishing measures for certain categories of elderly traders and craftsmen (*Journal officiel de la République française* (Official Gazette of the French Republic) 'JORF'), 14 July 1972, p. 7419) establishes a tax to support the trade and craft sectors (Taxe d'aide au commerce et à l'artisanat, hereinafter 'the TACA').

4 The TACA is a progressive tax borne directly by retail stores in France which have a sales area exceeding 400 m² and an annual turnover in excess of EUR 460 000. The tax rates progress in step with annual turnover per m².

5 At the time of the events concerning the cases at issue in the main proceedings, the TACA was collected by the Caisse nationale de l'organisation autonome d'assurance vieillesse des travailleurs non salariés des professions industrielles et commerciales (National Independent Old-Age Insurance Fund for Self-Employed Persons in Manufacturing and Trading Occupations (hereinafter 'Organic').

The use to which the revenue from the TACA is put

The cessation payment

6 Under Articles 8 to 10 of Law No 72-657, the revenue from the TACA was first earmarked for financing special compensatory cessation aid for certain traders and craftsmen.

7 Article 106 of Law No 81-1160 of 30 December 1981 (JORF, 31 December 1981, p. 3539), the Finance Law for 1982, as amended by Law No 95-95 of 1 February 1995 (JORF, 2 February 1995, p. 1742) and by Law No 2002-1575 of 30 December 2002 (JORF, 31 December 2002, p. 22025), replaced that special compensatory aid with a cessation payment. That article provides:

'Traders and craftsmen who have been insured for 15 years or more under the old-age insurance schemes for persons in the craft sector and in manufacturing and trading occupations shall be eligible, upon request and provided that their financial means do not exceed a ceiling determined by decree, to receive aid from the funds of those schemes if they are:

(a) over the age of 60 and permanently cease all activity;

...'

8 Article 6 of Decree No 82-307 of 2 April 1982 (JORF, 4 April 1982, p. 1035), as amended by Decree No 91-1155 of 8 November 1991 (JORF, 10 November 1991), lays down the conditions governing the award of the cessation payment. According to that provision, the local committee is to lay down the amount of the payment within the limits determined by ministerial order on the basis of the 'factors which characterise the situation of each applicant, in particular the state of his resources and obligations'.

9 Article 10 of the Ministerial Order of 13 August 1996 (JORF, 29 August 1996, p. 12940), as amended by the Order of 3 September 2001 converting into euro certain amounts given in francs (JORF, 11 September 2001, p. 14495), states that 'the amount of the payment must be between EUR 3 140 and EUR 18 820 for a household, and between EUR 2 020 and EUR 12 100 for one person'.

Other uses to which the TACA is put

10 Since the TACA was established, the revenue from it has increased considerably on account of the expansion of the market share held by the retail and distribution industry and the growth in the surface area of commercial establishments in France.

11 The revenue surplus from the TACA was allocated to basic old-age insurance schemes for self-employed persons in the craft sector and for self-employed persons in manufacturing and trading occupations, to the Fonds d'intervention pour la sauvegarde de l'artisanat et du commerce (Intervention Fund for the Support of Crafts and Trade) (hereinafter 'Fisac') and to the Comité professionnel de la distribution des carburants (Fuel Distributors' Trade Committee) (hereinafter 'the CPDC').

– Allocation to old-age insurance schemes

12 Article 40-II of Law No 96-1160 of 27 December 1996 on social security funding for 1997 (JORF, 29 December 1996, p. 19369) added a paragraph (6) to Article L. 633-9 of the Social Security Code, which provides that a proportion of the revenue from the TACA is to be allocated for financing the basic old-age insurance schemes for self-employed persons in the craft sector and for self-employed persons in manufacturing and trading occupations. The amount in question is distributed, in proportion to their respective accounting deficit, between Organic and the Caisse nationale d'assurances vieillesse des artisans (National Old-Age Insurance Fund for Craftsmen) (hereinafter 'Cancava').

13 The amount of the TACA allocated for financing the insurance schemes in question is determined each year by an Interministerial Order.

14 That mechanism for financing the basic old-age insurance schemes was abolished by Article 35-IV of Law No 2002-1575.

– Allocation to Fisac

15 Article 2 of Decree No 95-1140 of 27 October 1995 (JORF, 29 October 1995, p. 15808) on the use to which the revenue from the TACA is to be put, provides that a proportion of the revenue surplus from the TACA is to be paid into a special Fisac account.

16 Under Article 1 of that decree, Fisac finances, on the one hand, collective projects with the aim of maintaining and adapting the trade and craft sectors for the purposes of retaining business activity in particular geographical or occupational areas and socially beneficial local services and, on the other hand, the transfer and restructuring of undertakings in the trade and craft sectors with

an annual turnover not exceeding amounts determined by order of the minister responsible for the trade and craft sectors.

17 Under Article 8 of that decree, 'decisions [to grant aid measures] shall be made by the minister responsible for the trade and craft sectors in the light of an opinion delivered by [a] committee' set up by that same decree.

– Allocation to the CPDC

18 The CPDC was created by Decree No 91-284 of 19 March 1991 (JORF, 20 March 1991, p. 3874), which was amended by Decree No 98-132 of 2 March 1998 (JORF, 7 March 1998, p. 3515) and by Decree No 2001-1048 of 12 November 2001 (JORF, 13 November 2001, p. 18016) (hereinafter 'Decree 91-284'). In accordance with Article 2 of Decree No 91-284, the CPDC is entrusted with:

- '1. drawing up and implementing the action programmes for reforming the fuel distribution network, improving its productivity, modernising its marketing and management conditions and maintaining a balanced provision of service across the national territory;
2. providing assistance to the undertakings concerned so that they can implement the programmes adopted and carry out any necessary studies to that end;
3. gathering information such as to contribute to the purposes described above and disseminating it within the trade.'

19 Article 8 of the same decree states that CPDC decisions are made by the CPDC's board, are notified to the Commissaire du gouvernement and the Contrôleur d'État and become operative provided that they have not been vetoed by any of those persons within 15 days.

20 Decree 98-132 increased CPDC resources by supplementing its receipts with a proportion of the revenue surplus from the TACA. To that end it amended Article 9 of Decree 91-284, adding a subparagraph (g) which states that: 'a joint order by the Minister for Industry, the Minister for the Trade and Craft Sectors and the Minister for the Budget shall set the ceiling each year for the funds allocated to the Fuel Distributors' Trade Committee'.

The main proceedings and the questions referred for a preliminary ruling

21 On 11 April 2001 the claimant companies in the main proceedings in Cases C-321/04 to C-325/04 each brought an action against Organic before the Tribunal des affaires de sécurité sociale de Saint-Étienne (Saint-Étienne Social Security Tribunal). Those actions sought to obtain reimbursement of the sums which the companies had paid as TACA in 1999 and/or 2000. They considered that the TACA had been introduced in breach of Articles 87(1) EC and 88(3) EC.

22 By judgments of 27 January 2003 the Tribunal des affaires de sécurité sociale de Saint-Étienne dismissed those actions. The claimants in the main proceedings then appealed to the Cour d'appel de Lyon (Court of Appeal, Lyon).

23 On 7 April 2003, the claimant in the main proceedings in Case C-276/04 brought an action before the Tribunal des affaires de sécurité sociale de Saint-Étienne against Organic to obtain reimbursement of the sums that it had paid as TACA in respect of the period from 2000 to 2002.

24 On 11 April 2003, the claimants in the main proceedings in Cases C-266/04 to C-270/04 brought five different actions before the same court against Organic for reimbursement of the sums that they had paid as TACA in respect of 2001.

25 The national courts in those cases seek to ascertain whether the TACA was introduced in breach of Articles 87(1) EC and 88(3) EC.

26 By judgments of 24 February 2004 (Cases C-321/04 to C-325/04) the Cour d'appel de Lyon therefore decided to stay the proceedings and ask the Court of Justice 'to decide whether [the TACA] collected from [the appellants] constitutes State aid within the meaning of Article 87 EC'.

27 By decisions of 5 April 2004 (Cases C-266/04 to C-270/04 and Case C-276/04), the Tribunal des affaires de sécurité sociale de Saint-Étienne decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 87 EC be interpreted as meaning that State funding by France through the ... CPDC and ... Fisac by way of assistance when self-employed craftsmen and traders retire and grants made to the old-age insurance scheme for self-employed persons in manufacturing and trading occupations, and to the scheme for self-employed persons in the craft sector constitute State aid?'

28 By order of the President of the Court of 24 September 2004, the cases were joined.

The questions referred for a preliminary ruling

Initial observations

29 According to Article 88(3) EC, the Commission is to be informed of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market, it is without delay to initiate the procedure provided for in Article 88(2) EC, and the Member State concerned may not put its proposed measures into effect until that procedure has resulted in a final decision.

30 An aid measure within the meaning of Article 87(1) EC which is put into effect in infringement of the obligations arising from Article 88(3) EC is unlawful (see Case C-354/90 *Fédération nationale du commerce extérieur des produits alimentaires* and *Syndicat national des négociants et transformateurs de saumon* [1991] ECR I-5505, paragraph 17). It is for the national courts to uphold the rights of the persons concerned in the event of a possible breach by the national authorities of the prohibition on putting aid into effect, taking all the consequential measures under national law as regards both the validity of decisions giving effect to aid measures and the recovery of the financial support granted (see Joined Cases C-34/01 to C-38/01 *Enirisorse* [2003] ECR I-14243, paragraph 42).

31 Even though, as the Advocate General rightly states in points 29 to 33 of her Opinion, the decisions to refer provide only some basic information about the legal and factual background to the main proceedings, it is clear from those decisions that the proceedings before the national courts all concern requests for reimbursement of the sums paid as TACA.

32 It is, moreover, apparent from the documents sent to the Court that the claimants in the main proceedings submitted in the proceedings before the national courts that the TACA is unlawful since it is linked to aid granted in breach of Articles 87(1) EC and 88(3) EC.

33 In those circumstances, the questions referred for a preliminary ruling essentially concern the question whether Articles 87(1) EC and 88(3) EC preclude the levy of a tax such as the TACA.

34 According to consistent case-law, taxes do not fall within the scope of the EC Treaty's provisions concerning State aid unless they constitute the method of financing an aid measure, so that they form an integral part of that measure (Case C-174/02 *Streekgewest* [2005] ECR I-85, paragraph 25).

35 If a tax effectively constitutes an integral part of an aid measure within the meaning of Article 87(1) EC, disregard on the part of the national authorities of the obligations arising from Article 88(3) EC affects not only the lawfulness of the aid measure but also that of the tax which constitutes the method of financing it (see *Enirisorse*, paragraphs 43 to 45).

36 It must therefore be considered whether a tax such as the TACA may be regarded as forming an integral part of one or more aid measures within the meaning of the case-law cited above.

37 The alleged aid measures which are disputed in the proceedings pending before the national courts and which, according to those courts, may affect the legality of the TACA by virtue of the Treaty provisions in respect of State aid are, first, an exemption from the TACA for retail outlets with a sales area of less than 400 m² or having an annual turnover of less than EUR 460 000 (hereinafter 'small retail outlets') and, secondly, the various measures financed through the revenue from the TACA.

38 Those different measures must be considered separately.

Exemption from the TACA for small retail outlets

39 The claimants in the main proceedings submit that exemption from the TACA for small retail outlets constitutes an aid measure within the meaning of Article 87(1) EC. It is a selective advantage granted through State resources and is likely to adversely affect competition and trade between Member States. As the tax is inseparable from the exemption from it, it is an integral part of the aid.

40 In that regard, it must be borne in mind that, for a tax to be regarded as forming an integral part of an aid measure, it must be hypothecated to the aid measure under the relevant national rules, in the sense that the revenue from the tax is necessarily allocated for the financing of the aid. In the event of such hypothecation, the revenue from the tax has a direct impact on the amount of the aid and, consequently, on the assessment of the compatibility of that aid with the common market (*Streekgewest*, paragraph 26).

41 However, a tax cannot be hypothecated to an exemption from payment of that same tax for a category of businesses. Application of a tax exemption and its extent do not depend on the tax revenue (*Streekgewest*, paragraph 28).

42 Thus the Court has held that businesses liable to pay a tax cannot rely on the argument that the exemption enjoyed by other businesses constitutes State aid in order to avoid payment of that tax (see Case C-390/98 *Banks* [2001] ECR I-6117, paragraph 80).

43 Accordingly, even if the tax exemption for small retail outlets constitutes an aid measure within the meaning of Article 87(1) EC, the possible illegality of that aid is not such as to affect the legality of the TACA.

44 It therefore follows from the above that the possible illegality of exemption from the TACA for small retail outlets is not such as to affect the legality of the tax itself, so that businesses which are liable to pay the TACA cannot plead the possible illegality of the exemption before the national

courts in order to avoid payment of that tax or to obtain reimbursement.

The various uses to which the revenue from the TACA is put

45 According to the claimants in the main proceedings, the various uses to which the revenue from the TACA is put all constitute State aid for the purposes of Article 87(1), which have been granted in breach of Article 88(3) EC.

46 However, it must be borne in mind that, in the context of the cases in the main proceedings, which all concern demands for reimbursement of taxes that are allegedly unlawful under Articles 87(1) EC and 88(3) EC, the question whether the various measures financed by means of the TACA constitute State aid is relevant only in so far as it is established that the tax is hypothecated to the measures concerned (*Streekgewest*, paragraph 26).

47 According to the claimants in the main proceedings, there is such hypothecation of the TACA to the measures financed by that tax. The revenue from the TACA is not allocated to the Treasury. On the contrary, the legislation establishing the TACA specifically aims to finance aid measures in favour of certain categories of traders who are in competition with those subject to the tax.

48 First, as regards the cessation payment (see paragraphs 6 to 9 of this judgment), it must be noted that, under the national legislation at issue, that measure is funded by the TACA. However, contrary to the submissions of the claimants in the main proceedings, the national legislation does not provide for hypothecation of the TACA to the cessation payment.

49 To that effect it must be pointed out that the amount of the cessation payment granted to traders and craftsmen who permanently cease all activity is, as was stated in paragraph 9 of this judgment, 'between EUR 3 140 and EUR 18 820 for a household, and between EUR 2 020 and EUR 12 100 for one person'. The amount of the payment actually made is not dependent on the revenue from the tax, but is laid down, under Article 6 of Decree No 82-307, 'by the local committee' within the limits determined by ministerial order on the basis of 'factors which characterise the situation of each applicant, in particular the state of his resources and his charges'.

50 The national legislation at issue in the main proceedings can thus be distinguished from that considered in the case which gave rise to the judgment in *Case 47/69 France v Commission* [1970] ECR 487, paragraph 20, where it was provided that the aid which it established increased 'in proportion to the increase in the revenue from the charge'.

51 Similarly, under the national legislation at issue in the case which gave rise to the judgment in *Enirisorse*, cited above, the revenue from the tax directly influenced the amount of the economic advantage granted. In that case the legislation expressly provided that two thirds of the revenue from the tax was to be paid to a specific port authority.

52 By contrast, in the cases in the main proceedings, there is no connection between the revenue from the TACA and the amount of the cessation payment granted to traders and craftsmen who permanently cease working. The national legislation at issue establishes the amount of the cessation payment between a minimum and maximum value regardless of the revenue from the tax. It is then for the local committee to decide upon the amount of the cessation payment solely on the basis of the personal circumstances of the traders and craftsmen concerned. Since the revenue from the TACA does not influence the amount of the advantage granted to traders and craftsmen by virtue of the cessation payment, the TACA is not hypothecated to the cessation payment within the meaning of the case-law cited in paragraph 40 of this judgment.

53 In those circumstances, the possible illegality of the cessation payment in the light of the Treaty provisions on State aid is not such as to affect the lawfulness of the TACA.

54 Secondly, as regards the allocation of part of the revenue from the TACA to the financing of basic old-age insurance schemes for self-employed persons in the craft sector and for self-employed persons in manufacturing and trading occupations (see paragraphs 12 to 14 of this judgment), it must be pointed out that the recipient funds (Organic and Cancava) each administer a basic social security scheme founded on a solidarity mechanism. As the activity carried out by the funds concerned does not constitute an economic activity (Joined Cases C-264/01, C-306/01, C-354/01 and C-355/01 *AOK Bundesverband and Others* [2004] ECR I-2493, paragraph 47), the financing of that activity falls outside the scope of Article 87(1) EC.

55 Furthermore, in any event the national legislation at issue in no way establishes hypothecation of the TACA to the old-age insurance schemes for craftsmen and traders. Under Article 40-II of Law No 96-1160, the amount of the TACA allocated for financing the insurance schemes in question is determined each year by joint order of the competent Ministers. In view of the discretion enjoyed by those Ministers, it cannot be accepted that the revenue from the TACA directly affects the amount of the advantage granted to the recipient funds at issue (see Case C-175/02 *Pape* [2005] ECR I-127, paragraph 16). Indeed it is apparent from the documents submitted to the Court that the amount allocated to Organic and Cancava is invariably set at EUR 45 730 000 each year, regardless of the revenue from the TACA.

56 Finally, on the basis of the evidence in the documents submitted to the Court, the TACA does not appear to be hypothecated to the measures financed by Fisac (see paragraphs 15 to 17 of this judgment) or the CPDC (see paragraphs 18 to 20 of this judgment) either. The discretion enjoyed by Fisac and the CPDC and the competent Ministers in respect of the allocation of funds deriving from the revenue from the TACA under Articles 8 of Decree No 95-1140 and 4 of Decree No 91-284 respectively precludes the existence of such hypothecation (see *Pape*, paragraph 16).

57 Consequently, even if Fisac and the CPDC finance measures could be classified as State aid, the possible illegality of such aid would not be such as to affect the lawfulness of the TACA in the light of the Treaty provisions in respect of State aid.

58 It follows from all the above that Articles 87(1) EC and 88(3) EC are to be interpreted as not precluding the levy of a tax such as the TACA.

Costs

59 Since these proceedings are, for the parties to the main proceedings, a step in the actions pending before the national courts, the decision on costs is a matter for those courts. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not

recoverable.

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

Articles 87(1) EC and 88(3) EC are to be interpreted as not precluding the levy of a tax such as the French tax to support the trade and craft sectors.

[Signatures]

* Language of the case: French.