



Press and Information

General Court of the European Union

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Judgment in Joined Cases T-515/13, Spain v Commission and T-719/13, Lico Leasing, SA and Pequeños y Medianos Astilleros Sociedad de Reconversión, SA v Commission

## **The General Court annuls the Commission's decision finding that the 'Spanish tax lease system' was illegal State aid.**

*The advantage to investors was not selective and the statement of reasons concerning the likelihood of a distortion of competition and an effect on trade was not sufficient*

From May 2006 onwards the Commission received several complaints against what was called 'the Spanish Tax Lease System' ('the STLS'). Those complaints were that the alleged system allowed maritime shipping companies to benefit from a 20-30% price reduction when purchasing ships constructed by Spanish shipyards, to the detriment of the shipyards of other Member States.

The STLS was based on a fiscal arrangement organised, in general, by a bank, which acted as an intermediary between a maritime shipping company (buyer) and a shipyard (seller). When a ship was sold, the bank interposed a leasing company and an economic interest company (EIG) set up by the bank. The latter sold to investors shares in the EIG and set up a complex network of contracts between the various parties. The aim of the arrangement was to generate tax advantages for the investors and to transfer part of those advantages (between 85% and 90%) to the maritime shipping company in the form of a rebate on the price of the vessel, the investors retaining the other advantages as a return on their investment (between 10% and 15%). The advantages derived from five fiscal measures applicable to finance leases (accelerated depreciation and – with authorisation – early depreciation of certain goods), to EIGs (fiscal transparency) and to maritime shipping activities (special regime of tonnage taxation).

By decision of 17 July 2013,<sup>1</sup> the Commission took the view that three of the five fiscal measures under examination constituted illegal State aid to the EIGs and their investors and had been unlawfully implemented by Spain since 1 January 2002.<sup>2</sup> The aid was declared partially incompatible with the internal market. In compliance with the principle of legal certainty, the Commission ordered the recovery of the aid only in the case of certain transactions. Recovery was ordered only from investors without their being able to transfer the burden of recovery to other persons.

Spain, Lico Leasing (a financial institution having invested in a certain number of EIGs which had participated in the STLS) and the Pequeños y Medianos Astilleros Sociedad de Reconversión (a company that co-operates with small and medium-sized shipyards in order to enable them appropriately to achieve their industrial objectives) applied to the General Court for annulment of the Commission Decision.<sup>3</sup>

<sup>1</sup> Commission Decision No 2014/200/EU of 17 July 2013 on the aid scheme SA.21233 C/11 (ex NN/11, ex CP 137/06) implemented by Spain Tax scheme applicable to certain finance lease agreements also known as the 'Spanish Tax Lease System' (OJ 2014, L 114, p.1) (see Commission IP-13-706).

<sup>2</sup> Certain tax provisions applicable to the STLS were amended by Spain in 2012 before the adoption of the Commission's decision at issue in the present case. On account of those amendments, the Commission found that the new rules did not constitute State aid in its Decision of 20 November 2012 relating to State aid SA 34736 (12/N) concerning the implementation by the Kingdom of Spain of a tax regime allowing early depreciation of assets acquired via finance-lease agreements (OJ 2012 C 384, p. 1) (see IP-12-1241). The Court dismissed an action against that decision in its judgment in Case [T-140/13 Netherlands Maritime Technology Association v Commission](#). That judgment is currently under appeal before the Court of Justice (Case [C-100/15 P](#)).

<sup>3</sup> There are 63 other cases pending before the General Court against that Commission Decision.

By today's judgment, **the Court annuls the Commission Decision because it is vitiated by a number of errors and contains an insufficient statement of reasons concerning the classification as State aid.**<sup>7</sup>

**According to the Court, the Commission was wrong to declare that there was a selective economic advantage and, therefore, State aid to the EIGs and investors.**

The Court notes in that respect that by reason of the fiscal transparency of the EIGs, the fiscal measures applied to them under the STLS could benefit only their members, the investors. **In the absence of an economic advantage for the EIGs, the Commission was wrong to find that they had benefited from State aid.**

**With regard to the investors, the Court found that the economic advantage obtained by them was not selective.** Despite the existence of an authorisation system, the advantages in question were available, under the same conditions, to any investor who decided to participate in the transactions within the STLS by purchasing shares in the EIGs set up by the banks. Those advantages were therefore in the nature of general advantages with regard to investors. Moreover, the Commission's finding that the STLS favoured 'certain activities'<sup>4</sup> did not concern the industrial or economic activities of the investors, who operated in all sectors of the economy.

The General Court also considered that, in the particular circumstances of the case, the Commission did not give sufficient reasons for its finding that the measures at issue were likely to distort competition and affect trade between Member States.

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**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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<sup>4</sup> The Commission refers to the acquisition of seagoing vessels via finance leasing contracts, in particular with a view to bareboat charters and subsequent resale. A bareboat charter is a contract for the charter of a vessel which includes neither the crew nor provisions, the charterer being responsible for them.