General Court of the European Union
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Press and Information

Judgments in Cases T-679/16 Athletic Club v Commission and T-865/16 Fútbol Club Barcelona v Commission

The General Court annuls the Commission's decision classifying the tax regime of four Spanish professional football clubs as State aid

All Spanish professional football clubs were required to convert to sports public limited companies ('SPLC' or 'SPLCs') by a law of 1990, in order to encourage more responsible management of their activities. An exception was, however, laid down: professional sports clubs which had achieved a positive result for the tax years preceding the adoption of the law were permitted to continue to operate as sports clubs. Four Spanish professional football clubs — the Fútbol Club Barcelona (Barcelona), the Club Atlético Osasuna (Pamplona), the Athletic Club (Bilbao) and the Real Madrid Club de Fútbol (Madrid) — chose that option. Accordingly, as non-profit organisations and in contrast to SPLCs, their income was taxed at a specific rate that was, until 2016, lower than the rate applicable to SPLCs.

By a decision of 2016[1], the Commission declared that Spain had unlawfully implemented State aid in the form of a corporation tax privilege in favour of those four professional football clubs. According to the Commission, that regime was incompatible with the internal market. It therefore ordered Spain to discontinue the scheme and to recover the aid granted from the recipients immediately and effectively.

The Fútbol Club Barcelona and the Athletic Club brought an action against the Commission's decision before the General Court of the European Union.

By today's judgment in Case T-865/16, Fútbol Club Barcelona v Commission, **the General Court annuls the Commission's decision**. However, Athletic Club's action in Case T-679/16 has been dismissed.

The Court first states that the examination of a State aid regime must include, an examination of its various consequences, both favourable and detrimental to its recipients, when the equivocal nature of the alleged advantage is a result of the very features of the regime.

The Court points out that the measure caught by the contested decision is a restriction, in the Spanish professional sports sector, of the personal scope of the tax regime of non-profit organisations in force when the law of 1990 was adopted. It therefore examines whether the Commission sufficiently demonstrated that the tax regime of non-profit organisations, taken as a whole, was such as to put its recipients in a more advantageous position than if they had been required to operate as an SPLC.

The Court observes that, as stated by the Commission in its decision, a nominal preferential — as compared to the clubs operating as SPLCs — tax rate was applied, from 1990 to 2015, to the four clubs which benefit from the regime at issue.

[1] Commission Decision (EU) 2016/2391 of 4 July 2016 on the State aid SA.29769 (2013/C) (ex 2013/NN) implemented by Spain for certain football clubs (OJ 2016 L 357, p. 1); see Commission press release IP/16/2401.

However, the examination of the resulting advantage cannot be dissociated from that of the other components of the tax regime of non-profit organisations. The Court points out in that regard, inter alia, that during the administrative procedure carried out by the Commission, the Real Madrid Club de Fútbol had observed that the tax deduction for the reinvestment of extraordinary profits was higher for SPLCs than for non-profit entities. The Madrid club claimed that that deduction was potentially very significant due to the practice of player transfers, as profits could be reinvested in the purchase of new players and that the tax regime applicable to non-profit organisations had thus been, between 2000 and 2013, 'significantly more disadvantageous' to it than that applicable to SPLCs.

Nonetheless, the Commission had ruled out that the relative advantage relating to the higher threshold of tax deductions applicable to SPLCs offsets the preferential tax rate enjoyed by non-profit organisations, on the ground, in particular, that it had not been demonstrated that that system of tax deductions '[was] in principle and in the longer term more advantageous'. However, according to the Court, the Commission, which bore the burden of proof of the existence of an advantage resulting from the tax regime of non-profit entities, could find that such an advantage exists only by demonstrating, without prejudice to the limits of its investigative obligations, that the ceiling on tax deductions set at a less advantageous level for non-profit entities than for SPLCs did not offset the advantage resulting from a lower nominal tax rate.

The Commission also supported its findings by figures contained in a study provided by Spain during the administrative procedure. It asserted on that basis that, for most of the tax years, the effective taxation of professional football clubs as non-profit organisations was lower than that of comparable entities under the general tax regime. However, the figures related to aggregate data, all sectors and operators included, and related to only four tax years, whereas the period concerned by the regime at issue ran from 1990 to 2015. The Court finds that **the Commission erred in its assessment of the facts**.

The Court next ascertains whether, despite that error, the Commission was entitled to rely on just the data provided by Spain in order to find that an advantage existed. The Court observed that those data should have been examined in the light of the other factual evidence submitted to the Commission, like the statements submitted by the Real Madrid Club de Fútbol concerning the importance of the tax deductions for professional football clubs, connected to player transfers. According to the Court, the Commission was therefore, when it adopted its decision, in possession of evidence highlighting the specific nature of the sector as regards tax deductions, which should have led to its having doubts as to whether its findings — all sectors included — on the effective taxation of non-profit entities and entities subject to the general tax regime, respectively, could be applied to that sector. Accordingly, the Court holds that **the Commission has not shown to the requisite legal standard that the measure at issue conferred an advantage on its beneficiaries**.

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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