



Press and Information

General Court of the European Union

PRESS RELEASE No 116/20

Luxembourg, 23 September 2020

Judgment in Joined Cases T-515/13 RENV Espagne v Commission and T-719/13 RENV **Error! Reference source not found.**

Lico Leasing, SA and Pequeños y Medianos Astilleros Sociedad de Reconversión, SA v Commission

The Spanish tax system applicable to certain finance lease agreements entered into by shipyards constitutes an aid scheme

The unlawful State aid granted under that system must be recovered from the beneficiaries

In 2006, the European Commission received a number of complaints concerning the application of 'the Spanish Tax Lease System' ('the STL system') to certain finance lease agreements in so far as it allowed shipping companies to benefit from a 20-30% price reduction when purchasing ships constructed by Spanish shipyards. According to the Commission, the objective of the STL system was to grant tax advantages to economic interest groupings ('EIGs') and the investors participating in them, which then passed on part of those benefits to the shipping companies that bought a new ship.

In a decision¹ adopted in July 2013, the Commission found that the STL system constituted State aid² in the form of a selective tax advantage that was partially incompatible with the internal market. In so far as the aid scheme had been implemented since 1 January 2002 in breach of the notification obligation,³ the Commission ordered the national authorities to recover the aid from the investors, that is to say, the members of the EIGs.

In September 2013, Spain, Lico Leasing, SA and Pequeños y Medianos Astilleros Sociedad de Reconversión, SA ('the applicants') brought actions for annulment of the Commission's decision. In its judgment of 17 December 2015, *Spain and Others v Commission*⁴ ([T-515/13 and T-719/13](#)), the General Court of the European Union held that the benefit obtained by the investors of the EIGs was not selective and that the statement of reasons relating to the criteria of distortion of competition and effect on trade was inadequate. Consequently, the Commission's decision was annulled without it being necessary to rule on the other pleas in law and arguments put forward by the applicants. By its judgment of 25 July 2018, the Court of Justice, hearing an appeal brought by the Commission, set aside the judgment in *Commission v Spain and Others*.⁵ ([C-128/16 P](#)), judgment of the General Court. The Court of Justice held that the General Court, in its analysis of the selective nature of the tax measures, misapplied the provisions of the Treaty relating to State aid and that, contrary to the findings of the General Court, the Commission's decision was not vitiated by a failure to state reasons. Noting that the General Court had not ruled on all the pleas in law raised before it, the Court of Justice found that the state of the proceedings did not enable it to give final judgment and, accordingly, referred the case back to the General Court.

By its renvoi judgment of 23 September 2020, *Spain and Others v Commission* (T-515/13 RENV and T-719/13 RENV), the General Court dismissed the actions brought by the applicants.

¹ Commission Decision 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).

² Within the meaning of Article 107(1) TFEU.

³ Laid down in Article 108(3) TFEU.

⁴ See [CP 150/15](#).

⁵ See [CP 115/18](#).

The General Court assessed, first, the classification of the tax measures as State aid. In that context, it ascertained, first of all, whether the Commission was entitled to conclude that the benefits granted under the STL system, taken as a whole, were selective in nature. Following a review of the case-law on selectivity stemming from the discretionary power of the national authorities when exercising their competences in respect of taxation,⁶ **the General Court observed that the benefit of the tax regime at issue was granted by the tax authorities in the context of a system of prior authorisation on the basis of vague criteria requiring an interpretation exercise for which no provision was made. Thus, the tax authorities could set the start date for depreciation on the basis of circumstances defined in terms that gave that authority considerable scope for discretion. The General Court took the view that the existence of those discretionary aspects was such as to favour the beneficiaries over other taxpayers in a comparable factual and legal situation.** More specifically, other EIGs might not have benefited from accelerated depreciation under the same conditions. **Furthermore**, in order to dispel the argument that authorisation had in practice been granted to all EIGs active in the sector in question, **the General Court stressed that, in view of the de jure discretionary nature of the legislation, it did not matter whether or not their application was de facto discretionary. The General Court therefore concluded that, since one of the measures enabling benefit from the STL system as a whole was selective, namely the authorisation of accelerated depreciation, the Commission had not erred in considering that the system as a whole was selective.** Next, the General Court pointed out that the market of the purchase and sale of maritime vessels was open to trade between Member States and that a price reduction of 20-30% on the price of a ship threatened to distort competition on that market on which the EIGs were active. Thus, **the conditions relating to the risk of distortion of competition and the effect on trade between Member States were satisfied. Consequently, the General Court rejected the plea alleging disregard of the classification of a measure as State aid.**

The General Court examined, second, the recovery of the unlawful aid and rejected the pleas raised by the applicants in that regard. Inter alia, it rejected the allegation of infringement of the principle of legitimate expectations. The applicants had failed to establish that they had obtained precise, unconditional and consistent assurances from the Commission that the regime at issue did not constitute 'State aid'. Furthermore, **the General Court found that the Commission had duly taken into account the requirement of legal certainty in its decision, which had led it to limit in time the recovery of the unlawful aid.** The recovery of the aid was limited to that granted following publication of the decision relating to the French tax EIGs, which had put an end to a situation of legal uncertainty arising from the *Brittany Ferries* decision⁷. In that regard, the General Court finds that the Commission did not err in finding that the publication of that decision had brought to an end all legal uncertainty since, in that decision, a regime comparable to the STL system had been classified as State aid. Moreover, the General Court pointed out that that finding was not called into question by subsequent circumstances, such as the Commission's alleged inaction with regard to the regime at issue.

Lastly, the General Court also rejected the plea alleging infringement of the principles applicable to recovery. The applicants criticised the Commission's decision in so far as it ordered the recovery of all aid from the investors (the members of the EIGs) even though part of the tax benefits had been transferred to the shipping companies. The Commission had decided that the shipping companies were not beneficiaries of the aid and therefore the recovery order was directed solely and entirely at the investors, who were the sole beneficiaries of all the aid on account of the tax transparency of the EIGs. The General Court held that the Commission had not erred in

⁶ Judgments of the Court of Justice of 26 September 1996, *France v Commission* ([C-241/94](#), paragraph 23), of 29 June 1999, *DM Transport* ([C-256/97](#), paragraph 27), of 18 July 2013, *P* ([C-6/12](#), paragraph 27) and of 25 July 2018, *Commission v Spain and Others* ([C-128/16 P](#), paragraph 55). Judgments of the General Court of 28 November 2008, *Hotel Cipriani and Others v Commission* ([T-254/00](#), [T-270/00](#) and [T-277/00](#), paragraph 97) and of 20 September 2019, *Port autonome du Centre et de l'Ouest and Others v Commission* ([T-673/17](#), paragraph 188).

⁷ The *Brittany Ferries* decision, adopted in 2001, might have led economic operators to consider that tax benefits such as those granted under the STL system could be regarded as general measures not constituting State aid. However, according to the Commission, the situation of legal uncertainty ended with the adoption of a decision on the French tax EIGs, published on 30 April 2007, which should have led a prudent and circumspect operator to take the view that a regime similar to the STL system could constitute State aid.

ordering recovery of all the aid from the investors, even though the investors had passed part of the benefit to other operators, since the latter were not regarded as beneficiaries of the aid. It was the investors who actually benefited from the aid, since the applicable legislation did not require them to pass part of the aid to third parties.

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 and ten days 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.

Unofficial document for media use, not binding on the General Court.

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

Press contact: Jacques René Zammit ☎ (+352) 4303 3355