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Judgment of the Court of Justice in Case C-211/20 P | Commission v Valencia Club de Fútbol

Decision on State aid granted by Spain to Valencia CF annulled by the General Court: the Court of Justice dismisses the Commission's appeal

According to the Court of Justice, the General Court did not impose an excessive burden of proof on the Commission and merely found that the Commission had not fulfilled the requirements which it had imposed on itself by adopting the Guarantee Notice

On 5 November 2009, the Instituto Valenciano de Finanzas (IVF), the financial institution of the Generalitat Valenciana (Regional Government of Valencia, Spain), provided the Fundación Valencia, an association linked to Valencia CF, a Spanish professional football club, with a guarantee for a bank loan of €75 million, through which it acquired 70.6% of the shares in Valencia CF.

On 10 November 2010, the IVF increased its guarantee in favour of Fundación Valencia by €6 million, so as to obtain an increase by the same amount in the sum loaned, in order to cover the payment of the overdue principal, interest and costs arising from the non-payment of interest on the guaranteed loan on 26 August 2010.

By decision of 4 July 2016,¹ the Commission found that those and other measures constituted unlawful State aid which is incompatible with the internal market and consequently ordered their recovery. Valencia CF subsequently brought an action before the General Court of the European Union for the annulment of that decision. By judgment of 12 March 2020,² the General Court annulled that decision in so far as it concerned Valencia CF and held that the Commission committed a number of manifest errors of assessment concerning the guarantee granted by the IVF and the increase of the guarantee decided in 2010.

By its appeal, the Commission asks the Court of Justice to set aside the judgment of the General Court. In support of its appeal, the Commission raised a single ground of appeal alleging a misinterpretation of the concept of 'economic advantage' for the purposes of Article 107(1) TFEU.

In today's judgment, the Court of Justice dismisses that single plea, and therefore the appeal itself, as unfounded.

First, the Court of Justice points out that the Guarantee Notice³ provides for a hierarchy between the three methods set out in that notice for establishing and quantifying the aid element of a measure. It recalls that, under that notice, it is for the Commission to verify whether 'risk-carrying' is 'remunerated by an appropriate premium on the guaranteed ... amount', given that, when 'the price paid for the guarantee is at least as high as the corresponding guarantee premium benchmark that can be found on the financial markets, the guarantee does not contain aid'.

¹ Commission Decision (EU) 2017/365 of 4 July 2016 on the State aid SA.36387 (2013/C) (ex 2013/NN) (ex 2013/CP) implemented by Spain for Valencia Club de Fútbol Sociedad Anónima Deportiva, Hércules Club de Fútbol Sociedad Anónima Deportiva and Elche Club de Fútbol Sociedad Anónima Deportiva (OJ 2017 L 55, p. 12).

² Judgment of 12 March 2020, *Valencia Club de Fútbol v Commission*, [T-732/16](#) (see also [PR No 30/20](#)).

³ Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (2008/C 155/02).

Accordingly, the Commission was obliged to verify, first, whether there was a corresponding guarantee premium benchmark available on the financial markets. Secondly, in the absence of such a premium, the Commission stated in that notice that ‘the total financial cost of the guaranteed loan, including the interest rate of the loan and the guarantee premium, has to be compared to the market price of a similar non-guaranteed loan’. Finally, if there is no such premium or market price for a similar non-guaranteed loan, the Guarantee Notice allows the Commission, with the agreement of the Member State concerned, to use reference rates. Consequently, the Court of Justice **upholds the judgment of the General Court** which stated that, by adopting that notice, **the Commission imposed on itself the obligation to verify whether ‘there is’ a corresponding guarantee premium benchmark available on the financial markets and, failing that, whether ‘there is’ a market price for a similar non-guaranteed loan, before resorting to the reference rate.**

Second, as for the burden of proof and the duty of care incumbent on the Commission as regards demonstrating the existence of an advantage, the Court recalls that it is **for the Commission to prove**, taking into account, inter alia, the information provided by the Member State concerned, that the conditions for the application of the private operator principle **have not been fulfilled, so that the State intervention at issue entails an advantage**. Thus, **it is for the Commission to carry out an overall assessment**, taking into account all relevant evidence in the case enabling it to determine whether the recipient company would manifestly not have obtained comparable facilities from such a private operator. The Court of Justice highlights that the Commission cannot assume that an undertaking has benefited from an advantage constituting State aid **solely on the basis of a negative presumption**, based on a lack of information enabling the contrary to be found, if there is no other evidence capable of positively establishing the actual existence of such an advantage. Finally, the Court of Justice recalls that the lawfulness of a decision concerning State aid **falls to be assessed by the EU judicature** in the light of the information available to the Commission on the date when the decision was adopted.

Thirdly, the Court confirms that **there is nothing** in the decision at issue to suggest that the Commission verified whether there was a corresponding guarantee premium benchmark available on the financial markets. Furthermore, the Commission inferred **from its own finding** that Valencia CF was in difficulty when the guarantee was granted, **not only that no financial institution would have provided that club with a guarantee, but also that no similar non-guaranteed loan could exist**. The Court therefore finds that the Commission **did not establish before the General Court that it had evidence of a certain reliability and consistency** which would have enabled it to state that there was only a ‘limited number of observations of similar transactions on the market’ which do ‘not provide a meaningful comparison’ with the reference value of the market price for a similar non-guaranteed loan.

Fourthly, the Court states that, contrary to what the Commission claims, the General Court **did not**, in that way, **impose on it an excessive duty of care and an excessive burden of proof**, but merely found that **the Commission had not satisfied the requirements which it had imposed on itself by adopting that notice**. It notes in turn that the General Court **did not require** the Commission to provide evidence that transactions of a similar nature could not be found on the market, but merely pointed out that the Commission **had not substantiated** its finding or availed itself of its power to make a specific request to the Spanish authorities or the interested parties during the administrative procedure to obtain the production of relevant evidence for the purposes of the assessment to be carried out.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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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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