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Judgments of the General Court in Cases T-826/14 | Spain v Commission, T-12/15 | Banco Santander and Santusa v Commission, T-158/15 | Abertis Infraestructuras and Abertis Telecom Satélites v Commission, T-252/15 | Ferrovial and Others v Commission, T-253/15 | Sociedad General de Aguas de Barcelona v Commission, T-256/15 | Telefónica v Commission, T-257/15 | Arcelormittal Spain Holding v Commission, T-258/15 | Axa Mediterranean v Commission and T-260/15 | Iberdrola v Commission

The General Court annuls the Commission's decision declaring the Spanish tax scheme on the deduction for indirect acquisitions of shareholdings in foreign companies unlawful

In 2002, Spain introduced a new corporate tax scheme. That scheme allowed companies that had acquired shareholdings in a foreign company to deduct from the tax base, in the form of amortisation, the goodwill resulting from the acquisition of that shareholding. In response to questions from Members of the European Parliament, the Commission stated, at the beginning of 2006, that that scheme did not fall within the scope of the EU State aid rules.

Nevertheless, following a complaint from a private operator, the Commission examined more closely the tax scheme in question. By decision of 28 October 2009, concerning **acquisitions of shareholdings made within the European Union**, and decision of 12 January 2011, concerning acquisitions of shareholdings in companies established **outside the European Union ('the initial decisions')**, it declared that the measures in question constituted State aid incompatible with the internal market. It therefore ordered the Spanish authorities to recover that aid. However, the Commission allowed the scheme to continue to apply, subject to conditions, in certain cases (principle of the protection of legitimate expectations) ¹.

The actions brought against the initial decisions by various companies were unsuccessful ².

In July 2013, the Commission examined a new interpretation of the tax scheme in question formalised in a binding

¹ See the Commission press releases on the adoption of those decisions ([PR of 28 October 2009](#) and [PR of 12 January 2011](#)).

² By judgments of 7 November 2014, *Autogrill España v Commission* (T-219/10) and *Banco Santander and Santusa v Commission* (T-399/11) (see [PR No 145/14](#)), the General Court annulled the Commission's initial decisions, as it considered that all the cumulative conditions in order to establish the existence of State aid, in particular that of the selectivity of the measure, were not satisfied. The Commission brought appeals before the Court of Justice against those two judgments of the General Court. By judgment of 21 December 2016, *Commission v World Duty Free Group and Others* (Joined Cases C-20/15 P and C-21/15P, see [PR 139/16](#)), the Court set aside the judgments of the General Court and referred the cases back to that court. By judgments of 15 November 2018, *Deutsche Telekom v Commission* (T-207/10), *Banco Santander v Commission* (T-227/10), *Sigma Alimentos Exterior v Commission* (T-239/11), *Axa Mediterranean v Commission* (T-405/11), *Prosegur Compañía de Seguridad v Commission* (T-406/11), *World Duty Free Group v Commission* (T-219/10 RENV) and *Banco Santander and Santusa v Commission* (T-399/11 RENV) (see [PR 175/18](#)), the General Court confirmed the Commission's initial decisions. The companies concerned and Spain once again brought appeals before the Court of Justice. By judgments of 6 October 2021, *Sigma Alimentos Exterior v Commission* (C-50/19 P), *World Duty Free Group and Spain v Commission* (C-51/19 P and C-64/19 P), *Banco Santander v Commission* (C-52/19 P), *Banco Santander and Others v Commission* (C-53/19 P and C-65/19 P), *Axa Mediterranean v Commission* (C-54/19 P), and *Prosegur Compañía de Seguridad v Commission* (C-55/19 P), (see [PR 170/21](#)), the Court dismissed the appeals, with the result that the cases concerning the Commission's initial decisions were closed.

opinion sent by the Spanish authorities to that institution. According to the Commission's opinion, that interpretation extended the initial scheme to the **financial goodwill resulting from the indirect acquisitions of shareholdings** in non-resident undertakings through the direct acquisition of shareholdings in non-resident companies. By **decision of 15 October 2014**, the Commission concluded that that new tax measure was **new aid which was incompatible with the internal market**. Consequently it required Spain to put an end to that aid scheme and to recover the aid granted under that scheme.³

Spain and several companies concerned requested the Court to annul the Commission decision of 15 October 2014. They submit, inter alia, that the Commission wrongly classified the new administrative interpretation as new aid and that it infringed, inter alia, the principle of legal certainty and the principle of the protection of legitimate expectations. Those actions were stayed pending the definitive resolution of the cases concerning the Commission's initial decisions.

By today's judgments, **the General Court upholds those actions and annuls the Commission's decision of 15 October 2014.**

The Court considers, in effect, that **the Commission was no longer entitled to adopt the decision of 15 October 2014, as its initial decisions already covered the acquisition of shareholdings, both direct and indirect.** The fact that in its decision of 15 October 2014, the Commission ordered the recovery of the entirety of the aid granted under the scheme in question, as applied to the indirect acquisitions of shareholdings, amounts to a **withdrawal of lawful decisions**, in so far as the initial decisions already covered the indirect acquisition of shareholdings and accorded them, subject to certain conditions, the benefit of the protection of legitimate expectations.

According to the Court, **the Commission could not revoke or withdraw its initial decisions.** First, it had not been demonstrated that those decisions were based on inaccurate information. Secondly, this is a question of **lawful decisions which conferred on Spain, subject to conditions and on account of the existence of a legitimate expectation, a subjective right to implement the aid scheme in question, even though it has been declared incompatible. Incidentally, they conferred on the undertakings benefiting from that scheme a subjective right not to have to repay certain unlawful aid. By withdrawing those rights, by its decision of 15 October 2014, as regards the indirect acquisition of shareholdings, the Commission infringed the principles of legal certainty and the protection of legitimate expectations.**

In any event, **even if the Commission was entitled to adopt the decision of 15 October 2014, it erred in law by refusing to acknowledge that there was a legitimate expectation similar to that acknowledged in the initial decisions in favour of the beneficiaries of the aid schemes in question in respect of their indirect acquisition of shareholdings.** In effect, **the answers that the Commission gave** at the beginning of 2006 **to the parliamentary questions** which were put to it **gave rise** on the part of Spain and the beneficiaries to **a legitimate expectation as to the lawfulness of the aid scheme** as regards all of the acquisitions of shareholdings (direct and indirect).

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.

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.

³ See [Commission PR](#) on the adoption of that decision.

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The full text and as the case may be, the résumé of judgments [T-826/14](#), [T-12/15](#), [T-158/15](#), [T-252/15](#), [T-253/15](#), [T-256/15](#), [T-257/15](#), [T-258/15](#) and [T-260/15](#) are published on the CURIA website on the day of delivery.

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