

**Appeal brought on 22 February 2023 by the Autoridad Portuaria de Bilbao against the judgment of the General Court (Fifth Chamber) delivered on 14 December 2022 in Case T-126/20, Autoridad Portuaria de Bilbao v Commission**

**(Case C-110/23 P)**

(2023/C 173/29)

*Language of the case: Spanish*

### **Parties**

*Appellant:* Autoridad Portuaria de Bilbao (represented by: D. Sarmiento Ramírez-Escudero and X. Codina García-Andrade, abogados)

*Other party to the proceedings:* European Commission

### **Form of order sought**

The appellant claims that the Court should:

- set aside the judgment of the General Court for the reasons set out in the three grounds of appeal and declare that the judgment is vitiated by an error of law;
- rule on the substance of the case, in accordance with Article 61 of the Statute and Article 170 of the Rules of Procedure, by declaring that the action for annulment of the decisions contested before the General Court, brought at first instance by the Autoridad Portuaria de Bilbao, must be upheld;
- order the Commission to pay the costs incurred by the Autoridad Portuaria de Bilbao both in the proceedings at first instance and in the present proceedings before the Court of Justice.

### **Grounds of appeal and main arguments**

#### First ground of appeal:

The judgment of the General Court is vitiated by an error of law, based on an infringement of Article 107(1) TFEU, in that the General Court accepted that, when the Commission found that the Exención Fiscal de Bizkaia (Biscay Tax Exemption) is an advantage, the Commission did not assess it as being a complex arrangement.

In support of the first ground of appeal, the appellant claims that the reasoning relied on by the General Court to conclude that there is no measure of a complex nature is based on purely formal grounds which depart from the substantive assessment required by the case-law of the Court of Justice.

#### Second ground of appeal:

The judgment is vitiated by an error of law in that the General Court infringed Article 107 TFEU, Regulation 2015/1589<sup>(1)</sup> and the relevant case-law, in conjunction with Article 4(3) TEU, Article 296 TFEU and Article 41 of the Charter, by concluding that the Commission does not have to carry out a full analysis of the available data where it is clear that there is only one beneficiary of the aid scheme.

In support of the second ground of appeal, the appellant claims that it is a well-known fact under the Spanish legal system that only one entity benefits from the Biscay Tax Exemption (the Autoridad Portuaria de Bilbao). In that case, even though the measure can be classified as an ‘aid scheme’ for the purposes of Regulation 2015/1589, the Commission must carry out a full analysis of the available data. That is the case according to the original purpose of the case-law, which allows the Commission not to carry out such an analysis, interpreted in the light of Article 4(3) TEU, Article 296 TFEU and Article 41 of the Charter.

#### Third ground of appeal:

The judgment is vitiated by an error of law in that the General Court infringed Article 108 TFEU and Regulation 2015/1589, in the light of Article 4(3) TEU, by finding that, in cooperation procedures, the Commission’s obligations are less extensive than in investigation procedures.

In support of the third ground of appeal, the appellant claims that the General Court states in its judgment, without any justification whatsoever, that in a cooperation procedure under Article 21 of Regulation 2015/1589, the Member State has fewer guarantees than in an investigation procedure. With respect to that ground of appeal, the appellant argues that both the wording of Articles 21 to 23 of Regulation 2015/1589 and the close connection between Article 108 TFEU, from which the cooperation procedure in Regulation 2015/1589 derives, and the principle of sincere cooperation in Article 4(3) TEU mean that the Commission must examine the information provided by the Member State.

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(<sup>1</sup>) Council Regulation (EU) 2015/1589, of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union — OJ 2015 L 248, p. 9.

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**Request for a preliminary ruling from the Vilniaus apygardos administracinis teismas (Lithuania)  
lodged on 28 February 2023 — Virgilijus Valančius v Lietuvos Respublikos vyriausybė**

**(Case C-119/23, Valančius)**

(2023/C 173/30)

*Language of the case: Lithuanian*

**Referring court**

Vilniaus apygardos administracinis teismas

**Parties to the main proceedings**

*Applicant:* Virgilijus Valančius

*Defendant:* Lietuvos Respublikos vyriausybė

**Questions referred**

1. Does Article 254 of the Treaty on the Functioning of the European Union, read in conjunction with Article 19(2) of the Treaty on European Union, which provides that the members of the General Court of the European Union are to be chosen from persons ‘whose independence is beyond doubt and who possess the ability required for appointment to high judicial office’, require that a candidate for appointment to the General Court of the European Union be selected in a Member State of the European Union exclusively on the basis of professional ability?
2. Is a national practice, such as that at issue in the present case, whereby, in order to ensure the transparency of the selection of a particular candidate, the Government of a Member State responsible for proposing a candidate for appointment to the office of Judge of the General Court of the European Union establishes a group of independent experts to assess the candidates, which, after interviewing all the candidates, draws up a ranked list of the candidates on the basis of clear and objective selection criteria laid down in advance and, in accordance with the conditions announced in advance, puts forward to the Government the candidate who has been ranked the highest on the basis of his or her professional ability and competence, but the Government proposes for appointment as a Judge of the European Union a candidate other than the candidate in first place on the ranked list, compatible with the requirement that the independence of the judge be beyond doubt and with the other requirements for judicial office laid down in Article 254 of the Treaty on the Functioning of the European Union, read in conjunction with Article 19(2) of the Treaty on European Union, taking account of the fact that a judge who may have been appointed unlawfully might influence the decisions of the General Court of the European Union?