

Pleas in law and main arguments

The contested decision in the present case finds the aid scheme introduced by Spain, in accordance with Article 12(5) TRLIS, incompatible with the common market, as regards aid granted to beneficiaries to make intra-Community acquisitions. In that regard, it states that the aforementioned provision allows for the deduction for tax purposes of amortization of the financial goodwill resulting from a foreign shareholding acquisition of greater than 5 %.

In support of its claims, the applicant submits the followings pleas:

1. The contested decision infringes Article 107(1) TFEU in that it finds that the measure at issue constitutes State aid. The applicant contends, in that regard, that the Commission has not proved that the tax measure examined favours 'specific undertakings or the production of specific goods', as required under Article 107(1) TFEU. The Commission merely assumes that the measure is selective on the basis of the fact that it applies only to the acquisition of shareholdings in foreign companies and not in domestic companies. The applicant considers that reasoning to be erroneous and circular: the fact that application of the measure examined — as for any other tax rule — depends on the fulfilment of certain objective requirements does not render it, in law or fact, a selective measure. In fact, the mechanical nature of the Commission's reasoning would result in every tax measure being considered to be *prima facie* selective.

For the sake of completeness, both a legal analysis of the measure, and the statistics produced by the Kingdom of Spain, show that Article 12(5) TRLIS is a general measure open, in law and fact, to all undertakings which are subject to Spanish corporation tax irrespective of their size, nature, sector or origin.

Second, the *prima facie* different treatment under Article 12(5) TRLIS, far from constituting a selective advantage serves to place all transactions for the acquisition of shares on an equal tax footing, be those shares national or foreign; as, if, owing to the impossibility to complete cross-border mergers, the amortization of financial goodwill can only be carried out at a national level to the extent that there are rules in the tax system which allow it, Article 12(5) TRLIS does no more than extend that possibility to the purchase of shares in foreign companies.

In the alternative, the Commission's decision is disproportionate, since, its application in cases where control is taken of foreign undertakings should be, at least, equivalent to cases of national mergers and therefore justified by the nature and broad logic of the Spanish system.

2. Infringement of Article 107(1) TFEU resulting from an error of law in identifying the beneficiaries of the measure.

In the alternative, although it considers that Article 12(5) TRLIS contains elements of State aid, the Commission ought to have carried out an exhaustive economic analysis to ascertain who the beneficiaries of the aid scheme were. The applicant claims, in any event, that the beneficiaries of the aid (in the form of an inflated purchase price for the shares) were those selling the shares and not, as the Commission alleges, the Spanish firms who applied that measure.

3. Lastly, the applicant claims breach of the principle of protection of legitimate expectations with respect to the breadth of the temporal scope of the recovery order.

Action brought on 18 May 2010 — Iberdrola v Commission

(Case T-221/10)

(2010/C 179/94)

Language of the case: Spanish

Parties

Applicant: Iberdrola, SA (Bilbao, Spain) (represented by: J. Ruiz Calzado, M. Núñez Müller and J. Domínguez Pérez, lawyers)

Defendant: European Commission

Form of order sought

— Annulment of Article 1(1) of the Decision;

— Order the Commission to pay all of the costs arising from the proceedings.

Pleas in law and main arguments

The decision which is the subject-matter of the present case is the same as in Case T-219/10 *Autogrill España v Commission*.

The pleas and main arguments are similar to those relied on in that case. In particular, the applicant claims:

- that the Commission committed a manifest error of assessment by finding that the measure in Article 12(5) TRLIS constitutes State aid which is incompatible with the internal market, given that it did not take account of the positive effects resulting from that measure and ignored the beneficial effect of that measure for the attainment of objectives pursued by other rules in the Treaty;

- that the Commission breached the principles of protection of legitimate expectations and of equal treatment by departing from the guidelines in the Communication on direct taxation and its administrative practice adopted in line with that communication;
- that the Commission breached the principle of sound administration — which requires it to examine, in a diligent, detailed and impartial manner, all aspects relevant to the case — by not continuing the proceeding (as it has done in respect of extra-Community acquisitions) to establish the alleged selectivity of the measure and verify, before making a finding in that regard, the precise extent of the practical obstacles to an intra-Community commercial merger;
- that the Commission has infringed its obligation to respect the scheme of the Treaty and to ensure the consistent application of the rules relating to supervision of State aid and those relating to other principles and freedoms contained in the Treaty such as the free movement of capital and the creation of the internal market;
- that the contested decision lacks sufficient reasoning in relation to specific significant aspects of the Commission's assessment of the measure's selectivity and its effect on competition and trade between Member States.

Action brought on 20 May 2010 — Regione Puglia v Commission

(Case T-223/10)

(2010/C 179/95)

Language of the case: Italian

Parties

Applicant: Regione Puglia (Bari, Italy) (represented by: F. Brunelli and A. Aloia, lawyers)

Defendant: European Commission

Form of order sought

- Annul Debit Note No 3241001630 of the European Commission of 26 February 2010.
- Order the Commission to pay the costs, including a fixed amount for general costs.

Pleas in law and main arguments

The present action is brought against the debit note issued by the Commission on 26 February 2010 in implementation of

Decision C(2009) 10350 of 22 December 2009 concerning the cancellation of part of the contribution from the European Regional Development Fund (ERDF) allocated to the operational programme POR Puglia Obiettivo 1 2000-2006. That decision was challenged by the Regione Puglia and by Italy in Case T-84/10 ⁽¹⁾ and Case T-117/10 ⁽²⁾ respectively.

In support of its claims, the applicant puts forward the following pleas:

- Decision C(2009) 10350 of 22 December 2009 is unlawful, on the basis of the pleas in law and main arguments already relied on in Case T-84/10.
- Infringement of Article 7(2) of Commission Regulation (EC) No 448/2001 of 2 March 2001 laying down detailed rules for the implementation of Council Regulation (EC) No 1260/1999 as regards the procedure for making financial corrections to assistance granted under the Structural Funds, ⁽³⁾ which provides for the application of a rate of interest of 1,5 % above the rate applied by the European Central Bank in its main refinancing operations, since the contested debit note provides that the rate of interest to be charged is that published in the OJEU on 1 April 2010, increased by 3,5 %.

⁽¹⁾ OJ C 113, 1.5.10, p. 58.

⁽²⁾ Not yet published in the OJ.

⁽³⁾ OJ L 64, 6.3.2001, p. 13.

Action brought on 18 May 2010 — Banco Bilbao Vizcaya Argentaria v Commission

(Case T-225/10)

(2010/C 179/96)

Language of the case: Spanish

Parties

Applicant: Banco Bilbao Vizcaya Argentaria, SA (Bilbao, Spain) (represented by: J. Buendía Sierra, E. Abad Valdenebro, M. Muñoz de Juan and R. Calvo Salinero, lawyers)

Defendant: European Commission

Form of order sought

- Annulment of Article 1(1) of the contested decision in so far as it states that Article 12(5) TRLIS (Amended Law on Corporation Tax) contains elements of State aid;