Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

2 February 2023*

(Appeal – State aid – Article 107(1) TFEU – Tax regime applicable to certain finance lease agreements for the purchase of ships (Spanish tax lease system) – Condition relating to selectivity – Obligation to state reasons – Principle of the protection of legitimate expectations – Principle of legal certainty – Recovery of the aid)

In Joined Cases C-649/20 P, C-658/20 P and C-662/20 P,

THREE APPEALS under Article 56 of the Statute of the Court of Justice of the European Union, brought on 1 December and 3 December 2020,

Kingdom of Spain, represented by S. Centeno Huerta, A. Gavela Llopis, I. Herranz Elizalde and S. Jiménez García, acting as Agents,

appellant in Case C-649/20 P,

Lico Leasing SA, established in Madrid (Spain),

Pequeños y Medianos Astilleros Sociedad de Reconversión SA, established in Madrid,

represented by J.M. Rodríguez Cárcamo and A. Sánchez, abogados,

appellants in Case C-658/20 P,

Caixabank SA, established in Barcelona (Spain),

Asociación Española de Banca, established in Madrid,

Unicaja Banco SA, established in Malaga (Spain),

Liberbank SA, established in Madrid,

Banco de Sabadell SA, established in Sabadell (Spain),

Banco Bilbao Vizcaya Argentaria SA, established in Bilbao (Spain),

Banco Santander SA, established in Santander (Spain),

Santander Investment SA, established in Boadilla del Monte (Spain),

* Language of the case: Spanish.

Naviera Séneca AIE, established in Las Palmas de Gran Canaria (Spain),

Industria de Diseño Textil SA (Inditex), established in Arteixo (Spain),

Naviera Nebulosa de Omega AIE, established in Las Palmas de Gran Canaria,

Abanca Corporación Bancaria SA, established in Betanzos (Spain),

Ibercaja Banco SA, established in Saragossa (Spain),

Naviera Bósforo AIE, established in Las Palmas de Gran Canaria,

Joyería Tous SA, established in Lérida (Spain),

Corporación Alimentaria Guissona SA, established in Guissona (Spain),

Naviera Muriola AIE, established in Madrid,

Poal Investments XXI SL, established in San Sebastián de los Reyes (Spain),

Poal Investments XXII SL, established in San Sebastián de los Reyes,

Naviera Cabo Vilaboa C-1658 AIE, established in Madrid,

Naviera Cabo Domaio C-1659 AIE, established in Madrid,

Caamaño Sistemas Metálicos SL, established in Culleredo (Spain),

Blumaq SA, established in Vall de Uxó (Spain),

Grupo Ibérica de Congelados SA, established in Vigo (Spain),

RNB SL, established in La Pobla de Vallbona (Spain),

Inversiones Antaviana SL, established in Paterna (Spain),

Banco de Albacete SA, established in Boadilla del Monte,

Bodegas Muga SL, established in Haro (Spain), and

Aluminios Cortizo SAU, established in Padrón (Spain),

represented by E. Abad Valdenebro, J.L. Buendía Sierra, R. Calvo Salinero and A. Lamadrid de Pablo, abogados,

appellants in Case C-662/20 P,

supported by:

Decal España SA, established in Barcelona, represented by M.-J. Silva Sánchez, abogado,

intervener in Case C-662/20 P,

the other party to the proceedings being:

European Commission, represented by J. Carpi Badía, V. Di Bucci, É. Gippini Fournier and P. Němečková, acting as Agents,

defendant at first instance,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, D. Gratsias, M. Ilešič, I. Jarukaitis (Rapporteur) and Z. Csehi, Judges,

Advocate General: P. Pikamäe,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 15 June 2022,

after hearing the Opinion of the Advocate General at the sitting on 29 September 2022,

gives the following

Judgment

1 By their appeals, the Kingdom of Spain, Lico Leasing SA and Pequeños y Medianos Astilleros Sociedad de Reconversión ('PYMAR') SA, as well as Caixabank SA, Asociación Española de Banca, Unicaja Banco SA, Liberbank SA, Banco de Sabadell SA, Banco Bilbao Vizcaya Argentaria SA, Banco Santander SA, Santander Investment SA, Naviera Séneca AIE, Industria de Diseño Textil SA (Inditex), Naviera Nebulosa de Omega AIE, Abanca Corporación Bancaria SA, Ibercaja Banco SA, Naviera Bósforo AIE, Joyería Tous SA, Corporación Alimentaria Guissona SA, Naviera Muriola AIE, Poal Investments XXI SL, Poal Investments XXII SL, Naviera Cabo Vilaboa C-1658 AIE, Naviera Cabo Domaio C-1659 AIE, Caamaño Sistemas Metálicos SL, Blumaq SA, Grupo Ibérica de Congelados SA, RNB SL, Inversiones Antaviana SL, Banco de Albacete SA, Bodegas Muga SL and Aluminios Cortizo SAU (together 'Caixabank and Others') ask the Court to set aside the judgment of 23 September 2020, *Spain and Others* v *Commission* (T-515/13 RENV and T-719/13 RENV, EU:T:2020:434) ('the judgment under appeal'), by which the General Court dismissed the actions for annulment brought by the Kingdom of Spain, Lico Leasing and PYMAR against 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; 'the decision at issue').

I. Background to the dispute

2 Following complaints about the fact that the Spanish tax lease system as applied to certain finance lease agreements for the purchase of ships ('the STL system') enabled shipping companies to purchase ships built by Spanish shipyards at a 20% to 30% rebate, the European Commission initiated the formal investigation procedure under Article 108(2) TFEU, by Decision C(2011) 4494 final of 29 June 2011 (OJ 2011 C 276, p. 5).

3 In the course of that procedure, the Commission found that the STL system had been used, up to the date of adoption of that decision, in transactions involving the building by shipyards and the acquisition by shipping companies of sea-going vessels and the financing of those transactions by means of an ad hoc legal and financial structure organised by a bank. The STL system involved, for each ship order, a shipping company, a shipyard, a bank, a leasing company, an economic interest grouping (EIG) set up by that bank and investors who purchased shares in that EIG. The EIG would lease the ship from a leasing company as soon as construction of the ship began and would then charter it to the shipping company under a bareboat charter. That EIG would undertake to acquire the vessel at the end of the leasing contract while the shipping company would undertake to acquire it at the end of the bareboat charter contract. According to the decision at issue, it was a tax planning scheme intended to generate tax benefits for investors in a 'tax transparent' EIG and transfer part of those benefits to a shipping company in the form of a rebate on the price of that vessel.

4 The Commission found that the operations carried out under the STL system combined five measures provided for in a number of provisions of the Real Decreto Legislativo 4/2004, por el que se aprueba el texto refundido de la Ley del Impuesto sobre Sociedades (Royal Legislative Decree 4/2004 approving the consolidated version of the Law on Corporation Tax) of 5 March 2004 (BOE No 61 of 11 March 2004, p. 10951; the 'TRLIS'), and of Real Decreto 1777/2004, por el que se aprueba el Reglamento del Impuesto sobre Sociedades (Royal Decree 1777/2004 approving the Regulation on Corporation Tax) of 30 July 2004 (BOE No 189 of 6 August 2004, p. 37072; the 'RIS'). Those five measures were (i) the accelerated depreciation of leased assets under Article 115(6) of the TRLIS (the 'early depreciation'), (ii) the discretionary application of early depreciation under Article 48(4) and Article 115(11) of the TRLIS and Article 49 of the RIS, (iii) the provisions relating to EIGs, (iv) the tonnage tax scheme under Articles 124 to 128 of the TRLIS, and (v) the provisions of Article 50(3) of the RIS.

5 Under Article 115(6) of the TRLIS, the early depreciation of the leased asset started on the date on which that asset became operational, that is to say, not before it was delivered to, and started being used by, the lessee. However, pursuant to Article 115(11) of the TRLIS, the Ministry of Economic Affairs could, on a formal request by the lessee, set an earlier start date for the depreciation in question. Article 115(11) of the TRLIS imposed two general conditions for early depreciation. The specific conditions applicable to EIGs were set out in Article 48(4) of the TRLIS. The authorisation procedure under Article 115(11) of the TRLIS was set out in Article 49 of the RIS.

6 The tonnage tax scheme was authorised in 2002 as State aid compatible with the internal market by virtue of the Community guidelines on State aid to maritime transport of 5 July 1997 (OJ 1997 C 205, p. 5), as amended by Commission Communication C(2004) 43 (OJ 2004 C 13, p. 3) ('the Maritime Guidelines'), by Commission Decision C(2002) 582 final of 27 February 2002 concerning State aid N 736/2001 implemented by Spain – Scheme for the tonnage based taxation of shipping companies (OJ 2004 C 38, p. 4) (the 'Commission's decision of 27 February 2002 on tonnage based taxation'). Under that scheme, undertakings entered in one of the registers of

shipping companies which had obtained authorisation from the tax authority to that end are taxed, not on the basis of their profits and losses, but on the basis of their tonnage. Spanish legislation enables EIGs to be entered in one of those registers, even though they are not shipping companies.

7 Article 125(2) of the TRLIS established a special procedure for vessels already acquired at the time of entry into the tonnage tax scheme and for used vessels acquired when the undertaking was already benefiting from that scheme. Under the normal application of that scheme, potential capital gains were taxed on entry into that scheme and it was assumed that the taxation of capital gains, even though it was delayed, took place later on when the vessel was sold or dismantled. However, by way of derogation from that provision, Article 50(3) of the RIS provided that, when vessels were acquired through a call option as part of a leasing contract previously approved by the tax authorities, those vessels were deemed to be new and not used, within the meaning of Article 125(2) of the TRLIS, without taking into consideration whether they had already been depreciated, so that any capital gains were not taxed. That exception, which was not notified to the Commission, was only applied to specific leasing contracts approved by the tax authorities in the context of applications for early depreciation pursuant to Article 115(11) of the TRLIS, that is to say, in relation to newly built vessels that were leased and acquired through STL operations from – with one exception – Spanish shipyards.

8 By applying all of those measures, the EIG collected the tax benefits in two stages. In the first stage, early and accelerated depreciation of the cost of the leased vessel was applied under the ordinary corporate income tax system, which generated heavy tax losses for that EIG which, because of EIGs' tax transparency, were deductible from the investors' own revenues in proportion to their shares in that EIG. While that early and accelerated depreciation is usually offset later on by increased tax payments when that vessel is completely depreciated or when it is sold resulting in a capital gain, the tax savings resulting from the initial losses transferred to the investors were then safeguarded, in the second stage, as a result of the EIG's switchover to the tonnage tax scheme which allowed the full exemption of the capital gains resulting from the sale of that vessel to the shipping company.

9 Whilst it took the view that the STL scheme had to be characterised as a 'system', the Commission also examined each of the measures in question individually. By the decision at issue, the Commission decided that, among those measures, those resulting from (i) Article 115(11) of the TRLIS relating to early depreciation, (ii) the application of the tonnage tax scheme to non-eligible undertakings, vessels or activities, and (iii) Article 50(3) of the RIS (the 'tax measures at issue') constituted State aid to the EIGs and their investors, unlawfully put into effect by the Kingdom of Spain since 1 January 2002 in infringement of Article 108(3) TFEU. It declared that the tax measures at issue were incompatible with the internal market, except to the extent that the aid corresponded to a remuneration in conformity with the market for the intermediation of financial investors and that it was channelled to maritime transport companies eligible under the Maritime Guidelines. It decided that the Kingdom of Spain was obliged to put an end to the application of that aid scheme in so far as it was incompatible with the internal market and recover the incompatible aid from the EIG investors who had benefited from it, and that those recipients should not be able to transfer the burden of recovery of that aid to other persons.

10 However, the Commission decided that no recovery would take place in respect of aid granted as part of financing operations in respect of which the competent national authorities had undertaken to grant the benefit of the measures by a legally binding act adopted before 30 April 2007, the date of publication in the *Official Journal of the European Union* of

Commission Decision 2007/256/EC of 20 December 2006 on the aid scheme implemented by France under Article 39 CA of the General Tax Code – State aid C 46/04 (ex NN 65/04) (OJ 2007 L 112, p. 41) ('the decision on the French *GIE fiscaux*').

II. Proceedings prior to the appeals and the judgment under appeal

11 By separate applications lodged at the Registry of the General Court on 25 September and 30 December 2013, the Kingdom of Spain, on the one hand, and Lico Leasing and PYMAR, on the other, brought an action for annulment of the decision at issue. The two cases were joined for the purposes of the judgment.

12 By judgment of 17 December 2015, *Spain and Others* v *Commission* (T-515/13 and T-719/13, EU:T:2015:1004), the General Court annulled the decision at issue.

13 By application lodged at the Registry of the Court of Justice on 29 February 2016, the Commission brought an appeal against that judgment of the General Court. In the context of that appeal, Bankia SA, which has since been taken over by Caixabank, and 33 other entities were, by order of the President of the Court of 21 December 2016, *Commission* v *Spain and Others* (C-128/16 P, not published, EU:C:2016:1007), granted leave to intervene in support of the form of order sought by Lico Leasing and PYMAR.

14 By judgment of 25 July 2018, *Commission* v *Spain and Others* (C-128/16 P, EU:C:2018:591), the Court of Justice set aside the judgment of the General Court, referred the cases back to it, reserved the costs and held that the interveners in the appeal had to bear their own costs.

15 Following that referral, the General Court, by the judgment under appeal, dismissed the actions. In that judgment, the General Court rejected the applicants' plea alleging infringement of Article 107(1) TFEU relating to the selectivity of the STL system, holding, in essence, that the existence of a broad discretion of the tax authority to authorise early depreciation was sufficient to consider that the STL system as a whole was selective. The General Court also rejected the pleas alleging failure to state reasons for the decision at issue, infringement of the principle of equal treatment, infringement of the principles of the protection of legitimate expectations and legal certainty and of the principles applicable to recovery of the aid. As regards the latter, it found that the Commission had not erred in law in ordering the recovery of all the aid at issue from the investors, even though part of the advantage concerned had been transferred to third parties.

III. Procedure before the Court and forms of order sought

16 By order of the President of the Court of 2 August 2021, Decal España SA was granted leave to intervene in support of the form of order sought by Caixabank and Others in Case C-662/20 P.

17 After hearing the parties and the Advocate General, the Court decided to join Cases C-649/20 P, C-658/20 P and C-662/20 P for the purposes of the oral part of the procedure and the judgment, in accordance with Article 54 of the Rules of Procedure of the Court of Justice.

18 By their appeals, the Kingdom of Spain, Lico Leasing and PYMAR, as well as Caixabank and Others, supported by Decal España, claim that the Court should set aside the judgment under appeal, annul the decision at issue and order the Commission to pay the costs.

19 The Commission contends that the appeal in Case C-662/20 P should be dismissed as inadmissible and, in the alternative, as unfounded, and the appeals in Cases C-649/20 P and C-658/20 P should be dismissed. It also requests that the Kingdom of Spain, Lico Leasing, PYMAR, Caixabank and Others, and Decal España be ordered to pay the costs.

IV. Consideration of the appeals

A. Admissibility of the appeal in Case C-662/20 P

20 While Caixabank and Others claim that the General Court was fully entitled to grant them leave to intervene in the referral proceedings and that their appeal is therefore admissible, the Commission is of the opinion that, besides the fact that they have not shown how the judgment under appeal affects them directly, they are not 'interveners' within the meaning of the second sentence of the second paragraph of Article 56 of the Statute of the Court of Justice of the European Union, and are not entitled to bring an appeal, since they do not have the status of 'interveners' in Case T-719/13 RENV.

21 Consequently, the General Court, in paragraph 65 of the judgment under appeal, in infringement of Article 217 of its Rules of Procedure, erred in law by granting them the status of interveners even though they had never applied for leave to intervene before that court and that article unequivocally limits the parties entitled to lodge observations in the proceedings following the referral of a case by the Court of Justice to those who were 'parties to the proceedings before the General Court'.

22 In that regard, the General Court held, in paragraph 65 of the judgment under appeal, that, since the Court of Justice had referred the cases back to it in order for it to examine certain pleas which raise legal issues of interest to Bankia and 32 other entities as well as Aluminios Cortizo, it was in the interests of the sound administration of justice to give the interveners before the Court of Justice leave to intervene in the proceedings referred back to the General Court in order to ensure that the dispute being heard by the General Court is properly dealt with and to promote the continuation of the debate. The General Court rejected the Commission's argument alleging infringement of Article 217(1) of its Rules of Procedure, holding that the wording of that provision was not necessarily an obstacle to that intervention, since it does not define 'parties to the proceedings before the General Court' and does not preclude interveners before the Court of Justice from acquiring that status, as such, in the context of a case that has been referred back to the General Court.

23 In doing so, the General Court did not err in law. As the Court of Justice held in paragraph 124 of the order of 1 August 2022, *Soudal and Esko-Graphics* v *Magnetrol and Commission* (C-74/22 P(I) EU:C:2022:632), it must be held that Article 40 of the Statute of the Court of Justice of the European Union, respect for the procedural rights guaranteed to interveners by the Rules of Procedure of the General Court and the principle of the proper administration of justice require, in the context of a coherent articulation of the procedures before the Court and the General Court, that an intervener in the appeal automatically enjoy the status of intervener before the General Court, where a case is referred back to that court following the annulment by the Court of Justice of a decision of the General Court.

24 Accordingly, contrary to what the Commission maintains, Caixabank and Others had the status of interveners before the General Court and are, under the second sentence of the second paragraph of Article 56 of the Statute of the Court of Justice of the European Union, entitled to bring an appeal against the judgment under appeal if that judgment directly affects them.

25 It follows from the case-law of the Court, in that respect, that an appellant who is likely to have to refund a sum pursuant to the judgment of the General Court must be considered to be directly affected by that judgment (judgment of 26 October 2016, *DEI and Commission* v *Alouminion tis Ellados*, C-590/14 P, EU:C:2016:797, paragraph 24 and the case-law cited).

26 It is common ground that, in order to comply with the judgment under appeal, which dismissed the actions brought by the appellants before the General Court seeking annulment of the decision at issue, Caixabank and Others may have to repay the aid which they received, to which that decision relates. Consequently, Caixabank and Others must be regarded as directly affected by that judgment. Their appeal is therefore admissible.

B. The grounds of appeal relating to the selectivity of the STL system

27 By the second ground of appeal in Case C-649/20 P and the first ground of appeal in Cases C-658/20 P and C-662/20 P, the Kingdom of Spain, Lico Leasing, PYMAR and Caixabank and Others, supported by Decal España, complain that the General Court infringed Article 107(1) TFEU as regards the selectivity of the STL system.

1. Admissibility

28 The Commission contends that those grounds are inadmissible in that they extend the scope of the dispute. The Kingdom of Spain, Lico Leasing and PYMAR did not, in their applications, put forward any pleas relating to the selectivity of the STL system and, in particular, did not argue before the General Court that the decision at issue was vitiated by an error of law based on the Commission's failure to examine the selectivity of that system by reference to the three-step method of analysis referred to in paragraphs 83 and 97 of the judgment under appeal, consisting, for the purposes of assessing whether a national tax measure is selective, of (i) identifying the ordinary tax regime, (ii) determining whether the measure concerned is selective by verifying whether it derogates from that ordinary tax regime by differentiating between operators who are in a comparable legal and factual situation, and (iii) examining whether the Member State has established that that measure was justified by the nature or overall structure of the system of which it formed part (the 'three-step method of analysing the selectivity of aid').

29 According to settled case-law, the jurisdiction of the Court of Justice when examining an appeal is limited to the legal review of findings made in relation to the pleas and arguments debated before the General Court. A party cannot, therefore, put forward for the first time before the Court of Justice a plea in law which it has not raised before the General Court since that would allow that party to bring before the Court of Justice, whose jurisdiction in appeal proceedings is limited, a wider case than that heard by the General Court (judgment of 6 October 2021, *Sigma Alimentos Exterior* v *Commission*, C-50/19 P, EU:C:2021:792, paragraph 38 and the case-law cited).

30 That said, an appellant is entitled to lodge an appeal relying, before the Court of Justice, on grounds and arguments which arise from the judgment under appeal itself and seek to criticise, in law, its correctness (judgment of 6 October 2021, *Sigma Alimentos Exterior* v *Commission*, C-50/19 P, EU:C:2021:792, paragraph 39 and the case-law cited).

31 In the present case, the appellants claim that the General Court erred in law in rejecting the plea alleging infringement of Article 107(1) TFEU relating to the selectivity of the STL system, failing to apply the three-step method of analysing the selectivity of aid. Thus, in so far as the second ground of appeal in Case C-649/20 P and the first ground of appeal in Cases C-658/20 P and C-662/20 P call into question the legal conclusions drawn by the General Court from its own finding on a plea argued before it, those second and first grounds of appeal cannot be regarded as changing the subject matter of the proceedings before the General Court.

32 The second and first grounds of appeal are therefore admissible.

2. Substance

33 By their grounds of appeal, the appellants complain that the General Court (i) failed to apply the three-step method of analysing the selectivity of aid, (ii) erred in law in finding that the STL system was selective on the ground that the tax authority had discretionary powers to authorise early depreciation, (iii) erred in law by failing to compare the situation of undertakings benefiting from the STL system and the situation of those excluded from it, and (iv) examined the selectivity of the STL system in the light of a single measure of that system rather than in the light of the STL system as a whole.

(a) The complaint relating to the failure to apply the three-step method of analysing the selectivity of aid

(1) Arguments of the parties

34 The appellants complain that the General Court failed to apply the three-step method of analysis required by the Court of Justice to assess the selectivity of aid, by omitting to identify the ordinary tax system, to determine whether the STL system was selective by verifying whether it derogated from that ordinary tax system in that it differentiated between operators in a comparable factual and legal situation and to examine whether the Member State had established that it was justified by the nature or general scheme of the system of which it formed part.

35 In that regard, in its first ground of appeal, the Kingdom of Spain submits that the General Court infringed the finding of the Court of Justice in paragraph 71 of the judgment of 25 July 2018, *Commission* v *Spain and Others* (C-128/16 P, EU:C:2018:591).

36 Caixabank and Others maintain that, after finding that the Commission had not applied the three-step method of analysing the selectivity of aid in the decision at issue, the General Court avoided drawing legal conclusions therefrom by misinterpreting recital 156 of that decision. It stated, in paragraph 87 of the judgment under appeal, that the Commission had based the existence of selectivity of the STL system on two alternative lines of reasoning, that is to say on the fact that the tax authority had discretionary powers and that the STL system was sectoral,

whereas, in actual fact, the Commission had presented those two factors not as two alternative lines of reasoning, but as the inseparable parts of a single line of reasoning. Consequently, by substituting its own reasoning for that of that decision, the General Court erred in law.

37 The Commission takes the view that that complaint is unfounded.

(2) Findings of the Court

38 In the first place, it should be observed that, in paragraph 46 of the judgment of 25 July 2018, *Commission* v *Spain and Others* (C-128/16 P, EU:C:2018:591), the Court found that, by not acknowledging that the EIGs were beneficiaries of the tax measures at issue on the ground that those entities were 'fiscally transparent', the General Court had erred in law.

39 In paragraph 58 of that judgment, the Court of Justice held that the considerations which led the General Court to find fault with the Commission's assessment were based on the incorrect premiss that only the investors, and not the EIGs, could be regarded as the beneficiaries of the advantages arising from the tax measures at issue. Therefore, the Court of Justice held that, in failing to examine whether the system for authorising early depreciation conferred on the tax authority a discretionary power such as to favour the activities carried on by the EIGs involved in the STL system or having the effect of favouring such activities, the General Court had erred in law.

40 Furthermore, in paragraph 67 of the judgment of 25 July 2018, *Commission* v *Spain and Others* (C-128/16 P, EU:C:2018:591), the Court of Justice stated, in response to a plea raised by the Commission, that the same incorrect premiss underpinned the General Court's assessment that the advantages obtained by the investors who had participated in the STL operations could not be considered to be selective since those operations were open, on the same terms, to any undertaking without distinction. Moreover, the Court added, in paragraphs 68 to 71 of that judgment, that that assessment amounted to, in the light of the judgment of 21 December 2016, *Commission* v *World Duty Free Group and Others* (C-20/15 P and C-21/15 P, EU:C:2016:981), an error of law since the General Court had not looked into whether the Commission had established whether the tax measures at issue introduced, through their actual effects, differences in the treatment of operators, although the operators who qualified for the tax advantages and those who did not were, in the light of the objective pursued by that tax system, in a comparable factual and legal situation.

41 It is apparent from those paragraphs of the judgment of 25 July 2018, *Commission* v *Spain and Others* (C-128/16 P, EU:C:2018:591), that the Court of Justice, contrary to what the Kingdom of Spain claims, did not require, in the present case, a three-step analysis of the selectivity of the STL system to be carried out and that, by contrast, it requested the General Court to examine whether the procedure for authorising early depreciation conferred on the tax authority a discretionary power such as to favour the activities carried on by the EIGs involved in the STL system or having the effect of favouring such activities.

42 The Kingdom of Spain's argument that the General Court, in the judgment under appeal, infringed the findings of the Court in the judgment of 25 July 2018, *Commission* v *Spain and Others* (C-128/16 P, EU:C:2018:591), is therefore unfounded.

43 In the second place, it should be noted that the General Court, in paragraph 87 of the judgment under appeal, found that the Commission did not, at least explicitly, in the decision at issue, conduct the three-step analysis of the selectivity of the STL system but that, in recital 156 of that decision, the Commission had stated that the STL system, considered as a whole, was selective because, first, the tax authority had discretionary powers to authorise early depreciation on the basis of imprecise conditions and, secondly, because the tax authority would only authorise STL operations to finance sea-going vessels. In that paragraph of that judgment, the General Court also noted that the Commission had stated at the hearing that the fact that the tax authority had discretionary powers to grant authorisation was in itself sufficient to make the entire STL system selective.

44 While, in that paragraph of the judgment under appeal, the General Court did not faithfully reproduce the wording of recital 156 of the decision at issue, which does not include the words 'first' and 'secondly', which might suggest that the assessment of the selectivity of the STL system carried out by the Commission was based on two different lines of reasoning, the fact remains that, in that recital, the Commission stated that 'the advantage [was] selective because it [was] subject to the discretionary powers conferred on the tax administration by the compulsory prior authorisation procedure and by the imprecise wording of the conditions applicable to early depreciation' and that 'since other measures applicable only to maritime transport activities eligible under the Maritime Guidelines … [were] dependent on that prior authorisation, the whole STL system [was] selective'. The Commission added that 'as a result, the tax administration would only authorise STL operations to finance sea-going vessels (sectoral selectivity)'.

45 It follows that although, admittedly, the Commission referred to the existence of sectoral selectivity, the Commission did indeed rely, in the decision at issue, on the fact that the tax authority had discretionary powers in order to find that the entire STL system was selective. Consequently, contrary to the claims of Caixabank and Others, the General Court did not misinterpret that decision nor did it substitute its reasoning for that set out in the decision.

46 In the third place, it should be recalled that, so far as concerns the condition relating to the selectivity of the advantage, which is a constituent factor in the concept of 'State aid' within the meaning of Article 107(1) TFEU, since that provision prohibits aid 'favouring certain undertakings or the production of certain goods', it is clear from the Court's settled case-law that the assessment of that condition requires it to be determined whether, under a particular legal regime, a national measure is such as to favour 'certain undertakings or the production of certain goods' over others which, in the light of the objective pursued by that regime, are in a comparable factual and legal situation (judgment of 21 December 2016, *Commission* v *Hansestadt Lübeck*, C-524/14 P, EU:C:2016:971, paragraph 41 and the case-law cited).

47 Where the measure at issue is conceived as an aid scheme and not as individual aid, it is for the Commission to establish that that measure, although it confers an advantage of general application, confers the benefit of that advantage exclusively on certain undertakings or certain sectors of activity (see, to that effect, judgment of 21 December 2016, *Commission* v *World Duty Free Group and Others*, C-20/15 P and C-21/15 P, EU:C:2016:981, paragraph 55).

48 As the Advocate General observed in point 47 of his Opinion, the three-step method of analysing the selectivity of aid, invoked by the appellants, was designed in order to reveal the concealed selectivity of advantageous tax measures that are apparently available to any undertaking. By contrast, it is not relevant to an examination of the selectivity of an advantageous tax measure,

the granting of which depends on the discretionary powers of the tax authority and which, therefore, cannot be considered to be general in nature (see, to that effect, judgment of 29 June 1999, *DM Transport*, C-256/97, EU:C:1999:332, paragraph 27).

49 It follows that Caixabank and Others' argument that the General Court did not draw legal conclusions from its finding that the Commission had not applied, in the decision at issue, the three-step method of analysing the selectivity of aid is unfounded and that the complaint relating to such an omission must be rejected.

(b) The complaints relating to the discretionary powers of the tax authority, the failure to examine the comparability of the situations and the failure to examine the selectivity of the STL system as a whole

(1) Arguments of the parties

50 By those complaints, which it is appropriate to examine together, the appellants complain, in the first place, that the General Court, in paragraphs 88 to 100 of the judgment under appeal, considered that the tax authority had discretionary powers to grant early depreciation. The General Court's reasoning is, in that regard, erroneous and contrary to the case-law of the Court of Justice.

51 In particular, the appellants submit that the General Court erred in law in making a distinction between '*de jure* selectivity' and 'de facto selectivity' and, thus, failed to examine whether, in fact, the exercise of the authority's powers had actually led to unjustified favourable treatment of certain operators in comparison with others which are in a comparable situation. In any event, the General Court did not mention any regulatory provision or administrative practice that indicates that the measure concerned specifically benefited the EIGs. In short, the distinction between '*de jure* selectivity' and 'de facto selectivity' leads to a reversal of the burden of proof, in that such a distinction would have the effect of releasing the Commission from its obligation to demonstrate that the tax scheme is selective on account of its effects.

52 The General Court was also wrong to classify the STL system as 'selective' on the ground that the tax authority was entitled to carry out an assessment of applications seeking to take advantage of early depreciation. In so doing, the General Court thus failed to have regard to the fact that the existence of discretionary powers of the tax authority does not give rise to a presumption that the measure in question is selective and there was confusion on the part of the General Court between the discretionary nature of a decision of that authority and the assessment of the documents provided by the economic operators that is to be carried out by that authority in the exercise of its administrative powers.

53 The authorisation scheme for early depreciation was based on objective criteria which did not allow the tax authority to choose the beneficiaries and enabled the prevention of fraud or abuse, which is a specific objective inherent in the tax system in question. In that regard, the General Court was wrong to hold, in paragraph 97 of the judgment under appeal, that Article 49(6) of the RIS did not ensure that it applied only in anti-fraud situations.

54 In the second place, the appellants complain that the General Court concluded, in paragraph 101 of the judgment under appeal, that the STL system was selective as a whole, even though it examined only one of the measures of which it is composed and did not therefore carry out an analysis of the other measures and the effects which they produced together.

55 In the third place, the Kingdom of Spain and Caixabank and Others submit that the General Court erred in law, in paragraph 100 of the judgment under appeal, by failing to compare the factual and legal situations of the undertakings to which the benefit of the STL system was granted and those of the undertakings which were excluded from it.

56 The Commission considers that those complaints are unfounded.

(2) Findings of the Court

57 It should be noted that the General Court correctly pointed out, in paragraph 88 of the judgment under appeal, that the mere existence of a system of authorisation does not imply that a measure is selective and that that is the case where the degree of latitude of the competent authorities is limited to verifying the conditions laid down in order to pursue an identifiable tax objective and the criteria to be applied by those authorities are inherent in the nature of the tax regime (see, to that effect, judgment of 18 July 2013, *P*, C-6/12, EU:C:2013:525, paragraphs 23 and 24). It also rightly pointed out that, on the other hand, where the competent authorities have a broad discretion to determine the beneficiaries of the measure or the conditions under which it is granted, the exercise of that discretion must be regarded as favouring certain undertakings or the production of certain goods in comparison with others apparently in a comparable factual and legal situation in the light of the objective pursued (see, to that effect, judgment of 18 July 2013, *P*, C-6/12, EU:C:2013:525, paragraph 27).

58 In paragraphs 89 to 93 of the judgment under appeal, the General Court held, in the light of Article 115 of the TRLIS and Article 49 of the RIS, that, as the Commission had observed in the decision at issue, the authorisation system at issue was based on obtaining prior authorisation – as opposed to merely notifying the authority – on the basis of vague criteria requiring interpretation by the tax authority, which had not published any guidelines and those criteria could therefore not be regarded as objective. It found, in particular, that it emerged from Article 115(11) of the TRLIS that the tax authority could set the start date for the depreciation having regard to the 'specific characteristics of the [duration]' of the contract or the 'specific nature of [the economic use of the asset]', which were inherently vague criteria whose interpretation gave the tax authority a significant discretion, as the Commission highlighted in recital 133 of the decision at issue.

59 The General Court found, in paragraph 94 of the judgment under appeal, that Article 49 of the RIS also conferred important discretionary powers on the tax authority, allowing it, first, to request all the information and documents it deemed appropriate, including information on the positive implications of the shipbuilding contracts for the economy and jobs in Spain, which were not obviously relevant to satisfaction of the criteria under Article 115(11) of the TRLIS, and, secondly, to grant or reject the authorisation, but also to set a different start date for the depreciation from that proposed by the taxpayer, without further clarification.

60 In paragraph 97 of the judgment under appeal, the General Court noted that, to that extent, the wording of Article 49 of the RIS did not ensure that it was used only in anti-fraud situations.

61 In paragraph 100 of the judgment under appeal, the General Court concluded that the presence of discretionary factors was such as to favour beneficiaries over other taxpayers in a comparable factual and legal situation and that, specifically, it could be seen from those discretionary factors that other EIGs might not have benefited from the early depreciation under the same conditions and, similarly, because of those discretionary factors, other undertakings in a comparable factual and legal situation but engaged in other sectors or having a different form might not necessarily have benefited from it under the same circumstances. The General Court considered that, since the provisions under consideration were discretionary as a matter of law, it was irrelevant whether or not they were actually applied in a discretionary manner.

62 Lastly, in paragraph 101 of the judgment under appeal, the General Court held that, since one of the measures making it possible to benefit from the STL system as a whole was selective, that is to say, authorisation of the early depreciation, the Commission did not err when it found that the tax system at issue was selective as a whole.

63 In that regard, it should be noted, in the first place, that, contrary to what the appellants claim, the General Court was not required, in order to assess whether the power of the tax authority to authorise the early depreciation was discretionary, to examine whether, in practice, the exercise of that discretion had in fact led to unjustified favourable treatment of certain operators by comparison with others which are in a comparable situation. As the Advocate General noted in point 68 of his Opinion, in relation to an aid scheme, the Commission must perform the examination of that scheme with reference to the time of adoption of the scheme in question and by carrying out an *ex ante* analysis. The Commission need only demonstrate that the tax scheme at issue is such as to favour its beneficiaries, by ascertaining that the scheme, taken as a whole, is, given its particular characteristics, capable of resulting, at the time of its adoption, in the tax liability being lower than it would have been if the general tax regime had been applied (see, to that effect, judgment of 4 March 2021, *Commission* v *Fútbol Club Barcelona*, C-362/19 P, EU:C:2021:169, paragraphs 86 and 87).

64 Consequently, the General Court did not err in law in holding, in paragraph 100 of the judgment under appeal, that, since the national provisions were discretionary as a matter of law, it is irrelevant whether or not they were actually applied in a discretionary manner.

65 It must be borne in mind, in the second place, that, according to the case-law of the Court, with respect to the analysis, in the context of an appeal, of the General Court's determinations on national law, the Court of Justice has jurisdiction only to determine whether that law was distorted, which must be obvious from the documents on the Court's file, without there being any need to carry out a new assessment of the facts and the evidence (see, to that effect, judgments of 5 July 2011, *Edwin* v *OHIM*, C-263/09 P, EU:C:2011:452, paragraph 53; of 9 November 2017, *TV2/Danmark* v *Commission*, C-649/15 P, EU:C:2017:835, paragraphs 49 and 50; and of 20 December 2017, *Comunidad Autónoma de Galicia and Retegal* v *Commission*, C-70/16 P, EU:C:2017:1002, paragraph 72).

66 The appellants do not invoke any such distortion of national law. Indeed, they have neither claimed nor established that the General Court developed reasoning running manifestly counter to the content of the provisions of national law or ascribed to one of those provisions a scope that it manifestly does not have in the light of other material in the file (see, by analogy, judgment of 21 December 2016, *Commission* v *Hansestadt Lübeck*, C-524/14 P, EU:C:2016:971, paragraph 21).

67 It follows that the appellants' arguments seeking to show that, contrary to what the General Court held, the authorisation scheme for early depreciation was based on objective criteria which did not allow the tax authorities to choose the beneficiaries, as well as the assertion that the General Court wrongly held that Article 49 of the RIS did not ensure that it applied only in anti-fraud situations, must be rejected as inadmissible.

68 Moreover, it follows from paragraphs 57 and 63 of this judgment that the General Court was not required, in order to assess the selectivity of the STL system, to examine whether the factual and legal situation of undertakings to which the benefit of that measure was granted and that of the undertakings which were excluded from it were comparable, but it had to assess whether that measure was such as to favour certain undertakings over others which were in a comparable factual and legal situation, which is the case where the competent authorities have a broad discretionary power to determine its beneficiaries and its conditions.

69 Therefore, since the General Court ruled, in its assessment of national law, that that law conferred on the tax authority, for the reasons summarised in paragraphs 58 and 59 of the present judgment, a broad discretion to authorise early depreciation, it did not err in law in holding, in paragraph 100 of the judgment under appeal, that the presence of the discretionary factors of that scheme was such as to favour the beneficiaries over other taxpayers in a comparable factual and legal situation and in finding that the measure was selective.

70 In the third place, as regards the question of whether the STL system can be regarded as selective as a whole, it should be borne in mind that, in the decision at issue, after having examined the selectivity of each of the measures comprising the STL system, the Commission took the view, in recital 156 of that decision, that the advantage conferred by the STL system was selective in that it was subject to the discretionary powers of the tax authority under the prior authorisation procedure for early depreciation and in that other measures comprising the STL system, namely the tonnage tax scheme and the non-taxation of capital gains, were dependent on prior authorisation by that authority.

71 First, it does not appear that the appellants challenged before the General Court the fact that the tonnage tax scheme and the non-taxation of capital gains depended on the tax authority's prior authorisation to proceed with early depreciation. Secondly, the appellants do not claim that the General Court misinterpreted national law in finding that authorisation of early depreciation made it possible to benefit from the STL system as a whole.

72 Therefore, the General Court was fully entitled to conclude that the Commission had not erred in finding that early depreciation made the STL system selective as a whole.

73 It follows that the complaints relating to the discretionary powers of the tax authority, the failure to examine the comparability of the situations and the failure to examine the selectivity of the STL system as a whole must be rejected as unfounded.

74 Consequently, the second ground of appeal in Case C-649/20 P and the first ground of appeal in Cases C-658/20 P and C-662/20 P must be rejected as unfounded.

C. The grounds of appeal relating to the principles of the protection of legitimate expectations and legal certainty

75 By the third ground of appeal in Case C-649/20 P, the second and third grounds of appeal in Case C-658/20 P and the second ground of appeal in Case C-662/20 P, raised in the alternative and which it is appropriate to examine in the second place, the Kingdom of Spain, Lico Leasing and PYMAR, and Caixabank and Others claim that the General Court erred in law in the application of the principle of the protection of legitimate expectations and the principle of legal certainty.

1. Arguments of the parties

76 The Kingdom of Spain complains that the General Court distorted its argument that the Commission's conduct had contributed to making the regulatory framework unstable in that it had allowed operators to believe that the STL system was compatible with EU law, by carrying out a separate analysis of those two principles which it had nonetheless relied on in the context of a single plea. The General Court thus examined certain aspects relied on in the light of the principle of the protection of legitimate expectations and other aspects in the light of the principle of legal certainty instead of examining all of them in the light of those two principles, which led to inconsistencies in the reasoning in paragraphs 163, 164, 168, 199 and 201 of the judgment under appeal, with regard in particular to the decision on the French *GIE fiscaux*, the period that elapsed until the investigation procedure was opened, the tonnage tax scheme and a letter from the Commissioner in charge of the Directorate-General (DG) for 'Competition' of 9 March 2009 (the 'letter of the Commissioner for DG Competition'). Moreover, the General Court's findings in relation to each of those points are incorrect.

77 Lico Leasing and PYMAR take issue with the General Court for having misinterpreted, in paragraph 174 of the judgment under appeal, the letter of the Commissioner for DG Competition of 9 March 2009. They complain, in particular, that the General Court failed to mention two paragraphs of that letter, which, in their view, are essential in order to understand its full significance.

78 Lico Leasing and PYMAR also complain that the General Court incorrectly classified, in paragraphs 199 and 201 of the judgment under appeal, certain facts in the context of the examination of the plea relating to the principle of legal certainty as regards the decision on the French *GIE fiscaux* and the letter of the Commissioner for DG Competition of 9 March 2009.

79 Caixabank and Others, supported by Decal España, maintain that the General Court erred in law in rejecting, in paragraph 166 of the judgment under appeal, the Kingdom of Spain's argument that the recovery of the aid ordered in the decision at issue infringed the principle of the protection of legitimate expectations, in view of the Commission's decision of 27 February 2002 on tonnage based taxation. The reason put forward by the General Court, namely the alleged financial nature of the EIGs' activities, conflicts with the Court of Justice's classification of those activities in the judgment of 25 July 2018, *Commission* v *Spain and Others* (C-128/16 P, EU:C:2018:591). In addition, the General Court's reasoning is flawed and, in any event, inadequate, since the EIGs are undertakings performing an economic activity in the maritime transport sector, the Commission having acknowledged on several occasions that the chartering of bareboat vessels was a shipping activity and accepted its inclusion in various tonnage schemes it has authorised.

80 The Commission takes the view that the arguments put forward by the applicants are, in some cases, inadmissible and, in others, unfounded.

2. Findings of the Court

81 In the first place, it should be borne in mind that, as the General Court noted in paragraph 158 of the judgment under appeal, the right to rely on the principle of the protection of legitimate expectations applies to any individual in a situation in which an EU institution, by giving that person precise assurances, has led him or her to entertain well-founded expectations. Such assurances, in whatever form they are given, constitute precise, unconditional and consistent information (judgment of 16 December 2010, *Kahla Thüringen Porzellan* v *Commission*, C-537/08 P, EU:C:2010:769, paragraph 63). As for the principle of legal certainty, which is a general principle of EU law, it is designed to ensure the foreseeability of situations and legal relationships governed by EU law and requires any act of the administration which produces legal effects to be clear and precise, so that those concerned may be able to ascertain unequivocally what their rights and obligations are and may take steps accordingly (see, to that effect, judgment of 3 June 2008, *Intertanko and Others*, C-308/06, EU:C:2008:312, paragraph 69 and the case-law cited).

82 As the General Court also observed, in essence, in paragraphs 155, 156 and 193 of the judgment under appeal, it is only in exceptional circumstances that, in order to oppose the recovery of State aid which was not granted in compliance with the procedure laid down in Article 108 TFEU, a legitimate expectation that such State aid is lawful or that the principle of legal certainty has been infringed may be relied on (see, to that effect, judgments of 22 April 2008, *Commission* v *Salzgitter*, C-408/04 P, EU:C:2008:236, paragraph 107, and of 13 June 2013, *HGA and Others* v *Commission*, C-630/11 P to C-633/11 P, EU:C:2013:387, paragraph 134).

83 Since the principle of the protection of legitimate expectations and the principle of legal certainty are two separate principles, it should be noted that it was open to the General Court to examine separately the Kingdom of Spain's arguments relating to those principles, even though they were presented together by the Kingdom of Spain. Such a separate examination of the arguments relied on does not in itself constitute a distortion of those arguments and cannot be criticised if it does not lead to a failure to reply to them. The Kingdom of Spain, which considers that that separate examination led to inconsistencies in the reasoning followed by the General Court in rejecting its plea, does not claim that the General Court failed to respond to its arguments.

84 In the second place, as regards the inconsistencies in the reasoning of the General Court invoked by the Kingdom of Spain, it should be recalled that, in recital 261 of the decision at issue, the Commission considered that, in view of the complexity of the tax measures at issue, it could not rule out that legal uncertainty may have been created by Commission Decision 2002/15/EC of 8 May 2001 concerning State aid implemented by France in favour of the Bretagne Angleterre Irlande company ('BAI' or 'Brittany Ferries') (OJ 2002 L 12, p. 33) ('the Brittany Ferries decision'), regarding the classification of the STL system as aid, but this could only have been the case up to the publication of the decision on the French *GIE fiscaux* in the *Official Journal* on 30 April 2007.

85 To reject the arguments of the Kingdom of Spain, Lico Leasing and PYMAR seeking annulment of the order for recovery of the aid at issue for the period up to the publication of the decision opening the formal investigation procedure on 21 September 2011, the General Court, in the paragraphs of the judgment under appeal to which the appeals relate, and, to begin with, in paragraph 163 of that judgment, stated that the Brittany Ferries decision and the decision on the

French *GIE fiscaux* could not, in the present case, be considered to offer precise, unconditional and consistent assurances because they did not mention the STL system, either directly or indirectly.

86 In paragraph 164 of the judgment under appeal, the General Court rejected the argument based on the Commission's request for information from the Spanish authorities on 21 December 2001 because that request and any subsequent inaction by the Commission for a given period did not amount to precise, unconditional and consistent assurances that the STL system was lawful. It considered that, first, in that request for information, the Commission had merely sought additional information about the possible existence of a tax leasing scheme applicable to vessels in Spain so that it could examine that scheme in the light of the State aid rules and, secondly, that the Commission's subsequent inaction cannot amount to precise, unconditional and consistent assurances, in the light of the content of the response from the Spanish authorities.

87 In paragraph 166 of the judgment under appeal, the General Court held that the Commission's decision of 27 February 2002 on tonnage based taxation, which had found that scheme to be compatible with the internal market, could not give rise to a legitimate expectation because it related to the operation of vessels owned or leased by the operators, not to financial activities relating to bareboat chartering.

88 In paragraph 168 of the judgment under appeal, the General Court observed that Commission Decision 2005/122/EC of 30 June 2004 on the State aid which the Netherlands is planning to implement in favour of four shipyards to support six shipbuilding contracts (OJ 2005 L 39, p. 48) did not provide precise, unconditional and consistent assurances that the STL system was lawful, because, in essence, first, the Commission had not, in that decision, stated precisely, unconditionally and consistently that, after carrying out a full in-depth analysis, it had reached the conclusion that the STL system was not State aid and, secondly, the subject of that decision was not the STL system, but a Dutch scheme.

89 In paragraph 169 of the judgment under appeal, so far as concerns the letter of the Commissioner for DG Competition of 9 March 2009, the General Court noted that that letter had been sent in response to the Minister for Trade and Industry of the Kingdom of Norway, who, after suggesting that the STL system was an aid scheme benefiting the Spanish shipyards, had requested information about the actions which the Commission intended to take in that regard. It observed that, in her reply, that Commissioner had stated that the Commission had examined the matter and that, since the system was open on a non-discriminatory basis to the acquisition of vessels built by shipyards in other Member States, it did not envisage adopting any further measures 'at that stage'. However, in paragraph 174 of that judgment, the General Court considered that that letter did not provide precise, unconditional and consistent assurances, since it did not state in that manner that, after carrying out a full and in-depth analysis, the Commission had reached the conclusion that the STL system was not State aid.

90 In paragraph 199 of the judgment under appeal, the General Court noted, as regards the effects of the publication of the decision on the French *GIE fiscaux* in April 2007, that the Commission was quite correct to find that that decision had ended any legal uncertainty since it should have caused any prudent and alert economic operator to realise that a regime similar to the STL system could be State aid. In this respect, it observed that it was apparent from the decision on the French *GIE fiscaux* that a system for the construction of sea-going vessels and the transfer of those vessels to shipping companies, through EIGs and using leasing contracts, which gave rise to a number of tax advantages, could amount to a State aid scheme. It added that, while it was true that the scheme at

issue in the decision on the French *GIE fiscaux* was not identical to the STL system, there was nothing to suggest that the differences between them were more marked than those between the STL system and the scheme at issue in the Brittany Ferries decision, relied on by the Kingdom of Spain, Lico Leasing and PYMAR.

91 In paragraphs 200, 201 and 203 to 205 of the judgment under appeal, the General Court held that the circumstances subsequent to the publication of the decision on the French *GIE fiscaux* and invoked by the Kingdom of Spain, Lico Leasing and PYMAR do not mean that that publication could not have ended the legal uncertainty. It considered that the letter of the Commissioner for DG Competition of 9 March 2009 could not have contributed to creating or maintaining legal certainty and that, while the decision to initiate the formal investigation procedure had indeed been taken almost four and a half years after the decision on the French *GIE fiscaux*, it was nevertheless apparent from the decision at issue that the Commission had sent the Spanish authorities eight requests for information during that period and that the tax measures at issue were complex, with the result that the Commission could not be criticised for remaining inactive and that that situation was different to that which gave rise to the judgment of 24 November 1987, *RSV* v *Commission* (223/85, EU:C:1987:502).

92 It must be stated that there are no inconsistencies between those various findings of the General Court. In particular, contrary to what the Kingdom of Spain maintains, there is no contradiction between the finding that the Brittany Ferries decision and the decision on the French *GIE fiscaux* could not be considered to offer precise, unconditional and consistent assurances as to the compatibility of the STL system with EU law and acknowledgment of legal uncertainty before the adoption of that second decision. The Kingdom of Spain's arguments relating to those alleged inconsistencies are therefore unfounded.

93 In the third place, as regards the errors allegedly made by the General Court, according to the Kingdom of Spain, so far as concerns the decision on the French *GIE fiscaux*, the period which elapsed up to the opening of the investigation procedure, the tonnage tax scheme and the letter of the Commissioner for DG Competition of 9 March 2009, it is necessary, first of all, to reject the argument that the General Court made an error of law in considering that the decision on the French *GIE fiscaux* had created an objectively stable situation of certitude or legal certainty, whereas the principle of legal certainty requires there to be an objectively clear and stable regulatory framework.

94 It is sufficient to observe that the General Court did not find that the decision on the French *GIE fiscaux* had created certainty as to the fact that the STL system was State aid, but that the Commission did not err in law in taking the view that that decision had put an end to all legal uncertainty in that it should have led a prudent and circumspect economic operator to consider that a scheme similar to the STL system could constitute State aid. In so doing, the General Court did not err in law.

95 Secondly, as for the Kingdom of Spain's complaint that the General Court erred in not properly assessing the long period of time which had elapsed up to the opening of the formal investigation procedure, it must be held that that complaint seeks to call into question findings of fact which are not subject to review by the Court of Justice in the context of an appeal, with the result that the arguments supporting that complaint are inadmissible.

96 Thirdly, as regards the Kingdom of Spain's argument that the General Court failed to take into consideration, as a factor giving rise to legitimate expectations, the Commission's decision of 27 February 2002 on tonnage based taxation, it should be recalled that the Commission took the view, in recital 245 of the decision at issue, that the Commission's decision of 27 February 2002 on tonnage based taxation, could not have created any legitimate expectations that entities whose activities exclusively consist of chartering out one vessel on a bareboat basis would be eligible for the tonnage tax scheme, since it was clear from that decision that the tonnage tax scheme should apply exclusively with respect to qualifying vessels and qualifying maritime transport activities. That assessment, by the Commission, of the tonnage tax scheme was confirmed by the General Court in paragraph 166 of the judgment under appeal. The Kingdom of Spain merely asserts that the Commission's decision of 27 February 2002 on tonnage based taxation did not exclude the operation of vessels under the bareboat chartering system, without, however, putting forward any arguments to demonstrate this. Consequently, that argument of the Kingdom of Spain must be rejected.

97 In addition, concerning the Kingdom of Spain's claim that, even if the Commission had been correct and that the present case involved an improper application of the tonnage tax scheme, the General Court should have recognised that any operator could have considered that that misuse of an aid scheme authorised by the Commission did not give rise to an obligation to recover aid, it must be held that that argument was not raised before the General Court and that, consequently, the latter cannot be criticised for having failed to establish the existence of a legitimate expectation in respect of the operators concerned regarding the alleged misuse of the tonnage tax scheme.

98 Fourthly, concerning the Kingdom of Spain's claim that the General Court erred in its assessment of the letter of the Commissioner for DG Competition of 9 March 2009, by merely analysing the formal aspects of that letter, it should be borne in mind that, in accordance with the second subparagraph of Article 256(1) TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, an appeal lies on points of law only. The General Court has exclusive jurisdiction to find and appraise the relevant facts and to assess the evidence submitted to it. The appraisal of those facts and the assessment of that evidence thus do not, save where the facts and evidence are distorted, constitute a point of law which is subject, as such, to review by the Court of Justice on appeal (judgment of 16 July 2020, *ACTC* v *EUIPO*, C-714/18 P, EU:C:2020:573, paragraph 67 and the case-law cited). Since the Kingdom of Spain has not maintained or demonstrated that the General Court distorted that letter, its arguments relating to it are inadmissible.

99 In the fourth place, as far as concerns the argument of Lico Leasing and PYMAR alleging distortion of that letter, it should be recalled that a plea alleging distortion of the evidence produced before the General Court can be upheld only if the alleged distortion is obvious from the documents in the Court's file, without any need for a new assessment of the facts and the evidence (judgment of 2 March 2021, *Commission* v *Italy and Others*, C-425/19 P, EU:C:2021:154, paragraph 52 and the case-law cited).

100 While it is true that the General Court did not reproduce word for word, in paragraph 174 of the judgment under appeal, the two paragraphs of the letter of the Commissioner for DG Competition of 9 March 2009, mentioned by Lico Leasing and PYMAR, it is not obvious, on reading that letter in its entirety, that the General Court distorted it in any way by asserting, in that paragraph of the

judgment under appeal, that that letter merely stated that the STL system did not appear to discriminate against shipyards from other Member States and added that no further measures were envisaged 'at that stage'. That argument of Lico Leasing and PYMAR is therefore unfounded.

101 As regards the arguments of Lico Leasing and PYMAR, alleging an error in the classification of certain facts in the examination of the plea relating to the principle of legal certainty so far as concerns the decision on the French *GIE fiscaux* and the letter of the Commissioner for DG Competition of 9 March 2009, it appears that those arguments in fact seek a new assessment of the facts and evidence, which does not fall within the scope of the review carried out by the Court of Justice in the context of an appeal. Those arguments are therefore inadmissible.

102 In the fifth place, as regards the arguments of Caixabank and Others, supported by Decal España, alleging that the General Court erred in law in rejecting the Kingdom of Spain's argument that the recovery of the aid ordered by the decision at issue infringed the principle of the protection of legitimate expectations, in view of the Commission's decision of 27 February 2002 on tonnage based taxation, it must be observed that the General Court did indeed err in finding, in paragraph 166 of the judgment under appeal, that the decision at issue related 'to the operation of vessels owned or leased by the operators, not to financial activities relating to bareboat chartering such as those in the present case'. As the Court noted in paragraph 42 of the judgment of 25 July 2018, *Commission* v *Spain and Others* (C-128/16 P, EU:C:2018:591), it was apparent from the description of the STL system that the EIGs carried on the activity of the acquisition of vessels through leasing contracts, in particular with a view to their bareboat chartering and subsequent resale, from which it follows that they did not solely carry on financial activities.

103 However, that error has no bearing on the General Court's finding that the Commission's decision of 27 February 2002 on tonnage based taxation had not given rise to a legitimate expectation, since, as a basis for that assessment, the General Court referred to recital 245 of the decision at issue, according to which it was clear from that decision that the tonnage tax scheme had to apply exclusively to eligible vessels and for eligible maritime transport activities, namely, to shipping companies registered under Spanish law, whose activity includes the operation of owned and chartered ships and, accordingly, EIGs were excluded, since their activities consist exclusively in chartering out a single vessel on a bareboat basis.

104 Nor is that assessment called into question by the argument that the EIGs carried on a maritime transport activity, which was not argued before the General Court and, in any event, was not developed, with the result that it appears manifestly unfounded. Nor is it called into question by the fact that the Commission has on several occasions, in other decisions, accepted that bareboat chartering amounted to such an activity since, in any event, it is in the light of Article 107(3)(c) TFEU – and not of the previous practice or other decisions of the Commission – that it must be assessed whether or not aid satisfies the conditions laid down by that provision for its application (see, to that effect, judgments of 20 May 2010, *Todaro Nunziatina & C.*, C-138/09, EU:C:2010:291, paragraph 21, and of 22 September 2020, *Austria* v *Commission*, C-594/18 P, EU:C:2020:742, paragraph 25 and the case-law cited).

105 It follows that Caixabank and Others' arguments must be rejected as unfounded.

106 Consequently, the third ground of appeal in Case C-649/20 P and the second and third grounds of appeal in Case C-658/20 P must be rejected as being partly inadmissible and partly unfounded and the second ground of appeal in Case C-662/20 P must be rejected as unfounded.

D. The Kingdom of Spain's ground of appeal, alleging failure to state reasons in the judgment under appeal so far as concerns the selectivity of the STL system and the recovery of the aid at issue

1. Arguments of the parties

107 By its first ground of appeal, which it is appropriate to examine in the third place, the Kingdom of Spain complains that the General Court failed to give adequate reasons for the judgment under appeal so far as concerns the analysis of the selectivity of the STL system and the recovery of the aid at issue, which infringed the rights of the defence enshrined in Article 47 of the Charter of Fundamental Rights of the European Union.

108 In the first place, as regards the selectivity of the STL system, the General Court did not explain, first of all, why it was not necessary to apply the three-step method of analysing the selectivity of aid and merely endorsed the Commission's assertion that the system as a whole was selective because of the discretionary powers of the tax authority to authorise early depreciation and the fact that that authority authorised only operations intended to finance vessels.

109 Next, the General Court failed to fulfil its obligation to state reasons by finding that the decision at issue was reasoned to the requisite legal standard, even though that decision contains an accumulation of contradictions and omissions.

110 Lastly, the General Court failed to fulfil its obligation to state reasons in relation to the question of whether all the measures comprising the STL system should be regarded as a unitary system and analysed as a whole or separately with the requirement that they all be selective, stating, in paragraph 101 of the judgment under appeal, that, since one of the measures making it possible to benefit from the STL system was selective, the system as a whole was selective.

111 In the second place, as regards the recovery of the aid at issue, the General Court failed to fulfil its obligation to state reasons in that it merely reproduced the content of the decision at issue without any justification. It also contradicted itself by abandoning its overall view of the STL system as forming a whole to concentrate on a single group of participants in it, namely investors, in order to request recovery from them and without having regard to the other beneficiaries of the STL measures.

112 Taking the view that the judgment under appeal contains an adequate statement of reasons, the Commission considers that that ground of appeal is unfounded.

2. Findings of the Court

113 It should be borne in mind that the obligation on the General Court to state reasons under the second paragraph of Article 296 TFEU and Article 36 of the Statute of the Court of Justice of the European Union requires it to disclose in a clear and unequivocal manner the reasoning that it has followed, in a way that allows the interested parties to understand the justification for the decision taken and permits the Court of Justice to exercise its powers of review (see, to that effect, judgment of 5 May 2022, *Commission* v *Missir Mamachi di Lusignano*, C-54/20 P, EU:C:2022:349, paragraph 70 and the case-law cited). That obligation does not require the General Court to provide an account that follows exhaustively and one by one all the arguments articulated by the parties to the case. The reasoning may therefore be implicit, on condition that

it enables the persons concerned to understand the grounds of the General Court's judgment and provides the Court of Justice with sufficient information to exercise its powers of review when examining an appeal (judgment of 14 September 2016, *Trafilerie Meridionali* v *Commission*, C-519/15 P, EU:C:2016:682, paragraph 41).

114 In the present case, as regards, in the first place, the selective nature of the STL system, it is apparent from paragraphs 87 to 101 of the judgment under appeal, the content of which is explained in paragraphs 43 and 57 to 62 of the present judgment, that the General Court adequately set out the reasons why it considered, first, that the STL system was selective because of the discretionary powers of the tax authority to authorise early depreciation, from which it follows that it implicitly, but clearly, accepted that the application of the three-step method of analysing the selectivity of aid was not necessary and, secondly, that the selective nature of early depreciation rendered the STL system selective as a whole.

115 As regards the argument that the General Court failed to fulfil its obligation to state reasons by asserting that the decision at issue was reasoned to the requisite legal standard, it must be borne in mind that, according to the settled case-law of the Court of Justice, it follows from the second subparagraph of Article 256(1) TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) and Article 169(2) of the Rules of Procedure that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal. In this respect, under Article 169(2) of the Rules of Procedure, the pleas in law and legal arguments relied on must identify precisely those points in the grounds of the decision of the General Court which are contested (judgment of 20 September 2016, *Mallis and Others* v *Commission and ECB*, C-105/15 P to C-109/15 P, EU:C:2016:702, paragraphs 33 and 34). The Kingdom of Spain does not mention to which paragraphs of the judgment under appeal that argument relates, with the result that it is too imprecise to receive a response and is therefore inadmissible.

116 It follows that the Kingdom of Spain's arguments, based on a failure to state reasons in the judgment under appeal so far as concerns the selectivity of the STL system, are partly inadmissible and partly unfounded.

117 Concerning, in the second place, the recovery of the aid at issue, the General Court – in response to the plea raised by Lico Leasing and PYMAR, by which they challenged, in essence, as noted in paragraph 218 of the judgment under appeal, the decision at issue in so far as it orders the recovery of all that aid from the investors, whereas 85% to 90% of the advantage was systematically transferred to the **s**hipping companies – stated, in paragraph 219 of that judgment, as follows:

'Given that the Commission found in the present case that – which is not at issue in these proceedings – the shipping companies were not the beneficiaries of the aid, it follows that the order for recovery related solely and in its entirety to the investors, the sole beneficiaries of the whole of the aid according to the [decision at issue], on account of the transparency of the EIGs. According to its own reasoning, the [decision at issue] was therefore correct to order recovery of all the aid from the investors, even though they had transferred part of the advantage to other operators, because those other operators were not regarded as beneficiaries of the aid. According to the [decision at issue], it was the investors that actually benefited from the aid since the applicable rules did not require them to transfer part of the aid to third parties.'

118 By merely, first, finding that Lico Leasing and PYMAR had not challenged the designation of the recipients in the decision at issue and, secondly, referring to the logic and content of that decision, when it could be inferred from the plea raised that those undertakings – even though they had not disputed the identity of the recipients – claimed, implicitly but necessarily, that they had not been the only recipients of the aid in question since a large part of that aid had been transferred to the shipping companies, the General Court failed to respond to that plea. Consequently, the General Court failed to rule on that plea, which constitutes an infringement of the obligation to state reasons (see, to that effect, judgment of 14 July 2005, *Acerinox* v *Commission*, C-57/02 P, EU:C:2005:453, paragraph 36, and order of the Vice-President of the Court of 17 August 2022, *SJM Coordination Center* v *Magnetrol International and Commission*, C-4/22 P (I), EU:C:2022:626, paragraph 19).

119 The Kingdom of Spain's ground of appeal alleging failure to state reasons in the judgment under appeal as far as concerns the recovery of the aid at issue from its recipients must therefore be upheld, without it being necessary to examine the other pleas and arguments of the parties which relate to the same part of the judgment under appeal.

120 Consequently, the judgment under appeal must be set aside to the extent that, by that judgment, the General Court dismissed the actions is so far as they sought annulment of Article 1 of the decision at issue, inasmuch as it designates the EIGs and their investors as the sole recipients of the aid referred to in that decision, and Article 4(1) of that decision, inasmuch as it orders the Kingdom of Spain to recover in full the amount of the aid referred to in that decision from the EIG investors which benefited from it.

121 The appeals are dismissed as to the remainder.

V. The action before the General Court

122 In accordance with the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the decision of the General Court is set aside, the Court of Justice may itself give final judgment in the matter, where the state of the proceedings so permits.

123 In the present case, in the light, in particular, of the fact that the actions for annulment brought by the applicants which form the subject matter of Cases T-515/13, T-515/13 RENV, T-719/13 and T-719/13 RENV are based on grounds which have been the subject of an adversarial debate before the General Court and the examination of which does not require the adoption of any additional measure of organisation of procedure or investigation of the case, the Court considers that the part of those actions which remains to be examined after the judgment under appeal has been partially set aside, relating to the merits of the obligation to recover the aid at issue from its recipients is ready for adjudication and that a final ruling must be given on it (see, by analogy, judgment of 2 September 2021, *NeXovation* v *Commission*, C-665/19 P, EU:C:2021:667, paragraph 60 and the case-law cited).

A. Arguments of the parties

124 The Kingdom of Spain, by its second to fourth grounds of appeal, and Lico Leasing and PYMAR, by their second ground of appeal, in the alternative, claim that, by ordering recovery of the aid at issue, the Commission infringed the principles of the protection of legitimate expectations, legal certainty and equal treatment.

125 By their third ground of appeal, also raised in the alternative, Lico Leasing and PYMAR dispute the method for calculating the aid to be recovered set out by the Commission in the decision at issue, claiming, in essence, that that method leads to requiring investors or EIGs to repay the full amount of the tax advantage without taking account of the fact that the greater part of that advantage has been transferred to the shipping companies.

126 The Commission disputes the merits of all those grounds and arguments. As regards the recovery of the aid at issue, it claims, in essence, that the investors who are members of the EIGs are the sole recipients of the aid at issue and, in their capacity as taxpayers, the only possible interlocutors vis-à-vis the Kingdom of Spain with a view to its recovery. In its opinion, the fact that that aid may have had economic effects on other undertakings cannot be taken into account in determining the amount of aid received and to be recovered.

B. Findings of the Court

127 In the first place, as regards the grounds of appeal and arguments raised by the Kingdom of Spain, Lico Leasing and PYMAR, alleging infringement of the principles of the protection of legitimate expectations and legal certainty, they must be rejected as unfounded for the reasons set out in paragraphs 81 and 82 of the present judgment, as well as for those set out in paragraphs 163 to 169, 174 and 199 to 205 of the judgment under appeal and essentially in paragraphs 85 to 91 of this judgment, which the Court has endorsed with the exception of the error found in paragraph 102 thereof.

128 Similarly, it is necessary to reject the ground of appeal and the arguments of the Kingdom of Spain, alleging infringement of the principle of equal treatment, for the reasons set out in paragraphs 139 to 145 of the judgment under appeal, which the Court of Justice has endorsed, according to which, in substance, first, the Kingdom of Spain has not provided a detailed explanation of the reasons why the situation examined in the Brittany Ferries decision and that which was the subject of the decision at issue are comparable and that Member State cannot rely on an earlier practice on the part of the Commission and, secondly, the alleged difference in treatment as opposed to the decision on the French *GEI fiscaux*, which ordered recovery of the aid as from the date of publication of the decision to open the formal investigation procedure, was objectively justified by the fact that the uncertainty resulting from the Brittany Ferries decision ceased to exist once the decision on the French *GIE fiscaux* was adopted.

129 In the second place, as regards the amount of aid to be recovered from the investors, as stated in paragraph 118 of the present judgment, it is inferred from the third ground raised by Lico Leasing and PYMAR that, by that ground, they claim, implicitly but necessarily, that they were not the only recipients of the aid at issue since a large part of that aid was transferred to the shipping companies, and they therefore dispute the Commission's identification of the recipients of that aid.

130 In that regard, it should be borne in mind that the obligation on the Member State concerned to abolish, through recovery, aid considered by the Commission to be incompatible with the single market has as its purpose, according to the settled case-law of the Court, the restoration of the situation as it was before the aid was granted. That objective is attained once the aid in question, together, where appropriate, with default interest, has been repaid by the recipient, or, in other words, by the undertakings which actually enjoyed the benefit of it. By repaying the aid, the recipient forfeits the advantage which it had enjoyed over its competitors on the market, and the situation prior to payment of the aid is restored (see judgment of 21 December 2016, *Commission* v *Aer Lingus and Ryanair Designated Activity*, C-164/15 P and C-165/15 P, EU:C:2016:990, paragraphs 89 and 90 and the case-law cited).

131 In the present case, it should be noted, first, that, in recital 11 of the decision at issue, the Commission stated that an STL operation allowed a shipping company to have a new vessel built with a 20% to 30% rebate on the price charged by the shipyard. In recital 12 of that decision, the Commission considered that the STL system was a tax planning scheme generally organised by a bank in order to generate tax benefits for investors in a 'tax transparent' EIG and transfer part of those tax benefits to that shipping company in the form of a rebate on the price of the vessel; the rest of the benefits are kept by the investors.

132 In recital 162 of the decision at issue, the Commission also noted that, in economic terms, a substantial part of the tax advantage collected by the EIG was transferred to that shipping company in the form of a price rebate. It stated that the annexes attached to certain files when EIGs request prior authorisation for early depreciation confirmed that the operators involved in the STL system considered that the tax benefits resulting from the operation were shared between the EIGs or their investors and the shipping companies.

133 Next, as regards the authorisation of early depreciation granted by the tax authority, the Commission noted, in recitals 135 and 136 of the decision at issue, that it was apparent from the examples provided by the Spanish authorities that the applications for authorisation submitted by the EIGs described in detail the whole STL organisation, provided all the relevant contracts, in particular the shipbuilding contract, leasing contract, bareboat charter, option contracts, debt assumption and release agreement. Those applications also included, in certain cases, annexes which were not necessary to demonstrate compliance with the applicable provisions of the TRLIS or the RIS, namely a detailed calculation of the overall tax advantages and how they will be shared between the shipping company, on the one hand, and the EIGs or their investors, on the other hand, and a statement by the shipyard, in which the economic and social benefits expected from the shipbuilding contract were set out.

134 The Commission also stated, in recital 168 of the decision at issue, that the requests submitted to the tax authority generally included a calculation of the overall tax advantage generated by the STL system and how that tax advantage was shared between the shipping company and the investors in the EIG, or, in any event, contained the necessary elements for doing that calculation.

135 In recitals 133 to 139 and 156 of the decision at issue, the Commission rightly considered that the tax authority had discretionary powers to authorise early depreciation and, as a result, the STL was selective as a whole.

136 Lastly, in recital 169 of the decision at issue, the Commission however considered that (i) all the economic consequences of granting the tax advantage to the EIGs resulted from a combination of legal transactions between private entities, (ii) the applicable rules did not oblige the EIGs to

transfer part of the tax advantage to the shipping companies, and (iii) the fact that, in the exercise of its broad discretion, the tax authority assessed the economic impact of the overall transaction was not sufficient to establish that the Spanish authorities decided on the transfer of part of the advantage to the shipping companies or the amount of that transfer. The Commission concluded, in recital 170 of that decision, that the advantages enjoyed by the shipping companies were not imputable to the Member State concerned.

137 However, it followed from the Commission's own findings, referred to in paragraphs 131 to 135 of the present judgment, that the STL system as a whole constituted an aid scheme arising from the application of the Spanish tax legislation and the authorisations granted by the Spanish tax authorities and intended, regardless of the legal procedures relied on, to give an advantage not only to the EIGs, but also to shipping companies.

138 Furthermore, it is apparent from the Commission's findings referred to in paragraph 133 above that the allocation of the tax advantage generated by the STL system between the shipping company and the EIG investors was provided for in legally binding agreements, submitted to the tax authority and which the latter took into account in order to authorise, in the exercise of its discretion in that regard, early depreciation. Therefore, contrary to what the Commission, in essence, stated in recital 169 of the decision at issue, the EIGs were obliged, under the rules of the law applicable to the contracts concluded with the shipping companies, to transfer part of the tax advantage obtained to those companies.

139 It follows that the Commission erred in law as regards the designation of the recipients of the aid at issue and, consequently, as regards the recovery of that aid in that it ordered the Kingdom of Spain, contrary to the case-law referred to in paragraph 130 of that judgment, to recover the full amount of that aid solely from the EIG investors.

140 Consequently, Article 1 of the decision at issue must be annulled inasmuch as it designates the EIGs and their investors as the sole recipients of the aid referred to in that decision, and Article 4(1) of that decision must also be annulled inasmuch as it orders the Kingdom of Spain to recover the full amount of the aid at issue from the EIG investors which benefited from it.

Costs

141 Under Article 184(2) of the Rules of Procedure, where the appeal is unfounded or where the appeal is well founded and the Court of Justice itself gives final judgment in the case, the Court is to make a decision as to the costs.

142 Under the first sentence of Article 138(3) of the Rules of Procedure, applicable to appeal proceedings by virtue of Article 184(1) thereof, where each party succeeds on some and fails on other heads, the parties are to bear their own costs. However, if it appears justified in the circumstances of the case, the Court may order that one party, in addition to bearing its own costs, pay a proportion of the costs of the other party.

143 In the light of the circumstances of the present case, the Kingdom of Spain, Lico Leasing, PYMAR and Caixabank and Others must be ordered to bear all their costs and to pay three quarters of the costs incurred by the Commission both at first instance and in connection with the appeals in Case C-128/16 P and Joined Cases C-649/20 P, C-658/20 P and C-662/20 P. The Commission is to bear one quarter of its own costs.

144 In accordance with Article 140(3) of the Rules of Procedure, which applies to the procedure on appeal by virtue of Article 184(1) of those rules, Decal España, intervener in the appeal, is to bear its own costs.

On those grounds, the Court (Fifth Chamber) hereby:

1. **Sets aside the judgment of the General Court of the European Union of 23 September 2020, *Spain and Others* v *Commission* (T-515/13 RENV and T-719/13 RENV, EU:T:2020:434) to the extent that, by that judgment, the General Court dismissed the actions is so far as they sought annulment of Article 1 of 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', inasmuch as it designates the economic interest groupings and their investors as the sole recipients of the aid referred to in that decision, and Article 4(1) of that decision, inasmuch as it orders the Kingdom of Spain to recover in full the amount of the aid referred to in that decision from the economic interest groupings' investors which benefited from it;**

2. **Dismisses the appeals as to the remainder;**

3. **Annuls Article 1 of Decision 2014/200 inasmuch as it designates the economic interest groupings and their investors as the sole recipients of the aid referred to in that decision;**

4. **Annuls Article 4(1) of that decision inasmuch as it orders the Kingdom of Spain to recover in full the amount of the aid referred to in that decision from the investors of the economic interest groupings which benefited from it;**

5. **Orders the Kingdom of Spain, Lico Leasing SA, Pequeños y Medianos Astilleros Sociedad de Reconversión SA, Caixabank SA, Asociación Española de Banca, Unicaja Banco SA, Liberbank SA, Banco de Sabadell SA, Banco Bilbao Vizcaya Argentaria SA, Banco Santander SA, Santander Investment SA, Naviera Séneca AIE, Industria de Diseño Textil SA (Inditex), Naviera Nebulosa de Omega AIE, Abanca Corporación Bancaria SA, Ibercaja Banco SA, Naviera Bósforo AIE, Joyería Tous SA, Corporación Alimentaria Guissona SA, Naviera Muriola AIE, Poal Investments XXI SL, Poal Investments XXII SL, Naviera Cabo Vilaboa C-1658 AIE, Naviera Cabo Domaio C-1659 AIE, Caamaño Sistemas Metálicos SL, Blumaq SA, Grupo Ibérica de Congelados SA, RNB SL, Inversiones Antaviana SL, Banco de Albacete SA, Bodegas Muga SL and Aluminios Cortizo SAU to bear all their own costs and to pay three quarters of the costs incurred by the European Commission both at first instance and in connection with the appeals in Case C-128/16 P and Joined Cases C-649/20 P, C-658/20 P and C-662/20 P;**

6. **Orders Decal España SA to bear its own costs;**

7. **Orders the European Commission to bear one quarter of the costs it has incurred both at first instance and in connection with the appeals in Case C-128/16 P and Joined Cases C-649/20 P, C-658/20 P and C-662/20 P.**

[Signatures]