

**Form of order sought**

The appellant submits that the Court should:

- Set aside the judgment of the General Court of 15 November 2018;
- Uphold the application for annulment and definitively annul the contested decision; and
- Order the European Commission to pay the costs.

**Grounds of appeal and main arguments**

On 15 November 2018, the General Court gave judgment in Case T-406/11, *Prosegur Compañía de Seguridad v European Commission*, <sup>(1)</sup> against which this appeal is brought. The judgment dismissed the appellant's action against the European Commission's decision of 12 January 2011, <sup>(2)</sup> on 'financial goodwill' regulated by Article 12.5 of the Spanish Ley de Impuesto sobre Sociedades (Law on Corporation Tax).

In support of its appeal, the appellant relies on a single ground of appeal, alleging that, in the judgment under appeal, the General Court erred in law in its interpretation of Article 107(1) of the Treaty on the Functioning of the European Union (TFEU), in relation to the concept of 'selectivity'.

In particular, it is submitted that the General Court erred:

- In determining the reference system at the first stage of the selectivity analysis;
- In determining the objective forming the basis for comparing the separate legal and factual situations at the second stage of the selectivity analysis;
- Consequently, the General Court also erred in the attribution of the burden of proof and the application of the principle of proportionality;
- In the alternative, in its examination relating to the supposed lack of proof of a causal link between the companies' inability to merge abroad and the acquisition of holdings abroad; and
- In the alternative, in ruling out the severability of the measure according to the control percentage;
- In addition to maintaining a legally incorrect line of reasoning, the General Court substituted its own reasoning for that of the Commission's decision in relation to a number of the abovementioned points, thus giving rise to further errors of law.

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<sup>(1)</sup> Judgment of 15 November 2018, *Prosegur Compañía de Seguridad v Commission* (T-406/11, not published, EU:T:2018:793).

<sup>(2)</sup> Commission Decision 2011/282/EU of 12 January 2011 on the tax amortisation of financial goodwill for foreign shareholding acquisitions C 45/07 (ex NN 51/07, ex CP 9/07) implemented by Spain (OJ 2011 L 135, p. 1).

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**Action brought on 29 January 2019 — European Commission v Italian Republic**

**(Case C-63/19)**

(2019/C 112/41)

*Language of the case: Italian*

**Parties**

*Applicant:* European Commission (represented by: R. Lyal and F. Tomat, acting as Agents)

*Defendant:* Italian Republic

**Form of order sought**

The Commission claims that the Court should:

- find that, by applying a reduction to rates of excise duty on the basis of the regional legislation adopted by the Friuli-Venezia Giulia Region, which provides for a contribution system in respect of petrol and gas oil used as motor fuel, in connection with the sale of such products to residents of the Friuli-Venezia Giulia Region, the Italian Republic has failed to fulfil its obligations under Articles 4 and 19 of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity;<sup>(1)</sup>
- order the Italian Republic to pay the costs.

**Pleas in law and main arguments**

The regional legislation adopted by the Friuli-Venezia Giulia region has introduced a contribution system in respect of petrol and gas oil used as motor fuel, in connection with the sale of such products to residents of the Friuli-Venezia Giulia Region. The system provides, in essence, that, at the time the fuel is purchased from the pump, service station operators are to pay out a fixed amount (per litre) reducing the price owed for the fuel. The regional administrative authority is to repay the service station operators the amount paid out on the purchases of fuel made by the recipients.

The scheme of Directive 2003/96/EC, which has restructured the Community framework for the taxation of energy products and electricity, requires that throughout the whole territory of every Member State there must be a single level of taxation for each product and for each use. That principle derives from the general scheme of the directive, and in particular from what is set out in recitals 5 and 15, from the wording of the provisions of that directive, and from a systematic interpretation of all those provisions. It is possible to derogate from the principle whereby each Member State must provide for a single level of taxation for each product and for each use only in the cases expressly provided for in that directive. Directive 2003/96 lays down a series of provisions enabling the Member States to apply reductions, exemptions or differentiations to the level of taxation in respect of specific products or specific uses, in particular in Articles 5, 7, 15, 16 and 17 of that directive and in Articles 18 and 19 thereof. Such reductions, exemptions or differentiations may be implemented by the Member States using the methods set out in Article 6 of that directive, which provides that Member States are to be free to give effect to exemptions or reductions directly, by means of a differentiated rate or by refunding all or part of the amount of taxation.

According to the Commission, the case at hand constitutes a reduction in the rates of excise duty on motor fuel not permitted by Directive 2003/96/EC on the taxation of energy products.

The Commission therefore considers that in the case at hand the Italian Republic has failed to fulfil its obligations under Articles 4 and 19 of Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity.

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<sup>(1)</sup> OJ 2003 L 283, p. 51.

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**Appeal brought on 29 January 2019 by the Kingdom of Spain against the judgment of the General Court (Ninth Chamber, Extended Composition) delivered on 15 November 2018 in Case T-219/10 RENV World Duty Free Group v Commission**

**(Case C-64/19 P)**

(2019/C 112/42)

*Language of the case: Spanish*

**Parties**

*Appellant:* Kingdom of Spain (represented by: M. A. Sampol Pucurull, acting as Agent)