



Press and Information

General Court of the European Union

PRESS RELEASE No 30/20

Luxembourg, 12 March 2020

Judgments in Cases T-732/16

Valencia Club de Fútbol v Commission and T-901/16 Elche Club de Fútbol v Commission

The General Court annuls the Commission's decision on aid measures implemented in favour of the Spanish football clubs Valencia CF et Elche CF

The decision is vitiated by a number of manifest errors of assessment

Between 2009 and 2010, the Instituto Valenciano de Finanzas ('the IVF') — the financial establishment of the Generalitat Valenciana (Regional Government of Valencia, Spain) — granted a number of guarantees to associations linked to three Spanish professional football clubs from the Autonomous Community of Valencia, Valencia CF, Hércules CF and Elche CF. Those guarantees were intended to cover the bank loans taken out by those associations in order to participate in the increase in the capital of the three clubs to which they were linked. In Valencia CF's case, the guarantee granted was increased in 2010 in order to cover the increase of the underlying bank loan.

By decision of 4 July 2016,¹ the Commission found that those measures constituted unlawful State aid incompatible with the internal market in favour of the three football clubs, and consequently it ordered their recovery.²

The three clubs each brought an action before the General Court with a view to annulling the Commission's decision. By judgment of 20 March 2019, the Court annulled the Commission's decision in relation to Hércules CF.³

By today's judgments, **the Court annuls the Commission's decision in relation to Valencia CF and Elche CF.**

Judgment T-732/16 Valencia Club de Fútbol v Commission:

First of all, the Court examines the assessments relating to **the guarantee given by the IVF to cover the bank loan granted to the association linked to Valencia CF, the Fundación Valencia.** It considers that **the Commission made a manifest error of assessment in that respect by finding that no equivalent guarantee premium could be found on the market.** After correctly classifying Valencia CF as a 'firm in difficulty', **the Commission wrongly assumed** that no financial establishment would act as a guarantor for a firm in such a situation and, consequently, that no corresponding guarantee premium benchmark could be found on the market. Furthermore, **it did not carry out an overall assessment** taking into account all relevant evidence enabling it to determine whether Valencia CF would manifestly not have obtained comparable facilities from a private investor. The Court also considers that **the Commission did not sufficiently support the finding that there was no market price for a similar non-guaranteed loan** 'due to the limited number of observations of similar transactions on the market'.

¹ Commission Decision (EU) 2017/365 of 4 July 2016 on the State aid SA.36387 (2013/C) (ex 2013/NN) (ex 2013/CP) implemented by Spain for Valencia Club de Fútbol, Sociedad Anónima Deportiva, Hércules Club de Fútbol, Sociedad Anónima Deportiva and Elche Club de Fútbol, Sociedad Anónima Deportiva (OJ 2017 L 55, p. 12) (see. Commission PR).

² Valencia had to pay € 20 381 000 (plus interest), Hércules, € 6 143 000 (plus interest), and Elche, € 3 688 000 (plus interest).

³ Case: [T-766/16](#) Hércules Club de Fútbol v Commission

Next, the Court examines **the assessments relating to the increase in the guarantee decided in 2010**. The Commission had, inter alia, concluded that the shares in Valencia CF acquired by the Fundación Valencia and pledged to the IVF as a counter-guarantee had a value 'close to zero' on the date that increase was granted, since Valencia CF, in particular, was in difficulty and was operating at a loss. **The Court finds that the evidence on which the Commission's conclusions on that point are based are partly incorrect**, in that the financial year preceding that grant closed with a profit. It also considers that **the Commission made a manifest error of assessment in that respect**, because it did not take into account relevant factors, such as the existence of the club's significant own equity and the generation of a profit before taxes in the fiscal year preceding the grant of the increase. Those errors vitiate the Commission's assessment of the value of the counter-guarantees provided by the Fundación Valencia and, consequently, its calculation of the amount of the aid arising from the increase of the guarantee.

Judgment T-901/16 Elche Club de Fútbol v Commission:

The Court finds that **the Commission's assessment of the existence of an advantage from which Elche CF benefits is vitiated by manifest errors of assessment**.

In the first place, **the Commission made a manifest error of assessment by not taking into account the economic and financial situation of the borrowing association linked to Elche CF, the Fundación Elche**. The Court states that this is a relevant factor for the purposes of evaluating the risk taken by the State guarantor and, thereby, the guarantee premium which a private operator would claim in those circumstances. Although the Fundación Elche is not identified by the Commission as being the actual beneficiary of the loan, it did benefit from the guarantee at issue under the contract concluded with the IVF and was accountable to the IVF for the consequences, as the case may be, of activating the guarantee.

In the second place, the Court states that **the Commission made a further manifest error of assessment by also failing to take into account, for the purposes of examining the existence of an advantage, the relevant fact of the mortgage on land which the Fundación Elche had granted to the IVF as a counter-guarantee**.

In the third place, the Court considers that **the Commission was wrong not to take into account the recapitalisation of Elche FC for the purposes of assessing the value of the shares in Elche FC, pledged to the IVF as a counter-guarantee**, which the Commission found to be 'close to zero'.

In the fourth place, the Court states, as it did in relation to Valencia CF, that **the Commission, after finding that Elche CF was a firm in difficulty, wrongly assumed that no financial establishment would act as a guarantor for such a firm and therefore that that no corresponding guarantee premium benchmark could be found on the market**. Similarly, the Court criticises the Commission **for not sufficiently substantiating its conclusion relating to the lack of comparable transactions to establish the market price of a similar non-guaranteed loan**.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The full text of the judgment [T-732/16](#) and [T-901/16](#) are published on the CURIA website on the day of delivery

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