

# COUNTRY STUDIES CONCERNING STATE AID



**Spain**  
**Justice and Environment 2024**

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## Background

In March 2021, the Aarhus Convention Compliance Committee (ACCC) found in favor of J&E member organization ÖKOBÜRO and its member, GLOBAL 2000, in the communication they had brought, namely [ACCC/C/2015/128 \(EU\)](#). Specifically, the Committee [found that](#):

- (a) *By failing to provide access to administrative or judicial procedures for members of the public to challenge decisions on State aid measures taken by the European Commission under article 108 (2) TFEU that contravene European Union law relating to the environment, the Party concerned fails to comply with article 9 (3) of the Convention;*
- (b) *By failing to provide any procedure under article 9 (3) of the Convention through which members of the public are able to challenge decisions on State aid measures taken by the European Commission under article 108 (2) TFEU that contravene European Union law relating to the environment, the Party concerned also fails to provide an adequate and effective remedy regarding such decisions as required by article 9 (4) of the Convention.*

Accordingly, the Committee made the following recommendation:

*The Committee, pursuant to paragraph 35 of the annex to decision I/7, recommends that the Meeting of the Parties, pursuant to paragraph 37 (b) of that annex, recommends that the Party concerned take the necessary legislative, regulatory and other measures to ensure that the Aarhus Regulation is amended, or new European Union legislation is adopted, to clearly provide members of the public with access to administrative or judicial procedures to challenge decisions on State aid measures taken by the European Commission under article 108 (2) TFEU that contravene European Union law relating to the environment, in accordance with article 9 (3) and (4) of the Convention.*

## Questions

### IS ADMINISTRATIVE STATE AID CASE LAW AVAILABLE IN YOUR COUNTRY?

We have not been able to identify any database or website containing that information.

### IS JUDICIAL STATE AID CASE LAW AVAILABLE IN YOUR COUNTRY?

There is no such database, but the National Commission on Markets and Competition elaborates an annual report on state aid<sup>1</sup> in which amongst its content includes a section on judicial case law (IV.5 Case Law Developments of National Courts) of the previous reported year.

### IN JUDICIAL CASES, WHO HAD LEGAL STANDING ACCORDING TO THE STATE AID CASE LAW?

In Spain, standing to sue in State aid cases is mainly regulated by Law 29/1998 of 13 July 1998, on the administrative-judicial review procedure, and by specific legislation on state aid and environmental law, which is based on European Union law, such as the TFEU and the Guidelines on State Aid for Environmental Protection and Energy, and which is complemented in our legal system by the General Subsidies Law (Law 38/2003),

Legal standing in state aid court cases in Spain can be granted to aid beneficiaries or competitors and entities with a legitimate interest.

According to a recent judgement of the Spanish Supreme Court on a case<sup>2</sup> filed by the government of the Autonomous Community of Madrid against the national Government regarding the allocation of the European funds from the Recovery and Resilience Plan in which the defendant alleges lack of standing of the plaintiff the Supreme Court declared:

*To appreciate the requirement of standing for a specific natural or legal person, it is necessary, except in the exceptional cases where our legal system recognizes the existence of a public action, that there exists a legitimate interest in the claim being pursued, which must be identified when filing each administrative judicial review. Thus, standing, which constitutes an indispensable prerequisite of the process, "implies the existence of an unequivocal material relationship between the subject and the object of the claim raised in the administrative judicial review, with reference to an interest in the*

<sup>1</sup> Available at: <https://www.cnmc.es/expedientes/iapcnmc00123>

<sup>2</sup> STS 2221/2024 - ECLI:ES:TS:2024:2221. Available at: <https://www.poderjudicial.es/search/openDocument/f901ce7d3a9fa15da0a8778d75e36f0d>

*proper sense, identified and specific, such that the annulment of the challenged act or provision automatically produces a positive (benefit) or negative (detriment) effect, current or future, but certain.*

*In summary, the existing case law defines legitimate interest, the basis of standing referred to in Article 19 of the LJCA [Law 29/1998], as <<the potential ownership of a position of advantage or legal benefit by the person pursuing the claim, which would materialize if the claim succeeded>>.*

*This specific relationship between the natural or legal person and the claim pursued in each process explains the case-by-case nature of standing, which has also been highlighted by the case law of this Chamber. In ruling STS 1611/2023, dated November 30, 2023 (RC 918/2022), we emphasized that in each case, the presence of the party's legitimate interest must be examined, and the process serves this purpose.” (the emphasis is ours)*

In state aid cases it is understood that in general the following parties have standing:

- **Beneficiaries of state aid:** legal or natural persons receiving state aid may have standing to challenge administrative decisions related to such aid, provided that they are affected by modifications or revocations of such aid.
- **Competitors:** companies or persons competing in the same sector and adversely affected by state aid that they consider unfair may have standing to bring an action.

From the Supreme court judgment, it could be inferred that NGOs have standing on state aid cases related to environment and climate as Law 27/2006, of 18 July, regulating access to information, public participation and access to justice in environmental matters (Aarhus Law), which allows these entities to challenge acts that affect the environment as it recognizes them a conditional *actio popularis* specifically to NGOs meeting certain criteria (those that have been registered for at least two years before challenging an act before a court of law can exercise *actio popularis*). Nevertheless, as it is seen below this has not been tested yet before Spanish courts.

### **IS THERE ANY EXAMPLE WHERE AN NGO WANTED TO HAVE LEGAL STANDING IN STATE AID RELATED COURT PROCEDURE?**

We have not identified any case in which an NGO has sought to establish standing in a judicial proceeding related to state aid in Spain.

## **ARE THERE ENVIRONMENTAL ISSUES ADDRESSED IN STATE AID CASES IN YOUR COUNTRY?**

We have not identified any such cases in our country, so we have no details on this issue.

### **IF YES, WHAT ARE THEY?**

## **HAS THERE BEEN A PRELIMINARY RULING CASE INITIATED BY YOUR COUNTRY'S JUDICIARY IN STATE AID CASES?**

Yes, **Case C-74/16**, concerning a request for a preliminary ruling submitted, pursuant to Article 267 of the Treaty on the Functioning of the European Union (TFEU), by the Madrid Administrative Court no. 4 by an order of January 26, 2016, received by the Court of Justice on February 10, 2016. The proceedings between the parties are related to the exemption from the ICIO (Tax on Construction, Installations and Works) granted to religious institutions in Spain.

In 2017, Madrid Administrative Court no. 4 referred a preliminary question to the Court of Justice of the European Union (CJEU) to determine whether the tax exemption granted to a religious congregation could be considered State aid incompatible with the internal market of the European Union.

The Madrid Administrative Court no. 4 referred the following preliminary question: "Whether the exemption from the ICIO granted to the Catholic Church, when applied to properties used for economic activities not strictly religious in nature, may be considered State aid contrary to Article 107(1) of the Treaty on the Functioning of the European Union (TFEU)"<sup>3</sup>.

### **IF YES, WHAT WAS THE JUDGMENT OF THE EU COURT?**

Case C-74/16, related to the tax exemption from the Tax on Construction, Installations and Work, (ICIO) granted to religious institutions in Spain, was addressed by the CJEU in 2017. The CJEU ruled that the tax exemption in question could be considered State aid when the property benefiting from the exemption is used for economic activities and not exclusively for religious purposes. The Court emphasized that any tax exemption favouring certain organizations engaged in economic activities could distort competition and, therefore, breach European rules on State aid.

The dispute originated when a Spanish religious congregation, which owned a school in Getafe, requested the refund of the ICIO paid for the renovation of the school's assembly hall, arguing that the tax exemption should apply even if the property was not used exclusively for religious

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<sup>3</sup> Available at: <https://curia.europa.eu/juris/document/document.jsf?docid=192143&doclang=ES>

activities but also for other economic purposes. However, the local council denied the request, asserting that the exemption only applied to properties used for religious purposes, prompting the congregation to bring the case before Spanish courts.

The case did not focus directly on environmental issues but rather on the fiscal and competition implications of the ICIO tax exemption granted to the Catholic Church in Spain.

### **HAS THERE BEEN AN INFRINGEMENT CASE AGAINST YOUR COUNTRY AT THE COMMISSION?**

Yes, Spain has been involved in several infringement cases concerning State aid before the European Commission, and some of these have been brought before the CJEU.

The most relevant of these is the one mentioned in the previous questions regarding the Spanish tax regime on the amortization of goodwill for foreign acquisitions (C-51/19 P and C 64/19 P).

In its judgment of 6 October 2021, the CJEU dismissed the appeals brought by **World Duty Free Group SA (WDFG) and Spain (C-51/19 P y C-64/19 P)**, and upheld the decisions of the European Commission, which had declared that a Spanish tax regime constituted State aid incompatible with the internal market rules of the EU. The underlying issue related to the different tax treatment between Spanish companies acquiring shareholdings in foreign companies and those investing domestically.

The regime allowed companies acquiring foreign shareholdings to amortize the 'goodwill' resulting from those acquisitions, putting them in a more favourable position compared to those acquiring shareholdings in domestic companies.

The European Commission considered that this constituted selective State aid, as it was not a general benefit applicable to all companies, but rather depended on whether the investment was made inside or outside Spain. The companies that had benefited from this regime, including WDFG, challenged the Commission's decision before the national courts, which in turn referred the matter to the CJEU.

The key questions that arose during the proceedings before the CJEU were as follows:

- Was the Spanish tax regime a form of selective State aid? The key issue was whether the regime favoured certain companies over others and whether the conditions for applying this tax treatment constituted a selective advantage incompatible with EU rules.

- Could the Commission require the recovery of the aid granted under this regime? Another question was whether the Commission had the right to order the recovery of aid received under the tax regime since its declaration as incompatible State aid

The CJEU ruled in favour of the Commission on both questions, confirming that the regime constituted selective aid, and that the recovery of the aid was necessary. In this specific case, no direct environmental issues were involved. The case primarily focused on taxation and State aid in the context of cross-border investments.

Another infringement case was concerning the fiscal aid to operators of digital terrestrial television (DTT) in Spain (C-70/16 P and C-81/16 P), which pertains to public aid granted by Spain for the installation and operation DTT in rural areas. The Commission determined that the aid, granted between 2005 and 2008, selectively benefited DTT operators to the detriment of competing technologies (such as satellite television). Spain and several beneficiaries of these aids brought the case before the CJEU.<sup>4</sup>

Lastly, there is the case concerning the logistical platforms in Castilla-La Mancha (C-740/19), where the Commission found that the aid for the construction of logistical infrastructures in the region constituted illegal State aid, as they favoured certain transport and logistics companies to the detriment of competition within the EU.<sup>5</sup>

## DID IT GO TO THE EU COURT?

Yes, all the cases.

## IF YES, WHAT WAS THE JUDGMENT OF THE EU COURT?

In the first case, concerning the Spanish tax regime on the amortization of goodwill for foreign acquisitions (C-51/19 P and C-64/19 P), the judgment consolidated the principle that tax regimes granting advantages to companies making cross-border investments, as opposed to domestic investments, may be considered selective State aid and, therefore, incompatible with the EU single market.

<sup>4</sup> Available at: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=199647&pageIndex=0&doclang=ES&mode=lst&dir=&occ=first&part=1&cid=3321883>

<sup>5</sup> Available at: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=243723&pageIndex=0&doclang=ES&mode=req&dir=&occ=first&part=1&cid=3326663>



In the case of fiscal aid to operators of digital terrestrial television (DTT) in Spain (C-70/16 P and C-81/16 P), in its judgment of 2017, the CJEU confirmed the Commission's decision, stating that the public aid regime for DTT constituted selective State aid incompatible with EU rules. The Court found that the aid favoured a specific technology (DTT), which restricted competition with other technological platforms.

In the case concerning logistical platforms in Castilla-La Mancha (C-740/19), the Court upheld the Commission's position and ordered the recovery of the granted aid. The judgment reaffirmed the Court's strict stance on the application of EU competition rules

### HAS IS CHANGED ANYTHING IN YOUR RESPECTIVE CASE LAW?

The impact of the aforementioned infringement proceedings concerning State aid opened by the European Commission has confirmed its position, ruling that the aid in question was selective and incompatible with the rules of the European Union. The judgment of the CJEU in cases C-51/19 P and C-64/19 P has been decisive in modifying Spanish fiscal policy. As a result of this judgment, Spanish jurisprudence has had to adapt in the following aspects:

- Review of selective tax regimes: Spain has adjusted its tax legislation to prevent certain regimes from granting benefits that could be considered selective State aid under EU rules. This case highlighted the importance of ensuring that tax benefits are applied in a non-discriminatory manner and do not favour cross-border investments to the detriment of domestic ones.
- Recovery of aid: Companies that benefited from the amortization regime of goodwill have been required to repay the aid received. This has directly affected the companies that availed themselves of this tax advantage but has also led to increased scrutiny over public aid regimes in Spain.

In cases C-70/16 P and C-81/16 P, the CJEU confirmed that the State aid granted to operators of digital terrestrial television (DTT), to the detriment of competing technologies such as satellite television, constituted incompatible State aid under the internal market.

The changes in Spanish jurisprudence resulting from this judgment include:

- **Technological neutrality in the granting of aid:** This case underscored the need for Spain to adopt a stance of technological neutrality when granting public aid, avoiding favouritism towards a specific technology, such as DTT, over others, such as satellite

television. Consequently, the Spanish government has had to adjust its policies to ensure that State aid does not distort competition among technologies.

- **Impact on public policy design:** The judgment compelled Spanish authorities to modify their approach to granting subsidies and public aid in the telecommunications sector, and possibly in other sectors where multiple technologies compete with each other

In the case concerning logistical platforms in Castilla-La Mancha (C-740/19), the effects on Spanish jurisprudence include:

- **Increased scrutiny over regional aid:** Following this judgment, the oversight of public aid granted at the regional level in Spain has been strengthened. The case demonstrated that aid awarded at the regional level is also subject to EU rules and cannot selectively benefit specific companies or sectors without distorting competition.

**Review of regional development policies:** The case has impacted how autonomous communities design their economic and regional development policies.

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