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Judgment of the Court in Case C-453/23 | Prezydent Miasta Mielca

State aid: the Court specifies the circumstances in which tax exemptions may be prohibited by EU law

In Poland, an undertaking was refused the property tax exemption provided for where the land concerned is equipped with railway infrastructure made available to rail carriers, on the ground that the grant of that exemption would be in breach of the EU law on State aid. The Polish Supreme Administrative Court has put questions to the Court of Justice in that regard. The Court considers that, in principle, a general and abstract exemption, such as that provided for by Polish law, does not constitute State aid, as it does not confer a selective advantage. That exemption does not appear to be connected with the specific characteristics of the undertakings benefiting therefrom or of their activities; nor does it appear to be part of a manifestly discriminatory system. Based on a neutral criterion, it applies to various actors, including undertakings of different sizes and from different sectors, as well as non-economic entities. Moreover, it serves a twofold – budgetary and environmental – objective. However, it is for the national court to assess whether or not the exemption regime in question constitutes State aid.

A Polish undertaking which owns an individual railway siding on its land decided to make that siding available to a rail carrier in order to avail itself of a property tax exemption. To that end, it applied to the competent authority for an advance tax ruling confirming its right to that exemption.

Although that undertaking satisfied all the conditions laid down by Polish law, it was refused the exemption on the ground that, under EU law, that exemption would constitute unlawful State aid because it had not been notified to the Commission beforehand.

The undertaking is contesting that refusal before the Polish courts. Having doubts as to whether that property tax exemption may be classified as State aid in the light of EU law,¹ the Polish Supreme Administrative Court has made a reference to the Court of Justice. It seeks to ascertain whether that exemption confers a selective advantage on its beneficiaries, and whether it distorts or threatens to distort competition.

According to the Court, **the property tax exemption in question does not appear to confer a selective advantage and thus does not appear to constitute State aid. However, it is for the national court to give a definitive ruling in that regard.**

In its analysis, the Court starts from the premiss that the legal property tax regime, as provided for by Polish law, represents the ‘normal’ tax regime, in the light of which the possible selectiveness of the exemption is to be assessed. That regime applies to all those who own or hold immovable property and defines the constituent elements of the property tax, including the exemption in question.

A general and abstract exemption to which a direct tax is subject, such as that established by Polish law, **cannot, in principle, be regarded as State aid.** In so far as it is presumed to be inherent in the ‘normal’ tax regime, it does not, as a general rule, confer a selective advantage.

However, there are two situations in which such an exemption could be selective. The first is where that exemption

forms part of a tax regime configured according to manifestly discriminatory parameters. The second is where the conditions set by the relevant legislation for benefiting from that exemption are connected with one or more specific characteristics of the undertakings benefiting therefrom, those characteristics being inextricably linked to the nature of those undertakings or the nature of their activities, with the result that those undertakings form a consistent category.

In this instance, the exemption in question is granted to persons subject to property tax on the condition that they own, *inter alia*, land forming part of railway infrastructure which is made available to rail carriers. Subject to verification by the national court, **that condition therefore does not appear to be connected, in law or in fact, with specific characteristics of the undertakings benefiting from that exemption.** Nor does it appear to form part of a tax regime configured according to manifestly discriminatory parameters.

Thus, that exemption appears to be capable of being obtained by a heterogeneous group of beneficiaries, including non-economic operators and undertakings of very different sizes in very different sectors. **The fact that only undertakings satisfying the conditions of an exemption can benefit from that exemption is not sufficient, in itself, for the exemption to be regarded as selective.**

In addition, the exemption referred to above pursues an objective which is not only budgetary, but also environmental, encouraging the restoration of disused railway sidings and the use of rail transport. In the context of its fiscal autonomy, a Member State may legitimately pursue, through direct taxation, in addition to a purely budgetary objective, one or more other objectives which, as the case may be, constitute, when taken together, the objective of the relevant reference framework.

However, if the national court were to consider that the exemption in question confers a selective advantage, it would then be necessary to examine whether, in view of its general characteristics, that exemption distorts or threatens to distort competition. In that regard, the Court emphasises that, in principle, the act of releasing an undertaking from the costs which it would normally have had to pay, in an economic sector which has been the subject of liberalisation at EU level, distorts the conditions of competition.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text and, as the case may be, the abstract of the judgment](#) is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355.

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¹ Article 107(1) TFEU.