



Court of Justice of the European Union

PRESS RELEASE No 57/18

Luxembourg, 26 April 2018

Judgments in Cases C-233 to C-237/16

Asociación Nacional de Grandes Empresas de Distribución (ANGED) v Generalitat de Catalunya (C-233/16), Consejería de Economía y Hacienda del Principado de Asturias (C-234/16), Consejo de Gobierno del Principado de Asturias (C-236/16) and Diputación General de Aragón (C-237/16)

Press and Information

Regional taxes in Spain on large retail establishments are compatible with EU law

The purpose of the taxes is to contribute to environmental protection and to town and country planning by attempting to correct and counterbalance the adverse effects of large retail establishments

Three Spanish autonomous communities, Catalonia (Case C-233/16), Asturias (Cases C-234/16 and C-235/16) and Aragon (Cases C-236/16 and C-237/16) introduced regional taxes on large retail establishments situated in their respective territories. Those taxes are intended to offset the potential impact of those large retail establishments on the territory and the environment, as revenue from those taxes is to be used to fund environmental action plans and make improvements to infrastructure.

The Asociación Nacional de Grandes Empresas de Distribución ('the ANGED'), a national association of large distribution companies, challenged the lawfulness of the taxes in question before the Spanish courts and filed a complaint with the Commission on that subject. The Tribunal Supremo (Supreme Court, Spain), which will have to give a ruling on the actions brought by ANGED, is uncertain as to the compatibility of the regional taxes with freedom of establishment. That Court also asks whether the exemptions available from those three regional taxes could constitute State aid prohibited under the FEU Treaty. It therefore referred questions to the Court of Justice to that effect.

In today's judgments, the Court rules that neither freedom of establishment nor the law on State aid preclude taxes on large retail establishments such as those at issue.

As regards **freedom of establishment**, the Court finds, first of all, that the criterion chosen for determining which establishments are subject to the tax, relating to the sales area of the establishment, does not give rise to any direct discrimination. It adds that that criterion does not appear in most cases to place at a disadvantage nationals from other Member States or companies whose seat is in another Member State.

Next, the Court examines whether the exemptions from the regional taxes in question constitute **State aid** for the purposes of the FEU Treaty. It states that it cannot be excluded a priori that the criterion relating to the sales area enables an advantage to be given, in practice, to certain undertakings or in respect of the production of certain goods by mitigating their tax burden vis-à-vis those subject to the tax in question. The Court explains that it must therefore be determined whether retail establishments excluded from the scope of those taxes are in a comparable situation to establishments that come within their scope.

The Court points out that the purpose of the taxes in question is to contribute towards environmental protection and town and country planning, by attempting to correct and counteract the environmental and territorial consequences of the activities of large retail establishments (deriving, in particular, from the ensuing rise in traffic flows), by having those establishments contribute to the financing of environmental action plans and measures to improve infrastructure.

As regards the **exemption resulting from the tax criterion based on the size of establishments** (the laws governing the taxes set a threshold below which establishments are exempt from paying the taxes), the Court states that it is not disputed that the environmental impact of retail establishments depends largely on their size. The larger the sales area, the greater the number of people, which results in greater adverse effects on the environment. The Court considers that a condition based on sales area thresholds in order to distinguish between undertakings with a greater or lesser environmental impact is consistent with the objectives pursued. It is also clear that the setting-up of such establishments is of particular significance for town and country planning policies, wherever those establishments may be situated. The Court takes the view that a condition, such as that in issue, under which the imposition of a tax is based on the sales area of an undertaking differentiates between categories of establishments that are not in a comparable situation in the light of the objectives pursued by the legislation in question. Therefore, the tax exemption received by retail establishments whose sales area is below the threshold set by that legislation cannot be regarded as conferring a selective advantage on those establishments and, therefore, is not capable of constituting State aid.

As for the **exemptions for certain activities pursued by establishments, such as, for example, the business of a garden centre or of selling vehicles or construction materials** (and, in the case of the Catalan tax, the 60% reduction of the tax base for certain activities), the regional governments argue that the activities in question require, by their very nature, large sales areas that are not intended to attract the greatest number of consumers and do not increase flows of customers who travel there by private vehicle. Thus, those activities will have fewer adverse effects on the environment and on town and country planning than the activities of establishments liable for the tax in question. The Court considers that that factor may justify the distinction adopted by the taxes, which will therefore not result in selective advantages being given to the retail establishments exempted from the taxes. It is, however, for the Tribunal Supremo to determine whether in fact that is the case.

The Court concludes that exemptions based on the size or nature of the activities of an establishment provided for by taxes such as those in question do not constitute State aid for the purposes of the FEU Treaty, provided that the establishments exempted from the tax do not have as significant an adverse effect on the environment and on town and country planning as the others.

However, **with regard to Catalonia**, the effect of the criterion drawing a distinction for fiscal purposes on the basis of the individual nature of retail establishments is to exempt from the tax large collective retail establishments with a surface area equal to or above the tax threshold. The Court considers that that criterion differentiates between two categories of large retail establishment that are objectively in a comparable situation in the light of the objectives of environmental protection and town and country planning. As a result, **the exemption of collective establishments from that tax is selective and constitutes State aid**, as the other conditions set out in the FEU Treaty are met.

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 a European Union 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.

Unofficial document for media use, not binding on the Court of Justice.

The full text of the judgments [C-233/16](#), [C-234/16](#) and [C-235/16](#) also [C-236/16](#) and [C-237/16](#) is published on the CURIA website on the day of delivery.

Press contact: Holly Gallagher ☎ (+352) 4303 3355