



Euro Tax Flash from KPMG's EU Tax Centre

CJEU clarifies circumstances in which tax exemptions may be prohibited by EU law

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On April 29, 2025, the Court of Justice of the European Union (CJEU or the Court) rendered its [decision](#) in case C-453/23, addressing the conditions under which tax exemptions may be considered permissible under EU State aid rules.

The case concerned Polish legislation granting a property tax exemption for land, buildings, and structures forming part of railway infrastructure, provided they are made available to rail carriers. The Court held that this exemption does not confer a selective advantage on its beneficiaries, as it does not favor certain undertakings over others in a comparable legal and factual context.



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CJEU – Poland – State Aid – Tax Exemption – Notification to the European Commission – Selective Advantage – Reference Framework – Member State autonomy

Background

The plaintiff was a Polish company that owned land on which a railway siding infrastructure was located. In 2021, the company indicated its intention to make this siding available to a rail carrier to carry out transport operations on its behalf.

Under Polish tax rules, a property tax exemption is available for land, buildings, and structures forming part of railway infrastructure when made available to rail carriers. The purpose of this exemption is to promote rail transport, which is generally considered as more environmentally friendly and safer than road transport.

The plaintiff sought to benefit from the exemption by requesting an advance tax ruling. Although the company met all the conditions set out under national law, the exemption was denied on the grounds that, under EU law, it would constitute unlawful State aid, as it had not been notified to the European Commission in accordance with Article 108(3) of the Treaty on the Functioning of the European Union (TFEU)¹. The plaintiff challenged the refusal. Following a series of legal proceedings, the case ultimately reached the Polish Supreme Administrative Court. The court expressed uncertainty as to whether the tax exemption qualified as State aid under EU law and referred the matter to the Court of Justice of the European Union (CJEU) for a preliminary ruling. Specifically, the referring court asked the CJEU to clarify whether:

- the tax exemption under dispute distorts or threatens to distort competition within the meaning of Article 107(1) TFEU; and
- a beneficiary of such an exemption – granted without prior notification, would be required to repay the aid with interest.

On October 17, 2025, Advocate General (AG) Kokott of the CJEU recommended that the CJEU finds that a derogation from the reference system by means of a statutory tax exemption exists only where the national provision concerned is manifestly inconsistent. If it is not, in AG's Kokott view, such a tax exemption is part of the relevant (national) reference system and cannot constitute a selective advantage.

CJEU Decision

The Court recalled its settled case-law under which a measure can be classified as State aid only if all of the following four conditions are met:

1. There must be an intervention by the State or through State resources.
2. The intervention must be liable to affect trade.
3. The intervention must confer a selective advantage on the beneficiary.
4. It must distort or threaten to distort competition.

The CJEU noted that although the referring court's first question focuses on whether the tax exemption distorts or threatens to distort competition (step four above), the request also reveals doubts about whether the exemption confers a selective advantage. The Court then held that, under Article 267 TFEU, the CJEU has the authority to reformulate questions to ensure it provides useful guidance. In light of the above, the CJEU interpreted the first question as essentially asking whether legislation exempting railway infrastructure from property tax confers a selective advantage and distorts or threatens to distort competition.

Existence of a selective advantage

The Court recalled that when considering whether a selective advantage has been granted – step 3 above, the European Commission is tasked with (i) identifying the reference system, i.e. the ordinary tax system applicable in that Member State in a factually comparable situation (by reference to the objectives of that regime), and (ii) demonstrating that the disputed tax

¹ Article 108(3) of TFEU requires Member States to notify State aid measures to the Commission before their implementation and to await the outcome of the Commission's investigation before implementing notified measures.

measure is a derogation from that 'normal' system, and therefore represents a form of discrimination (either formally or in practice).

Quoting its settled case-law, the CJEU noted that the determination of the reference system must follow from an objective examination of the content, the structure and the specific effects of the applicable rules under national law. In the Court's view the selectivity of a tax measure cannot be assessed in the light of a reference framework consisting of some provisions of the law of the Member State concerned that have been artificially taken from a broader legislative framework. Under the Court's case-law, in case a tax measure is inseparable from the general tax system of the relevant Member State, reference should be made to the general system. In the case at hand, the Court identified the Polish property tax regime, including the exemption, as the normal tax framework.

The relevant Polish law defines the beneficiaries of the exemption at issue in a general and neutral way, i.e., subject to the condition that they own land, a building or a structure forming part of railway infrastructure which is made available to rail carriers. In the Court's view, since such exemptions are presumed to form part of the 'normal' tax regime, they generally do not confer a selective advantage for their beneficiaries. The Court also noted that this finding is derived from the fiscal autonomy that Member States retain in the field of direct taxation. Furthermore, the Court emphasized that whilst the EC has wide discretion to assess the compatibility of aid with the internal market under Article 107(3) TFEU, requiring the Commission to scrutinize every general and abstract tax exemption would risk systematically replacing Member States' judgment with that of the Commission – thereby infringing on their fiscal autonomy.

However, the Court also clarified the circumstances under which such an exemption could be considered selective. First, selectivity may arise if the exemption is part of a tax regime that is configured on the basis of manifestly discriminatory parameters, designed to circumvent EU State aid rules. Second, an exemption may be selective if the conditions for eligibility are linked, in law or in fact, to specific characteristics of the entities that benefit from it – characteristics that are inextricably linked to the nature of those entities or their activities. In such cases, the beneficiaries effectively form a consistent category, suggesting the exemption confers a selective advantage. On the other hand, in the Court's view, the fact that only entities satisfying the conditions of an exemption can benefit from that exemption is not sufficient, in itself, for the exemption to be regarded as selective.

As regards the present case, the Court noted that, whilst it is up to the referring court to decide on the facts, in its view the exemption under dispute does not fall under the two scenarios above, which could be considered selective. The Court noted that the measure was based on neutral criterion, applying equally to any taxpayer that owns land, a building, or a structure forming part of railway infrastructure which is made available to rail carriers, irrespective of whether or not that taxpayer carries out an economic activity, and regardless of the nature of that activity. Furthermore, the Court noted that the criterion, which applies irrespective of the taxpayer's sectors of activity, or legal form. In other words, the measure does not inherently favor a particular group of undertakings. In the CJEU's view, subject to verification by the referring court, the exemption under dispute must therefore be regarded as forming part of the applicable reference framework.

Existence of a measure that distorts or threatens to distort competition

The CJEU noted that it is for the referring court to determine whether the exemption distorted or threatened to distort competition (without being required to examine each taxpayer's individual situation). The Court did emphasize that, in principle, the act of releasing an undertaking from the costs which it would normally have had to pay distorts competition.

ETC Comment:

The case at hand provides useful guidance on the instances when tax exemptions cannot be classified as State aid. As such, a general and neutral exemption would not constitute State aid, as long as i) the reference system itself is not manifestly discriminatory and ii) provided the exemption is not subject to a condition linked to the nature of the beneficiaries or the nature of their activities, which would enable all of those beneficiaries to be grouped together within a single consistent category.

The Court also gave several examples of tax measures that would not be classified as State aid, as long as the criteria above are met – i.e., a tax exemption that is dependent on the undertakings' results, or tax exemptions the application of which are subject to a certain recruitment policy or certain environmental measures.

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