



Reports of Cases

Case C-233/16

Asociación Nacional de Grandes Empresas de Distribución (ANGED)
v
Generalitat de Catalunya

(Request for a preliminary ruling from the Tribunal Supremo)

(Reference for a preliminary ruling — Regional tax on large retail establishments — Freedom of establishment — Protection of the environment and town and country planning — State aid — Selective measure — Letter from the Commission stating that no further action will be taken on a complaint — Existing aid)

Summary — Judgment of the Court (First Chamber), 26 April 2018

1. *Freedom of establishment — Tax legislation — Corporation tax — National rules governing a regional tax on large retail establishments — Lawfulness*

(Arts 49 TFEU and 54 TFEU)

2. *State aid — Definition — Selective nature of the measure — Derogation from the general tax system — Justification derived from the nature and general scheme of the system — Criteria for assessment*

(Art. 107(1) TFEU)

3. *State aid — Existing aid and new aid — Classification as existing aid — Criteria — Aid resulting from exemptions from and reductions of a tax levied on large retail establishments — Not included*

(Art. 108(1) and (3) TFEU; Council Regulation No 659/1999, Arts 1(b), (ii), (iv) and (v), (d) and 15(2))

1. Articles 49 and 54 TFEU must be interpreted as not precluding a tax levied on large retail establishments, such as that at issue in the main proceedings.

In the case in the main proceedings, the legislation in question lays down a criterion relating to the sales area of the establishment which does not give rise to any direct discrimination. Nor does the evidence submitted to the Court show that that criterion disadvantages in most cases nationals from other Member States or companies whose seat is in another Member State.

(see paras 32, 33, 35, operative part 1)

2. A tax such as that at issue in the main proceedings imposed on large retail establishments according, in essence, to their sales area does not constitute State aid within the meaning of Article 107(1) TFEU to the extent that it exempts establishments whose sales area is less than 2 500 m². Nor, in so far as that tax exempts establishments which pursue the business of a garden centre or of selling vehicles, construction materials, machinery or industrial supplies or reduces by 60% the tax base of establishments selling furniture, sanitary ware and doors and windows and those that are do-it-yourself stores, does it constitute State aid within the meaning of Article 107(1) TFEU, provided that those establishments do not have as significant an adverse effect on the environment and on town and country planning as the others, which it is for the referring court to ascertain. Such a tax does, however, constitute State aid within the meaning of that provision, to the extent that it exempts collective large retail establishments with a surface area equal to or greater than 2 500 m².

(see paras 67, 68, operative part 2)

3. See the text of the decision.

(see paras 72-74, 81-83, 86, operative part 3)