



Joined cases C-236/16 and C-237/16; C-233/16 and joined cases C-234/16 and C-235/16 - ANGED

AG reiterates that the reference system for State aid analysis varies according to the difference in treatment concerned

On 9 November 2017 AG Kokott issued its opinions in ANGED (joined cases C-236/16 and C-237/16; case C-233/16 and joined cases C-234/16 and C-235/16). The cases deal with a Spanish property tax levied on large retail establishments. The amount of tax due is mainly based on the dimension of the sales area. Among others, the Spanish regime provides that no tax is due on small retail establishments (i.e. below certain dimensional thresholds) and, moreover, it provides an exemption for certain sales area used solely for the sale of certain goods (such as machinery, vehicles, tools and industrial supplies; nurseries for gardening and cultivation; etc.).

Of particular interest in the AG opinions is the assessment of selectivity for State aid purposes. AG relies on the case law of the CJEU, according to which a tax advantage may be considered selective in so far as it differentiates between operators who, in the light of the objective pursued by the national tax system, are in a comparable factual and legal situation (the reference system). Reiterating the view she expressed in the opinion released in the case Finanzamt Linz (Case C-66/14), the AG states that the reference system varies according to the difference in treatment under consideration (para. 88 of joined cases C-236/16 and C-237/16). As a consequence, different tax treatments granted within the same tax may be considered selective on the basis of different reference systems. In the case at stake, in particular, the AG provides for different reference systems in respect of a) the exemption for large retail establishments and b) the non-taxation of small retail establishments. AG states that with regard to the exemption granted to large retail establishments, the reference system should be all large retail establishments, whereas for the non-taxation of small retail establishments, the reference system should be all retail establishments (irrespective of their dimension). In both cases the AG uses, as yardstick to assess comparability, the objective pursued by the Spanish property tax.

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