



Case C-598/17, A-Fonds

CJEU rules on the interaction between State Aid rules and the fundamental freedoms

Today the Court of Justice of the European Union ("CJEU") issued its judgment in the case C-598/17, *A-Fonds*, on the jurisdiction of domestic courts in cases concerning State Aid regimes that also violate fundamental freedoms. The case concerned a German public body made up of several German municipalities (BBB) that invested into Dutch companies through a fully owned German investment vehicle. The dividends received by BBB were subject to tax at source in the Netherlands. BBB submitted a refund request for that tax, claiming that Dutch taxation was in breach of the free movement of capital because Dutch public bodies comparable to BBB enjoyed a full exemption from Dutch corporate tax under Dutch tax law.

The Dutch referring court regarded the Dutch exemption regime in breach of the free movement of capital. However, that court had doubts on whether it had jurisdiction to rule on the refund requested by BBB, under EU law. This was because, according to the referring court, the exemption regime for Dutch public bodies might constitute State Aid granting a selective advantage to Dutch public bodies. In such a case, indeed, refund to public bodies resident outside the Netherlands (such as BBB) would be tantamount to expanding the scope of an unlawful State Aid regime.

The CJEU found that, in the case at stake, the domestic court had no jurisdiction to rule on the refund of the tax on the basis of the free movement of capital. This is because, under the provisions of the TFEU, the European Commission has exclusive competence to assess the existence of unlawful State Aids (subject to review by the EU Courts) and, consequently, a domestic court has no jurisdiction to rule on the refund of a tax under the provisions of the free movement of capital, if that refund constitutes a State Aid scheme.

For further information: **Maisto e Associati**

Milan

Piazza F. Meda 5
20121
T: +39.02.776931

Rome

Piazza d'Aracoeli 1
00186
T: +39.06.45441410

London

2, Throgmorton Avenue
EC2N 2DG
T: +44.207.3740299

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