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Advocate General's Opinion in Joined Cases C-555/22 P, C-556/22 P and C-564/22 P | United Kingdom v Commission and Others

Advocate General Medina: The Court of Justice should annul the Commission decision finding that the United Kingdom granted illegal tax rulings (tax advantages to certain multinational groups) between 2013 and 2018

Both the Commission and the General Court erred in law when considering that the Controlled Foreign Company (CFC) rules, instead of the general UK corporation tax system as a whole, were the correct reference framework for examining whether a selective advantage had been granted

By decision of 2 April 2019 ¹, the European Commission found that the United Kingdom had granted between 2013 and 2018 illegal state aid to certain multinational groups by means of tax advantages. Indeed, it considered that the UK unduly exempted those groups from a tax scheme targeting tax avoidance.

According to the Commission, the UK's Controlled Foreign Company (CFC) rules were aimed at preventing UK companies from using a subsidiary, based in a low or no tax jurisdiction, to avoid taxation in the UK. They allowed the UK tax authorities to reallocate all profits artificially diverted to an offshore subsidiary back to the UK parent company, where it could be taxed accordingly.

However, between 2013 and 2018, the CFC rules included an exemption for certain financing income (i.e. interest payments received from loans) of multinational groups active in the UK. The Commission considered part of this group financing exemption (GFE) as illegal tax advantage. It ordered the UK to recover it from its beneficiaries.

The United Kingdom and the company ITV challenged the Commission decision before the General Court of the European Union. By judgment of 8 June 2022, the General Court dismissed their actions ².

The United Kingdom, ITV and two companies of the London Stock Exchange Group appealed to the Court of justice.

In today's opinion, **Advocate General Laila Medina proposes to the Court of Justice to set aside the judgment of the General Court and to annul the Commission decision.**

In order to determine whether a national measure constitutes State aid, the Commission must, *inter alia*, demonstrate that the measure confers a selective advantage on the beneficiaries. In order to classify a tax measure as 'selective', the Commission must begin by **identifying the reference system, that is the 'normal' tax system** applicable in the State concerned. Next, the Commission must demonstrate that the measure at issue derogates from that reference system because it differentiates between undertakings in a comparable situation.

When determining the reference framework for the purposes of applying Article 107(1) TFEU to tax measures, **the Commission is, in principle, required to accept the interpretation of the relevant provisions of national law given by the Member State** concerned in the context of an exchange of arguments between that State and the

Commission. The Commission's interpretation will prevail over the Member State's interpretation only if the Commission can establish that the latter interpretation is manifestly incompatible with the wording and objectives of the national provisions at issue.

Further to a detailed assessment of the provisions of the applicable national law, the Advocate General concludes that **the General Court and the Commission erred in law when considering that the CFC rules constituted the correct reference framework** for examining whether a selective advantage had been granted. Instead, the correct reference framework ought to have been the **general UK corporation tax system**. The CFC rules form part of that system and cannot be severed from it. The General Court thus erred by abstracting one set of rules (the CFC rules) from their broader legislative framework (the general corporation tax system).

Indeed, the CFC rules can only be fully understood when considering the UK corporate tax system as a whole. According to the Advocate General, in the context of determining the reference framework, the Commission and the General Court **failed to carry out an objective examination of the content, structure and actual effects of the applicable rules under the national law** concerned. Therefore, the error made in the determination of the reference framework necessarily vitiates the whole of the selectivity analysis.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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¹ [Commission Decision \(EU\) 2019/1352](#) of 2 April 2019 on the State aid SA.44896 implemented by the United Kingdom concerning CFC Group Financing Exemption; see also [Commission press release IP/19/1948](#) of the same day.

² Judgment of 8 June 2022, United Kingdom and ITV v Commission ([T-363/19](#) and [T-456/19](#)).