COURT OF JUSTICE OF EU / JUDGMENT

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Category: Opinions

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Press and Information
Court of Justice of the European Union
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Judgment in Joined Cases C-622/16 P Scuola Elementare Maria Montessori Srl v Commission, C-623/16 P Commission v Scuola Elementare Maria Montessori Srl, and C-624/16 P Commission v Pietro Ferracci

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The Court annuls the Commission's decision not to order recovery of unlawful aid granted by Italy in the form of an exemption from municipal tax on real property
Directly concerned competitors of the beneficiaries of State aid are entitled to bring actions before the EU's Courts for the annulment of such a decision
By decision of 19 December 20121 the Commission found that the exemption from municipal tax on real property (ICI) granted by Italy to non-commercial entities (such as ecclesiastical or religious institutions) carrying on certain activities (such as educational or accommodation activities) on the real property belonging to them was unlawful State aid. However, the Commission did not order it to be recovered, since it considered this to be absolutely impossible. The Commission also found that the tax exemption provided for by the new Italian scheme of the single municipal tax (IMU), applicable in Italy as from 1 January 2012, did not constitute State aid.
Private educational establishment Scuola Elementare Maria Montessori ('Montessori') and Mr Pietro Ferracci, the owner of a bed and breakfast, asked the General Court to annul the Commission's decision. They argued in particular that the decision put them in an unfavourable competitive situation compared to ecclesiastical or religious institutions located nearby which carried on similar activities to theirs and were able to benefit from the tax exemptions in question.
The Commission objected that neither Montessori nor Mr Ferracci satisfied the conditions for bringing actions before the EU's Courts laid down by Article 263 of the Treaty on the Functioning of the European Union (TFEU).2
By judgments of 15 September 20163 the General Court declared the actions admissible but dismissed them as unfounded.
Montessori and the Commission appealed against those judgments.
In today's judgment the Court of Justice considers for the first time the question of the admissibility – on the basis of the third limb of the fourth paragraph of Article 263 TFEU – of direct actions brought by competitors of beneficiaries of a State aid scheme against a decision of the Commission declaring that the national scheme in question does not constitute State aid and that aid granted under an unlawful scheme cannot be recovered. The Court notes that such a decision (i) is a 'regulatory act', that is, a non-legislative act of general application, which (ii) directly concerns Montessori and Mr Ferracci and (iii) does not entail implementing measures with respect to them.

The Court therefore finds that the actions brought by Montessori and Mr Ferracci against the Commission's decision are admissible.
1 Commission Decision 2013/284/EU of 19 December 2012 on State aid SA.20829 (C 26/2010, ex NN 43/2010 (ex CP 71/2006)) Scheme concerning the municipal real estate tax exemption granted to real estate used by non-commercial entities for specific purposes implemented by Italy (OJ 2013 L 166, p. 24).
2 Article 263 TFEU, fourth paragraph, provides that 'any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures'.
3 Cases: T-220/13 Scuola Elementare Maria Montessori v Commission and T-219/13 Ferracci v Commission.
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As to the substance of the case, the Court recalls that the adoption of an order to recover unlawful aid is the logical and normal consequence of a finding that it is unlawful. Admittedly, the Commission cannot require the recovery of aid if this would be contrary to a general principle of EU law, such as the principle that 'no one is obliged to do the impossible'. However, the Court points out that the recovery of unlawful aid may be regarded as objectively and absolutely impossible only where the Commission finds, following a scrupulous examination, that two conditions are satisfied, namely that the difficulties relied on by the Member State concerned genuinely exist and that there are no alternative methods of recovery. Thus, in the present case, the Commission could not conclude that it was absolutely impossible to recover the unlawful aid by confining itself to observing that it was impossible to obtain the necessary information for recovery of the aid from the Italian land register and tax databases, and it should also have considered whether there were alternative methods that would allow recovery, even if only partial, of the aid. In the absence of such an analysis, the Commission failed to show that it was absolutely impossible to recover the ICI. On that ground, the Court sets aside the General Court's judgment in so far as it endorsed the Commission's decision not to order recovery of the unlawful aid granted by means of the exemption from ICI, and consequently annuls the Commission's decision.
The Court considers, in addition, that the General Court did not err in law in holding that the exemption from IMU, which did not extend to educational services provided for consideration, did not apply to economic activities and could not therefore be regarded as State aid. On this point, the Court recalls its case-law4 according to which tax exemptions concerning real property may constitute prohibited State aid if and to the extent that the activities carried out on the premises in question are economic activities.
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 judgment is published on the CURIA website on the day of delivery.
Press contact: (+352) 4303 3355
Pictures of the delivery of the judgment are available from "Europe by Satellite" (+32) 2 2964106
4 Case: C-74/16 Congregación de Escuelas Pías Provincia Betania, see also Press Release No 71/17.

There are no comments yet.