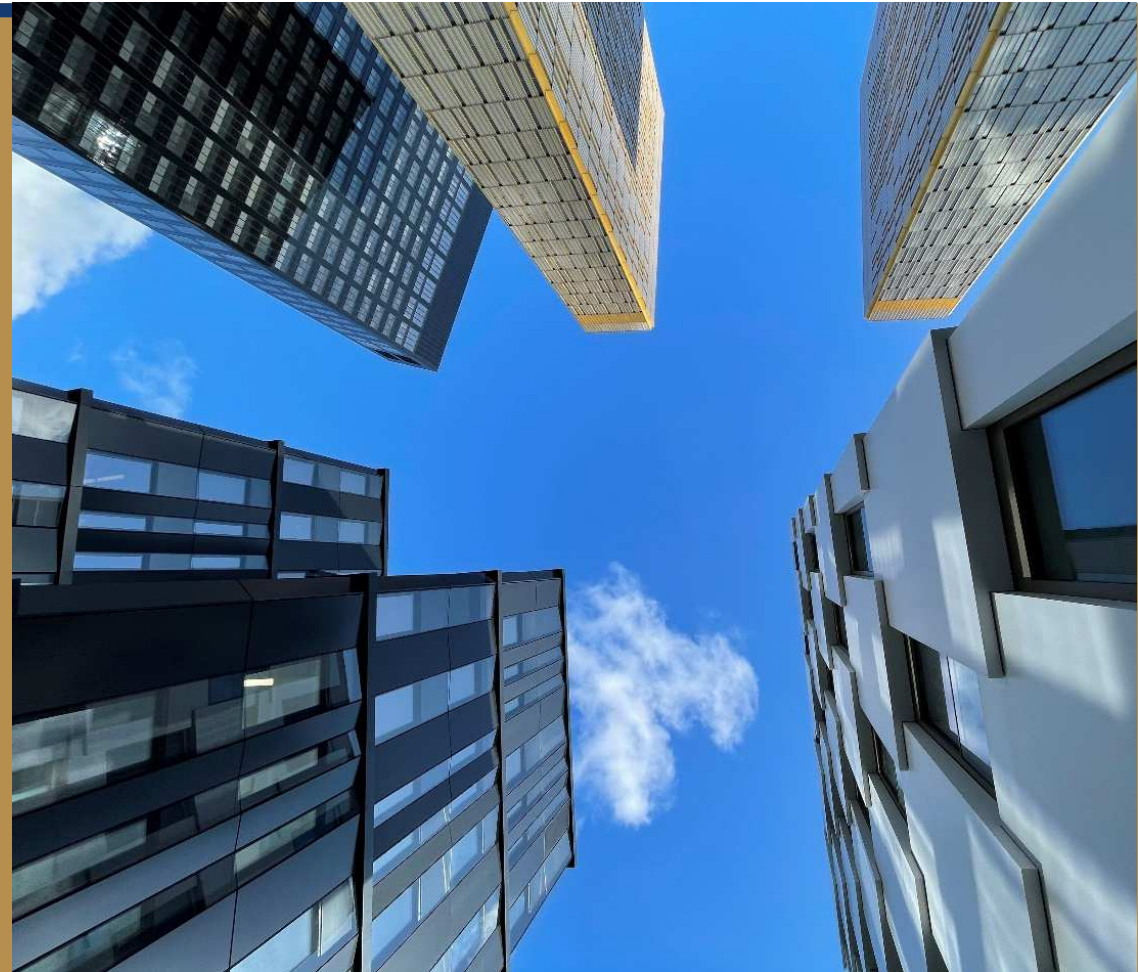




COUR DE JUSTICE  
DE L'UNION EUROPÉENNE

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# State aid before the CJEU: Highlights from 2024-2025



Judge Suzanne Kingston  
26 September 2025

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# OVERVIEW

- Tax: End of the « tax rulings » wave: **Apple, UK v Commission (CFC regime); Presydent Miasta; Commission v Spain**
- Air travel: Towards the end of the « Covid » wave: **Wizz Air (Tarom II); Ryanair (TAP II); Ryanair (Condor II)**
- **Austria v Commission (Paks II)**

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# TAX RULINGS

- Following **World Duty Free** (CJ, 2016): Clarified the concept of selectivity of State aid as applied to national tax measures:
- Does the measure favour certain undertakings over others which, in the light of the objective of the tax system, are in a comparable factual and legal situation and therefore in essence suffer discriminatory treatment?
- After WDF: 3 stage test – (1) Identification of reference system; (2) Demonstration that the measure deviates from that system; (3) Competitive advantage for certain undertakings without justification. **COM does not need to show that only certain undertakings in fact benefit from the measure: prima facie generally applicable measures can constitute aid.**
- Applying WDF to **tax rulings: Fiat** (CJ, 2022), **Starbucks** (GC, 2019) – no State aid

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# TAX RULINGS: APPLE (CJ, SEPT 2024)

- Long-running saga involving tax rulings of Irish authorities from 1991 and 2007: apportionment of profit to **Irish branches of two Apple subsidiaries** (ASI + AOE);
- ASI/AOE: Incorporated, but not tax resident, in Ireland: **What should the appropriate profit chargeable to tax in IRL have been?** (viz, profits generated from use of Apple IP rights)
- GC: Commission had not proven that there were sufficient activities in Ireland so as to justify attribution of that profit to IRL: no « **selective advantage** » proven – small number of employees doing relatively minor tasks in IRL. COM had applied an « **exclusion** » approach (if not taxed in US, must be taxable somewhere + if insufficient activities in the US head office, must be taxable in IRL)
- CJ overrules GC: COM had not applied an « exclusion » approach, but had looked at the US head office activities; its conclusion on the appropriate branch profit attribution was correct. CJ could look at GC's interpretation of national law, because this involved the definition of the concept of aid.

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# TAX RULINGS: UK V COMMISSION (CJ, SEPT 2024)

- Did certain exemptions from the **UK Controlled Foreign Corporation Rules** (anti-abuse measures) confer a selective advantage and therefore constitute State aid?
- CFC rules: essentially expand the tax base to include profits of foreign companies controlled by UK established companies
- CJ: overturns GC judgment; The exemptions did not constitute State aid
- UK CFC rules did not constitute the reference system: This was the **general corporation tax system**, largely based on territoriality and including rules aimed at avoiding artificial diversion of profits or erosion of the tax base

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# TAX RULINGS: PREZYDENT MIASTA MIELCA (CJ, APRIL 2025)

- Rare case of preliminary reference on tax rulings / State aid
- Company was refused property tax exemption for land with railway infrastructure, on the basis that SA
- Reference from Polish Supreme Administrative Court
- CJ: **General and abstract exemption is not in principle a selective advantage**; conditions do **not appear to be connected to specific undertakings, via characteristics inextricably linked to the nature of those undertakings**, or to be **manifestly discriminatory** ; available to different sectors and companies; **budgetary** and **environmental** objective.
- Here: exemption appears to be capable of being obtained by heterogeneous group of beneficiaries from different sectors
- For national court to rule definitively on the facts.

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# TAX SCHEMES: COMMISSION V SPAIN (CJ, 2025)

- **CJ confirms GC's judgment** annulling COM's decision that new Spanish tax scheme on the deduction of indirect acquisitions of foreign shareholdings was unlawful aid.
- Companies could deduct goodwill from acquisition of foreign shareholdings from their tax base.
- First decision on 2002 scheme: CJ upholds COM decision (**WDF**: aid, but legitimate expectation applies: response to questions from MEPs)
- Second decision : COM considers that Spain had extended the scheme in 2013 to indirect acquisition of foreign shareholdings.
- GC: Original scheme had always covered indirect acquisitions, so legitimate expectations apply. CJ upholds this.

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# COVID AIRLINE CASES: WIZZ AIR HUNGARY – TAROM II (GC, NOV 2024)

- GC **rejects Wizzair's claim re Romanian aid** of 2 million euro granted to national airline TAROM
- Capital injection from Romanian general budget to compensate for 14 international routes July – Dec 2020: COM finds compatible with internal market (107.2.b) without opening formal investigation procedure
- GC finds exceptional circumstances applied; COM had correctly assessed **proportionality** of aid and that there was no overcompensation. COM had correctly assessed the **counterfactual**, which losses had been directly caused by the travel restrictions, and that TAROM had taken **reasonable measures to limit the damage in that period**.
- COM had correctly taken into account prior **rescue aid** (107.3.c)

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# COVID AIRLINE CASES: RYANAIR (GC, TAP II RESCUE AID, FEB 25); RYANAIR (GC, CONDOR II, JUNE 25)

- **Ryanair (TAP II rescue aid):** Following prior annulment and retaking of rescue aid decision, GC dismisses action against that second decision.
- Aid = loan agreement between Portugal and TAP; necessary to keep TAP in operation between July/December 2020.
- First judgment: COM had not indicated if TAP formed part of a larger group, as required for rescue aid analysis. Second judgment: Upholds COM decision (objective of common interest, appropriate and proportionate; and not contrary to non-discrimination or free movement principles)
- **Ryanair (Condor II):** State guarantee and loan to charter airline Condor's benefit. Ryanair had not proven that Commission's decision not to open investigation was unlawful. Commission's counterfactual was plausible: Condor was a viable undertaking and aid did not relate to its rescue, but to the Covid travel restrictions.

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# AUSTRIA V COMMISSION (PAKS II NUCLEAR POWER STATION, CJ 11 SEPT 2025)

- CJ annuls COM's decision to approve Hungary's aid for Paks II, as COM did not check if direct award of contract (ie, without public tender procedure) for construction of new reactors complies with **EU public procurement rules**.
- **Investment aid** to State-owned Paks II to develop two nuclear reactors at Paks nuclear power station, to gradually replace existing reactors; to be owned by Paks II and fully financed by Hungary.
- **Direct award** of contract: to Nizhny Novograd Engineering: Hungary-Russia agreement; Russia to provide Hungary with State loan to finance most of development.
- Concept of « **direct and inextricable link** » with the aid: COM should not have stopped with checking compatibility with State aid rules, but also with public procurement rules, as **construction of reactors forms an integral part of notified measures and direct award of contract was indispensable for the project**.
- An open procedure **may lower costs therefore influence amount of advantage/aid**.

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# CONCLUSION

- Tax / State aid looks set to remain a source of cases and potentially further development in the case law (**Prezydent**)
- Airline/Covid cases: End of a State aid era, subject to certain pending appeals
- « Direct and inextricable link » doctrine: Important doctrine still in course of development