



## **The General Court annuls the Commission's decision concerning tax exemptions granted by Belgium by means of rulings**

*The Commission wrongly considered that the Belgian system relating to the excess profit of multinational companies constituted an aid scheme*

Since 2005, Belgium has applied a system of exemptions for the excess profit of Belgian entities which form part of multinational corporate groups. Those entities could obtain an advance ruling from the Belgian tax authorities, if they were able to demonstrate the existence of a new situation, such as a reorganisation leading to the relocation of the central entrepreneur to Belgium, the creation of jobs or investments. In that context, profits regarded as being 'excess', in that they exceeded the profit that would have been made by comparable standalone entities operating in similar circumstances, were exempted from corporate income tax.

In 2016, the Commission found that that system of excess profit exemptions constituted a State aid scheme that was incompatible with the internal market and unlawful<sup>1</sup> and ordered the recovery of the aid thus granted from 55 beneficiaries, including the company Magnetrol International.

Belgium and Magnetrol International brought an action before the General Court seeking the annulment of the Commission's decision. They allege inter alia that the Commission: (1) encroached upon Belgium's exclusive tax jurisdiction in the field of direct taxation and (2) erred in finding an aid scheme in the present case.

### **In today's judgment, the General Court annuls the Commission's decision.**

As regards the alleged encroachment upon Belgium's exclusive jurisdiction, the General Court notes that while direct taxation, as EU law currently stands, falls within the competence of the Member States, they must nonetheless exercise that competence consistently with EU law. Accordingly, a measure by which the public authorities grant certain undertakings advantageous tax treatment which – although it does not involve the transfer of State resources – places the beneficiaries in a more favourable position than other taxpayers is capable of constituting State aid. Since the Commission is competent to ensure compliance with the State aid rules, it cannot be accused of having exceeded its powers in the present case. The General Court therefore rejects the argument put forward by Belgium and Magnetrol International.

As regards the existence of an aid scheme, the General Court finds that the Commission erroneously considered that the excess profit exemption system constituted an aid scheme, within the meaning of Article 1(d) of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union.

First of all, the provisions identified by the Commission as the basis of the alleged aid scheme did not set out all the essential elements of that scheme. Accordingly, the implementation of those

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<sup>1</sup> Commission Decision (EU) 2016/1699 of 11 January 2016 on the excess profit exemption State aid scheme SA.37667 (2015/C) (ex 2015/NN) implemented by Belgium (OJ 2016 L 260, p. 61).

provisions and thus the grant of the alleged aid necessarily depended on the adoption of further implementing measures, which precludes the existence of an aid scheme.

Next, the General Court finds that the Belgian tax authorities had a margin of discretion over all of the essential elements of the exemption system in question, allowing them to influence the amount and the characteristics of the exemption and the conditions under which it was granted, which also precludes the existence of an aid scheme.

Lastly, the General Court holds that it cannot be concluded that the beneficiaries of the alleged aid scheme are defined in a general and abstract manner or that there was actually a systematic approach on the part of the Belgian tax authorities as regards all of the advance rulings concerned.

**The Commission therefore wrongly considered that the Belgian system relating to the excess profit constituted an aid scheme.**

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**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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

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