

State Aid: General Court Upholds Commission Decision on Belgian Excess Profit Scheme in Joined Cases *Magnetrol v. Commission* (T-263/16 RENV, T-265/16, T-311/16, T-319/16, T-321/16, T-343/16, T-350/16, T-444/16, T-800/16 and T-832/16)

20 September 2023

Report from Dr René Offermanns, Principal Research Associate, IBFD

On 20 September 2023, the General Court of the European Union gave its judgement in Joined Cases *Magnetrol v. Commission* (T-263/16 RENV, T-265/16, T-311/16, T-319/16, T-321/16, T-343/16, T-350/16, T-444/16, T-800/16 and T-832/16) on the Belgian excess profit scheme (for prior coverage and details, see [General Court decision: Belgium v. Commission \(T-131/16\) and Magnetrol v. Commission \(T-263/16\) joined cases – State aid: Belgian excess profit scheme \(15 February 2019\)](#) and [State Aid: General Court Upholds Commission Decision on Belgian Excess Profit Scheme in Belgium v Commission \(Case T-131/16 RENV\) \(20 September 2023\)](#)).

In support of their actions for annulment, Belgium and the applicant undertakings challenged the existence of an advantage arising from the excess profit scheme and its selectivity.

The General Court dismissed the action in its entirety, upholding the Commission's decision, and ordered the applicants to pay the costs.

In particular, the General Court considered that:

- the Commission correctly found that the excess profit exemption scheme did not form part of the reference system applicable in the present case;
- the excess profit exemption scheme constitutes an advantage favouring the beneficiaries of the tax rulings because it resulted in a tax reduction;
- the scheme conferred a selective advantage, as it was not granted to all entities in a comparable factual and legal situation;
- the system is selective because it excluded companies that had decided not to make investments, centralize activities or create employment in Belgium and was not granted to undertakings that were part of a small group;
- the scheme was financed through State resources because the exempt profits would have been taxed in Belgium;
- the scheme was not justified by the objective of avoiding double taxation, because the exemption was not conditional upon proof that the excess profit had been included in the profit of another associated company or that it had actually been taxed in another state; and
- the scheme distorted competition within the European Union as it attracted investments in Belgium.

The full text of the judgement can be read [here](#) (in English).

Note: On 20 September 2023, the General Court of the European Union gave its judgement in several other cases regarding the Belgian excess profit scheme. All actions to annul the European Commission Decision of 11 January 2016 on the excess profit exemption State aid scheme have been dismissed by the General Court. The pleas and main arguments of these judgements, can be consulted here: cases [T266/16](#), [T324/16](#), [T351/16](#), [T363/16](#), [T371/16](#) and [T388/16](#); cases [T858/16](#) and [T867/16](#); case [T637/16](#); cases [T467/16](#) and [T681/16](#); case [T420/16](#); case [T373/16](#); cases [T278/16](#) and [T370/16](#) and cases [T201/16](#), [T335/16](#), [T357/16](#) and [T369/16](#). For the General Court Decision in *Belgium v Commission* (Case T-131/16 RENV), see [State Aid: General Court Upholds Commission Decision on Belgian Excess Profit Scheme in Belgium v Commission \(Case T-131/16 RENV\) \(20 September 2023\)](#).

An appeal, limited to points of law only, may be brought before the ECJ against the decision of the General Court within 2 months and 10 days of notification of the decision.

European Union; Belgium - State Aid: General Court Upholds Commission Decision on Belgian Excess Profit Scheme in Joined Cases *Magnetrol v. Commission* (T-263/16 RENV, T-265/16, T-311/16, T-319/16, T-321/16, T-343/16, T-350/16, T-444/16, T-800/16 and T-832/16) (20 Sep. 2023), News IBFD.

Exported / Printed on 9 Mar. 2024 by hkermadi@deloitte.lu.