

ECJ: Soudal NV Appeals State Aid Case Concerning Belgian Excess Profit Scheme in Joined Cases T-201/16, T-335/16, T-357/16 and T-369/16

26 February 2024

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On 30 November 2023, Soudal NV appealed the judgment of the General Court of the European Union (the General Court) on the State aid case concerning the Belgian Excess Profit Scheme (see [State Aid: General Court Upholds Commission Decision on Belgian Excess Profit Scheme in Joined Cases Magnetrol v. Commission \(T-263/16 RENV, T-265/16, T-311/16, T-319/16, T-321/16, T-343/16, T-350/16, T-444/16, T-800/16 and T-832/16\) \(20 September 2023\)](#))).

The appellant claims that the Court of Justice for the European Union (ECJ) should set aside the judgment of the General Court, annul the contested decision and order the Commission to pay the costs both before the General Court and before the Court of Justice. Alternatively, should the Court confine itself to following the third ground, annul the recovery order laid down in article 2 of the contested decision and order the Commission to pay the costs of the proceedings before both the General Court and the Court of Justice.

Alternatively, if the ECJ upholds the appellant's grounds of appeal, but considers that the matter has not yet been settled because the General Court did not rule on the secondary line of reasoning relating to the arm's length principle, it should refer the case back to the General Court. However, this referral should only be in relation to the alternative line of reasoning relating to selectivity, and reserve the costs of the proceedings before the General Court and the proceedings before the ECJ.

In the further alternative, the ECJ should follow the third ground of appeal here, too, and at least annul the recovery order laid down in article 2 of the contested decision.

According to the appellant, the General Court made several errors of law and fact in finding that the Commission had correctly defined the reference framework and that it had rightly demonstrated the existence of derogations from the reference framework.

Firstly, the appellant claims that it will demonstrate that the judgment under appeal must be set aside because the General Court sought to determine the reference framework on the basis of errors of law and a distortion of the facts.

Secondly, the appellant claims that it will demonstrate that the General Court erred in law and distorted Belgian law by holding that paragraph 185(2)(b) of the Income Tax Code (ITC) allows a downward adjustment in Belgium only when a corresponding or correlative upward adjustment is made by a tax administration in another country.

Thirdly, the appellant claims that it will demonstrate that the General Court's findings are vitiated by errors of law and by a distortion of the facts by stating that Paragraph 185(2)(b) of the ITC does not allow adjustments to be made by reference to a 'hypothetical profit'.

The second ground is based on the fact that the General Court infringed article 61 of the Statute of the ECJ, because it has demonstrated various errors of law and fact by holding that the Commission had rightly qualified the scheme as selective. By this ground, the appellant will demonstrate that the three scenarios that demonstrate the alleged selectivity are not based on reality. Should the Court accede to rebutting all three scenarios, there is no selectivity and the judgment under appeal would have to be set aside and the contested decision annulled.

The third ground alleges that the General Court erred in law in finding that the recovery order does not run counter to the principles of legal certainty and of the protection of legitimate expectations.

The appeal was published in the Official Journal of the European Union on 26 February 2024 (OJ C 2024/1522) under case number Case C-734/23 P.

Note: On 26 February 2024, several appeals were made concerning the judgement of the General Court of the European Union (the General Court) on the State aid case concerning the Belgian Excess Profit Scheme (see [State Aid: General Court Upholds Commission Decision on Belgian Excess Profit Scheme in Joined Cases Magnetrol v. Commission \(T-263/16 RENV, T-265/16, T-311/16, T-319/16, T-321/16, T-343/16, T-350/16, T-444/16, T-800/16 and T-832/16\) \(20 September 2023\)](#)). These appeals can be consulted here: [Case C-735/23 P](#), [Case C-736/23 P](#), [Case C-737/23 P](#), [Case C-738/23 P](#), [Case C-739/23 P](#), [Case C-740/23 P](#), [Case C-741/23 P](#), [Case C-742/23 P](#), [Case C-752/23 P](#), [Case C-754/23 P](#), [Case C-755/23 P](#), [Case C-756/23 P](#), [Case C-757/23 P](#) and [Case C-758/23 P](#).

Belgium; European Union - ECJ: Soudal NV Appeals State Aid Case Concerning Belgian Excess Profit Scheme in Joined Cases T-201/16, T-335/16, T-357/16 and T-369/16 (26 Feb. 2024), News IBFD.

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