

State Aid: General Court Upholds Commission Decision on Belgian Excess Profit Scheme in *Belgium v Commission* (Case T-131/16 RENV)

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On 20 September 2023, the General Court of the European Union gave its judgement in the case of *Belgium v Commission* (Case T-131/16 RENV) on the Belgian excess profit scheme. With this action, Belgium requested the annulment of the European Commission Decision of 11 January 2016 on the excess profit exemption State aid scheme.

Since 2005, Belgium applied a scheme that exempted certain "excess" profits of Belgian entities which form part of multinational corporate groups. Those entities could obtain an advance ruling (tax ruling) from the Belgian tax administration if they centralized their activities, created employment or made investments in Belgium.

Under the scheme, profits exceeding the profit that would have been made by comparable standalone entities operating in similar circumstances, are exempted from corporate income tax.

On 11 January 2016, the European Commission found that that the excess profit scheme constituted unlawful State aid (see [European Union-1, News 11 January 2016](#)).

On 14 February 2019, the General Court annulled the Commission's decision. On appeal, on 16 September 2021, the Court of Justice of the European Union (ECJ) set aside the General Court's decision and decided that the Commission had correctly concluded that the Belgian excess profit scheme constituted an aid scheme.

In the current decision, the General Court confirmed the decision of the Commission and rejected the arguments of Belgium, particularly on the financing of the scheme at issue through State resources or the alleged failure to take into account the tax rules applicable in Belgium for the purpose of identifying the reference system.

The Court held that the Commission demonstrated that the Belgian scheme at issue granted tax advantages to its beneficiaries. Moreover, the Court agreed with the Commission's conclusion that that scheme was selective because it differentiated between operators who were in a comparable factual and legal situation.

As result, the entities belonging to a multinational group which benefited from the excess profit exemption, were treated differently than other entities subject to Belgian corporate income tax that did not benefit from it.

The General Court also confirmed the Commission's finding that the scheme was selective as companies that had decided not to make investments, centralize activities or create employment in Belgium could not benefit from the scheme. Finally, the scheme was also selective because it was not open to undertakings that were part of a small group.

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

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