Downloaded from Blogs on 25.11.2026 13:11

By PwC Deutschland | 06 December 2021

EU state aid : Dispute over tax advantages for Luxembourg companies continues

On 21 July 2021 Luxembourg has filed an appeal against the judgment of the General Court of 12 May 2021 in the joined cases T-516/18 and T-525/18 (Luxembourg and Engie Global LNG Holding and Others / Commission) regarding certain tax rulings concerning the transfer of business activities within the Engie group.

Downloaded from Blogs on 25.11.2026 13:11

Background

The tax rulings concerned a convertible loan granted by Engie Global's sister company in Luxembourg. This loan classified as a debt instrument and therefore was deductible under Luxembourg tax law. Both Luxembourg and Engie Global argue that these tax rulings were merely based on the application of Luxembourg tax law and did not involve any preferential treatment. Both parties, therefore, requested an annulment of the decision of the EU Commission. The actions for annulment against the European Commission's erstwhile state aid decision of 20 June 2018 were subsequently rejected by the General Court of the European Union (General Court) in its judgment of 12 May 2021.

In its judgment, the General Court approves the Commission's approach, relating to the complex intra-group financing structure, which – according to the General Court - entails looking at the economic and fiscal reality, rather than following a formalistic approach that separately reviews each individual transaction of the structure. In summary, the General Court finds that the view held by the Commission was justified insofar that a selective advantage was received as a result of the non-application of national anti-abuse provisions.

In broad outline, the transactions carried out under each structure were implemented in three successive stages. **First**, a holding company transfers shares to a subsidiary. **Second**, in order to finance the shares transferred, that subsidiary takes out an interest-free mandatorily convertible loan (ZORA) with an intermediary. Besides the fact that the loan granted generates no periodic interest, the subsidiary that has received the ZORA repays the loan, upon its conversion, by issuing shares the amount of which is equivalent to the nominal amount of the loan, plus a premium representing, in essence, all of the profits made by the subsidiary during the term of the loan (ZORA accretions). **Third**, the intermediary finances the loan granted to the subsidiary by entering into a prepaid forward sale contract with the holding company under which the holding company pays to the intermediary an amount equal to the nominal amount of the loan in exchange for the acquisition of the rights to the shares that the subsidiary will issue on conversion of the ZORA. Therefore, if the subsidiary makes profits during the life of the ZORA, the holding company will own the right to all the shares issued, which will incorporate the value of any profits made as well as the nominal amount of the loan.

Details of the judgement of the General Court of 12 May 2021 can be found **here**.

Appeal brought before the European Court of Justice (ECJ)

On 21 July 2021, Luxembourg brought its appeal against the judgment of the General Court in the joined cases T-516/18 and T-525/18 before the ECJ and requests to set aside the judgment of the General Court of 12 May 2021. - All of the appellants, therefore, request an annulment of the Commission Decision of the General Court.

More details on the grounds of appeal and main arguments of the appellant to be found **here**.

Sources:

Downloaded from Blogs on 25.11.2026 13:11

General Court of the European Union, judgment of 12 May 2021 (joint cases T-516/18 and T-525/18, Grand Duchy of Luxembourg and Others v European Commission). - The **ECJ case reference** of the appeal is **C-451/21 P**.

Keywords

illicit state aid, selective advantage, tax rulings