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By PwC Deutschland | 05 December 2023

ECJ annuls Commission’s State aid decision on Luxembourg tax rulings

In its judgment of today in two joint cases the European Court of Justice held that the European Commission’s review of the tax rulings granted by Luxembourg to the Engie group infringed EU law. Hence, the ECJ sets aside the judgment of the General Court and annuls the decision of the EU Commission.

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Background

The investigation by the EU Commission was related to rulings issued by the Luxembourg tax authorities between 2008 and 2014, whereby confirming the tax treatment of certain mandatorily convertible instruments issued by two Luxembourg group subsidiaries to two other Luxembourg companies of the Group. The Commission found, by decision of 20 June 2018, that Luxembourg had granted the Engie group unlawful State aid in connection with restructuring operations in Luxembourg.

The **General Court of the European Union** fully endorsed the Commission's view and dismissed the actions. The Engie group and Luxembourg thereupon launched appeals before the European Court of Justice (ECJ). In her Opinion of 4 May 2023 the Advocate General (AG) proposed that the ECJ should uphold the appeals (more details to be found in our **blog post of 12 May 2023**).

ECJ decision

The ECJ agreed with the suggestions of the AG by saying that the Commission erred in finding that Luxembourg had granted unlawful State aid to the Engie group in the form of tax advantages (tax rulings).

The provisions of Luxembourg law at issue do not expressly make the exemption of income from participations at the level of a parent company dependent on the taxation of distributed profit at the level of its subsidiary. That was the interpretation put forward by Luxembourg. The Commission departed from that interpretation, finding that it was incompatible with the general objective of taxing all resident companies. The ECJ notes, however, that the Commission is in principle required to accept the interpretation of provisions of national law given by the Member State during an exchange of arguments. In the present case, nothing put forward by the Commission invalidates the interpretation put forward by Luxembourg, which is, moreover, compatible with the wording of those provisions. The General Court therefore erred in upholding the Commission's finding as to the existence of such a link of conditionality between those two tax treatments.

Moreover, the General Court erred in holding that the Commission was not required to take into account the administrative practice of the Luxembourg tax authorities relating to a national provision on abuse of law.

Lastly, ruling on the actions for annulment itself, the ECJ considers that the Commission made errors in its various analyses of the reference frameworks defining the normal tax system. Those errors vitiated the whole of the selectivity analysis and the Commission's decision is therefore annulled.

Source

The ECJ judgment in the cases C-454/21 P *Engie Global LNG Holding and Others v Commission* and C-451/21 P *Luxembourg v Commission.* - The complete judgment to be found **here**.

See also ECJ, **PRESS RELEASE No 183/23** of 5 November 2023.

Moe detailed analysis of the judgment to be found in the **PwC EUDTG Newsalert - 7 December 2023.pdf**

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Keywords

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