

# State aid: Commission opens in-depth investigations into individual “excess profit” tax rulings granted by Belgium to 39 multinational companies

The European Commission has opened separate in-depth investigations to assess whether “excess profit” tax rulings granted by Belgium to 39 multinational companies gave those companies an unfair advantage over their competitors, in breach of EU State aid rules.

Today’s opening decisions follow the General Court’s February 2019 annulment of the Commission’s [January 2016](#) decision concluding that the same tax rulings formed part of a Belgian aid **scheme** that was illegal under EU State aid rules. The Court did not take a position on whether or not the “excess profit” tax exemptions gave rise to illegal State aid but found that the Commission had failed to establish the existence of a scheme. This means that, according to the General Court, the compatibility of the tax rulings with EU State aid rules needs to be assessed individually, which is why the Commission has now opened separate in-depth investigations into the individual tax rulings. At the same time, the Commission has appealed the judgment of the General Court to the European Court of Justice to seek further clarity on the existence of an aid scheme. These proceedings are ongoing.

Commissioner Margrethe **Vestager** in charge of competition policy said: *“All companies must pay their fair share of tax. We are concerned that the Belgian “excess profit” tax system granted substantial tax reductions only to certain multinational companies that would not be available to companies in a comparable situation. Following the General Court’s guidance, we have decided to open separate State aid investigations to assess the tax rulings. We also await further clarity from the European Court of Justice on the existence of an aid scheme.”*

The in-depth investigations concern individual “excess profit” tax rulings issued by Belgium between 2005 and 2014 in favour of 39 Belgian companies belonging to multinational groups (see details below). Most of these multinational groups are headquartered in Europe.

Belgian company tax rules require companies, as a starting point, to be taxed based on profit actually recorded from activities in Belgium. However, the Belgian “excess profit” tax rulings, relying on the Belgian income tax code (Article 185 §2, b of the ‘Code des Impôts sur les Revenus/Wetboek Inkomstenbelastingen’), allowed multinational entities in Belgium to reduce their corporate tax liability by so-called “excess profits” that allegedly result from the advantage of being part of a multinational group. These advantages included e.g. synergies, economies of scale, reputation, client and supplier networks, or access to new markets. In practice, the rulings

usually resulted in more than 50% and in some cases up to 90% of those companies' accounting profit being exempt from taxation.

The Commission's preliminary view is that by discounting "excess profit" from the beneficiaries' tax base, the tax rulings under investigation selectively misapplied the Belgian income tax code. In particular, the Commission has concerns that the rulings endorsed unilateral downward adjustments of the beneficiaries' tax base, although the legal conditions were not fulfilled. Furthermore, the Commission has concerns that the Belgian practice of issuing "excess profit" rulings in favour of certain companies may have discriminated against certain other Belgian companies, which did not, or could not, receive such a ruling.

As a result, the tax rulings may have given a selective advantage to the 39 multinational companies, allowing them to pay substantially less tax.

The opening of the in-depth investigations gives Belgium and interested third parties an opportunity to submit comments. It does not prejudice the outcome of the investigation.

#### **Companies concerned by the investigations**

1. Luciad NV SA.53964	
2. BASF Antwerpen NV	SA.53965
3. EVAL Europe NV SA.53966	
4. BP Aromatics Limited NV	SA.53967
5. The Heating Company BVBA	SA.53968
6. British American Tobacco Coordination Center VOF	SA.53969
7. Evonik Oxeno Antwerpen NV and "NewCo"	SA.53970
8. Nomatic SA SA.53971	
9. Delta Light NV SA.53972	
10. Henkel Electronic Materials (Belgium) NV	SA.53973
11. Puratos NV SA.53974	
12. Omega Pharma International NV	SA.53975
13. LMS International NV	SA.53976
14. Noble International Europe BVBA	SA.53977
15. Trane BVBA SA.53978	
16. VF Europe BVBA	SA.53979
17. St. Jude Medical Coordination Center BVBA	SA.53980
18. Soudal NV SA.53981	
19. Ontex BVBA	SA.53982
20. Atlas Copco Airpower NV	SA.53983
21. Belgacom International Carrier Services NV	SA.53984
22. Dow Corning Europe NV/SA	SA.53985
23. Capsugel Belgium NV	SA.53986

24. Kinopolis Group NV	SA.53987
25. Pfizer Animal Health SA / Zoetis Belgium SA	SA.53988
26. Anheuser-Busch Inbev NV / Ampar BVBA	SA.53989
27. Flir Systems Trading Belgium BVBA	SA.53990
28. Wabco Europe BVBA	SA.53991
29. Celio International NV/SA	SA.53992
30. Magnetrol International NV	SA.53993
31. Ansell Healthcare Europe NV	SA.53994
32. Esko-Graphics BVBA	SA.53995
33. Victaulic Europe BVBA	SA.53996
34. Astra Sweets NV	SA.53997
35. Mayekawa Europe NV	SA.53998
36. Tekelec International SPRL	SA.53999
37. Bridgestone Europe NV	SA.54000
38. Chep Equipment Pooling NV	SA.54001
39. Knauf Insulation SPRL	SA.54002

### **Background on the Commission's investigation into Belgian "excess profit" tax exemption**

In [January 2016](#), following an in-depth investigation, the Commission concluded that the "excess profit" exemptions granted by Belgium through tax rulings constituted an aid scheme and that such scheme was illegal under EU State aid rules. On this basis, the Commission ordered Belgium to recover the aid granted to the companies that had benefitted from that system.

In February 2019, the General Court annulled the Commission's decision. The Court found that the Commission had failed to establish the existence of an aid scheme. The Commission has appealed this finding to the European Court of Justice. In its judgment, the General Court did not conclude on whether the "excess profit" tax exemptions gave rise to illegal State aid. The Court explicitly confirmed that it is within the Commission's competence under State aid rules to review whether tax measures reducing a corporate taxpayer's income tax base give rise to a selective advantage. It further held that the "excess profit" tax exemptions granted by Belgium did not appear to pursue the objective of avoiding double taxation.

### **Background on the Commission's State aid investigations on tax**

Tax rulings as such are not a problem under EU State aid rules if they simply confirm that tax arrangements between companies within the same group comply with the relevant tax legislation. However, tax rulings that confer a selective advantage to specific companies can distort competition within the EU's Single Market, in breach of EU State aid rules.

Since June 2013, the Commission has been investigating individual tax rulings or rulings granted under tax schemes of Member States under EU State aid rules. It extended this information inquiry to all Member States [in December 2014](#).

The following investigations concerning tax rulings have already been concluded by the Commission:

- In [October 2015](#), the Commission concluded that Luxembourg and the Netherlands had granted selective tax advantages to Fiat and Starbucks, respectively. As a result of these decisions, Luxembourg recovered €23.1 million from Fiat and the Netherlands recovered €25.7 million from Starbucks.
- In [August 2016](#), the Commission concluded that Ireland granted undue tax benefits to Apple, which led to a recovery by Ireland of €14.3 billion.
- In [October 2017](#), the Commission concluded that Luxembourg granted undue tax benefits to Amazon, which led to a recovery by Luxembourg of €282.7 million.
- In [June 2018](#), the Commission concluded that Luxembourg granted undue tax benefits to Engie, which led to a recovery by Luxembourg of €123 million.
- In [September 2018](#), the Commission found that the non-taxation of certain McDonald's profits in Luxembourg did not lead to illegal State aid, as it is in line with national tax laws and the Luxembourg-US Double Taxation Treaty.
- In [December 2018](#), the Commission concluded that Gibraltar granted undue tax benefits of around €100 million to several multinational companies, through a corporate tax exemption scheme and through five tax rulings. The recovery procedure is ongoing.
- In [April 2019](#), the Commission concluded that the United Kingdom granted undue tax benefits to several multinational companies by allowing certain artificially diverted group financing income to remain outside the scope of the United Kingdom's anti-tax avoidance provisions. The recovery procedure is still ongoing.

The Commission also has two ongoing in-depth investigations concerning tax rulings issued by the Netherlands in favour of [Inter IKEA](#) and [Nike](#) and an investigation concerning tax rulings issued by Luxembourg in favour of [Huhtamäki](#).

The non-confidential versions of each decision will be made available under the case number indicated in the list below in the [State aid register](#) on the Commission's [Competition](#) website once any confidentiality issues have been resolved. New publications of State aid decisions on the internet and in the Official Journal are listed in the [State Aid Weekly e-News](#).