

# European Citizens' Initiative: Commission registers 'Eat ORIGINAL! Unmask your food' initiative

The stated objective of the proposed Citizens' Initiative is to impose mandatory declarations of origin for all food products in order to prevent fraud, protect public health and guarantee consumers' right to information.

The Commission's decision to register the Initiative only concerns the legal admissibility of the proposal. The Commission has not analysed the substance at this stage.

The registration of this Initiative will take place on 2 October 2018, starting a one-year process of collection of signatures of support by its organisers. Should the initiative receive one million statements of support within one year, from at least seven different Member States, the Commission will have to react within three months. The Commission can decide either to follow the request or not, and in both instances would be required to explain its reasoning.

## Background

European Citizens' Initiatives were introduced with the Lisbon Treaty and launched as an agenda-setting tool in the hands of citizens in April 2012, upon the entry into force of the European Citizens' Initiative Regulation which implements the Treaty provisions.

Once formally registered, a European Citizens' Initiative allows one million citizens from at least one quarter of EU Member States to invite the European Commission to propose a legal act in areas where the Commission has the power to do so.

The conditions for admissibility, as foreseen by the European Citizens' Initiative Regulation, are that the proposed action does not manifestly fall outside the framework of the Commission's powers to submit a proposal for a legal act, that it is not manifestly abusive, frivolous or vexatious and that it is not manifestly contrary to the values of the Union.

For more information

[Full text of the proposed 'Eat Original' European Citizens Initiative](#) (active from 2 October)

[Other European Citizens' Initiatives currently collecting signatures](#)

[European Citizens' Initiative website](#)

[European Citizens' Initiative Regulation](#)

## **European Citizens' Initiative: Commission registers 'Stop fraud and abuse of EU funds' initiative**

The proposed Citizens' Initiative calls for the application of enhanced controls and stricter sanctions in Member States which are not part of the European Public Prosecutor's Office to protect the Union's financial interests.

The College Decision notes that statements of support should be collected on the understanding that they would be supporting proposals which do not differentiate between Member States solely according to their participation or non-participation in the European Public Prosecutor's Office. This is because under the Treaties legal acts may not differentiate between Member States solely based on whether they participate in an enhanced cooperation. They can however do so when objectively justified, for example if there are different levels of protection of the financial interests of the Union.

The Commission's decision to register the Initiative only concerns the legal admissibility of the proposal. The Commission has not analysed the substance at this stage.

The registration of this Initiative will take place on 27 September 2018, starting a one-year process of collection of signatures of support by its organisers. Should the initiative receive one million statements of support within one year, from at least seven different Member States, the Commission will have to react within three months. The Commission can decide either to follow the request or not, and in both instances would be required to explain its reasoning.

### Background

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Initiative Regulation, are that the proposed action does not manifestly fall outside the framework of the Commission's powers to submit a proposal for a legal act, that it is not manifestly abusive, frivolous or vexatious and that it is not manifestly contrary to the values of the Union.

For more information

[Full text of the proposed 'Stop fraud and abuse of EU funds' European Citizens Initiative](#) (active from 27 September)

[Other European Citizens' Initiatives currently collecting signatures](#)

[European Citizens' Initiative website](#)

[European Citizens' Initiative Regulation](#)

[European Citizens' Initiative Forum](#)

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## [Daily News 19 / 09 / 2018](#)

### **College meeting: EU steps up its strategy for connecting Europe and Asia**

The European Commission and the High Representative of the Union for Foreign Affairs and Security Policy today adopted a [Joint Communication](#) that sets out the EU's vision for a new and comprehensive strategy to better connect Europe and Asia. The Joint Communication builds on the European Union's own experience of enhancing connections between its Member States, with and in other regions. With sustainable, comprehensive and rules-based connectivity at its core, the Communication will help to guide the EU's external action in this field and is a part of the implementation of its [Global Strategy](#). The EU will combine a principled approach to connectivity and recognition that Asia encompasses different regions, which are home to very diverse countries in terms of economic models and level of development, with concrete action based on three strands: creating transport links, energy and digital networks and human connections; offering connectivity partnerships to countries in Asia and organisations; and promoting sustainable finance through utilising diverse financial tools. The aim is to better connect Europe and Asia through physical and non-physical networks so as to strengthen the resilience of societies and regions, facilitate trade, promote the rules-based international order, and create avenues for a more sustainable, low-carbon future. This Joint Communication will inform the EU's engagement with its partners from the neighbourhood to the Pacific, bringing benefits for the people of Europe and those countries who see the value of our approach to connectivity. The Joint Communication adopted today will now be discussed in the European Parliament and the Council, and will contribute to discussions on connectivity at the upcoming [Asia-Europe Meeting \(ASEM\) Summit](#), to be held in Brussels on 18-19 October. A [full press release](#), including statements of

High Representative/Vice-President, Federica Mogherini, Vice-President Jyrki Katainen, and Commissioners Neven Mimica and Violeta Bulc is available online, as are a [memo explaining the EU's approach](#) to connecting Europe and Asia, a [factsheet on the strategy](#), and the [Joint Communication](#) itself. (For more information: Maja Kocijancic – Tel.: +32 229 86570; Enrico Brivio – Tel.: +32 229 56172; Adam Kaznowski – Tel.: +32 229 89359; Stephan Meder – Tel.: +32 229 13917)

### **College meeting: State aid: Commission investigation did not find that Luxembourg gave selective tax treatment to McDonald's**

The Commission has 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-United States Double Taxation Treaty. Following an in-depth investigation launched in [December 2015](#), based on doubts that Luxembourg might have misapplied its Double Taxation Treaty with the United States, the Commission has concluded that Luxembourg's tax treatment of McDonald's Europe Franchising does not violate the Double Taxation Treaty with the United States. On that basis, the Commission found that two tax rulings granted by the Luxembourg authorities in 2009 that exempted McDonald's Europe Franchising (a subsidiary of McDonald's Corporation that is tax resident in Luxembourg) from corporate taxation in Luxembourg because the company's profits may also be taxed in the United States do not infringe EU State aid rules. On 19 June 2018, the Luxembourg government presented draft legislation to amend the tax code to bring the relevant provision into line with the OECD's [Base Erosion and Profit Shifting](#) project and to avoid similar cases of double non-taxation in the future. The Commission welcomes steps taken by Luxembourg to prevent future double non-taxation. Commissioner Margrethe **Vestager**, in charge of competition policy, said: *"The Commission investigated under EU State aid rules whether the double non-taxation of certain McDonald's profits was the result of Luxembourg misapplying its national laws and the Luxembourg-US Double Taxation Treaty, in favour of McDonald's. EU State aid rules prevent Member States from giving unfair advantages only to selected companies, including through illegal tax benefits. However, our in-depth investigation has shown that the reason for double non-taxation in this case is a mismatch between Luxembourg and US tax laws, and not a special treatment by Luxembourg. Therefore, Luxembourg did not break EU State aid rules. Of course, the fact remains that McDonald's did not pay any taxes on these profits – and this is not how it should be from a tax fairness point of view. That's why I very much welcome that the Luxembourg Government is taking legislative steps to address the issue that arose in this case and avoid such situations in the future."* The full press release is available online in [EN](#), [FR](#), [DE](#). (For more information: Ricardo Cardoso – Tel.: +32 229 80100; Giulia Astuti – Tel.: +32 229 55344)

### **College meeting: European Citizens' Initiative: Commission registers two new Initiatives**

The College of Commissioners has today decided to register two new European Citizens' Initiatives, entitled 'Eat ORIGINAL! Unmask your food' and 'Stop fraud and abuse of EU funds'. The stated objective of the first proposed

Initiative is to impose mandatory declarations of origin for all food products in order to prevent fraud, protect public health and guarantee consumers' right to information. The registration of this Initiative will take place on 2 October 2018. The second Initiative calls for the application of enhanced controls and stricter sanctions to protect the Union's financial interests in Member States which are not part of the European Public Prosecutor's Office. The registration of this Initiative will take place on 27 September 2018. The Commission's decision to register these two Initiatives only concerns the legal admissibility of the proposals. The Commission has not analysed the substance at this stage. The registrations start a one-year process of collection of signatures of support by the organisers. Should an Initiative receive one million statements of support within one year, from at least seven different Member States, the Commission will have to react within three months. The Commission can decide either to follow the request or not, and in both instances would be required to explain its reasoning. A press release on the 'Eat ORIGINAL' Initiative is available [here](#). A press release on the 'Stop Fraud' Initiative is available [here](#). (For more information: *Natasha Bertaud – Tel.: +32 229 67456; Tim McPhie – Tel.: +32 229 58602*)

### **College meeting: Commission appoints three directors in its departments for Budget, for Human Resources and in the Joint Research Centre**

The European Commission has today decided to appoint Mr Johan Ureel to the position of Director "Expenditure" in its Directorate-General for Budget (DG BUDG); Mr Bernd Adolph to the position of Director "Security" in the Directorate-General for Human Resources and Security (DG HR) and Mr Philippe Duponteil to the function of Director "Resources" in the Joint Research Centre (JRC). Mr Johan Ureel, a Belgian national, joined the Commission from the private sector in 1998. He became a head of unit in 2007, when he was in charge of the team that negotiated the EU's 2014-2020 long-term budget. Between 2014 and 2016, he managed the team which negotiated the financing for the European Fund for Strategic Investments, the engine behind the Juncker Plan. Since 2017, he is leading the team in charge of EU's annual budget. In parallel, since October 2016, Mr Ureel has been an Acting Director of DG BUDG's "Expenditure" directorate. Mr Bernd Adolph, a German national, joins the Commission from the German domestic intelligence service (Bundesamt für Verfassungsschutz), where he has held management jobs since 2012. Between 1997 and 2000, he was a seconded national expert with the European Commission in Brussels, and between 2004 and 2008, he worked as a liaison officer for the German Federal Criminal Police Office in the German embassy in Rome. Mr Philippe Duponteil, a French national, joined the Commission from the French civil service in 1995. Throughout his career, he worked mainly on foreign affairs and trade issues. He spent nearly 10 years dealing with human and financial resources, strategic planning and external service in the Commission's Directorate-General for Trade (DG Trade). He took up his first management job in 2010. Mr Duponteil is currently head of the "Far East: China, Japan, Korea, Hong-Kong, Taiwan, Macao, Mongolia" unit in DG Trade. (For more information: *Alexander Winterstein – Tel.: +32 229 93265; Andreana Stankova – Tel.: +32 229 57857*)

### **La Commission adopte des dérogations environnementales pour les agriculteurs**

## **impactés par la sécheresse**

La Commission européenne a adopté les dérogations sur certaines règles de verdissement, telles que proposées durant l'été pour soutenir de manière concrète les agriculteurs touchés par la sécheresse. Cette flexibilité supplémentaire a pour objectif d'accroître les ressources en fourrage pour le bétail, ce qui est l'un des principaux défis auxquels sont confrontés les agriculteurs suite aux conditions climatiques exceptionnelles de cet été. Les dérogations adoptées concernent plus précisément les [cultures d'hiver et les cultures intermédiaires](#), et ont été présentées au mois d'août aux Etats membres. La décision d'aujourd'hui étend également à la France et la Belgique les [dérogations sur les terres en jachère](#) accordées précédemment à d'autres pays. Ces décisions s'appliquent de manière rétroactive et avaient déjà été annoncées cet été aux Etats membres concernés afin de rassurer du mieux possible les agriculteurs n'ayant pas pu suivre toutes les règles environnementales. La décision sur les avances de paiement sera également adoptée dans le courant du mois, à temps pour le début de la période de paiement qui commence le 16 octobre. La Commission continue de suivre de très près la situation sur base des informations fournies par les États membres. Il ne sera possible d'avoir une vision globale de l'impact de la sécheresse estivale que dans les mois qui viennent alors que des informations complémentaires sur les récoltes et la situation sur les marchés seront disponibles. Plus d'informations sont [en ligne](#). (Pour plus d'informations: Daniel Rosario – Tel.: +32 229 56185; Clémence Robin – Tel.: +32 229 52509)

## **Premier accord sur des prêts pour les étudiants italiens en master signé dans la région d'Émilie-Romagne**

Le [Fonds européen d'investissement](#) et la banque Emil Banca Credito Cooperativo ont signé hier le premier accord de garantie pour des prêts Erasmus+ proposés aux étudiants italiens en master. Cet accord prévoit des prêts à des conditions favorables pour les étudiants de la région d'Émilie-Romagne, dans le nord de l'Italie, qui souhaitent obtenir leur master dans l'un des 32 autres pays du programme Erasmus +. D'une valeur de 2,7 millions d'euros, il s'appuie sur le [programme Erasmus + de garantie de prêts](#). 200 étudiants en master devraient en bénéficier. Tibor **Navracsics**, membre de la Commission chargé de l'éducation, de la culture, de la jeunesse et du sport, a déclaré: *"Je suis très heureux de voir que les étudiants italiens auront accès aux prêts de master Erasmus + grâce à cet accord avec Emil Banca Credito Cooperativo. Cela donne un nouvel élan à notre objectif de promouvoir l'éducation à l'étranger, ouvrant la voie à une internationalisation et à une coopération accrues"*. Le programme de garantie de prêts Erasmus + Master existe depuis juin 2015, avec la coopération des banques et des établissements d'enseignement supérieur de cinq pays. Plus de 3 000 étudiants peuvent obtenir un master à l'étranger grâce aux garanties Erasmus + d'une valeur de 8,5 millions d'euros. De plus amples informations sont disponibles dans ce [communiqué de presse](#) publié par le Fonds européen d'investissement et Emil Banca Credito Cooperativo. Vous trouverez plus d'informations sur le programme Erasmus + [ici](#). (Pour plus d'informations: Nathalie Vandystadt – Tél.: +32 229 67083; Joseph Waldstein – Tél.: +32 229 56184)

## **EU scales up assistance to flood victims in Kerala**

The European Commission allocated yesterday an additional €1 million in emergency aid to India as devastating floods killed nearly 500 people and submerged entire villages in the southern state of Kerala. This comes on top of the initial assistance of €190,000 announced last month and channelled through the Indian Red Cross. Commissioner for Humanitarian Aid and Crisis Management Christos **Stylianides** said: *“Our EU assistance will target most vulnerable communities, whose livelihoods, homes and belongings have been swept away by the torrential rains. This funding will help deliver essential supplies and promote health activities to counter water borne diseases,”* This new support will provide relief to some of the most vulnerable and isolated communities affected by the flooding. The assistance will be channelled through the EU humanitarian partners who are already working on the ground. The [EU Civil Protection Mechanism](#) has also activated upon request of the UN Resident Coordinator to provide a water and sanitation expert. *(for more information: Carlos Martin Ruiz De Gordejuela – Tel.: +32 229 65322; Daniel Puglisi – Tel.: +32 229 69140)*

### **Mergers: Commission clears acquisition of Island Timberlands by BCI and PSP**

The European Commission has approved, under the EU Merger Regulation, the acquisition of Island Timberlands Limited Partnership (“ITLP”) by British Columbia Investment Management Corporation (“BCI”) and Public Sector Pension Investment Board (“PSP”), all three of Canada. ITLP is a private timberland business focused on the sustainable management of timber and other forest products. BCI is a Canadian institutional investor. PSP is the pension investment manager of the pension plans of the Canadian Federal Public Service, the Canadian Forces, the Royal Canadian Mounted Police and the Reserve Force. The Commission concluded that the proposed acquisition would raise no competition concerns, because there are no horizontal overlaps or vertical links between the companies’ activities in the European Economic Area. The transaction was examined under the simplified merger review procedure. More information is available on the Commission’s [competition](#) website, in the public [case register](#) under the case number [M.9090](#). *(For more information: Ricardo Cardoso – Tel.: +32 229 80100; Maria Tsoni – Tel.: +32 229 90526)*

### **Eurostat: La production dans le secteur de la construction en hausse de 0,3% dans la zone euro, en hausse de 0,4% dans l’UE28 (Juillet 2018 comparé à juin 2018)**

En juillet 2018 par rapport à juin 2018, la production dans le secteur de la construction, corrigée des variations saisonnières, a augmenté de 0,3% dans la zone euro (ZE19) et de 0,4% dans l’UE28, selon les premières estimations d’Eurostat, l’office statistique de l’Union européenne. En juin 2018, la production dans le secteur de la construction avait progressé de 0,7% dans la zone euro et de 1,0% dans l’UE28. En juillet 2018 par rapport à juillet 2017, la production dans le secteur de la construction a augmenté de 2,6% dans la zone euro et de 3,9% dans l’UE28. Un communiqué de presse Eurostat est à votre disposition [en ligne](#). *(Pour plus d’informations: Lucia Caudet – Tél.: +32 229 56182; Mirna Talko – Tél.: +32 229 87278)*

### **ANNOUNCEMENTS**

## **Vice-President Šefčovič and Commissioner Arias Cañete to attend 10<sup>th</sup> Citizens' Energy Forum in Dublin, 20 – 21 of September**

Commissioner for Climate Action and Energy Miguel **Arias Cañete** and Vice President for the Energy Union Maroš **Šefčovič**, will attend the 10<sup>th</sup> Citizens' Energy Forum in Dublin, Ireland, respectively on 20 and 21 of September. The forum is a dedicated platform to implement and enforce consumer rights in the energy market across the European Union and celebrates its 10th anniversary this year. This year's edition takes place, for the very first time in Dublin, Ireland. Previously all gatherings of this forum had taken place in London, United Kingdom. The forum is organised by the European Commission in collaboration with the Irish independent energy and water regulator (CRU). The meeting will focus on providing a fair deal to consumers and the role consumers play in the energy market in the context of the empowering measures proposed in the Commission's [Clean Energy for all Europeans package](#) and the recently adopted [New Deal for Consumers package](#). It will also focus on presenting innovative solutions in the retail energy market in terms of consumer engagement and business models. More information [here](#). (For more information: Anna-Kaisa Itkonen – Tel.: +32 229 56186; Lynn Rietdorf – Tel.: +32 229 74959)

## **Commissioner Avramopoulos in Serbia to discuss cybersecurity and strengthen cooperation with European Border and Coast Guard Agency**

Tomorrow, Commissioner for Migration, Home Affairs and Citizenship Dimitris **Avramopoulos** will be in Belgrade, Serbia where he will participate in a conference on high-tech crime and information security "Connect securely". The event will gather ministers and representatives from EU and non-EU countries, representatives from international organisations and EU agencies, and cyber experts to discuss best practice and examples of international cooperation in the fight against cybercrime, as well as international cooperation on cybersecurity. Tomorrow, Commissioner Avramopoulos will also meet Serbian Deputy Prime Minister and Minister of Interior Nebojša Stefanović to discuss cooperation on migration, border management and security, and to initial a status agreement for operational cooperation between the European Border and Coast Guard Agency and Serbia. The opening of the conference and the initialling of the status agreement will be available on [EbS](#). (For more information: Natasha Bertaud – Tel.: +32 229 67456; Katarzyna Kolanko – Tel.: +32 299 63444; Markus Lammert – Tel.: +32 229 80423)

## **Commissioner Crețu travels to Croatia on 20 and 21 September**

Commissioner for Regional Policy Corina **Crețu** will travel to Croatia on 20 and 21 September to present and discuss the Commission proposal for the future cohesion policy. On 20 September, she will visit the city of Vukovar in the Eastern part of the country where she will meet Ms Gabrijela Žalac, Minister for Regional Development and EU Funds, with whom she will then participate in a Citizens' Dialogue, and will visit an EU-funded project, the Vučedol Culture Museum and the archaeological site of Vučedol. On 21 September, Commissioner **Crețu** will travel to the neighbouring city of Beli Manastir, where she will meet Croatia's Prime Minister, Mr Andrej Plenkovic,



and participates in the Session of the Government Council for Slavonia. Ahead of her visit, the Commissioner said: *“Croatia, the EU’s newest Member State, is doing a great job in making the most out of EU cohesion money to the benefit of its citizens. Investments from the European Structural and Investment Funds have helped the country create jobs, modernise infrastructure and also enable young people to gain the skills they need. The next generation of cohesion policy programmes will continue to provide support to the country, with nearly 10 billion euro of cohesion funds proposed for 2021-2027.”* Information about the Commission’s proposal on the Regional Development and Cohesion Policy beyond 2020 is available [here](#). Facts and figures on Cohesion policy investments in Croatia in the period 2014-2020 can be found [here](#). (For more information: Johannes Bahrke – Tel.: +32 229 58615; Andreana Stankova – Tel.: +32 229 57857)

### **Le Commissaire Andriukaitis en déplacement en Italie pour participer à la Terra Madre – Salone del Gusto**

Le 20 septembre, Vytenis **Andriukaitis**, Commissaire européen en charge de la santé et de la sécurité alimentaire, sera en Italie pour participer à deux conférences consacrées au gaspillage alimentaire et à la résistance aux antibiotiques. Dans la soirée, il participera au dialogue citoyen au *le Circolo dei Lettori* sur le thème “L’Europe dans mon assiette. Gâchez moins, mangez mieux”. Avant sa visite, le Commissaire **Andriukaitis** a déclaré: *“Il est de notre responsabilité commune de continuer à réfléchir à la manière dont nous voulons produire, commercialiser, distribuer et consommer les produits alimentaires, du producteur à l’industriel transformateur, aux fournisseurs, transporteurs et commerçants, et jusqu’au consommateur. Je suis impatient d’échanger sur ce sujet et sur bien d’autres avec vous à Turin”*. À suivre [en direct](#). (Pour plus d’informations: Anca Paduraru – Tel.: +32 229 91269; Aikaterini Apostola – Tel.: +32 229 87624)

### **Commissioner Navracsics in Austria for higher education conference**

Tomorrow, Commissioner for Education, Culture, Youth and Sport, Tibor **Navracsics**, will be in Vienna to give an opening speech at a conference on the future of higher education organised by the Austrian Presidency and the European Commission: ‘[The new student: flexible learning paths and future learning environments](#)’. The conference will bring together around 150 government officials, practitioners and stakeholders working in higher education. Over two days they will discuss alternative access routes to higher education, the changing needs of future students and learning opportunities offered by digitalisation. The Commissioner will present an update on plans to build a [European Education Area](#) by 2025, focusing in particular on promoting the mutual recognition of diplomas, setting up European Universities and implementing the Digital Education Action Plan. (For more information: Nathalie Vandystadt – Tel.: +32 229 67083; Joseph Waldstein – Tel.: +32 229 56184)

[Upcoming events](#) of the European Commission (ex-Top News)

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## Updated weekly schedule of President Donald Tusk

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## State aid: Commission investigation did not find that Luxembourg gave selective tax treatment to McDonald's

**At the same time, the Commission welcomes steps taken by Luxembourg to prevent future double non-taxation.**

Commissioner Margrethe **Vestager**, in charge of competition policy, said: *"The Commission investigated under EU State aid rules whether the double non-taxation of certain McDonald's profits was the result of Luxembourg misapplying its national laws and the Luxembourg-US Double Taxation Treaty, in favour of McDonald's. EU State aid rules prevent Member States from giving unfair advantages only to selected companies, including through illegal tax benefits. However, our in-depth investigation has shown that the reason for double non-taxation in this case is a mismatch between Luxembourg and US tax laws, and not a special treatment by Luxembourg. Therefore, Luxembourg did not break EU State aid rules.*

*Of course, the fact remains that McDonald's did not pay any taxes on these*

*profits – and this is not how it should be from a tax fairness point of view. That's why I very much welcome that the Luxembourg Government is taking legislative steps to address the issue that arose in this case and avoid such situations in the future."*

Following an in-depth investigation launched in [December 2015](#), based on doubts that Luxembourg might have misapplied its Double Taxation Treaty with the United States, the Commission has concluded that Luxembourg's tax treatment of McDonald's Europe Franchising does not violate the Double Taxation Treaty with the United States. On that basis the tax rulings granted to McDonald's do not infringe EU State aid rules.

### **McDonald's Europe Franchising corporate structure**

McDonald's Europe Franchising is a subsidiary of McDonald's Corporation, based in the United States. The company is tax resident in Luxembourg and has two branches, one in the United States and the other in Switzerland. In 2009, McDonald's Europe Franchising acquired a number of McDonald's franchise rights from McDonald's Corporation in the United States, which it subsequently allocated internally to the US branch of the company.

As a result, McDonald's Europe Franchising receives royalties from franchisees operating McDonald's fast food outlets in Europe, Ukraine and Russia for the right to use the McDonald's brand.

McDonald's Europe Franchising also set up a Swiss branch responsible for the licensing of the franchise rights to franchisors and through which royalty payments flowed from Luxembourg to the US branch of the company.

### **McDonald's tax rulings in Luxembourg**

In March 2009, the Luxembourg authorities granted McDonald's Europe Franchising a **first tax ruling** confirming that the company did not need to pay corporate tax in Luxembourg since the profits would be subject to taxation in the United States. This was justified by reference to the Luxembourg – US Double Taxation Treaty, which exempts income from corporate taxation in Luxembourg, if it may be taxed in the United States. Under this first ruling, McDonald's Europe Franchising was required to submit proof every year to the Luxembourg tax authorities that the royalties transferred to the United States via Switzerland were declared and subject to taxation in the United States and in Switzerland.

Following this first tax ruling, the Luxembourg authorities and McDonald's engaged in discussions concerning the taxable presence of McDonald's Europe Franchising in the United States (a so-called "permanent establishment"). McDonald's claimed that although the US branch was not a "permanent establishment" according to US tax law, it was a "permanent establishment" according to Luxembourg tax law. As a result, the royalty income should be exempt from taxation under Luxembourg corporate tax law.

The Luxembourg authorities ultimately agreed with this interpretation and, in September 2009, issued a **second tax ruling** according to which McDonald's

Europe Franchising was no longer required to prove that the royalty income was subject to taxation in the United States.

### **Commission assessment**

The role of EU State aid control is to ensure that Member States do not give selected companies a better treatment than others, through tax rulings or otherwise. In this context, the Commission's [in-depth investigation](#) assessed whether the Luxembourg authorities selectively derogated from the provisions of their national tax law and the Luxembourg – US Double Taxation Treaty and gave McDonald's an advantage not available to other companies subject to the same tax rules.

The Commission concluded that this was not the case.

In particular, it could not be established that the interpretation given by the second tax ruling to the Luxembourg – US Double Taxation Treaty was incorrect, although it resulted in the double non-taxation of the royalties attributed to the US branch. Therefore, the Commission found that the Luxembourg authorities did not misapply the Luxembourg –US Double Taxation Treaty and that the tax advantage conferred to McDonald's Europe Franchising cannot be considered State aid.

McDonald's Europe Franchising's US branch did not fulfil the relevant provisions under the US tax code to be considered a permanent establishment.

At the same time, the Commission found that the Luxembourg authorities could exempt the US branch of McDonald's Europe Franchising from corporate taxation without violating the Double Taxation Treaty because the US branch could be considered a permanent establishment according to Luxembourg tax law. Under the relevant provision in the Luxembourg tax code, the business carried on by the US branch of McDonald's Europe Franchising fulfilled all the conditions of a permanent establishment under Luxembourg tax law.

Therefore, the Commission concluded that the Luxembourg authorities did not misapply the Luxembourg – US Double Taxation Treaty by exempting the income of the US branch from Luxembourg corporate taxation.

### **Preventing future double non-taxation in Luxembourg**

This interpretation of the Luxembourg – US Double Taxation Treaty led to double non-taxation of the franchise income of McDonald's Europe Franchising.

The Luxembourg government presented on 19 June 2018 draft legislation to amend the tax code to bring the relevant provision into line with the OECD's [Base Erosion and Profit Shifting](#) project and to avoid similar cases of double non-taxation in the future. This is currently being discussed by the Luxembourg Parliament.

Under the proposed new provision, the conditions to determine the existence of a permanent establishment under Luxembourg law would be strengthened. In addition, Luxembourg would be able to, under certain conditions, require companies that claim to have a taxable presence abroad to submit confirmation

that they are indeed subject to taxation in the other country.

## Background

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 tax 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 of Member States under EU State aid rules. It extended this information inquiry to all Member States in [December 2014](#).

Regarding investigations concerning tax rulings that 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 [January 2016](#), the Commission concluded that selective tax advantages granted by Belgium to at least 35 multinationals, mainly from the EU, under its "excess profit" tax scheme are illegal under EU State aid rules. The total amount of aid to be recovered from 35 companies is estimated at approximately €900 million, including interest. Belgium has already recovered over 90% of the aid.
- 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 of around €120 million. The recovery procedure is still ongoing.

The Commission also has one ongoing in-depth investigation concerning tax rulings issued by the Netherlands in favour of [Inter IKEA](#), and one investigation concerning a [tax scheme for multinationals](#) in the United Kingdom.

The non-confidential versions of the decision will be made available under the case number [SA.38945](#) 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](#).