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Press and Information

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Judgment of the Court of Justice in Joined Cases C-182/03 and C-217/03

Kingdom of Belgium and Forum 187 ASBL v Commission of the European Communities

THE COURT ORDERS THE PARTIAL ANNULMENT OF THE COMMISSION'S DECISION REQUIRING BELGIUM TO WITHDRAW THE TAX REGIME FOR COORDINATION CENTRES OF MULTINATIONAL UNDERTAKINGS

*By failing to incorporate transitional measures, the Commission's Decision infringed
Community law*

In 1982, Belgium introduced an advantageous tax regime¹ for coordination centres, which derogated from the ordinary law. To benefit from the regime, a centre must first receive individual authorisation. In order to obtain that authorisation, the centre must form part of a multinational group and satisfy a number of conditions regarding its capital, reserves and annual turnover. Only certain preparatory, auxiliary and centralisation activities are authorised and undertakings in the financial sector are excluded. At the end of the first two years of their activity, centres must have in Belgium at least the equivalent of 10 full-time employees.

In 1984 and 1987, the tax regime for the coordination centres was examined by the Commission. The latter found, in essence, that the regime did not contain a State aid element.

However, in 1997, as part of an overall review of harmful tax competition, the Council adopted a code of conduct² for business taxation. In 2000, a Council report found that the Belgian provisions concerning the coordination centres were harmful tax measures which should be withdrawn by 31 December 2005. On 21 January 2003, the Ecofin Council decided that the effects of certain harmful tax regimes could be extended. As regards the Belgian tax regime for the coordination centres, it held that those centres which were subject to the regime on 31 December 2000 could continue to benefit from it until 31 December 2010.

¹ Royal Decree No 187 of 30 December 1982 concerning the establishment of coordination centres (*Moniteur Belge* of 13 January 1983).

² Council code of conduct of 1 December 1997 for business taxation (OJ 1998 C 2, p. 2).

Notwithstanding that, on 17 February 2003, the Commission adopted a decision³ in which it required Belgium to withdraw the tax regime for coordination centres or to amend it in such a way as to make it compatible with the common market. With regard to centres approved before 31 December 2000, the scheme could be maintained until the expiry of the individual approval applying on the date of notification of the decision, and until 31 December 2010 at the latest. If the authorisation was renewed prior to that date, the benefits of the regime could no longer be granted, even temporarily.

Belgium and Forum 187 ASBL, a body representing the coordination centres in Belgium, asked the Court to annul the Commission's decision.

The Court first of all rejected the claims of Forum 187 for the annulment of the contested decision in so far as it classified the disputed measures as State aid incompatible with the common market.

Next, the Court considered the claims of the Kingdom of Belgium and Forum 187 for the partial annulment of the contested decision in so far as it failed to lay down appropriate transitional measures.

The Court held, first, that the coordination centres with an application for renewal of their authorisation pending on the date on which the decision was notified or with an authorisation which expired at the same time as or shortly after the decision was notified were entitled to have a legitimate expectation that a reasonable transitional period would be granted in order for them to adjust to the consequences of the decision and, secondly, that the coordination centres concerned did not have the time required to adjust to the change in the regime.

Lastly, the Court held that the decision led to a difference in treatment of the coordination centres. Depending on the date on which the last renewal of an authorisation took place in 2001 and 2002, or whether the authorisation terminated at the same time as or shortly after the notification of the decision, the time when the benefit of the regime is to expire will differ as, in the former case, it will occur on 31 December 2010, whereas, in the latter, no transitional period is laid down. By failing to adopt transitional measures for those coordination centres with an authorisation which terminated, the Commission infringed the general principle of equal treatment.

The Court accordingly annulled the Commission's decision in so far as it did not lay down any transitional measures.

³ Commission Decision 2003/757/EEC of 17 February 2003 on the aid scheme for coordination centres established in Belgium (OJ 2003 L 282, p. 25).

Unofficial document for media use, not binding on the Court of Justice.

Languages available: FR, CS, DE, EN, ES, HU, NL, PL, SK, SL.

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-182/03>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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