



Press and Information

Court of Justice of the European Union

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Advocate General's Opinions in Cases C-885/19 P  
Fiat Chrysler Finance Europe v Commission  
and Case C-898/19 P Ireland v Commission and others

**Tax ruling: Advocate General Priit Pikamäe proposes that the Court allow the appeal brought by Ireland and annul the Commission's decision declaring aid which Luxembourg granted to Fiat as being incompatible with the internal market**

*He proposes, however, that the appeal brought separately by Fiat Chrysler Finance Europe should be dismissed*

Advocate General Priit Pikamäe today considers two appeals brought separately by Ireland and Fiat Chrysler Finance Europe against the judgment of the General Court of the European Union confirming the validity of a Commission decision on a tax ruling.

On 3 September 2012, the Luxembourg tax authorities issued a tax ruling in favour of Fiat Chrysler Finance Europe ('FFT'), an undertaking in the Fiat group that provided treasury and financing services to the group companies established in Europe. The tax ruling at issue endorsed a method for determining FFT's remuneration for those services, which enabled FFT to determine its taxable profit on a yearly basis for corporate income tax in Luxembourg.

In 2015, the Commission concluded that the tax ruling constituted State aid under Article 107 TFEU and that it was operating aid that was incompatible with the internal market.<sup>1</sup> It also noted that Luxembourg had not notified it of the proposed tax ruling and had not complied with the standstill obligation. The Commission found that Luxembourg was required to recover the unlawful and incompatible aid from FFT.

Luxembourg and FFT each brought an action before the General Court of the European Union for annulment of the Commission's decision. In its judgment of 24 September 2019,<sup>2</sup> the General Court of the European Union dismissed the actions and confirmed the validity of the Commission's decision.

**Ireland (C-898/19 P) and Fiat Chrysler Finance Europe (C-895/19 P) therefore brought two separate appeals against that judgment before the Court of Justice.**

**Case C-898/19 P – Ireland v Commission**

In his Opinion delivered today, **Advocate General Priit Pikamäe proposes that the Court set aside the judgment of the General Court of the European Union of 24 September 2019 in the cases *Luxembourg and Fiat Chrysler Finance Europe v Commission* (T-755/15 and T-759/15), uphold the actions brought by Luxembourg and Fiat Chrysler Finance Europe before the General Court of the European Union, and annul Commission Decision (EU) 2016/2326.**

As a preliminary point, the Advocate General notes that the judgment under appeal endorsed the approach of the Commission consisting in introducing the arm's length principle into the examination of the existence of an economic advantage. The Court is thus led to question the

<sup>1</sup> Decision (EU) 2016/2326 of 21 October 2015 on State aid SA.38375 (2014/C ex 2014/NN) which Luxembourg granted to Fiat (OJ 2016 L 351, p. 1, 'the Commission's decision').

<sup>2</sup> Judgment of the General Court of 24 September 2019 in Joined Cases [T-755/15 Luxembourg v Commission](#) and [T-759/15 Fiat Chrysler Finance Europe v Commission](#) (see also [PR No 118/19](#)).

border drawn by the Treaty between fiscal autonomy of the Member States and the prohibition of State aid.

By its appeal, Ireland, supported by Luxembourg and FFT, challenges in several respects the analysis carried out by the General Court to determine whether there was an economic advantage, in particular from the perspective of the rules applicable to State aid (first ground), the obligation to state reasons, the principle of legal certainty and respect for the division of competences between the European Union and the Member States.

The Advocate General recalls that the assessment of whether a State measure of a fiscal nature confers an economic advantage on the recipient undertaking requires an examination of the national tax system applicable had such a measure not been adopted ('normal' taxation). In order to define that normal taxation, the same criteria laid down by the case-law of the Court for the purpose of identifying the reference framework should be used. In particular, normal taxation must be determined on the basis of rules of *national law*, including, quite clearly, EU law and international law transposed into the domestic legal system. It comprises only the rules and principles constituting the legislative expression of the national legislature's intention, and thus cannot be based on the objective allegedly pursued by that legislature.

The Advocate General starts by examining the first ground of appeal and, to that end, he traces the origin of the arm's length principle applied in the decision at issue, summarises the progressive development of its content by the Commission and recalls the content of the relevant part of the judgment under appeal. He suggests that the Court uphold the first ground of appeal in so far as the General Court erred in law in approving normal taxation as identified by the Commission for the purpose of examining the existence in the present case of an advantage within the meaning of Article 107(1) TFEU. Indeed, the Advocate General considers it appropriate to apply by analogy the case-law of the Court according to which an error in the determination of the reference framework vitiates the whole of the analysis relating to selectivity.

In the light of the proposal that the first ground of appeal should be declared well founded in so far as the arm's length principle used in the decision at issue is not a rule which is expressly codified in national law, the Advocate General considers that the judgment under appeal disregards the Treaty provisions governing the division of competences between the European Union and the Member States and providing for a prohibition of harmonisation in the field of taxation.

Taking the view that the state of the proceedings so permits, Advocate General Pikamäe suggests that the Court give final judgment in the matter and hold that the General Court infringed the provisions governing the division of competences between the European Union and its Member States.

### **Case C-885/19 P Fiat Chrysler Finance Europe v Commission**

In his Opinion delivered today, **Advocate General Priit Pikamäe proposes that the Court dismiss the appeal in its entirety.** The Advocate General considers in particular that the General Court correctly held that the Commission was not required to take account of the intra-group and cross-border dimension of the effects of the tax ruling at issue when determining whether that ruling conferred an economic advantage, and that the three errors made, according to the Commission, in the calculation of the remuneration of the treasury and financing services provided by FFT prevented an arm's length outcome from being obtained and could therefore form the basis for a finding of economic advantage.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the

appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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

*The full text of the Opinions ([C-885/19 P](#) and [C-898/19 P](#)) is published on the CURIA website on the day of delivery.*

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*Pictures of the delivery of the Opinion are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106.*