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Judgment of the Court in Case C-457/21 P | Commission v Amazon.com and Others

The Court of Justice confirms that the Commission has not established that the tax ruling given to Amazon by Luxembourg was a State aid that was incompatible with the internal market

By a tax ruling of 2003, the Luxembourg authorities accepted the Amazon group's proposal concerning the treatment of two of its subsidiaries established in Luxembourg for the purposes of Luxembourg corporate income tax. By a decision of 2017, the Commission found that that tax ruling constituted a State aid that was incompatible with the internal market. According to the Commission, the account taken of a royalty that one of those two subsidiaries had paid to the other under a licence agreement concluded between them on the use of intangible assets artificially diminished the tax base of the first subsidiary and, ultimately, that of the Amazon group in Luxembourg and in Europe.

Luxembourg and Amazon challenged the Commission's decision before the General Court of the European Union.

In May 2021, the General Court held ¹ that the Commission had not demonstrated to the requisite legal standard that the Amazon group subsidiary concerned had benefited from an undue reduction in its tax burden. It held that Luxembourg had not granted a selective advantage in favour of that subsidiary and therefore annulled the Commission decision.

In its judgment handed down today, the Court of Justice rejects the appeal brought by the Commission against the judgment of the General Court.

The Court considers that the General Court wrongly recognised the **arm's length principle**, which seeks to assess whether intra-group transactions are made in accordance with market conditions, as having general application within the context of the implementation of EU State aid rules. In fact, **since that principle has no autonomous existence in EU law, the Commission may rely on it only if it is incorporated into the national tax law concerned**, in this case the tax law of Luxembourg. Likewise, contrary to the General Court's finding, the Organisation for Economic Co-operation and Development (OECD) Guidelines on those transactions could be of practical importance in the case only if Luxembourg tax law made explicit reference to them. The Court of Justice concluded therefore that the Commission had wrongly determined the 'reference system', which is the first step in analysing a national measure in order to be able to categorise it as State aid.

However, despite those errors of law and the incorrect conclusion of the General Court, according to which the reference system determined by Luxembourg tax law enshrined the arm's length principle at the time the tax ruling at issue was adopted, the Court of Justice **upholds the judgment under appeal, since the Commission decision had to be annulled in any event because of the incorrect definition of the reference system, rather than for the reasons given by the General Court.** The General Court had annulled the Commission Decision owing to errors committed in the application of that reference system and, therefore, on the basis of an inaccurate hypothesis that that system complied with the treaty.

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.

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

The [full text and, as the case may be, an abstract](#) of the judgment are published on the CURIA website on the day of delivery.

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¹Judgment of 12 May 2021, [T-816/17 and T-318/18](#), *Luxembourg v Commission* (see also Press Release [No 79/21](#)).