EN
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Answer given by Executive Vice-President Vestager
on behalf of the European Commission
(9.9.2020)

1. The reform of the Code of Conduct referred to in one of the elements of the Commission's recent tax package[1] aims at reinforcing the role of the Code in tackling harmful tax competition. That initiative does not specifically focus on cases of State aid.

2. The Commission is assessing the judgment and its potential scope and impact on other State aid cases before deciding on possible next steps. The standard of the burden of proof applied in the judgment is part of that assessment.

3. The Commission uses the arm's length principle to assess whether a ruling gives rise to an advantage. It relies on guidance given by the OECD[2], since that reflects the international consensus on the application of that principle. This approach was once again upheld by the General Court. In the Fiat case, also its application by the Commission was upheld. According to specific OECD guidance, the attribution of profit to a branch, which legally forms part of the company to which it belongs, comprises two steps. The first step requires an allocation of the assets owned and risks assumed by the company between the branch and the rest of the company. That allocation depends on an assessment of the functions performed by the branch relative to the functions performed by the rest of the company in relation to those assets and risks. The second step of the branch profit attribution exercise consists of assessing the remuneration of any dealings between the branch and the rest of the company by applying an appropriate transfer pricing method, taking into account the functions performed, assets used and risks assumed by each of them.

[1] COM(2020) 313 final
[2] Organisation for Economic Cooperation and Development