



Press and Information

Court of Justice of the European Union
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Judgment in Case C-344/12
Commission v Italy

Italy has failed to fulfil its obligation to recover State aid granted to Alcoa in the form of a preferential electricity tariff

Alcoa Trasformazioni srl is an undertaking governed by Italian law forming part of the Alcoa group. It produces primary aluminium in Italy.

From 1996 it enjoyed a preferential tariff for electricity used at two production sites, one in Sardinia (Portovesme) and the other in the Veneto region (Fusina), as a result of a contract with the electricity supplier (ENEL). That tariff, initially set for a period of ten years, was authorised by the Commission, which found that the measure did not constitute aid since, at the time in question, it was an ordinary commercial transaction concluded on market terms.

The tariff was extended twice – initially until June 2007 and, subsequently, until 2010 – without being adjusted to take account of market trends. In 2009, the tariff was subsidised by a levy charged to electricity consumers¹ and no longer reflected market conditions. The amount was equal to the difference between the contract price concluded with the electricity supplier (ENEL) and the preferential price.

In 2009, the Commission² took the view that the purpose of those extensions was to reduce Alcoa's operating costs, thus conferring on it an advantage vis-à-vis its competitors. They thus constituted State aid incompatible with the common market, which Italy was obliged to recover, together with interest³.

Italy was also required to cancel all future payments and communicate the total amount of aid to be recovered, the measure already taken to comply with the decision and documentation to show that the beneficiary had been ordered to reimburse the aid.

According to Italy, the amount to be recovered is approximately €295 million, including €38 million in interest.

Taking the view that Italy had failed to comply with the duty to provide information and the duty to recover the aid, the Commission brought the present action for failure to fulfil obligations before the Court of Justice.

In today's judgment, the Court points out first of all that a Member State to which a decision requiring recovery of illegal aid is addressed is obliged to take all measures necessary to ensure

¹ Alcoa purchases its electricity from ENEL and the Italian State reimburses the difference between the contract purchase price and the historic tariff, which has fluctuated very little over time.

² Commission Decision 2010/460 of 19 November 2009 on State aid measures C 38/A/04 (ex NN 58/04) and C 36/B/06 (ex NN 38/06) implemented by Italy for Alcoa Trasformazioni.

³ An action for annulment of the decision to initiate the formal procedure to investigate the aid was rejected by the General Court in Case [T-332/06](#). The appeal brought by Alcoa was dismissed (Case [C-194/09 P](#)). Moreover, an action for annulment of Decision 2010/460 is pending before the General Court (Case [T-177/10](#)). The application for suspension of operation of that decision was rejected by order of the President of the General Court in Case [T-177/10 R](#). That order was upheld by the President of the Court of Justice in Case [C-446/10 P\(R\)](#), who dismissed Alcoa's appeal against the order of the President of the General Court.

implementation of that decision and actually recover the sums owed. Recovery must be effected without delay, and recovery after the prescribed time limits have expired will not satisfy the requirements of the Treaty.

As Italy was notified of Decision 2010/460 on 20 November 2009, the time limit expired on 20 March 2010.

By that date, the aid had not been recovered in its entirety. On the contrary, the procedure for recovery of the aid was still ongoing after the present action was instigated, that is to say, more than two and a half years after notification of the decision.

It is settled case law that the only defence available to a Member State against an application by the Commission for a declaration that it has failed to fulfil its obligations is to plead that it was absolutely impossible for it properly to implement the decision in question.

Neither in its relations with the Commission before the present action was brought nor in the proceedings before the Court has Italy claimed that it was absolutely impossible for it to implement the decision. It has simply alluded in its communications with the Commission to legal or practical difficulties and to its intention of achieving a negotiated solution with Alcoa.

For those reasons, the Court declares that **Italy has failed to fulfil its obligation to recover the State aid granted to Alcoa in the form of a preferential electricity tariff.**

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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