



General Court of the European Union

**PRESS RELEASE No 45/16**

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Judgments in Joined Cases T-50/06 RENV II Ireland v Commission and T-69/06 RENV II Aughinish Alumina v Commission, in Case T-56/06 RENV II France v Commission and in Joined Cases T-60/06 RENV II Italy v Commission and T-62/06 RENV II Eurallumina v Commission

Press and Information

## **The General Court confirms the decision of the Commission ordering the repayment of the tax exemptions granted by France, Ireland and Italy for alumina production**

*The Commission correctly applied EU State aid rules and did not infringe the principle of protection of legitimate expectations*

Alumina (or aluminium oxide) is a white powder extracted from bauxite, principally used in smelters to produce aluminium and additionally in chemical applications. Alumina production uses inter alia mineral oil as a fuel. In Ireland, Italy and France, there is only one producer of alumina, namely Aughinish Alumina in the Shannon region, Eurallumina in Sardinia and Alcan in the Gardanne region.

The three Member States in question exempted those undertakings from excise duty on mineral oils used for the production of alumina. The Council authorised those exemptions and extended them until 31 December 2006.

However, the Commission later held that those measures, financed by State resources, conferred an advantage on the recipient companies, were selective, distorted competition and affected the single market. Therefore, in 2005 it adopted a decision<sup>1</sup> according to which the exemptions granted by France, Ireland and Italy in respect of heavy fuel oils used in the production of alumina constituted unlawful State aid. The Commission decided however that the aid granted before 2 February 2002,<sup>2</sup> even if it was incompatible with the common market, did not have to be recovered because the recovery would be contrary to the principles of legitimate expectation and legal certainty. By contrast, the Commission ordered the recovery of the aid granted between 3 February 2002 and 31 December 2003,<sup>3</sup> that aid also being considered incompatible with the common market in so far as the beneficiaries did not pay a rate of at least €13.01 per 1 000 kg of heavy fuel oils.

In 2006, France, Ireland and Italy brought an action before the General Court, which in 2007 annulled<sup>4</sup> the Commission's 2005 decision, on the ground that the Commission had breached the obligation to state reasons. On appeal by the Commission, the Court of Justice<sup>5</sup> set aside the judgment of the General Court in 2009 for infringement of the principle *audi alteram partem* and the rights of the defence and referred the cases back to the General Court.

<sup>1</sup> Commission Decision 2006/323/EC of 7 December 2005 concerning the exemption from excise duty on mineral oils used as fuel for alumina production in Gardanne, in the Shannon region and in Sardinia respectively implemented by France, Ireland and Italy (OJ 2006 L 119, p. 12).

<sup>2</sup> The date of publication in the Official Journal of the decisions of the Commission to initiate the procedure in respect of the exemptions.

<sup>3</sup> The Commission limited the scope of its decision to 31 December 2003, owing to the significant amendments to the Community taxation of energy products made by Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ 2003 L 283, p. 51), which repealed Directive 92/82/EEC with effect from 31 December 2003.

<sup>4</sup> [T-50/06](#), [T-56/06](#), [T-60/06](#), [T-62/06](#) and [T-69/06](#) Ireland and Others v Commission.

<sup>5</sup> [C-89/08 P](#) Commission v Ireland and Others.

In 2012, the General Court, ruling again, annulled the Commission's 2005 decision,<sup>6</sup> on the ground that it partially nullified the legal effects of the Council's earlier decisions to authorise the exemptions. In examining those grounds, the General Court inter alia found that the exemptions at issue were attributable not to the Member States, but to the Council and therefore did not constitute State aid. On appeal by the Commission, the Court of Justice set aside the judgment of the General Court in 2013 finding, first, that the issue of the attributability of the exemptions had not been raised by the parties but by the General Court itself even though it did not have the power to do so and, second, that the Council's decisions authorising a Member State to introduce an exemption do not have the effect of preventing the Commission from examining whether that exemption constitutes State aid.<sup>7</sup> The Court therefore referred the cases back to the General Court once again.

Ruling for the third time in these cases, the General Court considers, in today's judgment and contrary to its first two judgments of 2007 and 2012, that **the Commission's decision is valid** and that **the State aid must therefore be recovered for the period between 3 February 2002 and 31 December 2003**.

The Court first of all gives effect to the judgment of the Court of Justice of 2013, finding that the Commission did have the power to examine whether, despite the Council's authorisation, the exemptions granted by the three Member States constituted State aid. Council authorisation decisions do not predetermine the effects of decisions adopted by the Commission in the exercise of its powers in the area of State aid.

The Court next examines whether the Commission complied with EU State aid rules. In that regard, the Court considers inter alia that the abolition of the excise duty on mineral oils **conferred** on the Irish, French and Italian undertakings in question **an advantage** vis-à-vis other undertakings that also use mineral oils. In addition, the Court takes the view that the Commission clearly indicated the reasons why **the exemptions at issue were liable to affect trade between Member States and distort competition in the market** by strengthening the competitive position of alumina producers established in Ireland, France and Italy vis-à-vis other European alumina producers.

Last, the Court considers that **the Commission did not infringe the principle of protection of legitimate expectations**. Even though the Commission did not adopt the contested decision within a reasonable period (49 months elapsed between the initiation of the formal investigation procedure and the adoption of the contested decision), the Court is of the view that this delay is not an exceptional circumstance capable of having given rise, on the part of the undertakings in question, to a legitimate expectation that the aid at issue was lawful. On the one hand, the exemptions were granted after the Commission's initiation of the formal investigation procedure and, on the other, the aid schemes had not been notified to the Commission in any way. The undertakings in question therefore could not reasonably believe, despite the delay in the investigation procedure, that the Commission's doubts no longer existed and that the exemptions at issue would encounter no objection. It follows that the Commission was justified in ordering the recovery of the aid at issue.

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**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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<sup>6</sup>[T-50/06 RENV](#), [T-56/06 RENV](#), [T-60/06 RENV](#), [T-62/06 RENV](#) and [T-69/06 RENV](#), see Press Release No [28/12](#) Ireland and Others v Commission.

<sup>7</sup>[C-272/12 P](#) Commission v Ireland and Others.

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*The full texts of the judgments ([T-50/06 & T-69/06](#), [T-56/06](#) and [T-60/06 & T-62/06](#)) are published on the CURIA website on the day of delivery*

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