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**The extension of the period of validity of existing State aid must be regarded as the alteration of that aid and, therefore, as new aid**

*This principle applies even where such an alteration stems from a national court's decision*

In 1960, DEI, a public electricity company, entered into a contract with Alouminion, a Greek company specialised in the production of aluminium, under which it was granted a preferential tariff for the supply of electricity. The contract was due to end on 31 March 2006, unless it was extended in accordance with its provisions. By decision of 23 January 1992, the Commission held that the preferential tariff granted to Alouminion under that contract constituted a State aid scheme compatible with the internal market.

DEI terminated the 1960 contract as of 1 April 2006. Alouminion challenged that termination before the Greek courts. By order of 5 January 2007, the Monomeles Protodikeio Athinon (Single-member Court of First Instance, Athens, Greece), in interlocutory proceedings, suspended, as an interim measure, the effects of the termination. DEI brought an appeal before the Polymeles Protodikeio Athinon (Multi-member Court of First Instance, Athens) which, by order of 6 March 2008, terminated, from that date, the 1960 contract.

By decision of 13 July 2011, the Commission considered that Greece had unlawfully granted Alouminion State aid of an amount of €17.4 million since, in consequence of the first order of the Greek courts, Alouminion continued to benefit from the preferential tariff for the period from 5 January 2007 to 6 March 2008. The Commission held that that aid should be classified as new aid and that, since it had been granted without prior notification to the Commission, it was incompatible with the internal market. It therefore ordered Greece to recover the aid from Alouminion.

The General Court, in proceedings brought by Alouminion, by judgment of 8 October 2014,<sup>1</sup> annulled the Commission's decision, holding that that aid must be classified as existing aid.

DEI, supported by the Commission, brought appeal proceedings before the Court of Justice arguing that the General Court had made errors in law.

**The question asked in the present case is whether the first order of the Greek court must be regarded as an alteration to existing aid (and therefore as new aid) or as existing aid.<sup>2</sup> In the first hypothesis only, it should have been notified to the Commission before being implemented.**

In today's judgment, the Court annuls the judgment of the General Court and refers the case back to it for further consideration.

In the first place, the Court holds that the General Court misinterpreted the case-law of the Court and erred in law by finding that the first order of the Greek Court was not to be regarded as the grant or alteration of existing aid. In that respect, the Court notes that the period of validity of

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<sup>1</sup> Case: [T-542/11](#) Alouminion v Commission,

<sup>2</sup> The distinction between new aid and the alteration of existing aid, on the one hand, and existing aid, on the other hand, is raised by TFEU

existing aid is a factor likely to influence the evaluation, by the Commission, of the compatibility of that aid with the internal market.

The Court concludes that **the extension of the duration of existing aid must be regarded as an alteration of existing aid and constitutes, therefore, new aid.**

In this case, this means that the first order of the Greek Court (order altering the time limits of application of the preferential tariff, as agreed in the 1960 contract, and therefore the time limits of the aid scheme, as authorised by the Commission) constitutes alteration of existing aid and, therefore, new aid.

Secondly, the Court states that the national courts are responsible for ensuring compliance with EU law on State aids and are subject to a duty of sincere cooperation with the institutions of the EU.

The Court concludes that the General Court erred in law by finding that, on the ground that they are ruling in interlocutory proceedings (as in the present case), the national courts may escape the obligations incumbent upon them in the context of the control of State aids.

**A national court seised of a dispute relating to a contract has to notify to the Commission all measures** (in particular those adopted by that court) **that affect the interpretation and implementation of that contract and that may have an effect on the functioning of the internal market, on competition or simply on the actual duration, over a specific period, of existing aid.**

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

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