



Press and Information

General Court of the European Union

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Judgment in Joined Cases T-50/06 RENV, T-56/06 RENV, T-60/06 RENV,
T-62/06 RENV and T-69/06 RENV
Ireland v Commission, France v Commission, Italy v Commission,
Eurallumina SpA v Commission, Aughinish Alumina Ltd v Commission

The General Court annuls the Commission's decision ordering the reimbursement of tax exemptions granted by France, Ireland and Italy for the production of alumina, which had been authorised by the Council

The acts of EU institutions must be consistent and comply with the principle of legal certainty

Alumina (or aluminium oxide) is a white powder produced out of bauxite ore, principally used in smelters to produce aluminium and additionally in chemical applications. Alumina production uses mineral oil inter alia as a fuel.

There is only one producer of alumina in Ireland, in Italy and in France: these are, respectively, Aughinish Alumina Ltd, in the Shannon region, Eurallumina SpA, in Sardinia and Alcan Inc. in the Gardanne region. Alumina producers are also present in Germany, Spain, Greece, Hungary and the United Kingdom.

European legislation, in force since 1992¹, harmonises excise duties on mineral oils and fixes the minimum rate of duty on heavy fuel oils, while allowing the Council to authorise Member States to introduce further exemptions from the harmonised excise duty.

On that basis, certain Member States – Ireland, Italy and France – have had exemptions from the excise duty on mineral oils used for the production of alumina, since 1983, 1993, and 1997 respectively. The Council authorised those exemptions and extended them until 31 December 2006².

However, the Commission later held that those measures conferred an advantage on the recipient companies – because they were financed by State resources – that they were selective, distorted competition and affected the single market. Therefore, in 2005 it adopted a decision³ according to which the exemptions from excise duty granted by France, Ireland and Italy in respect of heavy fuel oils used in the production of alumina (until 31 December 2003⁴) constituted State aid⁵. The Commission decided however that the aid granted before 2 February 2002⁶, 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 certainty⁷. By contrast, the aid granted between 3 February 2002 and 31 December 2003 was incompatible with the common

¹ Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils (OJ 1992 L 316, p. 12) and Council Directive of 19 October 1992 on the approximation of the rates of excise duties on mineral oils (OJ 1992 L 316, p. 19).

² The most recent authorisation decision is Council Decision 2001/224 of 12 March 2001 (OJ 2001 L 84, p. 23).

³ 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).

⁴ The Commission limited the scope of its decision of 31 December 2003, due to significant amendments to the Community taxation of energy products introduced by Council Directive 2003/96/EEC 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.

⁵ Within the meaning of Article 87(1) EC.

⁶ Date on which the Commission decisions to open the procedure with regard to the exemptions were published in the Official Journal (Decision 2006/323/EC, p. 101).

⁷ In addition, for the period prior to 17 July 1990, the Commission's powers of recovery were time-barred.

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 (that minimum rate having been fixed by the 1992 legislation) and the States were required to recover the aid from their beneficiaries.

In 2006 France, Ireland and Italy brought an action before the General Court, which annulled⁸ the Commission's decision of 2005, on the ground that the decision breached the obligation to state reasons.

On appeal by the Commission, the Court of Justice⁹ annulled 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 case back to the General Court.

It is on those cases that the General Court rules today. In this instance, the applicants complain that the Commission nullified the legal effects of the Council's decision which authorised the Member States to apply the exemptions until 31 December 2006, and thereby infringed the principle of legal certainty.

The General Court first recalls that the principle of legal certainty aims to ensure that situations and legal relationships governed by EU law remain foreseeable. To that end, it is essential **that the EU institutions observe the principle that they may not alter measures which they have adopted and avoid inconsistencies between the various provisions that they adopt.**

Moreover, the General Court points out that the rules governing the harmonisation of fiscal legislation and the rules on State aid pursue the same objective, namely to promote the proper functioning of the internal market by combating, especially, distortion of competition. In the light of their common objective, in order for those different rules to be implemented consistently, **the notion of distortion of competition must be regarded as having the same scope and the same meaning with regard to both the harmonisation of domestic fiscal legislation and State aid.** Therefore, the European Union institutions must assess whether there is a distortion of competition consistently, in order to decide whether or not to authorise an exemption from the harmonised excise duty.

Where such distortion is found, the General Court also states that the Commission must propose to the Council that it should not authorise the exemption, or abolish or amend it – which it failed to do in the present case. Moreover, it could also have asked the European Union judicature to review whether there is distortion of competition in the operation of the internal market, caused by that exemption, and ask it to annul the Council's decision.

In any event, the Commission was not entitled to classify the exemptions in issue as State aid so long as the Council's decision remained in force and had not been amended or annulled, without leading to an inconsistent implementation of the rules on the harmonisation of fiscal legislation and the rules on State aid, **contrary to the principle of legal certainty.**

The General Court therefore annuls the Commission's decision in so far as it is based on the finding that the exemptions from excise duty on mineral oils used as fuel for alumina production granted by France, Ireland and Italy constitute State aid and in so far as it orders the Member States to recover those exemptions from the beneficiaries to extent that the latter did not pay excise duty at a rate of at least €13.01 per 1 000 kg of heavy fuel oils.

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

⁸ Cases [T-50/06](#), [T-56/06](#), [T-60/06](#), [T-62/06](#), [T-69/06](#) Ireland and Others v Commission.

⁹ Case [C-89/08 P](#) Commission v Ireland and Others.

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

Press contact: Christopher Fretwell ☎ (+352) 4303 3355