

**Appeal brought on 1 June 2012 by the European Commission against the judgment of the General Court (Fourth Chamber, Extended Composition) delivered on 21 March 2012 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 and Others v Commission**

(Case C-272/12 P)

(2012/C 235/16)

Language of the case: French

**Parties**

*Appellant:* European Commission (represented by: V. Di Bucci, G. Conte, D. Grespan, N. Khan and K. Walkerová, Agents)

*Other parties to the proceedings:* French Republic, Ireland, Italian Republic, Eurallumina SpA, Aughinish Alumina Ltd

**Form of order sought**

- set aside the judgment of the General Court (Fourth Chamber, Extended Composition) of 21 March 2012, notified to the Commission on 23 March 2012, 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 and Others v Commission*,
- refer the cases back to the General Court for reconsideration,
- reserve the costs.

**Pleas in law and main arguments**

The Commission has brought an appeal before the Court of Justice against the judgment delivered on 21 March 2012 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 and Others v Commission* by which the General Court annulled 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 implemented by France, Ireland and Italy. <sup>(1)</sup>

The appellant raises five pleas in law in support of its appeal, based on a lack of jurisdiction of the General Court, a breach of procedure before the General Court which adversely affects the interests of the Commission and infringement of European Union law.

First, the General Court made errors of law by raising, of its own motion, in the five joined cases, a plea alleging infringement of Article 87(1) EC on the basis that the national measures at issue are not imputable to the Member States. In any event, in Cases T-56/06 RENV and T-60/06 RENV, it raised, of its own motion, the pleas alleging infringement of the principle of legal certainty and/or the presumption of legality attaching to European Union measures in order to annul the Commission's decision in its entirety, although those pleas had only been put forward to oppose the order for recovery.

Secondly, in deciding, contrary to what was held by the Court of Justice in its judgment in Case C-89/08 P *Commission v Ireland and Others* [2009] ECR I-11245, that the concept of distortion of competition possesses the same scope and meaning concerning State aid and the harmonisation of the laws of the Member States relating to taxes, the General Court made errors of law and, in particular, infringed the second paragraph of Article 61 of the Statute of the Court of Justice, under which, when the Court annuls a decision of the General Court and refers the case back to the latter for judgment, the General Court is bound by the points of law decided by the Court of Justice.

Thirdly, by taking the view that the exemptions at issue do not constitute State aid because they had been authorised by the Council under the rules on tax harmonisation, that they are not thus imputable to Member States and that they are, therefore, not subject to the procedure for monitoring aid established by the treaty, the General Court made errors of law in determining the respective jurisdictions of the Council and the Commission, as well as in determining the relationships between tax harmonisation and monitoring of State aid, and infringed Articles 87 and 88 EC and the principle of institutional balance.

Fourthly, the General Court interpreted *contra legem* Council Decision 2001/224/EC of 12 March 2001 concerning reduced rates of excise duty and exemptions from such duty on certain mineral oils when used for specific purposes. <sup>(2)</sup> According to the appellant, the General Court based its interpretation on the Council's response to a question from the Court, in infringement of the rules governing the interpretation of the acts of the institutions, and distorted the meaning of that response of the Council.

Finally, in so far as it is based on the infringement of the principle of legal certainty, the principle of the presumption of legality and the principle of good administration, the judgment of the General Court is vitiated by a defective statement of reasons or tainted with the same defects as those identified in the second, third and fourth pleas.

<sup>(1)</sup> OJ 2006 L 119, p. 12

<sup>(2)</sup> OJ 2001 L 84, p. 23

**Reference for a preliminary ruling from the Cour de cassation (France) lodged on 4 June 2012 — Directeur général des douanes et droits indirects, Chef de l'agence de poursuites de la Direction nationale du renseignement et des enquêtes douanières v Harry Winston SARL**

(Case C-273/12)

(2012/C 235/17)

Language of the case: French

**Referring court**

Cour de cassation (Supreme Court)