



Press and Information

Court of Justice of the European Union  
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Judgment in Case C-89/11 P  
E.ON Energie AG v Commission

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**The Court of Justice confirms that E.ON Energie AG must pay a fine of €38 million for breaking a seal during an inspection relating to a competition law investigation**

*It dismisses the appeal brought by E.ON Energie against the judgment of the General Court, which upheld the Commission's decision imposing that fine*

The Commission may, under EU law, impose on undertakings fines of up to 1% of their turnover where, deliberately or through negligence, they break seals placed by the Commission during an inspection relating to a competition law investigation.

In May 2006, the Commission carried out an inspection at the commercial premises of E.ON Energie AG in Munich (Germany) in order to verify its suspicions that that undertaking had participated in anti-competitive agreements. As the inspection could not be completed the same day, the documents selected for closer examination were stored in a room placed at the Commission's disposal by E.ON Energie. The door of the room was locked and an official Commission seal affixed.

Commission seals are made of self-adhesive plastic. If removed, they do not tear, but 'VOID' markings appear irreversibly on both the surface and the underside of the sticker. When the inspection team returned to the scene on the morning of the second day of the inspection, they found, *inter alia*, that the 'VOID' marking was visible on the seal affixed the previous day.

Consequently, by a decision of 30 January 2008, the Commission imposed a fine of €38 million on E.ON Energie for breaking the seal. The undertaking sought the annulment of that decision by bringing an action before the General Court, which was dismissed by a judgment of 15 December 2010.

E.ON Energie therefore lodged an appeal against the judgment of the General Court.

By its judgment today, the Court of Justice dismisses the appeal.

The Court of Justice finds, *inter alia*, that the General Court did not unduly reverse the burden of proof or infringe the principle of the presumption of innocence. Since the Commission had determined that there had been a breach of seal based on a body of evidence, the General Court was entitled to conclude that it was for E.ON Energie to adduce evidence challenging that finding.

In that context, the Court of Justice makes clear that an undertaking cannot challenge the probative value of a seal by simply invoking the possibility that it might have been defective. If such an argument, unsupported by evidence, could succeed, the Commission would be completely deprived of the possibility of using seals. Moreover, the Court of Justice recalls that, in principle, it is for the General Court to appraise the value of the evidence produced to it; the review by the Court of Justice on appeal is limited to points of law. Furthermore, the General Court is the sole judge of any need to supplement the information available to it, meaning that E.ON Energie cannot criticise the General Court for not having granted its request that that further measures of inquiry be ordered.

In addition, the Court of Justice dismisses E.ON Energie's argument that the General Court breached the principle of proportionality by not reducing the fine imposed by the Commission. The Court of Justice observes that only in so far as it considers that the level of the penalty is not merely inappropriate, but excessive to the point of being disproportionate, would it have to find that the General Court erred in law, due to the inappropriateness of the amount of a fine.

In that regard, the Court of Justice holds that the General Court did not err in law by holding that an infringement consisting of a breach of seal is particularly serious in itself. Moreover, knowing that the Commission could have imposed on E.ON Energie a fine of 10% of its annual turnover if the Commission had established the existence of anticompetitive practices, the fine of €38 million imposed for a breach of seal, which represented 0.14% of E.ON Energie's annual turnover, could not be considered as excessive in the light of the need to ensure the deterrent effect of that penalty.

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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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