



Press and Information

General Court of the European Union

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Judgment in Joined Cases T-479/11 and T-157/12
France and IFP Énergies nouvelles v Commission

The General Court annuls the Commission's decision classifying the unlimited implied guarantee granted by the French State to the Institut français du pétrole (French Petroleum Institute) as State aid

The Commission has not sufficiently explained or proven that that guarantee has the effect of conferring an actual economic advantage on the Institut français du pétrole

The Institut Français du Pétrole (now called IFP Énergies nouvelles) is a French public establishment entrusted with research and development, training, information and documentation missions. Until 2006, the IFP was constituted as a legal person governed by private law placed under the economic and financial control of the French Government. In 2006, the IFP was transformed into a legal person governed by public law, namely a public establishment of an industrial and commercial character (établissement public à caractère industriel et commercial) ('EPIC').

In 2011,¹ the Commission declared that the grant of that status had the effect of conferring on the IFP an unlimited public guarantee on all of its activities. It considered that the coverage, by that guarantee, of the economic activities of the IFP (such as technology-transfer and contract research activities) largely constituted State aid. The Commission took the view that the IFP had derived an actual economic advantage from the implied and unlimited guarantee from the State in connection with its relations with suppliers and customers, since that advantage is selective in so far as the IFP's competitors, subject to common law insolvency proceedings, did not benefit from a comparable guarantee from the State. Nevertheless, the Commission found that, subject to compliance with certain conditions, the State aid thus granted could be considered to be compatible with the internal market.

France and the IFP request the General Court to annul the Commission's decision. They consider, inter alia, that the IFP does not benefit from an unlimited implied guarantee and that, even if this is the case, that guarantee does not constitute State aid.

In today's judgment, the Court notes first of all that the implied and unlimited guarantee from the State in favour of EPICs is connected with the status of those establishments and follows inter alia from the fact that they are not subject to common law insolvency proceedings.²

As regards, next, the economic advantage which the IFP would have derived from the guarantee in connection with its relations with suppliers, the Court finds that the Commission did not adduce proof of such an advantage. The Commission has not demonstrated that, in the presence of the guarantee at issue, the IFP's suppliers are likely to grant it more favourable treatment, inter alia by lowering the prices of their products or of their services and by consequently expressing the more favourable assessment that they have of its risk of default (the IFP being protected from the risk of liquidation).

¹ Commission Decision 2012/26/EU of 29 June 2011 on State aid granted by France to the Institut Français du Pétrole (Case C 35/08 (ex NN 11/2008)) (OJ 2012 L 14, p. 1).

² [C-559/12 P](#) France v Commission, see Press Release no. [48/14](#).

Likewise, as regards relations between the IFP and its customers, the Court finds that the Commission did not clearly explain – or provide sufficient evidence to that effect – why the customers of the research institutes would foresee the risk of insolvency of their co-contracting party with the help of performance guarantees or best effort guarantees and why the customers of an EPIC would tend not to require such guarantees.

The Court also rejects the Commission's argument that the Commission does not have to show the actual effects produced by the guarantee. The Commission submitted that, according to the case-law of the Court,³ the existence of an advantage is presumed for EPICs and is thus established by the mere existence of the guarantee from the State. The Court considers, however, that the possibility of resorting to a presumption as a means of proof depends on the plausibility of the assumptions on which the Commission relied. In the present case, the Court notes the lack of plausibility of the assumptions on which the Commission relied in order to conclude that there was an advantage in the relations between the IFP and its suppliers and customers. As regards, specifically, the relations between the IFP and its suppliers, the Court observes that a reduction in price is not necessarily agreed to by the suppliers on account of the guarantee granted to EPICs, but depends on a multiplicity of factors such as the volume of orders placed by the customer, the payment deadlines granted by the supplier or the duration of the contractual relations.⁴

The Court therefore annuls the Commission decision in so far as it classifies, as State aid, the guarantee following from the IFP's status as an EPIC.

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

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³ See footnote 2.

⁴ The General Court also observes that the application of the presumption laid down in the judgment of 3 April 2014 (footnote 2) is confined to relations between an EPIC and the banking and financial institutions and therefore does not apply as it is to relations between an EPIC and its suppliers and customers. The General Court states, nevertheless, that that case-law is applicable to relations between the IFP and the banking and financial institutions. However, since the Commission came to the conclusion that, in the context of those relations, the IFP had not derived any actual economic advantage from the guarantee granted by the French State, the General Court infers from this that the presumption was disproved and that it can apply again for the future only in the event of a substantial change in the circumstances in which it was disproved. According to the General Court, such a change did not occur in the present case.