



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 133/18**

Luxembourg, 19 September 2018

Judgment in Case C-438/16 P

Commission v France and IFP Énergies nouvelles

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**The Court holds that the General Court must reconsider whether the Commission was justified in classifying the implied and unlimited guarantee granted by the French Republic to the Institut français du pétrole as State aid**

The Institut Français du Pétrole (now known as IFP Énergies nouvelles) is a French public institution responsible for carrying out research and development, training, information and documentation. Until 2006, IFP was a legal person governed by private law which operated under the economic and financial supervision of the French Government. In 2006, IFP was converted into a legal person governed by public law, namely a publicly-owned industrial and commercial establishment (EPIC).

In 2011,<sup>1</sup> the Commission declared that the grant of that status had resulted in conferring on IFP an unlimited public guarantee covering the totality of its activities. It considered that the cover provided by that guarantee for IFP's economic activities (such as technology-transfer and contract research activities) constituted to a large extent State aid. The Commission considered that IFP derived a real economic advantage from the implied and unlimited State guarantee in the context of its dealings with suppliers and customers, that advantage being selective in so far as IFP's competitors, which are subject to insolvency procedures provided for under ordinary law, do not enjoy a similar State guarantee. Nevertheless, the Commission concluded that, subject to respect for certain conditions, the State aid thereby granted could be considered to be compatible with the internal market.

France and IFP brought an action before the General Court of the European Union for the annulment of the Commission decision. By judgment of 26 May 2016,<sup>2</sup> the General Court upheld the actions and annulled the Commission decision in so far as it classified the guarantee deriving from IFP's EPIC status as State aid. Since it was dissatisfied with the judgment of the General Court, the Commission brought an action before the Court of Justice for it to be set aside.

By its judgment delivered today, the Court sets aside the judgment of the General Court and refers the case back to it for reconsideration.

The Court considers, first of all, that the mere fact that IFP benefits from a State guarantee was such as to allow the Commission to presume that, thanks to the guarantee associated with its status, an EPIC such as IFP benefits or could benefit, in its dealings with banks and financial institutions, from better financial terms than those normally available on the financial markets. In order to rely on that presumption, the Commission was not required to show the actual effects produced by the guarantee at issue. Moreover, the fact that the beneficiary of such a guarantee derived, in the past, no real economic advantage from its EPIC status does not suffice, in itself, to rebut the presumption of the existence of an advantage. The General Court was therefore mistaken, in its judgment, to hold that the presumption had been rebutted for that reason.

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<sup>1</sup> 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 11/08)) (OJ 2012 L 14, p. 1).

<sup>2</sup> Cases [T-479/11](#) and [T-157/12](#) France and IFP Énergies nouvelles v Commission, see also Press Release No [53/16](#).

Furthermore, the Court holds that the General Court erred in law by holding that the presumption of the existence of an advantage is restricted to an EPIC's dealings with banks and financial institutions. Therefore, although the presumption cannot be automatically extended to an EPIC's dealings with its suppliers and its customers, it is necessary to examine whether, in light of the conduct of those suppliers and customers, the advantage that the establishment concerned can derive therefrom is similar to that which it derives from its dealings with banks and financial institutions. In particular, the Commission is required to verify whether the conduct of suppliers and customers on the market concerned justifies a hypothesis of an advantage similar to that inherent in the EPIC's dealings with banks and financial institutions.

The Court therefore refers the case to the General Court for it to reconsider the Commission decision in the light of the considerations set out in the judgment delivered today.

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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.

Press contact: Holly Gallagher 📞 (+352) 4303 3355