



Press and Information

Court of Justice of the European Union

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Judgment in Case C-226/16

**Eni and Others v Premier Ministre and Ministre de l'Environnement,
de l'Énergie et de la Mer**

Member States cannot require natural gas suppliers to hold exclusively on national territory sufficient natural gas stocks to fulfil the obligations laid down by the EU regulation on security of gas supply

They can, however, widen the group of customers for which gas supply is safeguarded in the crisis situations referred to in that regulation, provided that they comply with the conditions laid down in the regulation

The companies Eni, Eni Gas & Power France and UPRIGAZ applied to the French Conseil d'État (Council of State) for annulment of a French decree which, according to them, infringes the EU regulation on security of gas supply.¹ Those companies maintain, first, that the decree improperly extends the definition of 'protected customers' laid down in the regulation (essentially defined by the regulation as households connected to a gas distribution network as well as, if Member States so choose, other categories including, in particular, SMEs). The companies submit that the decree includes in its definition of 'protected customers' non-domestic customers connected to a distribution network that have not accepted, under a contract, an interruptible supply and that such customers are not necessarily SMEs. The definition of 'protected customers' is important, as it imposes a whole series of obligations on gas suppliers to safeguard, in the event of crisis, security of gas supply to the most vulnerable customers.

In addition, the companies in question argue that, in order to ensure continuity of gas supply to customers, the decree requires suppliers to hold sufficient stocks of natural gas in France, which implies, in essence, that 80% of their storage rights must be held on national territory.

The Council of State has asked the Court of Justice whether the provisions at issue of the decree are compatible with the regulation.

In today's judgment, the Court first points out that the regulation allows Member States to impose 'additional obligations' on natural gas undertakings for reasons of security of gas supply. It follows that Member States may impose an additional obligation on natural gas undertakings to hold gas stocks for customers who are not necessarily 'protected customers', as defined in that regulation. However, the Court observes that the imposition of such an additional obligation is subject to compliance with a number of conditions laid down in the regulation. In particular, such an obligation must be based on a risk assessment, must not unduly distort competition or hamper the functioning of the internal market in natural gas, and must not impact negatively on the

¹ Regulation (EU) No 994/2010 of the European Parliament and of the Council of 20 October 2010 concerning measures to safeguard security of gas supply and repealing Council Directive 2004/67/EC (JO 2010 L 295, p. 1).

ability of any other Member State to supply its protected customers in the event of a national, EU or regional emergency. It will be for the Council of State to determine whether the decree in question complies with those conditions.

Next, the Court declares that legislation which requires natural gas suppliers to hold sufficient gas stocks necessarily and exclusively on national territory is incompatible with the regulation, as the latter prohibits the competent authorities from taking account solely of infrastructure located on national territory. Given, however, the fact that the decree in question provides that the French authorities may take account, in the context of the obligation to hold gas stocks on French territory, of 'other regulatory instruments', the Court requests the Council of State to determine whether that possibility under the decree ensures that the suppliers concerned can in fact meet their obligations at regional level or at EU level. If that were to be the case, then the obligation to hold stocks on national territory could be compatible with the regulation.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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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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