Reports of Cases

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

26 May 2016*

(State aid — Oil exploration — Implied and unlimited State guarantee conferred on the Institut français du pétrole (IFP) by the grant of the status of publicly-owned industrial and commercial establishment (EPIC) — Advantage — Presumption of an advantage)

In Joined Cases T-479/11 and T-157/12

**French Republic**, represented initially by E. Belliard, G. de Bergues, B. Beaupère-Manokha and J. Gstalter, thereafter by E. Belliard, G. de Bergues, J. Gstalter and S. Menez, thereafter by G. de Bergues, S. Menez, D. Colas and J. Bousin, and finally by G. de Bergues, D. Colas and J. Bousin, acting as Agents,

applicant in Case T-479/11,

**IFP Énergies nouvelles**, established in Rueil-Malmaison (France), represented initially by É. Morgan de Rivery and A. Noël-Baron, and thereafter by E. Morgan de Rivery and E. Lagathu, avocats,

applicant in Case T-157/12,

v

**European Commission**, represented by B. Stromsky, D. Grespan and K. Talabér-Ritz, acting as Agents,

defendant,

APPLICATION pursuant to Article 263 TFEU seeking the annulment of 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).

THE GENERAL COURT (Eighth Chamber),

composed of D. Gratsias, President, M. Kancheva and C. Wetter (Rapporteur), Judges,

Registrar: L. Grzegorczyk, Administrator,

having regard to the written stage of the procedure and further to the hearing on 8 October 2015,

gives the following

* Language of the case: French.

## Judgment

### Background to the dispute

1 By their actions, the applicants, the French Republic and IFP Énergies nouvelles ('IFPEN'), known prior to 13 July 2010 as the Institut Français du Pétrole (French Petroleum Institute), seek the annulment in full of 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/08)) (OJ 2012 L 14, p. 1, 'the contested decision').

2 IFPEN is a publicly-owned research establishment entrusted with three general-interest tasks: research and development in the fields of oil and gas prospecting, refining and petrochemicals technologies; the training of engineers and technicians; and the provision of sector information and documentation (recital 14 of the contested decision).

3 Furthermore, IFPEN has direct and indirect control over three commercial companies, Axens, Beicip-Franlab and Prosernat, with which it has concluded exclusive research and licensing agreements.

4 Until 2006, IFPEN was a legal person governed by private law which, in accordance with provisions of French national law, operated under the economic and financial supervision of the French Government. Under French Programme Law No 2005-781 of 13 July 2005 establishing the energy policy guidelines (JORF of 14 July 2005, p. 11570), IFPEN was converted, with effect from 6 July 2006, into a legal person governed by public law, more specifically a publicly-owned industrial and commercial establishment (EPIC) (recitals 21 to 23 of the contested decision).

5 It is clear from the documents before the Court, first, that that conversion was motivated by the French authorities' desire to bring IFPEN's nature and operating model into line with its financing model. In so far as IFPEN was financed primarily from a budget allocation, the purpose of the conversion was to reduce the discrepancy between the private status of that establishment and the public origin of a significant proportion of its resources. Secondly, that conversion formed part of the process of standardising the status of French research establishments.

6 With regard to the legal status of EPICs in French law, it should be pointed out that such establishments form a category of legal persons governed by public law which perform economic activities. Their legal personality is separate from that of the State, they are financially independent and they exercise certain special powers which usually include the performance of one or more public service tasks. Under French law, legal persons governed by public law are not subject to the ordinary law applicable to insolvency procedures by virtue of the general principle of the immunity from seizure enjoyed by public assets. The inapplicability of insolvency procedures to EPICs has been confirmed by the case-law which the French Cour de cassation (Court of Cassation) has formulated on the basis of Law No 85-98 of 25 January 1985 on the compulsory administration and winding-up of undertakings (JORF of 26 January 1985, p. 1097).

7 The specific features of the legal status of EPICs attracted the attention of the European Commission, which, in Decision 2010/605/EU of 26 January 2010 on State aid C 56/07 (ex E 15/05) granted by France to La Poste (OJ 2010 L 274, p. 1, 'the La Poste decision'), examined that status for the first time in the light of the rules governing State aid in the European Union. In that decision, the Commission concluded that, because of their status, the economic activities pursued by EPICs benefited from an implied and unlimited State guarantee mobilising public resources. That conclusion was based on the following considerations (recital 25 of the contested decision and recitals 20 to 37 of the La Poste decision):

— the insolvency procedures provided for under ordinary law are not applicable to EPICs;

— EPICs are, however, subject to the provisions of French Law No 80-539 of 16 July 1980 on the penalties imposed in administrative matters and on the execution of judgments by legal entities governed by public law (JORF of 17 July 1980, p. 1799), and its implementing rules. Those provisions expressly identify the State as the authority responsible for covering the debts of publicly-owned establishments, give it extensive powers, such as the issuing of mandatory payment orders and the creation of sufficient resources, and organise a principle of last-resort State liability for the debts of legal entities governed by public law;

— In the event that an EPIC is wound up, the principle generally applicable is that its debts will be transferred to the State or to another public entity, meaning that any creditors of an EPIC are assured of never losing the claims they hold against this type of establishment;

— EPICs might also have preferential access to 'Treasury imprest accounts'.

8 In the La Poste decision, the Commission took the view that the implied and unlimited State guarantee inherent in La Poste's EPIC status constituted State aid within the meaning of Article 107(1) TFEU, in that it allowed La Poste to obtain more favourable borrowing terms than it would have obtained had it been judged solely on its own merits (recitals 256 to 300 of the La Poste decision).

9 It was in the context of the proceedings that led to the adoption of the La Poste decision that, during 2006, the French authorities informed the Commission of IFPEN's conversion into an EPIC. The Commission was so informed in the course of proceedings initiated in 2005 in connection with the investigation, in the light of the rules governing State aid, of public funding granted to IFPEN by the French authorities (recitals 1 to 3 of the contested decision).

10 The Commission then decided to separate the investigation of whether IFPEN's conversion into an EPIC was capable of constituting State aid within the meaning of Article 107(1) TFEU from the investigation of IFPEN's public funding. Accordingly, on 16 July 2008, it closed the investigation of the public funding granted to IFPEN by adopting Decision 2009/157/EC on the aid measure implemented by France for the IFP Group (C 51/05 (ex NN 84/05)) (OJ 2009 L 53, p. 13). On the same day, by a decision published in the *Official Journal of the European Union* (OJ 2008 C 259, p. 12, 'the decision initiating the formal procedure'), the Commission decided to initiate a formal investigation procedure concerning the unlimited State guarantee in favour of IFPEN and invited interested parties to submit their comments.

11 In the decision initiating the formal procedure, the Commission noted, in particular, that IFPEN derived an advantage from its conversion into an EPIC, mainly through the more favourable funding terms from which it was considered to benefit on the financial markets. According to the Commission, that advantage, which is financed from State resources, constitutes State aid within the meaning of its Notice on the application of Articles [107] and [108 TFEU] to State aid in the form of guarantees (OJ 2008 C 155, p. 10, 'the Guarantees Notice').

12 The French authorities submitted their comments on that decision by letter of 14 October 2008. They later went on to reply to the Commission's additional questions and provided information on IFPEN's dealings with various creditor groups. A meeting between the Commission and the French authorities was also scheduled for 20 May 2010.

13 In addition, one of Axens' competitors, UOP Limited, an English company established in Guildford (United Kingdom), submitted its comments in response to the decision initiating the formal procedure. The French authorities were able to submit their observations on those comments.

14 On 29 June 2011, the Commission adopted the contested decision.

15 In the first place, by applying the same reasoning it had employed in the La Poste decision, and, moreover, by making numerous references to that decision (see, inter alia, recital 98 et seq. of the contested decision), the Commission formed the view, in the contested decision, that IFPEN's conversion into an EPIC in July 2006 conferred on it the benefits of an implied and unlimited State guarantee. The Commission further considered that that guarantee had resulted in a transfer of State resources within the meaning of point 2.1 of the Guarantees Notice, inasmuch as IFPEN paid no premium for that guarantee. There was thus, in the Commission's opinion, both an advantage to the undertaking and a drain on public resources, as the State waived the remuneration that normally accompanies guarantees. Furthermore, the Commission stated, the guarantee creates the risk of a potential and future claim on the resources of the State, which could find itself obliged to pay IFPEN's debts (recitals 134 and 135 of the contested decision).

16 With regard to IFPEN's subsidiaries, on the other hand, the Commission noted that, as commercial companies, they were subject to the insolvency procedures provided for in ordinary law and that, furthermore, their creditors could not automatically trigger the liability of their controlling shareholder. It concluded that those subsidiaries were not covered by the unlimited State guarantee from which IFPEN benefited by virtue of its EPIC status (recitals 176 and 177 of the contested decision).

17 In the second place, the Commission stated that the unlimited State guarantee arising from IFPEN's EPIC status was capable of constituting State aid in so far as it covered its economic activities. It therefore decided to limit the scope of its investigation into the existence of State aid exclusively to the economic activities carried on by IFPEN, as distinct, on the one hand, from the activities of its subsidiaries, which were not covered by that guarantee, and, on the other hand, from IFPEN's non-economic activities. The Commission stated that IFPEN's economic activities were confined to the contract research it carried out on behalf of its subsidiaries and third parties, technology transfers in the fields in which the subsidiaries Axens, Prosernat and Beicip-Franlab were exclusively active and the renting out of infrastructure, procurement of staff and provision of legal services for its subsidiaries (recitals 187 and 189 to 191 of the contested decision).

18 In the third place, the Commission examined, in particular, whether the implied and unlimited guarantee at issue conferred a selective advantage on the 'IFPEN group'.

19 In that regard, the Commission decided, as a first step, to examine whether IFPEN had itself been able to derive an advantage from the implied and unlimited State guarantee and, as a second step, to ascertain whether it had been able to transfer that advantage to its subsidiaries (recital 192 of the contested decision).

20 As regards the advantage from which IFPEN is said to have benefited, the Commission decided to examine its dealings with banks and financial institutions, suppliers and customers (recitals 193 and 194 of the contested decision).

21 At the end of its examination, the Commission, first, concluded that IFPEN did not derive any real economic advantage from the implied and unlimited State guarantee inherent in its EPIC status so far as concerns its dealings with banks and financial institutions during the period from its conversion into an EPIC in July 2006 until the end of 2010 (recital 199 of the contested decision). Secondly, it found that IFPEN derived a real economic advantage from that guarantee in its dealings with suppliers and customers (recitals 203 to 238 of the contested decision). Finally, the Commission considered that that economic advantage was selective, inasmuch as IFPEN's competitors, subject as they were to ordinary-law insolvency procedures, did not benefit from a comparable State guarantee.

22 As regards any transfer of the advantage conferred on IFPEN over its private-law subsidiaries, the Commission, referring to the analysis of IFPEN's dealings with its subsidiaries carried out in Decision 2009/157, concluded that the subsidiaries Axens and Prosernat had to some extent been able to

benefit from the economic advantage conferred on IFPEN in its dealings with customers. It classified that advantage as selective on the ground that Axens' and Prosernat's competitors did not have access to the technologies and human and material resources available to IFPEN on such favourable terms (recitals 226 and 243 to 250 of the contested decision).

23 In the fourth place, the Commission examined the compatibility of that State aid in the light of the rules set out in the Community framework for State aid for research and development and innovation (OJ 2006 C 323, p. 1). It concluded that the State aid granted to the 'IFPEN group' was compatible with the internal market, subject to certain conditions spelled out in the contested decision.

24 The operative part of the contested decision is complex. Only those points that are essential to the present dispute will be reproduced below:

'*Article 1*

1. The status of publicly owned industrial and commercial establishment granted by France to [IFPEN] conferred on [IFPEN], from 7 July 2006 onward, an unlimited public guarantee ('the State guarantee') covering the totality of its activities.

2. The cover provided by the State guarantee for the non-economic activities of [IFPEN], in particular its training activities with a view to increased, better qualified human resources, its independent [research and development] activities with a view to more extensive knowledge and better understanding, and its activities for the dissemination of research results, does not constitute State aid within the meaning of Article 107(1) TFEU.

3. The cover provided by the State guarantee for the technology transfer activities carried out by [IFPEN] in the fields provided for by the exclusive development, marketing and use agreement concluded with its subsidiary Beicip-Franlab does not constitute State aid within the meaning of Article 107(1) TFEU.

4. The cover provided by the State guarantee for the technology transfer activities carried out by [IFPEN] in the fields provided for by the exclusive agreements concluded with its subsidiaries Axens and Prosernat referred to in Article 3(1) of [Decision 2009/157] constitutes State aid within the meaning of Article 107(1) TFEU.

5. The cover provided by the State guarantee for the contract research and other services performed by [IFPEN], on behalf of both third parties and the subsidiaries, constitutes State aid within the meaning of Article 107(1) TFEU.

...

*Article 3*

In the period between 7 July 2006 and 31 December 2009, the cover provided by the State guarantee for the economic activities referred to in Article 1(4) and (5) constituted aid compatible with the internal market.

*Article 4*

From 1 January 2010 onward, and until the date of expiry of the exclusive agreements between [IFPEN] and its subsidiaries Axens and Prosernat referred to in Article 3(1) of [Decision 2009/157], the cover provided by the State guarantee for the economic activities referred to in Article 1(4) of this decision constitutes aid compatible with the internal market, subject to compliance with the conditions in Articles 5 and 6 of this decision.

*Article 5*

1. The annual financial report referred to in Article 4(2) of [Decision 2009/157] shall include, in addition to the information already mentioned in Article 5(1) of that decision, the information listed in paragraphs 2, 3 and 4 of this Article.

2. The annual financial report shall include the value, interest rate and contractual terms of the loans subscribed to by [IFPEN] during the year under review, and an estimate of the gross grant equivalent of any interest rate subsidy deriving from the State guarantee, unless proof is supplied that these loan contracts are in accordance with normal market conditions, either by comparing their terms with those obtained by [IFPEN] before its change of legal form, or on the basis of a more precise methodology approved in advance by the Commission.

3. The annual financial report shall include the value of goods and services obtained by [IFPEN] from suppliers to carry out the economic activities referred to in Article 1(4) and (5), during the year under review, and a maximum estimate of the gross grant equivalent of the aid resulting from a more favourable assessment by suppliers of the risk of default of the establishment. This estimate shall be made either by applying a flat rate of 2.5% to the value of acquisitions made, or on the basis of a more precise methodology approved in advance by the Commission.

4. The annual financial report shall include the value of the economic activities referred to in Article 1(4) and (5) carried out by [IFPEN] during the year under review, and a maximum estimate of the gross grant equivalent of the aid resulting from the lack of payment of a premium corresponding to a performance bond or, at the very least a best efforts guarantee, offered to the beneficiaries of the above-mentioned economic services. This estimate shall be made either by applying a flat rate of 5% to the value of the services provided or on the basis of a more precise methodology approved in advance by the Commission.

*Article 6*

1. The total amount of public funding allocated to the activities of [IFPEN] in the exclusive fields of activity of Axens and Prosernat, including the maximum impact of the State guarantee as estimated in Article 5(2), (3) and (4), must be lower than the maximum intensity permitted by the Community framework for State aid for research and development and innovation.

2. If the threshold referred to in paragraph 1 is exceeded, the surplus aid shall, where appropriate, be refunded by the subsidiary concerned, Axens or Prosernat, to [IFPEN].

*Article 7*

From 1 January 2010, the cover provided by the State guarantee for the economic activities referred to in Article 1(5) constitutes State aid which is compatible with the internal market, subject to compliance with the conditions in Article 8.

*Article 8*

1. The contract research activities and the provision of services carried out by [IFPEN] referred to in Article 1(5) shall remain ancillary to its principal activity of independent public research.

...

3. France shall submit each year to the Commission a report on the contract research activities and provision of services carried out by [IFPEN] which specifies the ratio of their value to the budget devoted by [IFPEN] to its independent public research activities.

*Article 9*

1. The French authorities and [IFPEN] shall include the following written statement in the financing contract for each transaction (for all instruments covered by a contract):

"The issue/programme/loan does not enjoy any form of direct or indirect State guarantee. In the event of insolvency, the State would not be obliged to act as financial substitute for [IFPEN] for payment of the claim".

2. The French authorities shall have a similar clause, ruling out State liability, included in any contract relating to contract research services or other services referred to in Article 1(5).

3. The French authorities shall have a similar clause, ruling out liability of [IFPEN] and the State, included in any contract involving a claim concluded by the public limited companies Axens, Beicip-Franlab and Prosernat.

4. [IFPEN] shall refrain from issuing any form of suretyship, endorsement, guarantee, or letter of intent or comfort in favour of the public limited companies Axens, Beicip-Franlab and Prosernat which does not comply with normal market terms.

...'

**Procedure and forms of order sought**

25 By application lodged at the Registry of the General Court on 9 September 2011, the French Republic brought an action against the contested decision which was registered under number T-479/11.

26 By document lodged at the Registry of the General Court on 29 December 2011, UOP, acting within the time limit laid down in Article 115(1) of the Rules of Procedure of the General Court of 2 May 1991, applied for leave to intervene in the present case in support of the form of order sought by the Commission.

27 The French Republic submitted its written observations on that application to intervene by document lodged at the Registry of the General Court on 10 January 2012. The Commission did not submit any observations.

28 By order of 25 January 2012, the General Court (Sixth Chamber) rejected UOP's application to intervene.

29 By application lodged at the Registry of the General Court on 5 April 2012, IFPEN brought an action which was registered under number T-157/12.

30 By document lodged at the Registry of the General Court on 31 July 2012, UOP, acting within the time limit laid down in Article 115(1) of the Rules of Procedure of 2 May 1991, applied for leave to intervene in the present case in support of the form of order sought by the Commission.

31 IFPEN and the Commission submitted their written observations on that application to intervene by documents lodged at the Registry of the General Court on 21 September 2012.

32 By order of 23 November 2012, the General Court (Sixth Chamber) rejected UOP's application to intervene.

33 Following a change in the composition of the Chambers of the General Court, the Judge-Rapporteur was assigned to the Eighth Chamber, to which Cases T-479/11 and T-157/12 were consequently allocated.

34 By order of 2 December 2013, the President of the Eighth Chamber of the General Court, after having heard the parties, suspended the proceedings in Cases T-479/11 and T-157/12 pending the Court's final decision in Case C-559/12 P, *France* v *Commission*.

35 Following the delivery of the judgment of 3 April 2014 in *France* v *Commission* (C-559/12 P, 'the judgment in *La Poste*', EU:C:2014:217), the General Court, first, asked the French Republic and the Commission to submit their observations on the conclusions to be drawn from that judgment for the action in Case T-479/11 and, secondly, asked the Commission to submit its observations on the conclusions to be drawn from that judgment for the action in Case T-157/12.

36 The French Republic, IFPEN and the Commission submitted their observations by letters of 5 May 2014.

37 On 8 September 2015, the General Court (Eighth Chamber), acting on a report of the Judge-Rapporteur, decided to open the oral part of the procedure in Cases T-479/11 and T-157/12.

38 By decision of 8 September 2015, the President of the Eighth Chamber of the General Court, after having heard the parties, joined Cases T-479/11 and T-157/12 for the purposes of the oral part of the procedure and the final decision.

39 The parties to the joined cases presented oral argument and answered the questions put to them by the Court at the hearing on 8 October 2015.

40 The French Republic and IFPEN claim that the Court should:

— annul the contested decision in its entirety;

— order the Commission to pay the costs.

41 The Commission contends that the Court should:

— dismiss the action;

— order the applicants to pay the costs.

**Law**

42 In Case T-479/11, the French Republic puts forward three pleas in support of its action.

43 The first plea alleges infringement of Article 107(1) TFEU, in that the Commission did not establish to the requisite legal standard the existence of State aid. In the context of this plea, the French Republic focuses on the issues of the burden and standard of proof that may be required in matters of State aid and puts forward arguments, divided into three parts, by which it submits, first of all, that the Commission did not positively demonstrate the existence of an implied and unlimited guarantee arising from EPIC status, next, that the Commission did not provide sufficient evidence to demonstrate the existence of an advantage accruing to IFPEN and, finally, that the Commission did not demonstrate that the State resources associated with that advantage had been transferred.

44 By the second plea, the French Republic submits that the Commission erred in law and in fact in taking the view that, by virtue of its EPIC status, IFPEN benefited from an implied and unlimited State guarantee.

45 Finally, the third plea alleges infringement of Article 107(1) TFEU, in that the Commission misconstrued the concept of a selective advantage. By that plea, which is divided into two parts, the French Republic, first, submits that the Commission wrongly concluded that the existence of a guarantee, if established, would confer an advantage on IFPEN, both in its dealings with its suppliers and its customers and in its dealings with banks and financial institutions. Secondly, and in the alternative, it disputes the Commission's findings concerning the transfer of that advantage to IFPEN's private-law subsidiaries, Axens and Prosernat.

46 In Case T-157/12, IFPEN puts forward five pleas in support of its action.

47 The first plea alleges infringement of the principles of subsidiarity and limited competence enshrined in Article 5 TEU and Article 2 TFEU. By that plea, IFPEN essentially disputes the Commission's conclusion that, under French national law, there is an implied and unlimited State guarantee inherent in the concept of an EPIC.

48 The second plea alleges infringement of Article 107(1) TFEU, in that the Commission did not establish the existence of a real economic advantage accruing to IFPEN and its subsidiaries. By this plea, which is divided into three parts, IFPEN first of all submits that the Commission did not successfully demonstrate to the standard of proof required by case-law the existence of a real economic advantage accruing to IPFEN from the guarantee at issue, in particular in its dealings with suppliers and its dealings with customers. Next, it submits that the Commission did not demonstrate to the requisite legal standard that that economic advantage had been transferred to its private-law subsidiaries, Axens and Prosernat. Finally, it considers that there is no adequate connection between that economic advantage and the transfer of State resources arising from the guarantee at issue.

49 The third plea alleges infringement of the Guarantees Notice or, in the alternative, Article 107(1) TFEU. By this plea, IFPEN submits, in essence, that point 1.2 of the Guarantees Notice cannot be interpreted as validating the existence of an automatic link between the fact, laid down by law and the rules governing the status of EPICs, that IFPEN cannot be the subject of insolvency proceedings, on the one hand, and the benefit of more favourable funding terms on the markets to an extent such as to constitute a selective advantage, on the other.

50 The fourth plea alleges errors of assessment in the determination of the amount of the advantage granted to IFPEN. By this plea, which is divided into two parts, IFPEN first disputes the relevance of using factoring and performance bonds or best efforts guarantees to estimate the amount of the advantage which it is said to have derived from the guarantee at issue in its dealings with suppliers and customers. Secondly, it submits that the Commission's determination of the extent of the State aid allegedly identified as having been granted both to it and to its subsidiaries.

51 Finally, the fifth plea alleges infringement of the principle of proportionality. By this plea, IFPEN claims, in essence, that the consequences of recognising the existence of an implied and unlimited State guarantee in favour of EPICs which is such as to constitute State aid, in particular the obligation of prior notification and other obligations imposed on it and the French Republic, are disproportionate.

52 It is apparent from an examination of the pleas raised by the French Republic and IFPEN, and the Commission's responses to them, that the present actions hinge on two questions.

53 First, there is the question of whether French national law confers on EPICs an implied and unlimited State guarantee which is inherent in the status of those establishments and which arises in particular from the fact that they are not subject to the insolvency procedures laid down in ordinary law.

54 However, when the General Court asked them about the conclusions to be drawn for their actions from the judgment of 3 April 2014 in *La Poste* (C-559/12 P, EU:C:2014:217), the applicants, by their letters of 5 May 2014, withdrew the pleas relating to the existence of an implied and unlimited State guarantee that is inherent in the concept of an EPIC.

55 Secondly, since the existence of the implied and unlimited State guarantee inherent in EPIC status has not been called into question in the present dispute, it is for the General Court to examine whether the Commission was right to conclude that that guarantee constituted State aid within the meaning of Article 107(1) TFEU. In that regard, it will fall to be examined, principally, whether that guarantee conferred on IFPEN a selective advantage which is one of the constituent elements of State aid within the meaning of Article 107(1) TFEU. When examining that issue, the General Court must take account of the possibility, deriving from the judgment of 3 April in *La Poste* (C-559/12 P, EU:C:2014:217), of establishing the existence of such an advantage by way of presumption.

56 All of the other issues addressed by the applicants in the actions, that is to say, first of all, the transfer of the advantage said to have accrued to IFPEN to its private-law subsidiaries, next, the connection between that advantage and the transfer of State resources arising from the guarantee at issue and, finally, the proportionality of the obligations imposed by the Commission on the French Republic, are premised on the existence of an advantage which IFPEN itself derived from the State guarantee inherent in its EPIC status. The pleas relating to the abovementioned issues are thus to be regarded as subsidiary to those relating to the existence of an advantage accruing to IFPEN.

*The pleas alleging infringement of Article 107(1) TFEU and relating to the existence and calculation of the advantage accruing to IFPEN*

57 The first part of the second plea and the fourth plea in Case T-157/12, and the second part of the first plea and the first part of the third plea in Case T-479/11 are concerned, in essence, with the existence of the advantage that IFPEN is said to have derived from the State guarantee inherent in its EPIC status and, to a lesser extent, with the estimate of the amount of that advantage.

58 Almost all of the arguments put forward by the applicants in connection with the abovementioned pleas have to do with the selective advantage that IFPEN is said to have derived from the guarantee at issue in its dealings with suppliers and customers and, more specifically, with the method chosen by the Commission to establish that advantage and the evidence adduced to demonstrate its existence. The French Republic, however, also takes issue, albeit incidentally, with some of the Commission's observations relating to the advantage that might materialise in IFPEN's dealings with banks and financial institutions.

59 The General Court will thus, in the remainder of its line of reasoning, begin by examining the arguments concerning the advantage which has emerged in IFPEN's dealings with its suppliers and customers and then turn to the advantage that might emerge in IFPEN's dealings with banks and financial institutions.

The advantage in the case of IFPEN's dealings with its suppliers and customers

60 In the first place, IFPEN and the French Republic argue, in essence, that the Commission did not successfully demonstrate to the standard of proof required by case-law the existence of an economic advantage which IFPEN is said to have derived from the guarantee at issue.

61 The applicants submit that, for the purposes of demonstrating the existence of an advantage constituting one of the elements of State aid within the meaning of Article 107(1) TFEU, the Commission must, at the very least, demonstrate that the measure under examination produces or is

capable of producing effects on competition. They state that, while the Commission's analysis may be prospective, it cannot be entirely hypothetical, but must, on the contrary, identify an advantage and illustrate the negative effects of that advantage on competition.

62 The demonstration of the existence of an advantage in IFPEN's dealings with suppliers and customers, however, is based, in their submission, on assumptions that are not substantiated by evidence. In particular, the Commission did not produce any testimony from suppliers or customers and certainly did not demonstrate that there was a habitual and automatic expectation on the part of suppliers and customers that insolvency proceedings could not be brought against an EPIC. Moreover, so far as IFPEN's dealings with customers are concerned, the applicants point to the confused, not to say incomprehensible, nature of some parts of the statement of reasons in the contested decision.

63 The applicants conclude from this that the Commission failed to comply with its investigative obligations in reasoning by supposition rather than by turning to IFPEN's suppliers and customers for any tangible evidence of the conduct attributed to them.

64 In response to those arguments, the Commission submits, first of all, that, in accordance with case-law, in particular the judgment of 3 April 2014 in *La Poste* (C-559/12 P, EU:C:2014:217), it does not have to show the specific or actual effects of the measure in order to demonstrate the existence of the aid. It states next that, in the case of aid schemes, it may, according to case-law, confine itself to examining the general characteristics of a scheme in order to determine whether that scheme comprises elements of aid, without being required to define the advantage in each particular case. Finally, it submits that, in the contested decision, it calculated rather than demonstrated the advantage.

65 In the second place, the applicants dispute the method chosen by the Commission to estimate the amount of the advantage conferred on IFPEN by the guarantee at issue in its dealings with suppliers and customers. In particular, they submit that the factoring and performance bonds or best efforts guarantees which the Commission chose as comparative indicators are irrelevant for the purposes of making an estimate of that kind.

66 As regards, first, IFPEN's dealings with suppliers, the applicants submit, in essence, that, by using factoring to determine whether suppliers adopt a more favourable assessment of the risk of default on the part of an EPIC, and in particular on the part of IFPEN itself, the Commission failed to take into account the nature and *modus operandi* of factoring services and the reasons why undertakings may use them. According to the applicants, the conclusions set out in the contested decision are not only contradictory but also invalidated by objective data provided to the Commission by the French authorities during the formal procedure. Finally, contrary to the Commission's findings in the contested decision, the prices charged by IFPEN's suppliers increased during the period concerned.

67 As regards, secondly, IFPEN's dealings with customers, the applicants state, in essence, that the performance bond is not used in the research sector and, moreover, entails an obligation to achieve a result which means that it cannot be compared with a best efforts guarantee, which entails an obligation to make endeavours. What is more, in the case of its contractual dealings, since IFPEN is already bound by an obligation to make endeavours which is contractually capped, it does not need to include an additional premium for a State guarantee in the costs used as the basis for calculating the prices it charges its customers for its services. Finally, according to the applicants, the reasoning adopted by the Commission necessarily leads it to the — manifestly incorrect — conclusion that, in the event of breach of a contract concluded by IFPEN with one of its customers, the State compensates the customer for such breach even it if was not caused by IFPEN's insolvency.

68 The Commission challenges the applicants' arguments by recourse to arguments which, in essence, reiterate the observations set out in the contested decision. At the hearing, it pointed up the fact that the use of 'reasoning in terms of the cost of equivalent risk cover' for the purposes of estimating the value of the advantage that IFPEN was able to derive from the guarantee at issue was justified by the

difficulties which it had had to overcome when making that estimate, those difficulties having arisen in particular from the absence on the market of a service comparable to a guarantee against the risk of insolvency which is marketed as such.

69 Before examining those arguments, it should be recalled, first of all, that, in order for a measure taken in respect of an undertaking to be classified as State aid within the meaning of Article 107(1) TFEU, four conditions must be met. First, there must be intervention by the State or through State resources. Secondly, the intervention must be liable to affect trade between Member States. Thirdly, it must confer an advantage accruing exclusively to certain undertakings or certain sectors of activity. Fourthly, it must distort or threaten to distort competition (see the judgment of 29 September 2000 in *CETM* v *Commission*, T-55/99, EU:T:2000:223, paragraph 39 and the case-law cited; see also, to that effect, the judgment of 23 March 2006 in *Enirisorse*, C-237/04, EU:C:2006:197, paragraphs 38 and 39 and the case-law cited).

70 The concept of aid embraces not only positive benefits, but also measures which, in various forms, reduce the charges which normally encumber the budget of an undertaking and which, therefore, without being subsidies in the strict sense of the word, are similar in character and have the same effect. Also, State measures which, whatever their form, are likely directly or indirectly to favour certain undertakings or are to be regarded as an economic advantage which the recipient undertaking would not have obtained under normal market conditions, are regarded as aid (see the judgment of 3 April 2014 in *La Poste*, C-559/12 P, EU:C:2014:217, paragraph 94 and the case-law cited).

71 Next, it need hardly be pointed out that it is for the Commission to provide proof of the existence of State aid within the meaning of Article 107(1) TFEU (see, to that effect, the judgment of 12 September 2007 in *Olympiaki Aeroporia Ypiresies* v *Commission*, T-68/03, EU:T:2007:253, paragraph 34). In that regard, the Court has previously held that, in order to verify whether the beneficiary undertaking is receiving an economic advantage which it would not have obtained under normal market conditions, the Commission is required to carry out a complete analysis of all factors that are relevant to the transaction at issue and its context, including the situation of the beneficiary undertaking and of the relevant market (judgments of 6 March 2003 in *Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen* v *Commission*, T-228/99 and T-233/99, EU:T:2003:57, paragraph 251, and 3 March 2010 in *Bundesverband deutscher Banken* v *Commission*, T-163/05, EU:T:2010:59, paragraph 37).

72 As regards the administration of proof in the sector of State aid, settled case-law requires the Commission to conduct a diligent and impartial examination of the contested measures, so that it has at its disposal, when adopting the final decision establishing the existence and, as the case may be, the incompatibility or unlawfulness of the aid, the most complete and reliable information possible for that purpose (see the judgment of 3 April 2014 in *La Poste*, C-559/12 P, EU:C:2014:217, paragraph 63 and the case-law cited).

73 Finally, with regard to the extent of judicial review of the contested decision in the light of Article 107(1) TFEU, it is clear from case-law that the concept of State aid, as set out in that provision, is a legal concept which must be interpreted on the basis of objective factors. For that reason, the European Union judicature must in principle, having regard both to the specific features of the case before them and to the technical or complex nature of the Commission's assessments, carry out a comprehensive review as to whether a measure falls within the scope of Article 107(1) TFEU (see the judgment of 2 March 2012 in *Netherlands* v *Commission*, T-29/10 and T-33/10, EU:T:2012:98, paragraph 100 and the case-law cited).

74 Admittedly, the Court has also held that judicial review is limited with regard to whether a measure comes within the scope of Article 107(1) TFEU, where the appraisals by the Commission are technical or complex in nature. It is however for the Court to decide whether that is the case (see the judgment in *Netherlands* v *Commission*, T-29/10 and T-33/10, EU:T:2012:98, paragraph 101 and the case-law cited).

75 In that regard, although the Commission enjoys a broad discretion the exercise of which involves economic assessments which must be made in a European Union context, that does not imply that the European Union judicature must refrain from reviewing the Commission's interpretation of economic data. According to the case-law of the Court of Justice, not only must the European Union judicature establish, among other things, whether the evidence relied on is factually accurate, reliable and consistent but also whether that evidence contains all the information which must be taken into account in order to assess a complex situation and whether it is capable of substantiating the conclusions drawn from it (see the judgment of 2 March 2012 in *Netherlands* v *Commission*, T-29/10 and T-33/10, EU:T:2012:98, paragraph 102 and the case-law cited).

76 The contested decision must be examined in the light of those principles.

77 The applicants' arguments concern the analysis presented by the Commission in Chapter 7.1.4 of the contested decision, entitled 'Existence of a selective advantage to the [IFPEN] group', in which the Commission examined, first, whether the guarantee at issue conferred any advantages on IFPEN itself and, secondly, whether any such advantages were transferred to its subsidiary companies (recital 192 of the contested decision).

78 As regards the selective advantage that IFPEN derived from the guarantee at issue for its own benefit, in recitals 193 and 194 of the contested decision, the Commission set out at the outset the approach it intended to take in order to establish the existence of that advantage. The Commission noted in particular that, in the decision initiating the formal procedure, it had stated that IFPEN could derive benefit from its EPIC status, mainly through more favourable funding terms on the capital markets. However, where, 'in the event of default of [IFPEN] ..., the [implied and unlimited] State guarantee [inherent in its EPIC status] would cover all of [its] debts, [that is to say] not only [the] financial [claims it might have had against institutional creditors] but also [claims of a] commercial or … [other] nature, in particular claims held by suppliers (whose invoices had not been paid) or by customers (to whom services had not been supplied', the existence of the advantage conferred on IFPEN by its EPIC status was to be analysed from the point of view of both its dealings with banks and financial institutions and its dealings with its suppliers and its customers (recitals 193 and 194 of the contested decision).

79 Later in the contested decision, the Commission observed, first, with regard to IFPEN's dealings with banks and financial institutions, that, although IFPEN is not the subject of a financial rating by an external rating agency, the funding granted to it necessarily entailed an assessment by its creditors of the risk of default. Given that, according to the Commission, IFPEN turned to the credit market to finance its debt, it could not be ruled out that it enjoyed an economic advantage as a result of the weight given by the financial markets in their assessments as to the State's role of last-resort guarantor of IFPEN's debts. However, having examined the terms of the loans taken out by IFPEN and the credit facilities offered to it during the period from its conversion into an EPIC until the end of 2010, the Commission found that those terms were in line with market conditions. On that basis, the Commission concluded that, during the period from 2006 to 2010, IFPEN did not derive any real economic advantage from its EPIC status in its dealings with banks and financial institutions. However, it did not rule out the possibility that such an advantage might materialise in the future (recitals 195 to 200 of the contested decision).

80 Secondly, as regards IFPEN's dealings with suppliers, the Commission first of all expressed the view that the prices charged by an EPIC's suppliers tended to fall as a result of the more favourable assessment by those suppliers of the risk of default by that establishment, since suppliers knew that the EPIC was protected from the risk of compulsory winding up. The Commission then tried to estimate the amount of the price reduction thus available to IFPEN by means of a comparative indicator, that is to say the use of factoring. Factoring was chosen on the ground that, according to the Commission, in the absence of a State guarantee, a supplier to IFPEN wishing to benefit from a comparable guarantee (i.e. to cover itself in full against the risk of default by the other party) might call on the services of a specialised credit institution or insurance undertaking, or use a factoring company, whose services include cover against the risk of default. The Commission established the remuneration normally payable for a factoring service and used the maximum overall premium usually charged by factoring companies to estimate the value of the advantage accruing to IFPEN. Finally, having calculated, on that basis, the value of the price reduction offered to IFPEN by its suppliers, the Commission concluded, in recital 214 of the contested decision, that, during the period from its conversion into an EPIC until 2009, that price reduction could not have exceeded a sum in the order of [*concealed confidential data*] per year. The Commission classified that price reduction as a real economic advantage from which IFPEN benefited by virtue of the State guarantee at issue (recitals 205 to 215 of the contested decision).

81 Thirdly, as regards IFPEN's dealings with customers, the Commission first of all stated that the State guarantee granted to IFPEN assured its customers that IFPEN would never be compulsorily wound up and would therefore always be able to fulfil its contractual obligations, or, if it couldn't, that customers would be compensated. According to the Commission, in the absence of a State guarantee, a customer wishing to enjoy the same level of protection would have to take out a performance bond with a financial intermediary in order to ensure the completion of its contract with IFPEN (recitals 220 and 221 of the contested decision). The Commission then expressed the view that the cost of such a bond represents, at most, 5% of the turnover generated by the service covered and attempted to identify which of IFPEN's activities would be covered by that guarantee (recitals 223 to 225 of the contested decision). Finally, it concluded that, during the period from its conversion into an EPIC until 2009, IFPEN benefited from a real economic advantage, consisting in the non-payment of a premium for a performance bond, or at the very least a best efforts guarantee, which it was able to offer to its customers in respect of its research activities, including its subsidiaries Axens and Prosernat in their exclusive fields. The Commission presented the calculation of the estimated value of that advantage in Table 5 of the contested decision (recitals 216 to 237 of the contested decision).

82 In the light of the abovementioned passages from the contested decision, it is clear that the method chosen by the Commission to determine whether IFPEN enjoyed an economic advantage by virtue of its EPIC status was to examine the advantage which emerged in IFPEN's dealings with its creditors, in this instance banks and financial institutions, suppliers and customers. Such a method presupposes that it examined the influence which that guarantee has on those dealings and has determined the conduct which those creditors, being entitled to enforce the guarantee in the event of non-payment of a sum of money or non-performance of some other obligation, are likely to adopt in the knowledge that that guarantee is in place.

83 That method is not wrong in law.

84 First, a guarantee is an ancillary undertaking which cannot be examined without taking into account the obligation to which it is attached. Because of its nature as such, an undertaking given by the State in the form of a guarantee cannot be regarded as State aid within the meaning of Article 107(1) TFEU in and of itself, but only in association with the obligation supporting it. It follows that, as the Commission itself acknowledged at the hearing, an implied and unlimited State guarantee inherent in EPIC status cannot be classified as State aid on the sole ground that it is free.

85 Secondly, the special feature of the guarantee forming the subject of the contested decision is that it is inherent in the status of the undertaking benefiting from it. That guarantee is not therefore linked to a particular obligation, but covers all of the obligations incumbent on that undertaking.

86 On account of that special feature, the guarantee forming the subject of the contested decision may influence the perception which creditors form of the undertaking benefiting from it. After all, although the creditors of that undertaking are not able to negotiate the terms of the guarantee, they may take account of its existence when negotiating the terms of their own contracts with that undertaking.

87 Thus, the advantage, within the meaning of the case-law cited in paragraphs 69 to 71 above, which arises from a State guarantee inherent in the status of the undertaking benefiting from it materialises in that undertaking's dealings with its creditors, in this instance banks and financial institutions, suppliers and customers. It takes the form of the more favourable treatment which those creditors, being able to enforce that guarantee in the event of non-payment of a sum of money or non-performance of some other obligation, afford to the beneficiary undertaking, thus reducing the charges that normally encumber its accounts or maximising the revenue accruing to it.

88 Finally, it follows from the case-law cited in paragraph 71 above that the conclusion that an advantage exists in a particular case is subject to the further condition that the more favourable treatment which creditors afford to the undertaking benefiting from the guarantee and the charges and revenue of that undertaking which are reduced or increased by that treatment must be determined with due regard for all the factors relevant to the transaction at issue and its context, including the situation of the beneficiary undertaking and the market concerned.

89 The foregoing considerations confirm that the Commission did not err in law in deciding, in recitals 193 and 194 of the contested decision, to determine the existence of the advantage conferred on IFPEN by the guarantee at issue by reference to its dealings with three groups of its creditors: banks and financial institutions, suppliers and customers.

90 There are, however, serious flaws in the way in which the Commission applied that method in the present case, in particular with respect to its definition of the advantage from which IFPEN is alleged to have benefited in its dealings with suppliers and customers.

91 After all, so far as concerns IFPEN's dealings with banks and financial institutions, the Commission defined the advantage from which IFPEN would be able to benefit by virtue of the guarantee at issue as consisting in more favourable funding terms that would be available to IFPEN on the financial markets.

92 That definition of the advantage cannot be criticised in so far as both the case-law of the Court of Justice and the Guarantees Notice recognise that, in circumstances involving a State guarantee, including a guarantee arising from the status of the undertaking exempt from the insolvency procedures laid down in ordinary law, creditors such as banks and financial institutions may afford more favourable treatment to the undertaking benefiting from that guarantee in the form of more advantageous funding terms. It is in this sense that the existence of the State guarantee may have the effect of reducing the charges that normally encumber the accounts of the undertaking benefiting from the guarantee.

93 Nevertheless, it must be noted that, in the present case, the Commission explicitly ruled out the existence of such an advantage, having found, after examining the terms of the loans taken out by, and the credit facilities offered to, IFPEN before and after its conversion into an EPIC, that, during the period from that conversion until the end of 2010, those terms were in line with market conditions (recital 199 of the contested decision).

94 Contrary to its findings with respect to IFPEN's dealings with banks and financial institutions, and its dealings with its suppliers and customers, the Commission concluded that the guarantee at issue conferred on IFPEN a 'real economic advantage'. That conclusion does not stand up to scrutiny. It is after all, as will be demonstrated below, based on a purely hypothetical line of reasoning which, in addition, is so lacking in clarity and consistency as to mean that the contested decision is, in part, vitiated by a failure to state reasons.

95 In the first place, so far as concerns IFPEN's dealings with suppliers, it is clear from the contested decision that the Commission defined the advantage that IFPEN was able to derive from the State guarantee inherent in its EPIC status as a price reduction granted to it by its suppliers in the knowledge that its status as such constituted an unlimited State guarantee against a risk of default on account of insolvency.

96 For, on the one hand, it is clear from recital 203 of the contested decision that, according to the Commission, there is a tendency for '[prices to fall as a result of] the more favourable assessment by contractors of the risk of default on the part of an entity which they know is protected from the risk of compulsory winding up by its status as a publicly owned establishment'.

97 On the other hand, in recital 214 of the contested decision, the Commission considered that, 'for the performance of its economic activities, [IFPEN] has enjoyed a real economic advantage, consisting in a reduction in the prices charged by its suppliers, and resulting from a more favourable assessment by the latter of the risk of default of the establishment'.

98 As IFPEN rightly states, it is clear from the observations made in recital 203 of the contested decision, and from the definition of the advantage set out in recital 214 of that decision, that, in the Commission's opinion, in circumstances involving an unlimited State guarantee arising from the fact that it is statutorily impossible for an establishment to be the subject of an insolvency procedure under ordinary law, suppliers generally adopt a more favourable assessment of the risk of default on the part of the establishment benefiting from that guarantee, that they reflect that more favourable view in the prices they charge that establishment and that the price reduction which thus ensues is necessarily attributable to that more favourable view.

99 In the contested decision, however, the Commission does not adduce any evidence to show that the three assumptions on which its reasoning rests are well founded. In particular, the contested decision contains no evidence of the existence, on the market concerned or in the course of business in general, of a tendency for suppliers to grant price reductions to establishments benefiting from a State guarantee against the risk of insolvency.

100 Indeed, the facts set out in the contested decision contradict the Commission's assumptions. It is clear from recital 70 of the contested decision that one undertaking which participated in the administrative procedure as an interested third party, namely UOP, which is a competitor of Axens, had stated that 'preferential terms may be granted to [IFPEN]/Axens as compared with its competitors'. The Commission goes on to say that 'UOP cites the contracts signed jointly by [IFPEN] and Axens mentioned in the opening decision', the existence of which was confirmed by the French authorities.

101 However, in recital 248 of the contested decision, which appears in the part of that decision that is devoted to an analysis of the advantages transferred to IFPEN's private-law subsidiaries, the Commission, referring to the contracts jointly concluded by IFPEN and its subsidiaries, mentioned in recital 70 of the contested decision, which it says were contracts for the provision of transport services for business travel by the staff of the various 'IFPEN group' affiliates, points out that the price reductions that the 'IFPEN group' was able to obtain under those contracts were granted on account of a bulk purchase. Thus, even if suppliers were able to reduce the prices of the services they sold to

IFPEN and its subsidiaries, the evidence gathered by the Commission during the formal investigation procedure indicated that that price reduction might have had an explanation other than the existence of an unlimited State guarantee in favour of IFPEN.

102 Finally, with regard more specifically to IFPEN's situation, there is nothing in the contested decision to indicate that the Commission examined, or even asked itself, whether the way in which IFPEN was perceived by its suppliers could have been influenced in any way by its conversion into an EPIC or whether its suppliers treated IFPEN more favourably after its conversion into an EPIC. The contested decision does not even contain findings to support the conclusion that the Commission sought to establish whether IFPEN's suppliers were aware that its EPIC status could be interpreted as a State guarantee against a risk of insolvency.

103 In that regard, it must also be noted that, during the administrative procedure, the French authorities, not least in their letters of 13 October 2008 and 25 November 2010, challenged the theoretical and speculative nature of the Commission's reasoning with respect to the alleged price reduction linked to the more favourable assessment adopted by suppliers of the risk of default by IFPEN. The French authorities also informed the Commission that IFPEN's general purchasing terms had not been affected by its conversion into an EPIC and that IFPEN's average payment terms for debts to suppliers were still below the requirements of the relevant provisions of the French Commercial Code. Finally, they stated that the existence of the advantage in IFPEN's dealings with suppliers is ruled out on account of the competitive procurement obligation to which IFPEN was subject.

104 It was in response to those arguments that, in recital 203 of the contested decision, the Commission found that the price reduction that might result from a call for tenders issued by IFPEN to its suppliers was to be distinguished from the price reduction resulting from the suppliers' more favourable assessment of the risk of default by that undertaking. In recital 204, the Commission immediately set about evaluating that price reduction, stating the following:

'To estimate the fall in price resulting from the more favourable assessment of the risk of default made by suppliers in the case of an EPIC, the Commission will look at the cost of equivalent risk cover. In the absence of a State guarantee, a supplier to [IFPEN] wishing to benefit from a comparable guarantee (i.e. to cover itself in full against the risk of default of the other party) could have recourse to the services of a specialised credit institution or insurance undertaking. Such cover against the risk of default is commonly offered by specialised factoring companies'.

105 The observations set out in recitals 203 and 204 of the contested decision, read in conjunction with recital 214 of that decision, highlight the error of logic in the Commission's reasoning.

106 It is clear from those recitals that, in fact, the Commission simply assumed the existence of a price reduction due to a more favourable assessment by suppliers of the risk of default by IFPEN, without ascertaining whether that assumption was well founded. It then set about evaluating the scale of that price reduction by means of an indicator which did not measure the price reduction itself but only the value of a guarantee which it considered to be comparable to that from which IFPEN benefited. It was the latter value which the Commission, in recital 214 of the contested decision, held to constitute a real advantage accruing to IFPEN from the guarantee at issue. Thus, instead of demonstrating the existence of an advantage and then calculating the amount represented by it, the Commission reasoned in reverse by inferring the existence of the advantage from the sole fact that it had been able, by way of comparison, to estimate its value.

107 Moreover, it need hardly be pointed out that the approach chosen by the Commission for determining the advantage that IFPEN derived from the guarantee at issue in its dealings with suppliers is strikingly different from that which it took in order to determine the advantage in that establishment's dealings with banks and financial institutions. In the case of the latter, the Commission sought to research the actual effects produced by the guarantee, examining one by one the loans taken out by IFPEN and the

credit facilities that were offered to it following its conversion into an EPIC, and comparing their terms with the terms of the loans taken out before that conversion. In the case of IFPEN's dealings with suppliers, on the other hand, the Commission confined itself to the application of a purely hypothetical line of reasoning, neglecting to verify its assumptions by examining the relevant market.

108 It follows from the foregoing that, so far as concerns the existence of any advantage which IFPEN was able to derive from the guarantee at issue in its dealings with suppliers, the Commission did not discharge the burden of proof as defined by the case-law cited in paragraph 71 above. In particular, the Commission did not demonstrate that, in circumstances involving a guarantee such as the guarantee at issue, suppliers to the undertaking benefiting from that guarantee were likely to afford it more favourable treatment, in particular by reducing the prices of their goods or services and expressing in this way their more favourable assessment of the risk of default by that undertaking. The Commission was therefore wrong to conclude, in recital 214 of the contested decision, that IFPEN benefited from a real economic advantage consisting in a reduction of the prices charged by its suppliers and resulting from a more favourable assessment by the latter of the risk of default on its part.

109 Furthermore, so far as concerns the actual definition of the advantage which IFPEN was able to derive from the guarantee at issue in its dealings with suppliers (see paragraphs 95 to 97 above), the Commission erred in law when, in order to give an estimate of that advantage, it chose to use factoring as part of its reasoning by reference to 'the cost of equivalent risk cover', instead of examining the levels of the prices charged by suppliers to IFPEN.

110 It follows from the foregoing that there is no need to examine the arguments by which the applicants challenge the relevance of the use of factoring to estimate the amount of the advantage accruing to IFPEN from the guarantee at issue in its dealings with suppliers. After all, the Commission could not estimate an advantage the existence of which had not been demonstrated in any way.

111 In the second place, so far as concerns IFPEN's dealings with customers, it is clear from the contested decision that the Commission defined the advantage which IFPEN was able to derive from the State guarantee inherent in its EPIC status as being the non-payment of a premium for a performance bond, or at the very least a best efforts guarantee, which it was able to offer to its customers.

112 That definition is based on a finding substantiated by a single statement made by UOP to the effect that, in the field of technology transfers, acquirers were particularly sensitive to the guarantees that their providers were able to give them in terms of cover for both contractual and non-contractual liability (recital 216 of the contested decision). On the basis of that finding, and having ruled out as irrelevant the question of the cover provided by the guarantee at issue for IFPEN's non-contractual liability, the Commission stated the following in recitals 220 and 221 of the contested decision:

'(220)
... in view of the State guarantee granted to [IFPEN], its customers are assured that IFP will never be subjected to compulsory winding up and therefore will always be able to fulfil its contractual obligations, or failing that that they will be compensated for any such breach.

(221)
By analogy with the arguments ... set out in recitals 204 et seq. with regard to dealings with suppliers, the Commission considers that in the absence of a State guarantee, a customer wishing to enjoy the same level of protection would take out a performance bond from a financial intermediary (a bank or insurance company, for example) to ensure the completion of the contract between it and [IFPEN]. The purpose of such protection would be to guarantee financial compensation for the customer for loss caused by (total or partial) breach of contract.'

113 In the following recitals, the Commission estimated the cost of a performance bond or a best efforts guarantee and considered that such a bond or guarantee would trigger a maximum rate of 5% of the turnover generated by the service covered (recitals 223 to 225 of the contested decision). It also tried to determine which of IFPEN's activities would be covered by 'such a guarantee' (recitals 226 to 235). In recital 236 of the contested decision, the Commission found as follows:

'... in the pursuit of its economic activities [IFPEN] has benefited from a real economic advantage, consisting in the absence of payment of a premium for a performance bond [or], at the very least for best efforts, which it was able to offer in respect of its research activities to its customers, including to its subsidiaries Axens and Prosernat in their exclusive fields. The Commission cannot quantify this advantage precisely, but in view of the specific nature of the risk covered, the Commission considers that in any case it would not exceed, service by service, year by year, the sums shown in Table 5 in this recital ...'.

114 In that regard, as the applicants note, the reasoning employed by the Commission to define the advantage from which IFPEN benefited in its dealings with its customers presupposes that, under normal market conditions, customers of research institutes such as IFPEN avail themselves of performance bonds or best efforts guarantees in order to protect themselves against the risk of insolvency on the part of the other contracting party, and that, in circumstances involving a guarantee such as that enjoyed by IFPEN, the latter's customers no longer need to take out such a guarantee or no longer ask it to provide one. The Commission's reasoning also implies that the waiver of the performance bond, or at least the best efforts guarantee, by IFPEN's customers is necessarily attributable to the existence of the State guarantee attendant upon its EPIC status.

115 However, as in its observations relating to the advantage in its dealings with suppliers (see paragraph 99 above), the Commission does not adduce any evidence to demonstrate that the assumptions on which its reasoning rests are well founded, or even likely. In particular, the contested decision contains no evidence capable of confirming that customers of research institutes pre-empt the risk of insolvency on the part of the other contracting party by taking out a performance bond or best efforts guarantee. Neither does the Commission cite any objective evidence such as to confirm that, in circumstances involving a guarantee such as the guarantee attendant upon EPIC status, customers of such an establishment tend not to require performance bonds or best efforts guarantees from that undertaking or not to take them out with an insurer. Finally, there is nothing in the statement of reasons in the contested decision to indicate that the Commission sought to ascertain whether the perception of IFPEN by its customers might have been influenced by its conversion into an EPIC or that those customers interpreted IFPEN's new status as a State guarantee against the risk of insolvency.

116 The Commission's observations relating to the advantage allegedly derived by IFPEN from the guarantee inherent in its EPIC status in its dealings with customers and the definition of that advantage set out in recital 236 of the contested decision contain even more serious flaws. First, they do not provide any insight into how IFPEN's customers, as its creditors, are likely to treat it more favourably in circumstances in which that guarantee is in place. Secondly, inasmuch as they are confused and inconsistent, those observations raise doubts as to the determination of the beneficiary of that guarantee.

117 First, it is clear from the considerations set out in paragraphs 86 to 89 above that, in the case of guarantees such as the guarantee at issue, the economic advantage accruing to the beneficiary undertaking materialises in particular in its dealings with its creditors, in this instance its customers, and consists in the more favourable treatment which those creditors, able to enforce that guarantee in the event of non-performance of an obligation, give to that undertaking, thus reducing its charges or maximising its revenue.

118 Moreover, as was pointed out in paragraphs 82 and 89 above, the methodology which the Commission chooses to adopt in the contested decision in order to establish the advantage that IFPEN derives from the guarantee at issue specifically serves to support the determination of that more favourable treatment.

119 Recital 236 of the contested decision, however, states only that, as a result of the guarantee at issue, IFPEN was able to offer its customers the 'absence of payment of a premium for a performance bond [or], at the very least for best efforts', but does not specify how the non-payment of that premium was capable of influencing IFPEN's dealings with its customers. In particular, the Commission does not indicate whether, in circumstances in which that guarantee is in place, customers would be more attracted to that establishment than to other research institutes or whether they would be willing to pay higher prices for IFPEN's services as an expression of their more favourable assessment of the risk of default on its part. In this way, the Commission fails to define the advantage that IFPEN was able to derive from the guarantee at issue in its dealings with customers.

120 Secondly, the Court can only share the bafflement expressed by IFPEN, which refers in the application to the highly confused nature of the reasoning relating to the definition of the advantage from which it allegedly benefited as a result of the guarantee at issue in its dealings with customers. It is difficult to understand who, according to the Commission (IFPEN's customers or IFPEN itself), would take out the performance bond and who, ultimately, would benefit from the reduction of charges resulting from the non-payment of the premium for that bond.

121 In that regard, it must be pointed out that, in recital 221 of the contested decision, reproduced in paragraph 112 above, the Commission states that 'a customer wishing to enjoy the same level of protection would take out a performance bond from a financial intermediary ...', which suggests that it is for IFPEN's customers or those of its competitors to take out the performance insurance and pay the corresponding premium.

122 Other passages in the contested decision, however, suggest that IFPEN would have to pay the premium for the performance bond. For example, in recital 236 of the contested decision, reproduced in paragraph 113 above, the Commission stated that '[IFPEN] has benefited from a real economic advantage, consisting in the absence of payment of a premium for a performance bond [or], at the very least for best efforts, which it was able to offer ... to its customers'. Similarly, in recital 246, which appears in the part concerning the transfer of the advantages accruing to IFPEN to its private-law subsidiaries, the Commission noted that 'the examination of [IFPEN]'s accounts [showed that, since] the premium corresponding to a performance bond, [or] at the very [least] for best efforts, was not paid to the State, it was not possible for it to be priced [by IFPEN into the cost-based remuneration it recovered from its subsidiaries for the services it supplied to them]'.

123 Those passages must be interpreted as meaning that it is the Commission's opinion that, under normal market conditions, customers of research institutes take out performance bonds or best efforts guarantees in order to protect themselves against the risk of breach of contract, including for reasons linked to the insolvency of the other party to the contract. If, however, they decide to become customers of IFPEN, they do not need to take out such insurance since IFPEN can offer them a State guarantee enforceable in the event of breach of contract on account of insolvency. Since IFPEN obtains its guarantee free of charge, it can also offer it to its customers free of charge.

124 While the interpretation of the contested decision proposed in paragraph 123 above serves to reconcile recitals 221 and 236 of that decision, it does have its limitations. First, while it is true that the burden of the premium for the performance bond normally rests on IFPEN's customers, the State guarantee from which IFPEN benefits must be interpreted rather as conferring an advantage on those customers. After all, as the applicants rightly submitted at the hearing, in such a case, the guarantee enjoyed by IFPEN removes from its customers the burden of the premium for the performance bond

that they would normally have to pay if that State guarantee were not in place. Secondly, that interpretation does not clarify the meaning of recital 246 of the contested decision, which states that IFPEN would have to pay the premium for the performance bond to the State.

125 In response to the doubts expressed by IFPEN, the Commission stated in the defence that the performance bond served as an indirect measure of the price of the implied and unlimited guarantee from which IFPEN benefited. For the purposes of that exercise, it submits, it makes little difference whether the performance bond is taken out by the vendor or its customer, the crucial factor being the price of the performance bond. Generally, the performance bond is taken out by the customer and that is the model adopted in the contested decision.

126 Those explanations, which can be examined only in the light of the settled case-law to the effect that a decision must be self-sufficient and the reasons on which it is based may not be stated in written or oral explanations given subsequently when the decision in question is already the subject of proceedings brought before the European Union judicature (see the judgment of 15 June 2005 in *Corsica Ferries France* v *Commission*, T-349/03, EU:T:2005:221, paragraph 287 and the case-law cited), are not sufficient to clarify the reasons for the contested decision, the confused nature of which was alluded to by IFPEN.

127 After all, if, as the Commission states, it made no difference who bore the burden of the premium for the performance bond, the important factor for the purposes of its demonstration being the price of that performance bond, the view would have to be taken, as the Commission sought to establish in that part of the contested decision concerning IFPEN's dealings with its customers, that that price was the amount of the premium that IFPEN might be charged on the market for a guarantee similar to the guarantee attendant upon its EPIC status. The advantage from which IFPEN benefited in its dealings with its customers would be the non-payment of that premium.

128 Interpreted in that way, the statement of reasons relating to the advantage in dealings with customers would be incompatible with the methodology chosen by the Commission to establish the existence of the advantage accruing to IFPEN, set out in paragraph 82 above. After all, the approach put forward by the Commission in its defence does not involve a determination of the more favourable conduct which IFPEN's customers, as its creditors, might adopt towards it in circumstances in which the guarantee at issue is in place. That approach is thus the complete opposite of the approaches taken to determine the advantage accruing to IFPFEN from the guarantee at issue in its dealings with banks and financial institutions and with suppliers. It will be recalled that, in the case of banks and financial institutions, the Commission examined the terms of the loans which they granted or offered to IFPEN. In so doing, the Commission ascertained whether the guarantee at issue exercised a real influence on the conduct of those institutions vis-à-vis IFPEN. In the case of suppliers, the Commission first determined the more favourable conduct that they might adopt vis-à-vis IFPEN in circumstances in which the guarantee at issue is in place. It considered, wrongly (see paragraph 106 above), that that conduct would take the form of a reduction in the prices of goods and services supplied to IFPEN. As a second step, the Commission attempted to calculate the value of that price reduction by using factoring.

129 Interpreted in the manner indicated in paragraph 127 above, the statement of reasons relating to the advantage in dealings with customers would also be incorrect in law. After all, the interpretation which the Commission puts forward in the defence amounts to an a priori finding that the guarantee at issue necessarily constitutes State aid solely because it is free and there is therefore no need to examine the influence of that guarantee on the relationship underpinning it, in this instance the relationship between IFPEN and a group of its creditors made up of its customers. As pointed out in paragraph 84 above, however, such a finding is not consistent with the very nature of a guarantee, which, as an ancillary undertaking, cannot be examined without taking into account the obligation to which it is attached. Moreover, it must be recalled that, in accordance with case-law, Article 107(1) TFEU defines measures of State intervention in relation to their effects. The classification of a State

measure as State aid within the meaning of that provision is therefore determined by reference not to its form, causes or objectives but to the effect which it produces (see the judgment of 19 March 2013 in *Bouygues and Bouygues Télécom* v *Commission and Others*, C-399/10 P and C-401/10 P, EU:C:2013:175, paragraph 102 and the case-law cited). It follows that, in order to be able to classify a State measure as State aid within the meaning of that provision, it falls to the Commission to examine the effects which that measure is liable to produce, in this instance its influence on IFPEN's dealings with its customers. By the line of argument it pursues in the defence, the Commission seeks to divest itself entirely of the need to examine even the potential effects of the guarantee at issue.

130 It follows from the foregoing that, leaving aside the flaw identified in paragraph 115 above, the statement of reasons set out by the Commission in the contested decision with respect to the existence of the advantage which IFPEN was able to derive from the State guarantee inherent in its EPIC status in its dealings with customers is obscure and inconsistent. Such a statement of reasons does not meet the standard required by Article 296 TFEU. To comply with that provision, the statement of reasons must, first, disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review (see, to that effect, the judgment of 22 October 2008 in *TV2/Danmark and Others* v *Commission*, T-309/04, T-317/04, T-329/04 and T-336/04, EU:T:2008:457, paragraph 178 and the case-law cited) and, secondly, must be logical and, in particular, contain no internal contradiction that would prevent a proper understanding of the reasons underlying the measure (see, to that effect, the judgments of 10 July 2008 in *Bertelsmann and Sony Corporation of America*, C-413/06 P, EU:C:2008:392, paragraph 169, and 29 September 2011 in *Elf Aquitaine* v *Commission*, C-521/09 P, EU:C:2011:620, paragraph 151).

131 Consequently, it must be held that, so far as concerns its demonstration of the existence of an economic advantage accruing to IFPEN from the guarantee at issue in its dealings with customers, the Commission did not discharge either the burden of proof as defined by the case-law cited in paragraph 71 above or the obligation to state reasons as interpreted by the case-law cited in paragraph 130 above. The Commission was therefore wrong to conclude, in recital 236 of the contested decision, that, as a result of the guarantee at issue, IFPEN benefited from a real economic advantage consisting in the non-payment of a premium for a performance bond, or at the very least a best efforts guarantee, which it was able to offer to its customers, including its subsidiaries Axens and Prosernat in their exclusive fields, in connection with its research activities.

132 It follows that there is no need to examine the arguments by which the applicants challenge the relevance of the use of performance bonds or best efforts guarantees to estimate the amount of the advantage accruing to IFPEN from the guarantee at issue in its dealings with customers.

133 The arguments relied on by the Commission in its submissions to the Court as presented at the hearing are not such as to rebut the conclusions set out in paragraphs 108 and 131 above.

134 In the first place, the Commission states that, in accordance with paragraph 99 of the judgment of 3 April 2014 in *La Poste* (C-559/12 P, EU:C:2014:217), in order to prove the existence of the advantage conferred by a State guarantee inherent in EPIC status, it does not have to show the actual effects produced by that guarantee. Since, in accordance with the judgment cited above, the existence of that advantage may be presumed, it is sufficient for the Commission to establish the existence of the State guarantee in order for the existence of the advantage to be established.

135 Moreover, on the basis, in particular, of the judgments of 14 February 1990 in *France* v *Commission* (C-301/87, EU:C:1990:67) and 8 December 2011 in *France Télécom* v *Commission* (C-81/10 P, EU:C:2011:811), the Commission states that, in order to demonstrate the existence of State aid, it is

sufficient that the measure is capable of conferring an advantage on the recipient, there being no need to verify the fact or extent of the advantage. It goes on to say that, if the position were otherwise, Member States which do not notify aid would be at an advantage over those that do.

136 Those arguments cannot succeed. It should after all be pointed out that the possibility of using a presumption as a means of proof depends on the plausibility of the assumptions on which that presumption is based. In the judgment of 3 April 2014 in *La Poste* (C-559/12 P, EU:C:2014:217), the Court of Justice held that a borrower who has subscribed to a loan guaranteed by the public authorities of a Member State normally obtains an advantage inasmuch as the financial cost that it bears is less than that which it would have borne if it had had to obtain that same financing and that same guarantee at market prices (judgment of 3 April 2014 in *La Poste*, C-559/12 P, EU:C:2014:217, paragraph 96). The Court also recalled that the Guarantees Notice specifically provided, at points 1.2, 2.1 and 2.2, that an unlimited State guarantee in favour of an undertaking whose legal form ruled out bankruptcy or other insolvency procedures granted an immediate advantage to that undertaking and constituted State aid, in that it was granted without the recipient thereof paying the appropriate fee for taking the risk supported by the State and also allowed 'better financial terms for a loan to be obtained than those normally available on the financial markets' (judgment of 3 April 2014 in *La Poste*, C-559/12 P, EU:C:2014:217, paragraph 97). It was in the light of those findings that the Court held that a simple presumption existed that the grant of an implied and unlimited State guarantee in favour of an undertaking which was not subject to the ordinary compulsory administration and winding-up procedures resulted in an improvement in its financial position through a reduction of the charges which would normally have encumbered its budget (judgment of 3 April in *La Poste*, C-559/12 P, EU:C:2014:217, paragraph 98).

137 It follows that the presumption established in the judgment of 3 April 2014 in *La Poste* (C-559/12 P, EU:C:2014:217) is based on the dual premiss, recognised as plausible by the Court of Justice, to the effect, first, that the existence of a guarantee by the public authorities of a Member State has a favourable influence on the assessment by creditors of the risk of default on the part of the beneficiary of that guarantee and, secondly, that that favourable influence is reflected in a reduction in the cost of credit.

138 In the present case, the Commission submits, with respect to IFPEN's dealings with its suppliers, that the favourable influence of the existence of a guarantee provided by the public authorities of a Member State on the assessment by creditors of the risk of default on the part of the beneficiary of that guarantee is reflected in a reduction of the prices offered to that beneficiary by its suppliers.

139 However, the plausibility of such an assumption is not self-evident. In business, a price reduction resulting from the relationship between a supplier and a customer is linked to a number of factors, including the volume of orders placed by the customer (see paragraphs 100 and 101 above), the payment terms granted to the customer by the supplier or the length of the contractual relationship.

140 Consequently, in the absence of any further explanation from the Commission in that regard in the contested decision, the Court cannot but find that the implausibility of that assumption precludes the view that the guarantee at issue is capable of conferring on IFPN an economic advantage in the form of a reduction of the prices offered to IFPN by its suppliers or that it is sufficient for the Commission to demonstrate the existence of that guarantee in order to be able to demonstrate the existence of such an advantage.

141 In addition, in the case of IFPEN's dealings with customers, it should be noted that, since, in the contested decision, the Commission did not even define the advantage accruing to IFPEN from the existence of the guarantee, the presumption on which the Commission intends to rely is redundant in that regard.

142 In any event, the Commission cannot rely on the simple presumption set out by the Court of Justice in paragraphs 98 and 99 of its judgment of 3 April 2014 in *La Poste* (C-559/12 P, EU:C:2014:217) for the purposes of establishing the existence of the advantage in IFPEN's dealings with suppliers and customers, inasmuch as that presumption serves only to establish the existence of an advantage in the form of more favourable credit terms.

143 After all, the presumption set out in paragraphs 98 and 99 of the judgment of 3 April 2014 in *La Poste* (C-559/12 P, EU:C:2014:217), must, first of all, be viewed in the context of the factual circumstances of, and statement of reasons for, the La Poste decision. Next, it cannot be read without taking into account the Court's findings that precede paragraphs 98 and 99, in particular those contained in paragraphs 96 and 97 of that judgment. Finally, the findings contained in paragraphs 102 to 108 of the judgment of 3 April 2014 in *La Poste* (C-559/12 P, EU:C:2014:217), in which the Court responds to the arguments put forward by the French Republic, also confirm the fact that the scope of that presumption is limited.

144 First, with regard to the factual context of, and statement of reasons for, the La Poste decision, it should be recalled in particular that, according to the Commission, the selective advantage from which La Poste benefited as a result of the implied and unlimited State guarantee inherent in its EPIC status consisted of more favourable credit terms than it had obtained on the market. The Commission's conclusion to that effect was based on the finding that credit terms are fixed by reference inter alia to financial ratings. It was clear from a number of analyses and methodologies of ratings agencies that the guarantee in question, as a determining factor of State support for La Poste, had a positive influence on its financial rating and, therefore, the credit terms that it was able to obtain [recitals 256 to 300 of the La Poste decision and the judgment of 3 April 2014 in *La Poste* (C-559/12 P, EU:C:2014:217, paragraph 18)].

145 It is therefore apparent that, unlike in the contested decision, in the La Poste decision, the Commission examined the existence of a selective advantage solely from the point of view of the beneficiary's dealings with banks and financial institutions and did not seek to ascertain whether such an advantage also existed in its dealings with other creditors, in particular suppliers and customers.

146 It is also important to point out the empirical nature of the examination as to the existence of a selective advantage accruing to La Poste. The Commission's conclusions with respect to the existence of that advantage are based on an observation of the conduct of players on the credit market from which the Commission concluded that there existed between the State guarantee inherent in La Poste's EPIC status, on the one hand, and the reaction of banks and financial institutions to the ratings supplied by ratings agencies, on the other, a causal link which manifested itself in the grant of more favourable credit terms to La Poste. As is clear from paragraphs 99 to 107 and 115 to 129 above, an empirical examination of this kind is clearly lacking in the contested decision so far as concerns IFPEN's dealings with suppliers and customers.

147 It is true that, in paragraphs 106 and 107 of the judgment of 3 April 2014 in *La Poste* (C-559/12 P, EU:C:2014:217), the Court of Justice held that the examination of the methodologies employed by the ratings agencies had only confirmatory value. It should be noted, however, that the examination of those methodologies is supplementary to the presumption-based demonstration of the existence of an advantage which has previously been correctly defined. In the present case, by contrast, it is the very definition of the advantage from which IFPEN is alleged to have benefited in its dealings with suppliers and customers which is problematic, inasmuch as, to the extent that that definition is present, it is based on inconsistent and purely hypothetical reasoning. As is clear from paragraphs 91 and 92 above, the definition of the advantage accruing to IFPEN in its dealings with banks and financial institutions, on the other hand, has attracted no criticism.

148 Secondly, it should be noted that paragraphs 96 and 97 of the judgment of 3 April 2014 in *La Poste* (C-559/12 P, EU:C:2014:217), which immediately precede the paragraphs in which the Court of Justice formulated the presumption as to the existence of a selective advantage, contain references, on the one hand, to the judgment of 8 December 2011 in *Residex Capital IV* (C-275/10, EU:C:2011:814) and, on the other hand, to points 1.2, 2.1 and 2.2 of the Guarantees Notice.

149 In the judgment of 8 December 2011 in *Residex Capital IV* (C-275/10, EU:C:2011:814), given in response to a request for a preliminary ruling from the Hoge Raad der Nederlanden (Supreme Court of the Netherlands, Netherlands), the Court of Justice held, in essence, that national courts have jurisdiction under Article 108(3) TFEU to cancel a State guarantee in a situation in which unlawful aid was implemented by means of that guarantee, which had been given by a public authority in order to cover a loan granted by a finance company to an undertaking which would not have been able to secure such financing under normal market conditions.

150 It is important to note that, in the case which gave rise to the judgment of 8 December 2011 in *Residex Capital IV* (C-275/10, EU:C:2011:814), the classification of the guarantee provided by the public authority in question as State aid in favour of the borrower was in no doubt, since it was common ground that, at the time when the guarantee was created, the borrower was already in difficulty and would not therefore have been able to obtain financing on the capital markets without it (judgment of 8 December 2011 in *Residex Capital IV*, C-275/10, EU:C:2011:814, paragraphs 39 to 42).

151 That is the very context in which it is necessary to view the Court's finding in paragraph 39 of the judgment of 8 December 2011 in *Residex Capital IV* (C-275/10, EU:C:2011:814) to the effect that, 'in the case where the loan granted by a credit institution to a borrower is guaranteed by the public authorities of a Member State, that borrower normally obtains a financial advantage and thus benefits from aid within the meaning of Article [107](1) [TFEU], inasmuch as the financial cost that it bears is less than that which it would have borne if it had had to obtain that same financing and that same guarantee at market prices', to which the Court refers in paragraph 96 of its judgment of 3 April 2014 in *La Poste* (C-559/12 P, EU:C:2014:217).

152 Consequently, the reference to the judgment of 8 December 2011 in *Residex Capital IV* (C-275/10, EU:C:2011:814) in paragraph 96 of the judgment of 3 April 2014 in *La Poste* (C-559/12 P, EU:C:2014:217) confines the application of the presumption established in the judgment of 3 April 2014 in *La Poste* (C-559/12 P, EU:C:2014:217) to dealings between the undertaking in receipt of a State guarantee, such as an EPIC, and the creditors lending to it, in particular banks and financial institutions, and to an advantage in the form of more favourable funding terms.

153 The same conclusion must be drawn with respect to the Court's reference to the Guarantees Notice.

154 According to point 1.2 of the Guarantees Notice:

'In their most common form, guarantees are associated with a loan or other financial obligation to be contracted by a borrower with a lender; they may be granted as individual guarantees or within guarantee schemes.

However, various forms of guarantee may exist, depending on their legal basis, the type of transaction covered, their duration, etc. Without the list being exhaustive, the following forms of guarantee can be identified:

...

— unlimited guarantees as opposed to guarantees limited in amount and/or time. The Commission also regards as aid in the form of a guarantee the more favourable funding terms obtained by enterprises whose legal form rules out bankruptcy or other insolvency procedures or provides an

explicit State guarantee or coverage of losses by the State. The same applies to the acquisition by a State of a holding in an enterprise if unlimited liability is accepted instead of the usual limited liability,

...'

155 According to point 2.2 of the Guarantees Notice, which concerns aid to the borrower:

'Usually, the aid beneficiary is the borrower. As indicated under point 2.1, risk-carrying should normally be remunerated by an appropriate premium. When the borrower does not need to pay the premium, or pays a low premium, it obtains an advantage. Compared to a situation without guarantee, the State guarantee enables the borrower to obtain better financial terms for a loan than those normally available on the financial markets. Typically, with the benefit of the State guarantee, the borrower can obtain lower rates and/or offer less security. In some cases, the borrower would not, without a State guarantee, find a financial institution prepared to lend on any terms. ...'

156 It is readily apparent the two points from the Guarantees Notice chosen by the Court of Justice as the basis for the presumption as to the existence of a selective advantage, established in paragraphs 98 and 99 of the judgment of 3 April 2014 in *La Poste* (C-559/12 P, EU:C:2014:217), refer to the advantage in the form of better credit terms, such as a lower lending rate or less stringent security requirements, which an undertaking benefiting from a State guarantee obtains on the market.

157 Thus, the Court's reference to those two points from the Guarantees Notice in paragraph 97 of its judgment of 3 April 2014 in *La Poste* (C-559/12 P, EU:C:2014:217) also limits the application of the presumption established in that judgment to dealings between the undertaking benefiting from a State guarantee and the creditors lending to it, in particular banks and financial institutions.

158 Moreover, it should be noted that the Court also refers to point 2.1 of the Guarantees Notice. In so far as that point concerns the question of the transfer of State resources, it has no bearing on the findings set out above. In any event, in the light of the findings contained in paragraph 84 above, that point does not support the inference that an unlimited State guarantee inherent in EPIC status can be regarded as conferring an advantage on such an establishment simply because it is free.

159 Thirdly and finally, the Court's observations in response to the arguments put forward by the French Republic, in particular in paragraph 104 of the judgment of 3 April 2014 in *La Poste* (C-559/12 P, EU:C:2014:217), confirm that the form of alleged proof accepted by the EU judicature for the purposes of establishing whether an implied and unlimited State guarantee inherent in EPIC status constitutes an economic advantage is applicable to the case of a borrower who, as a result of that guarantee, benefits from lower interest rates or is able to provide less security.

160 It follows from the foregoing considerations that the application of the presumption established in the judgment of 3 April 2014 in *La Poste* (C-559/12 P, EU:C:2014:217) is confined to dealings involving a financing transaction, a loan or, more broadly, credit from an EPIC's creditor, in particular that EPIC's dealings with banks and financial institutions.

161 In that regard, it is also important to note that, at the hearing, the Commission accepted that the advantage in an EPIC's dealings with its suppliers could be excluded if it were established that such an establishment pays its suppliers in cash, which, it submitted, has not been shown to be so in the case of IFPEN. Moreover, it is clear from the documents before the Court that, during the formal investigation procedure, the Commission sought to ascertain the payment terms applicable to IFPEN's debt to its suppliers (see paragraph 103 above). It is apparent, however, that the statement of reasons in the contested decision contains no reference to a line of reasoning in relation to credit on the basis

of which it might be possible, where appropriate, to contemplate applying the presumption established in the judgment of 3 April 2014 in *La Poste* (C-559/12 P, EU:C:2014:217) to IFPEN's dealings with its suppliers.

162 In the second place, on the basis in particular of the judgments of 15 December 2005 in *Italy* v *Commission* (C-66/02, EU:C:2005:768, paragraphs 91 and 92), 6 September 2006 in *Portugal* v *Commission* (C-88/03, EU:C:2006:511, paragraph 91), 9 June 2011 in *Comitato 'Venezia vuole vivere' and Others* v *Commission* (C-71/09 P, C-73/09 P and C-76/09 P, EU:C:2011:368, paragraph 114) and 12 September 2007 *Italy* v *Commission* (T-239/04 and T-323/04, EU:T:2007:260, paragraphs 142 to 144), the Commission submits that, when, as in the present case, it assesses an aid scheme, it does not have to demonstrate the fact or extent of that advantage, but may confine itself to examining the general characteristics of the scheme at issue in order to determine whether that scheme entails elements of aid.

163 IFPEN and the French Republic submit that that argument is inadmissible, on the ground that the contested decision does not classify the guarantee at issue as an aid scheme.

164 It need hardly be pointed out that the Commission did not explicitly specify whether its decision concerned individual aid or an aid scheme. However, while there is no need to rule on its admissibility, the Commission's argument must be rejected as unfounded.

165 In that regard, it should be recalled, first of all, that, under Article 1(d) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [108 TFEU] (OJ 1999 L 83, p. 1), replaced with effect from 14 October 2015 by Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 [TFEU] (OJ 2015 L 248, p. 9), an aid scheme is defined, first, as any act on the basis of which, without further implementing measures being required, individual aid awards may be made to undertakings defined within the act in a general and abstract manner and, secondly, as any act on the basis of which aid which is not linked to a specific project may be awarded to one or several undertakings for an indefinite period of time and/or for an indefinite amount. In Article 1(e) thereof, the same regulation defines individual aid as aid that is not awarded on the basis of an aid scheme and notifiable awards of aid on the basis of an aid scheme.

166 Next, it should be recalled that Regulation No 659/1999 divides individual aid awards and aid schemes into existing aid and new aid. Under Article 1(b), existing aid is, in essence, aid which has already been examined by the Commission or is deemed to have been so examined or aid that was being put into effect in the Member States of the European Union before their accession to the Union and is still applicable after accession. New aid is defined residually as all aid, that is to say aid schemes and individual aid, which is not existing aid, including alterations to existing aid.

167 Finally, it should be recalled that, in Article 2(1), Regulation No 659/1999 establishes an obligation in principle to notify to the Commission all plans to grant new aid. Thus, 'notifiable awards' of aid within the meaning of Article 1(e) of Regulation No 659/1999 (see paragraph 165 above) means all new aid. Moreover, aid which is implemented in breach of the notification obligation is considered to be unlawful aid as defined in Article 1(f) of Regulation No 659/1999.

168 In the light of those provisions, the guarantee attendant upon EPIC status must, in so far as it can be regarded as State aid within the meaning of Article 107(1) TFEU, be classified as an aid scheme within the meaning of the second part of Article 1(d) of Regulation No 659/1999.

169 However, it must be noted, first, that the measure examined in the contested decision is not the guarantee attendant upon EPIC status generally, but IFPEN's conversion into an EPIC, which has the effect of granting to that undertaking the State guarantee attendant upon its status as such.

170 Secondly, that conversion creates a new factual situation in which IFPEN becomes the beneficiary of a State guarantee attendant upon its new status and which may cause to be granted to IFPEN an advantage capable of being classified as State aid within the meaning of Article 107(1) TFEU. That new situation is caught by the notification obligation laid down in Article 2(1) of Regulation No 659/1999.

171 The analysis presented in paragraphs 169 and 170 above lends itself to the contested decision, in particular recitals 256 to 259 thereof, in which the Commission stated that IFPEN's conversion into an EPIC constituted new aid within the meaning of Article 1(c) of Regulation No 659/1999 that was subject to the notification obligation. The Commission also took the view that, in so far as the change of IFPEN's status had not been formally notified to it, but only signalled incidentally in the course of other proceedings, that obligation had not been fulfilled by the French authorities and IFPEN's conversion into an EPIC constituted unlawful aid.

172 In the light of the foregoing, it must be held that, in so far as IFPEN's conversion into an EPIC is classifiable as State aid, it constitutes notifiable aid awarded on the basis of an aid scheme, that is to say individual aid within the meaning of Article 1(e) of Regulation No 659/1999.

173 The Commission is therefore wrong to classify that measure as an aid scheme in the defence. Similarly, the Commission has no justification for stating, on the basis of the case-law cited in paragraph 162 above, concerning the general aid schemes referred to in the first part of Article 1(d) of Regulation No 659/1999, that, since IFPEN's conversion into an EPIC constitutes a scheme, in order to be able to classify that conversion as State aid within the meaning of Article 107(1) TFEU, it does not have to demonstrate the fact or extent of the advantage derived by IFPEN from the guarantee attendant upon EPIC status, but may confine itself to examining the general characteristics of that guarantee.

174 In the third place, while pointing up the need to distinguish between demonstrating the existence of an advantage and calculating that advantage, the Commission states that, in the contested decision, it estimated a 'market value' for the guarantee granted to IFPEN not in order to establish the existence of the advantage, which, in its view, has already been demonstrated, but in order to attempt to quantify that advantage so as to assess its compatibility with the internal market. The approach taken in the contested decision, according to the Commission, is thus to give the most accurate measurement of the effects which the State guarantee at issue has already produced, both on the capital markets and in dealings with some of IFPEN's other creditors, by estimating the cost of covering a risk equivalent to the risk of default of payment by a borrower.

175 At the hearing, the Commission submitted that it made that estimate on the basis of the comparison tools available, such as, in the case of IFPEN's dealings with suppliers, factoring contracts, and, in the case of its dealings with customers, use of performance bonds, with a view to being able to establish the compatibility of the guarantee at issue. According to the Commission, in circumstances involving an unlimited guarantee the value of which cannot be measured, it has no choice but to classify that guarantee as incompatible aid.

176 In that regard, it should be noted that the Commission does not specify what it means by the 'advantage which has already been demonstrated' and the 'effects which the State guarantee at issue has already produced'. It would nevertheless seem that this is an advantage different from that the existence of which was established in recitals 214 and 236 of the contested decision. Thus, by its argument, the Commission seems to be saying that the advantage which IFPEN enjoyed as a result of the guarantee inherent in its EPIC status stemmed from the very fact that that guarantee was free and that what it attempted to establish by estimating the 'market value' of that guarantee was the amount of the premium that IFPEN would have had to pay to the State.

177 That argument cannot succeed, first, inasmuch as it is contradicted by the text of the contested decision itself, in particular recitals 214 and 236, in which the Commission defines the real economic advantage from which IFPEN is alleged to have benefited in its dealings with its suppliers and its customers.

178 Moreover, it follows from recitals 192, 193 and 194 of the contested decision that, contrary to what it submitted in the defence, in the contested decision, in particular Chapter 7.1.4 thereof, entitled 'Existence of a selective advantage to the [IFPEN] group', the Commission did indeed seek to demonstrate and calculate the advantage conferred on IFPEN in its dealings with its creditors, in this instance banks and financial institutions, its suppliers and its customers, who were able to enforce the State guarantee in the event of default, rather than to evaluate the market value of the guarantee granted to IFPEN free of charge or the amount of the premium that it would have had to pay to the State for that guarantee. The argument put forward by the Commission in its submissions to the Court, which is inconsistent with the statement of reasons in the contested decision, therefore serves only to exacerbate the confusion as to the methodology chosen by the Commission to establish the existence of the economic advantage that IFPEN was able to derive from the guarantee at issue.

179 Secondly, as is clear from paragraph 129 above, that argument is also erroneous in law, in that it is based on the finding that the guarantee at issue necessarily constitutes State aid solely because it is free and that there is therefore no need to examine the influence of that guarantee on the dealings underpinning it.

180 Neither is the Court convinced by the argument put forward by the Commission at the hearing, inasmuch as it amounts to a — manifestly erroneous — finding that the Commission is able to rule on the compatibility of a measure even before it has established its status as aid.

181 It follows from all of the foregoing considerations that, so far as concerns the existence of an advantage which IFPEN was able to derive from the guarantee at issue in its dealings with suppliers, the Commission did not discharge the burden of proof as defined by the case-law cited in paragraph 71 above. So far as concerns the existence of such an advantage in IFPEN's dealings with its customers, the Commission discharged neither the burden of proof nor its obligation to state reasons as interpreted by the case-law cited in paragraph 130 above.

The advantage in IFPEN's dealings with banks and financial institutions

182 It has already been noted in paragraph 79 above that, in the case of dealings with banks and financial institutions, the Commission concluded that, during the period from 2006 to 2010, IFPEN had not derived any real economic advantage from its EPIC status. In other words, according to the Commission, the potential advantage which the undertaking could have derived from the unlimited guarantee, in the form of more favourable interest rates on loans than would be available on the market, did not materialise during the period under consideration (recital 199 of the contested decision).

183 According to the Commission, however, that conclusion was valid only retrospectively, since it could not make any presumptions about how market operators would behave in the future or how their perception of the impact of the State guarantee on the risk of default by IFPEN would evolve. That is why it imposed on the French Republic an obligation to send it, in the annual reports, information relating to the levels and terms of IFPEN's indebtedness and to provide proof that those terms were in line with market conditions (recital 200 of the contested decision).

184 At the hearing, the Commission submitted that the possibility that the guarantee at issue might give rise to an advantage in IFPEN's dealings with institutional creditors stemmed from a provision in IFPEN's articles of association which authorised it to take out loans. Since that provision was still present in IFPEN's articles of association at the time when the contested decision was adopted, the emergence of an advantage in the future could not be ruled out.

185 In the first part of the third plea in law in the action in Case T-479/11, the French Republic disputes the assertion that an advantage originating from the State guarantee may accrue to IFPEN in the future. It therefore considers that the obligation to send the Commission information relating to the levels and terms of IFPEN's indebtedness is not justified.

186 At the hearing, the applicants also submitted that, in accordance with the applicable legislation, namely Article 12 of French Law No 2010/1645 of 28 December 2010 on public finance planning for the years 2011 to 2014 (JORF of 29 December 2010, p. 22868), IFPEN cannot take out with a credit institution a loan with a term greater than twelve months. The Commission contended that that argument was inadmissible, on the ground that the French authorities did not cite the text of that law during the formal investigation procedure.

187 In that regard, it is common ground between the parties, first, that, in the present case, so far as concerns IFPEN's dealings with banks and financial institutions lending to it, the Commission may rely on the simple presumption established in the judgment of 3 April 2014 in *La Poste* (C-559/12 P, EU:C:2014:217, paragraphs 98 and 99) to the effect that the implied and unlimited State guarantee inherent in EPIC status has the consequence of improving the financial position of the beneficiary undertaking by reducing the charges which normally encumber its budget.

188 Secondly, it is established that, in the case of IFPEN, the simple presumption within the meaning of the judgment in *La Poste* (C-559/12 P, EU:C:2014:217) has been rebutted.

189 In the contested decision, after all, the Commission found that, from the time of IFPEN's conversion into an EPIC in July 2006 until the end of the period examined in the contested decision, namely the end of 2010, IFPEN did not derive from its EPIC status any real economic advantage in the form of more favourable credit terms granted to it by banks and financial institutions. In that regard, the Commission established that, so far as concerns maturities of more than one year, IFPEN did not borrow from credit institutions from the time of its change of status to the end of 2009. In 2009, the Commission identified only one loan with a maturity of less than one year, which was for a negligible amount and the rate for which was higher than the comparable borrowing rate agreed by IFPEN in 2005, that is to say at a time when it was not yet covered by the State guarantee. So far as concerns 2010, the Commission found that IFPEN received four credit facility proposals the terms of which were equivalent to those negotiated by IFPEN before its change of status in 2006 (recitals 196 to 198).

190 It is thus clear from the Commission's examination that IFPEN's conversion into an EPIC had no effect on its dealings with banks and financial institutions during the period covered by that examination.

191 Consequently, from the point of view of IFPEN's dealings with banks and financial institutions during the period between 2006 and 2010, the implied and unlimited State guarantee inherent in IFPEN's EPIC status, inasmuch as it did not confer an advantage accruing exclusively to that undertaking, cannot be classified as State aid within the meaning of Article 107(1) TFEU.

192 In the absence of a finding as to the existence of State aid, there is no justification for imposing on the French Republic an obligation to send the Commission information relating to the levels and terms of IFPEN's indebtedness or to provide proof that those terms are in line with market conditions.

193 As regards the question whether it is possible for the Commission to rely on the simple presumption within the meaning of the judgment of 3 April 2014 in *La Poste* (C-559/12 P, EU:C:2014:217) as a basis for taking the view that the guarantee at issue constitutes State aid within the meaning of Article 107(1) TFEU in favour of IFPEN, in that it is capable of conferring an advantage on that establishment in the future, thus justifying the obligation imposed on the French Republic to send the Commission information relating to the levels and terms of IFPEN's indebtedness and to provide proof that those terms are in line with market conditions, it must be held that, once rebutted, a simple presumption such as that established in the judgment of 3 April 2014 in *La Poste* (C-559/12 P, EU:C:2014:217) cannot be relied on again without a substantial change in the circumstances in which it was rebutted.

194 In the present case, it follows from the documents before the Court that, in the Commission's view, the possibility that the guarantee at issue may confer an advantage on IFPEN stemmed from the fact that that establishment was able to turn to the credit market and take out loans to finance itself. It is that ability to take on debt that justifies the application of the presumption as to the existence of an advantage.

195 However, the exhaustive examination of the terms of the loans taken out by, or offered to, IFPEN demonstrated, first, that, during the period covered by that examination, IFPEN's debt was almost zero, since it took out only one short-maturity loan for a negligible amount. Secondly, as is clear from recitals 197 and 198 of the contested decision, both the terms of that loan and the terms of the credit facilities offered to IFPEN reflected market conditions, which demonstrates that its conversion into an EPIC had no effect on its dealings with banks and financial institutions. In those circumstances, the Commission cannot rely on the mere fact that IFPEN is able, by virtue of its status, to take on debt as a basis for forming the view that the advantage accruing to it in the future may be established by way of presumption.

196 It follows from the foregoing, there being no need to rule on the admissibility of the argument put forward by the applicants at the hearing to the effect that IFPEN is prohibited by law from taking on debt, that, by imposing on the French Republic an obligation to send it information relating to the levels and terms of IFPEN's indebtedness or to provide proof that those terms were in line with market conditions, the Commission infringed Article 107(1) TFEU.

197 It follows from all of the foregoing considerations that, in the contested decision, the Commission did not successfully demonstrate the existence of an advantage that IFPEN was able to derive from the State guarantee attendant upon its EPIC status. First, so far as concerns IFPEN's dealings with banks and financial institutions, the Commission explicitly ruled out the existence of a real advantage during the period from that undertaking's conversion into an EPIC until 2010 and, in the circumstances of the present case, it cannot rely on the presumption set out by the Court of Justice in its judgment of 3 April 2014 in *La Poste* (C-559/12 P, EU:C:2014:217) in order to establish the existence of that advantage in the future. Secondly, so far as concerns IFPEN's dealings with suppliers and customers, it is clear from the considerations set out in paragraphs 95 to 131 above that the guarantee at issue is not capable of conferring on IFPEN the advantage defined by the Commission in recitals 214 and 236 of the contested decision.

198 Accordingly, it is appropriate to uphold the first part of the second plea and the fourth plea in the action in Case T-157/12, and the second part of the first plea and the first part of the third plea in the action in Case T-479/11, in so far as they concern the existence of the advantage accruing to IFPEN from the guarantee at issue and, there being no need to examine the other pleas and arguments put forward by the applicants, to find that the Commission was wrong to classify that guarantee as State aid within the meaning of Article 107(1) TFEU.

*The extent of the annulment*

199 It follows from the conclusion expressed in paragraph 198 above that the contested decision must be annulled. However, since the operative part of the contested decision is complex, it is necessary to examine the extent of that annulment.

200 First of all, in Article 1(1) of the contested decision, the Commission found that the EPIC status granted to IFPEN conferred on it an unlimited public guarantee covering the totality of its activities. Next, in Article 1(2) of the contested decision, the Commission, drawing the appropriate conclusions from its observations in recital 190 of that decision, found that the cover provided by that guarantee for IFPEN's non-economic activities did not constitute State aid within the meaning of Article 107(1) TFEU.

201 Finally, the other provisions of the operative part of the contested decision refer to the Commission's conclusions with respect to the cover provided by the guarantee at issue for IFPEN's economic activities, that is to say, on the one hand, technology transfers in the fields in which its subsidiaries Axens, Prosernat and Beicip-Franlab are exclusively active and, on the other hand, its contract research and other services performed on behalf of third parties and its subsidiaries. The Commission considered that the cover provided for those activities by the guarantee at issue constituted State aid within the meaning of Article 107(1) TFEU (Article 1(4) and (5) of the contested decision), with the exception of the technology transfer activity provided for in the agreement concluded between IFPEN and Beicip-Franlab (Article 1(3) of the contested decision). It follows from the statement of reasons in the contested decision, in particular in recitals 243, 247 and 250, that that exception is due, in essence, to the fact that the nature of IFPEN's dealings with Beicip-Franlab prevented any transfer of the advantage from which IFPEN is said to have derived from the guarantee at issue to that subsidiary.

202 So far as concerns the activities in respect of which the Commission established the existence of State aid, Articles 4 to 12 of the contested decision essentially list a series of conditions which the French Republic and IFPEN must satisfy in order for the State aid to be capable of being regarded as compatible with the internal market. So far as concerns the technology transfer activity provided for in the agreement between IFPEN and Beicip-Franlab, Article 2 of the contested decision requires the French Republic to notify the Commission of amendments to that agreement, unless these rule out the existence of State aid.

203 In the applications, IFPEN and the French Republic claim that the contested decision should be annulled in its entirety.

204 However, in their letters of 5 May 2014, mentioned in paragraph 36 above, in which they commented on the conclusions to be drawn from the judgment of 3 April 2014 in *La Poste* (C-559/12 P, EU:C:2014:217), the applicants withdrew the pleas relating to the existence of an implied and unlimited State guarantee inherent in the concept of an EPIC (see paragraphs 36 and 54 above).

205 Moreover, the pleas raised by the applicants in their applications seek only the annulment of the contested decision, first, in so far as it finds that the cover provided by the guarantee at issue for IFPEN's economic activities constitutes State aid, that aid having also been transferred to IFPEN's subsidiaries, and, secondly, in so far as it draws the appropriate conclusions from that finding by imposing on the French Republic and on IFPEN various notification obligations (see paragraphs 43, 45 and 48 to 51 above).

206 Taking into account the foregoing and the outcome of the examination of the present actions, it is appropriate to annul the contested decision, inasmuch as it classifies the guarantee arising from IFPEN's EPIC status as State aid within the meaning of Article 107(1) TFEU and to the extent that it determines the conclusions to be drawn from that classification, and dismiss the actions as to the remainder.

**Costs**

207 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 134(3), where each party succeeds on some and fails on other heads, each party is to bear its own costs. However, if it appears justified in the circumstances of the case, the General Court may order that one party, in addition to bearing his own costs, pay a proportion of the costs of the other party.

208 In the present case, the applicants and the Commission have both been partly unsuccessful, inasmuch as the General Court annuls the contested decision in part and dismisses the action as to the remainder. It must therefore be held that the Commission is to bear two thirds of its own costs in each case and two thirds of the costs incurred by each of the applicants in the two joined cases. The French Republic is to bear one third of its own costs and one third of the Commission's costs in Case T-479/11. Likewise, IFPEN is to bear one third of its own costs and one third of the Commission's costs in Case T-157/12.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

1. **Annuls Article 1(3) to (5) and Articles 2 to 12 of 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));**

2. **Dismisses the actions as to the remainder;**

3. **Orders the European Commission to bear two thirds of its own costs in Cases T-479/11 and T-157/12 and two thirds of the costs incurred by the French Republic and IFP Énergies nouvelles;**

4. **Orders the French Republic to bear one third of its own costs and one third of the Commission's costs in Case T-479/11;**

5. **Orders IFP Énergies nouvelles to bear one third of its own costs and one third of the Commission's costs in Case T-157/12.**

Gratsias Kancheva Wetter

Delivered in open court in Luxembourg on 26 May 2016.

[Signatures]

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