



## Reports of Cases

### Cases T-168/10 and T-572/10

#### European Commission

v

#### **Société d'économie mixte d'équipement de l'Aveyron (SEMEA) and Commune de Millau**

(Arbitration clause — Grant contract concerning a local development action consisting in the performance of work for the preparation and launching of a European Local Enterprise Centre in Millau (France) — Recovery of part of the sums paid — Admissibility of an action against a French company removed from the commercial and companies register — Application of French law — Administrative contract — Recovery of undue payments — Limitation period — Enforceability of an arbitration clause — Take-over of debt — Ancillary principle — Stipulation for third parties))

Summary — Judgment of the General Court (Third Chamber), 19 September 2012

1. *Proceedings — Referral to the General Court under an arbitration clause — Action brought against a company removed from the commercial and companies register — Assessment of admissibility having regard to the applicable national law*

*(Arts 256(1), first para., TFEU and 272 TFEU)*

2. *National law — French law — Recovery of debts from a local semi-public company removed from the commercial and companies register*
3. *Proceedings — Application initiating proceedings — Formal requirements — Identification of the subject-matter of the dispute — Brief summary of the pleas in law on which the application is based*

*(Statute of the Court of Justice, Art. 21, first para.; Rules of Procedure of the General Court, Art. 44(1)(c))*

4. *Non-contractual liability — Conditions — Unlawfulness — Damage — Causal link — One of the conditions not satisfied — Claim for compensation dismissed in its entirety*

*(Art. 340, second para., TFEU)*

5. *Proceedings — Referral to the General Court under an arbitration clause — Jurisdiction of the General Court defined exclusively by Article 272 TFEU and the arbitration clause — Application of national provisions on jurisdiction — Exclusion*

*(Art. 272 TFEU)*

6. *Proceedings — Referral to the General Court under an arbitration clause — Application of the clause to a third party with the aid of a stipulation for a third party in the contract — Lawfulness — Possibility of unilateral withdrawal — Limits*

(Art. 272 TFEU)

7. *Proceedings — Referral to the General Court under an arbitration clause — Application initiating proceedings — Formal requirements for the clause — Formalisation in writing*

(Art. 272 TFEU; Rules of Procedure of the General Court, Art. 44(5)(a))

1. An action brought under an arbitration clause, pursuant to Article 272 TFEU, is inadmissible if, when the action is brought, the defendant company had neither legal capacity nor standing to be a party to legal proceedings. The applicable law in that connection is that governing the incorporation of the company in question.

In that regard, where the applicable national law recognises the possibility that the legal personality of a company may continue to exist after termination of the liquidation process where a third party seeks to recover a debt from the company originating during the period of its activity, an action for payment of that debt is admissible despite the removal of the company from the commercial and companies register.

(see paras 52-55, 57)

2. See the text of the decision.

(see paras 52-56, 63-67, 71, 78-83, 85-89, 92-96, 127-128, 154, 156-158)

3. See the text of the decision.

(see para. 99)

4. See the text of the decision.

(see paras 106-107)

5. See the text of the decision.

(see paras 115-119, 123, 148)

6. The insertion into a contract of an arbitration clause allowing the Union to submit a dispute between itself and a third party to the EU judicature is not contrary to the requirement in Article 272 TFEU that such a clause be contained in the contract concluded by the Union or on its behalf. A provision in favour of a third party may be regarded as a provision made on behalf of the Union. On the other hand, that requirement in Article 272 TFEU must be interpreted as precluding the jurisdiction of the General Court over disputes concerning a contract being founded against the wishes of the Union. An arbitration clause stipulated solely in favour of the Union cannot be enforced against its will.

Moreover, since an arbitration clause is of a contractual nature, there is nothing to prevent the existence of such a clause being examined in the light of the general principles of contract law deriving from the legal orders of the Member States. Indeed, even if one of those principles states that a contract is binding only on the parties, that principle does not preclude those two parties conferring a right on a third party by means of a stipulation for the benefit of a third party. In that regard, it is

apparent from the general principles of contract law that the existence of a provision in favour of a third party may result from an express agreement between the stipulator and the promissor seeking to confer a right on a third party. The existence of such a provision in favour of a third party may also arise from the purpose of the contract or the circumstances of the case.

Whilst the stipulator and the promissor of a provision in favour of a third party may, in certain circumstances, delete or amend the clause conferring the right in question, under the general principles of contract law that is no longer possible after the third party has notified the promissor or stipulator that he wishes to exercise his right.

(see paras 134-135, 138, 144)

7. See the text of the decision.

(see paras 145-146)