Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

19 June 2014*

(Appeal — Arbitration clause — Grant contract concerning a local development action — Recovery of part of the sums paid — Assumption of debt — Jurisdiction of the General Court — Limitation period — Liability of the Commission)

In Case C-531/12 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 19 November 2012,

Commune de Millau,

Société d'économie mixte d'équipement de l'Aveyron (SEMEA), established in Millau (France),

represented by L. Hincker and F. Bleykasten, avocats,

appellants,

the other party to the proceedings being:

European Commission, represented by S. Lejeune and D. Calciu, acting as Agents, and by E. Bouttier, avocat, with an address for service in Luxembourg,

applicant at first instance,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, E. Levits, M. Berger, S. Rodin and F. Biltgen (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 27 February 2014,

gives the following

* Language of the case: French.

Judgment

1 By their appeal, the Commune de Millau (Municipality of Millau) (France) and the Société d'économie mixte d'équipement de l'Aveyron (the Aveyron semi-public installations company) (SEMEA) seek to have set aside the judgment of the General Court of the European Union in Joined Cases T-168/10 and T-572/10 *Commission* v *SEMEA and Commune de Millau* EU:T:2012:435 ('the judgment under appeal'), by which the General Court imposed on SEMEA and the Commune de Millau joint and several liability for payment to the European Commission of the principal sum of EUR 41 012 paid by the latter in respect of the guarantee it provided in connection with financing granted to SEMEA, together with default interest and interest on the capitalised amount thereof at fixed dates.

Background to the dispute

2 The background to the dispute was set out in paragraphs 1 to 31 of the judgment under appeal as follows:

'1 On 6 July 1990, the European Economic Community, represented by the Commission of the European Communities, concluded a grant contract with [SEMEA], which was 50% owned by the Commune de Millau (Municipality of Millau) (France).

2 That contract concerned a local development action consisting in the performance of work for the preparation and launching of a Centre européen d'entreprise locale (European Local Enterprise Centre) in Millau ("the contract").

3 Article 2 of the contract stipulated:

"The work is to be carried out during a period of 18 months from the date of signature of this contract."

4 Under Article 4 of the contract, SEMEA undertook to perform various services and to account for them to the Commission by submitting periodical reports, the Commission for its part undertaking to contribute financially to the performance of those works up to a maximum of ECU 135 000, not exceeding 50% of the justified costs of the works.

5 Article 6 of the contract provided:

"This contract is subject to French law."

6 Article 10 of the contract was worded as follows:

"In the event that credit facilities are unavailable or are insufficient for the performance of this contract, the Commission reserves the right to cancel this contract without any legal procedure or to adapt the contract to the new credit availability."

7 Article 9(1) of the General Terms of the contract stipulated:

"In the event of non-fulfilment by the contractor of one of the obligations arising under the contract and irrespective of the consequences provided by the law applicable to the contract, the contract may be automatically rescinded or cancelled by the Commission without the need to carry out any legal procedure, after the contractor has been sent a letter of formal notice, by registered post, and has failed to fulfil the obligation within a period of one month."

8 Article 10 of the General Terms of the contract provided:

"In the absence of an amicable settlement, the Court of Justice of the European Communities has exclusive jurisdiction to rule on any dispute concerning the contract and arising between the contracting parties."

9 By letter of 16 May 1991, SEMEA requested of the Commission that the contract be performed by another structure, the Centre européen d'entreprise et d'innovation (European Centre for Enterprise and Innovation) ("CEI 12"), which the Commission accepted by letter of 2 July 1991, specifying that that agreement did not exempt SEMEA from its obligations. By letter of 22 October 1991, SEMEA confirmed that it would guarantee the proper performance of the services stipulated in the contract.

10 During the months of June and July 1992, the Commission's services carried out a check on the state of progress of the works, following which it was found that the total eligible expenditure was ECU 187 977 and thus that the Commission's contribution was to be set at 50% of that amount, that is, at ECU 93 988.

11 Since SEMEA had already received ECU 135 000 in respect of the contract, the Commission claimed recovery from it of ECU 41 012 ("the disputed debt") by letter of 27 April 1993. SEMEA did not respond to that request.

12 On 17 February 1997, the Extraordinary General Meeting of Shareholders of SEMEA decided to put SEMEA into voluntary liquidation from 31 March 1997 and to appoint a liquidator.

13 By registered letter with acknowledgment of receipt of 18 November 2005, the Commission again asked SEMEA for payment of the disputed debt.

14 On 11 January 2006, the Commission sent a debit note for EUR 41 012 to SEMEA.

15 Replying by letter of 31 January 2006, SEMEA's liquidator stated that his accounts did not allow for payment of such a sum, that he was required to file the winding-up balance and that the disputed debt had to be regarded as time-barred under French law, which did not allow recovery of sums which had not been claimed within the last 4 years, and the Commission's last claim dated from 27 April 1993, over 12 years previously.

16 By registered letter with acknowledgment of receipt of 16 February 2006, the Commission formally applied for the disputed debt to be taken into account in the liquidation operations and to be accepted as a liability.

17 By letter of 20 September 2006, SEMEA informed the Commission that the Extraordinary General Meeting of the company had decided to postpone submitting the winding-up balance and referred to a CEI 12 report indicating that the Commission had finally abandoned its claim for payment of the disputed debt.

18 By letter of 29 November 2006, the Commission sent, through its lawyer, a letter of formal notice to SEMEA to reimburse the disputed debt. In that letter, the Commission stated that it had never intended to waive that debt.

19 By letter of 30 January 2007, the Commission's lawyer sent a further letter of formal notice to pay the disputed debt and inferred from SEMEA's failure to act that it was in a state of insolvency.

20 By letter of 5 February 2007, SEMEA stated that it was not in a state of insolvency.

21 By letter of 12 February 2007, SEMEA sent the copy of the CEI 12 memorandum stating that the Commission had abandoned its claim for payment of the disputed debt.

22 On 26 October 2007, the Commission sent, by process-server, a formal demand for payment to the address for service of SEMEA's liquidator.

23 On 10 December 2007, the Commission sent a formal demand for payment to the registered office of SEMEA's liquidator, by process-server.

24 By letter of 14 December 2007, addressed to the process-server who had delivered the formal demand for payment, SEMEA's liquidator repeated his request for information concerning the Commission's decision to waive payment of the disputed debt. In his letter, he claimed that the new shareholders and the liquidator were unaware of the undertakings between SEMEA and CEI 12.

25 By letter of 7 January 2008, the Commission's lawyer contested the claims made by SEMEA's liquidator, again called on him to settle the disputed debt and sent a copy of that letter to the procureur de la République (Public Prosecutor) in order that the conduct of SEMEA's liquidator might be assessed, having regard inter alia to the offence of fraud.

26 In response to that letter of formal notice, SEMEA's liquidator suggested that the disputed debt might be time-barred. In that letter, he pointed out that, at the beginning of 2007, he had undertaken, during a discussion with the Commission's lawyer, to pay the disputed debt as soon as he had received answers to the questions concerning its admissibility.

27 By letter of 21 February 2008, the Commission's lawyer sent a final letter of formal notice to SEMEA to pay the disputed debt.

28 On 21 November 2008, the Extraordinary General Meeting of SEMEA took formal note of the decision of the Commune de Millau, its main shareholder, to take over its assets and liabilities and decided to pay the sum of EUR 82 719.76, representing SEMEA's available liquidity, to the Commune de Millau. According to the liquidation report submitted by the liquidator, who referred to the disputed debt, all the mandated operations were regarded as settled.

29 On 9 December 2008, SEMEA's liquidator concluded the liquidation process and had SEMEA removed from the Commercial and Companies Register.

30 On 18 December 2008, the municipal council of the Commune de Millau took over SEMEA's assets and liabilities. The dispute with the European Commission was expressly stated as a liability.

31 On 12 February 2010, at the Commission's request, the Rodez Commercial Court appointed an ad hoc agent to represent SEMEA.'

The procedure before the General Court and the judgment under appeal

3 By application lodged at the Registry of the General Court on 15 April 2010, the Commission brought an action claiming that the General Court should, inter alia, order SEMEA to pay the sum of EUR 41 012 by way of reimbursement of the guarantee provided, together with capitalised interest, and the sum of EUR 5 000 in respect of the damage allegedly sustained.

4 As the Commune de Millau had taken over all SEMEA's assets and liabilities, the Commission, by application lodged at the Registry of the General Court on 21 December 2010, also brought an action against the Commune de Millau seeking, in essence, the same form of order.

5 On account of the connection between them, the two cases were joined.

6 In the first part of the judgment under appeal, the General Court examined the action brought by the Commission against SEMEA.

7 With regard to the admissibility of that action, the General Court declared, in paragraphs 47 to 49 of the judgment under appeal, that it had jurisdiction to hear the Commission's application pursuant to Article 272 TFEU and the first subparagraph of Article 256(1) TFEU, read in conjunction with Article 10 of the General Terms of the contract. The General Court rejected the plea of inadmissibility raised by SEMEA, alleging that, because of SEMEA's removal from the Commercial and Companies Register, that company had neither legal capacity nor standing to be party to legal proceedings when the action was brought.

8 So far as concerns the merits of the action, the General Court first of all, in paragraphs 61 to 68 of the judgment under appeal, classified the contract in question as being administrative in nature.

9 Next, the General Court held, in paragraphs 69 to 74 of that judgment, that SEMEA was required, pursuant to the rules on the recovery of sums overpaid under French law, to repay to the European Union the sum overpaid of EUR 41 012.

10 The General Court dismissed, in paragraphs 75 to 88 of the judgment under appeal, the objections put forward by SEMEA concerning, first, the waiver on the part of the Commission in respect of its claim for repayment of the sum owed, secondly, the fact that SEMEA was released from its debt when it was taken over by the Commune de Millau, thirdly, the disputed debt being time-barred and, fourthly, the disputed debt being extinguished.

11 Moreover, the General Court ordered SEMEA to pay default interest at the statutory rate applicable in France from 27 April 1993, with the capitalised amounts of that interest themselves generating interest from 15 April 2010 and at each annual due date thereafter.

12 Lastly, the General Court rejected the claim for compensation brought by the Commission.

13 With regard to the counterclaim brought by SEMEA, the General Court rejected it, having found, in paragraphs 108 and 109 of the judgment under appeal, that there was no direct causal link between the conduct of the Commission and the damage relied upon by the appellants.

14 In the second part of the judgment under appeal, the General Court examined the action brought by the Commission against the Commune de Millau. According to the Commune de Millau, that action should have been dismissed for having been brought before a court which did not have jurisdiction to hear it.

15 So far as concerns the question whether the General Court's jurisdiction could be founded on an arbitration clause concluded by SEMEA, the General Court pointed out, in paragraphs 114 to 119 of the judgment under appeal, that Article 272 TFEU had to be given a restrictive interpretation and that its jurisdiction to hear a case concerning a contract pursuant to an arbitration clause in that contract was determined, as a general rule, solely with regard to the provisions of Article 272 TFEU and the stipulations of the arbitration clause itself.

16 Having rejected the Commission's argument that the arbitration clause concluded by SEMEA had been transferred to the Commune de Millau as an ancillary part of the disputed debt, the General Court assessed, in paragraphs 132 to 149 of the judgment under appeal, whether the Commune de Millau could be subject to the arbitration clause by means of a stipulation for the benefit of a third party, made with SEMEA.

17 In that regard, the General Court first of all found, in paragraph 134 of the judgment under appeal, that the existence of an arbitration clause should be examined in the light of the general principles of contract law deriving from the legal orders of the Member States. Accordingly, the General Court stated that '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'.

18 Next, the General Court held, in paragraph 135 of the judgment under appeal, that the arbitration clause provided for in Article 10 of the General Terms of the contract could arise from the contract concluded between SEMEA and the Commune de Millau. On the one hand, Article 272 TFEU states that an arbitration clause must be contained in a contract concluded by or on behalf of the European Union. However, the Commune de Millau and the Commission have not concluded a contract or, therefore, an arbitration clause. In order to conclude that the Commission could rely on that arbitration clause against the Commune de Millau, the General Court considered that the stipulation for the benefit of a third party between SEMEA and the Commune de Millau could be regarded as a provision made on behalf of the European Union. On the other hand, it found that the jurisdiction of the General Court over disputes concerning a contract could not be founded against the wishes of the European Union, which would not, however, be the case with regard to an arbitration clause stipulated solely in favour of the European Union.

19 Lastly, the Court added, in paragraph 136 of the judgment under appeal, that the procedural nature of an arbitration clause did not preclude such a clause being stipulated in favour of a third party.

20 Having stated, in paragraph 138 of the judgment under appeal, that a provision in favour of a third party could result from an express agreement between the stipulator and the promissor seeking to confer a right on a third party, but that it could also arise from the purpose of the contract or the circumstances of the case, the General Court held, in paragraphs 139 to 141 of that judgment, in particular in the light of the elements of fact and law established by the minutes of the municipal council of the Commune de Millau of 18 December 2010, that the appellants wished to create a debt owed to the European Union by the Commune de Millau and that the Commune de Millau intended to be subject to the arbitration clause contained in Article 10 of the General Terms of the contract.

21 Thus, in paragraph 142 of the judgment under appeal, the General Court rejected the appellants' argument that the transfer of SEMEA's debt to the Commune de Millau would have had the effect of releasing SEMEA from that debt, when such a debt transfer would necessarily have required the European Union's consent, which is absent in the present case.

22 Moreover, in paragraph 148 of the judgment under appeal, the General Court stated that if there was a conflict between provisions of French law — namely, Article 2060 of the Civil Code and Article 48 of the Code of Civil Procedure — and Article 272 TFEU, Article 272 TFEU had to take precedence over any divergent national provisions.

23 The General Court concluded, in paragraph 149 of the judgment under appeal, that, pursuant to the arbitration clause, it had jurisdiction to adjudicate on the Commission's application against the Commune de Millau.

24 So far as concerns the merits of the action, the General Court found the claim against the Commune de Millau for repayment of the sum of EUR 41 012 and for payment of interest, itself bearing interest from 15 April 2010 — the first annual due date —, to be well founded.

25 Since the Commission is entitled to only one payment, the General Court held SEMEA and the Commune de Millau jointly and severally liable.

26 On the other hand, the General Court rejected the Commission's claim for compensation and dismissed the counterclaim of the Commune de Millau.

Procedure before the Court and forms of order sought

27 By their appeal, the appellants claim that the Court of Justice should:

— set aside the judgment under appeal;

— declare that the General Court has no jurisdiction to hear and determine the action brought against the Commune de Millau and declare inadmissible the action brought against SEMEA;

— in the alternative, dismiss the Commission's application;

— order the Commission to pay the Commune de Millau and SEMEA the sum of EUR 41 012, together with interest; and

— order the Commission to pay the costs.

28 The Commission contends that the Court should dismiss the appeal and order the appellants to pay the costs.

The appeal

The procedural validity of the appeal

29 The present appeal raises the question, as did the Advocate General in point 32 of her Opinion, whether the appeal has been validly brought on behalf of SEMEA.

30 It is apparent from the documents contained in the file submitted to the Court that, at the date on which the appeal was lodged — 19 November 2012 — the lawyers representing the Commune de Millau had not, contrary to Article 119(2) and Article 168(2) of the Rules of Procedure of the Court of Justice, lodged proof that their authority to act had been properly conferred by someone authorised for that purpose by SEMEA.

31 While, in a letter of 12 November 2012 addressed to Mr F. Bleykasten, Mr Blanc, as the *ad hoc* agent appointed to represent SEMEA, considered it appropriate that that company should join in the appeal brought by the Commune de Millau, he nevertheless acknowledged that his appointment as SEMEA's *ad hoc* agent had ended on 12 August 2012.

32 In accordance with Article 119(4) and Article 168(4) of the Rules of Procedure, the Registry of the Court requested, in October 2013, the lawyers acting for SEMEA to produce proof of their authority to act on behalf of SEMEA. By letter of 25 November 2013, the lawyers acting for SEMEA lodged at

the Court Registry an order of the competent Commercial Court of 5 November 2013 appointing Mr Blanc to act as SEMEA's *ad hoc* agent in the ongoing appeal proceedings before the Court of Justice.

33 As the Advocate General noted in points 40 to 44 of her Opinion, Article 119(4) and Article 168(4) of the Rules of Procedure should be interpreted as meaning that it is possible to remedy a failure to grant an authority to act on the date on which the appeal was lodged by means of an *ex post* submission of any document confirming the existence of that authority.

34 Consequently, even if the lawyers acting for SEMEA did not, at the date on which the present appeal was lodged, have authority to act on behalf of SEMEA, the fact remains that, following the appointment of Mr Blanc as *ad hoc* agent, he was validly empowered to confirm his intention that SEMEA join in the appeal brought by the Commune de Millau (see, to that effect, Joined Cases 193/87 and 194/87 *Maurissen and Union syndicale* v *Court of Auditors* EU:C:1989:185, paragraph 33).

35 It follows from the foregoing that the appeal was properly lodged on behalf of SEMEA.

Substance

36 In support of their appeal, the appellants put forward four grounds of appeal.

The first ground of appeal

– Arguments of the parties

37 By their first ground of appeal, the appellants submit that the General Court erred in law in holding that it had jurisdiction to hear the application brought against the Commune de Millau. The General Court wrongly considered that, pursuant to the stipulation for the benefit of a third party between SEMEA and the Commune de Millau, the Commune de Millau was subject to the arbitration clause provided for in Article 10 of the General Terms of the contract concluded between SEMEA and the Commission.

38 The appellants maintain, in the first place, that the national legislation applicable — in the present case Article 2060 of the Civil Code — prohibits public-law corporations from bringing a dispute before an arbitration tribunal. The appellants consider that a public-law corporation which cannot set up an arbitration clause may not, a fortiori, stipulate such a provision for the benefit of a third party, particularly since Article 272 TFEU does not provide for the possibility of such a stipulation.

39 In that regard, the appellants add that the General Court's reference, in paragraph 136 of the judgment under appeal, to the judgment in Case 201/82 *Gerling Konzern Speziale Kreditversicherung and Others* EU:C:1983:217, paragraphs 10 to 20, is not relevant to the present case, as that judgment was given in a specific context relating to an insurance contract. Moreover, on the basis of the principle of freedom of contract, the appellants state that, in so far as the Commission never expressly consented to the transfer of SEMEA's debt to the Commune de Millau, there has been no transfer of either that debt or the arbitration clause.

40 In the second place, the appellants criticise, in particular, paragraphs 137 to 140 of the judgment under appeal, in which the General Court found that the Commune de Millau's obligation to pay arises from the agreement between the Commune de Millau and SEMEA, since a stipulation for the benefit of a third party, namely, the European Union, may be inferred from that agreement. However, the

appellants dispute that such an agreement was concluded concerning the alleged debt to the Commission, as the Commune de Millau's decision to make good the shortfall in SEMEA's assets was a unilateral decision by that Commune.

41 In the third place, the appellants consider that the General Court, in paragraph 140 of the judgment under appeal, misread the resolution of 18 December 2010, by considering that the Commune de Millau had intended to take over 'in full knowledge of the facts' a debt the regime and content of which corresponded to those of SEMEA's debt. The decision of the municipal council of the Commune de Millau relating to SEMEA's assets and liabilities 'as set out above' contains a detailed description which makes no reference to the existence of an arbitration clause.

42 The Commission submits, first of all, that Article 10 of the General Terms of the contract must be regarded, in accordance with French law, as a clause conferring jurisdiction and not as an arbitration clause. Only an arbitration clause falls within the prohibition laid down in Article 2060 of the Civil Code.

43 Next, the Commission maintains that the General Court rightly considered that, in the present case, the criteria for a stipulation for the benefit of a third party had been met. The Commission adds that the scope of the judgment in *Gerling Konzern Speziale Kreditversicherung and Others* EU:C:1983:217 is not limited to insurance contracts.

44 The Commission considers, lastly, that the argument relating to the resolution of 18 December 2010 must be rejected as inadmissible, in so far as it concerns a question of pure fact.

– Findings of the Court

45 So far as concerns the first part of the first ground of appeal, the appellants dispute the very fact that an arbitration clause, within the meaning of Article 272 TFEU, can be the subject of a stipulation for the benefit of a third party. In that regard, they refer to their arguments put forward at first instance relating to the prohibition on public-law corporations governed by French law entering into an arbitration clause, submitting that that prohibition must apply, a fortiori, to the stipulation of such a clause for the benefit of a third party.

46 It follows from the foregoing that the appellants are merely developing a line of argument already put forward before the General Court, without, however, stating their views on the reasons given by the General Court for rejecting it.

47 It follows from Article 256 TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 112(1)(c) of the Rules of Procedure that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside, and also the legal arguments specifically advanced in support of the appeal (see, inter alia, Case C-352/98 P *Bergaderm and Goupil* v *Commission* EU:C:2000:361, paragraph 34; Case C-41/00 P *Interporc* v *Commission* EU:C:2003:125, paragraph 15; and Case C-131/03 P *Reynolds Tobacco and Others* v *Commission* EU:C:2006:541, paragraph 49).

48 Thus, where an appeal merely repeats or reproduces verbatim the pleas in law and arguments previously submitted to the General Court, including those based on facts expressly rejected by that Court, it fails to satisfy the requirements to state reasons under those provisions (see, inter alia, *Interporc* v *Commission* EU:C:2003:125, paragraph 16). Such an appeal amounts in reality to no more than a request for re-examination of the application submitted to the General Court, which the Court of Justice does not have jurisdiction to undertake (see, inter alia, *Reynolds Tobacco and Others* v *Commission* EU:C:2006:541, paragraph 50).

49 Accordingly, that argument must be rejected as inadmissible.

50 As regards the reference made to the judgment in *Gerling Konzern Speziale Kreditversicherung and Others* EU:C:1983:217 in paragraph 136 of the judgment under appeal, it should be noted that the General Court cited that judgment to point out that 'the procedural nature of an arbitration clause does not preclude such a clause being stipulated in favour of the third party'.

51 It is sufficient to note that paragraph 136 of the judgment under appeal contains a ground that was included for the sake of completeness which supports the conclusion to which the General Court came in paragraphs 134 and 135 of that judgment, namely that a clause conferring jurisdiction may be the subject of a stipulation for the benefit of a third party.

52 In so far as the appellants' argument relating to the judgment in *Gerling Konzern Speziale Kreditversicherung and Others* EU:C:1983:217 cannot therefore call into question the General Court's finding, that argument must be rejected as ineffective.

53 The argument concerning the principle of freedom of contract, according to which, in the absence of express consent from the Commission, there was no transfer of either the disputed debt or the arbitration clause relating thereto, must also be rejected. The appellants merely reproduce their argument put forward at first instance, without specifying in what way the General Court was wrong to find, in paragraphs 142 and 143 of the judgment under appeal, that the Commission's express consent was not necessary, in so far as the arbitration clause was stipulated in favour of the European Union.

54 As regards the second part of the first ground of appeal, it is sufficient to note that the appellants, while pointing out certain elements of fact, essentially dispute the assessment made by the General Court, in paragraphs 137 to 140 of the judgment under appeal, of the facts of the case in order to determine whether a stipulation for the benefit of a third party may be inferred from the purpose of the contract at issue.

55 According to Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice, there is a right of appeal on points of law only and it must be based on grounds alleging lack of competence of the General Court, a breach of procedure before it which adversely affects the interests of the appellant and the infringement of EU law by the General Court (see, to that effect, Case C-136/92 P *Commission* v *Brazzelli Lualdi and Others* EU:C:1994:211, paragraph 47).

56 The General Court therefore has exclusive jurisdiction to establish the facts except where the substantive inaccuracy of its findings is apparent from the documents submitted to it, and to assess the evidence accepted. The establishment of those facts and the assessment of that evidence do not, save where the clear sense of the evidence has been distorted, constitute a point of law which is subject as such to review by the Court of Justice (see, to that effect, inter alia, Case C-449/99 P *EIB* v *Hautem* EU:C:2001:502, paragraph 44, and Case C-105/04 P *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied* v *Commission* EU:C:2006:592, paragraphs 69 and 70).

57 The assessment of the facts carried out by the General Court, leading to the conclusion that the Commune de Millau was under an obligation to pay, does not therefore constitute a point of law which is subject to review by the Court of Justice, save where the facts are distorted, which has not, however, been alleged by the appellants.

58 The second part of the first ground of appeal must therefore be declared inadmissible.

59 So far as concerns the third part of the first ground of appeal, the appellants maintain that the General Court misread, in paragraph 141 of the judgment under appeal, the resolution of 18 December 2010 in determining the extent to which the Commune de Millau agreed to take over SEMEA's debt to the Commission.

60 It must be found that the appellants are merely challenging the actual assessment made by the General Court as to the extent of SEMEA's liabilities taken over by the Commune de Millau. Their allegation does not relate to any substantive inaccuracy of the findings or to any distortion of the clear sense of the evidence submitted.

61 In accordance with the case-law cited in paragraphs 55 and 56 above, the third part of the first ground of appeal must also be rejected as inadmissible.

62 It follows from all the foregoing that the first ground of appeal must be rejected as being in part ineffective and in part inadmissible.

The second ground of appeal

– Arguments of the parties

63 By their second ground of appeal, the appellants submit that the General Court erred in law in finding the action brought by the Commission against SEMEA to be admissible. The General Court wrongly considered that, first, SEMEA's company rights and obligations remained unsettled and, secondly, SEMEA had not been released from its debts to the Commission following the transfer of its assets and liabilities to the Commune de Millau since the Commission had not consented to the takeover of the disputed debt by the Commune de Millau.

64 According to the appellants, since the Commune de Millau had fully succeeded SEMEA, SEMEA could conclude the liquidation process. SEMEA had been validly released from its obligations to the Commission, whose consent was not necessary given that the substitution of a solvent legal entity was favourable to it.

65 The Commission submits that the second ground of appeal is inadmissible in that it lacks clarity. In the alternative, the Commission considers that the second ground of appeal should be dismissed as manifestly unfounded.

– Findings of the Court

66 It should be noted that, by their second ground of appeal, the appellants maintain that the Commune de Millau succeeded SEMEA. In doing so, they agree, in fact, with the General Court's reasoning in paragraphs 138 to 140 of the judgment under appeal, according to which it is apparent from the facts of the case that, by means of a stipulation for the benefit of a third party, the actual or potential creditors of SEMEA — including, in particular, the Commission — found that the Commune de Millau had been substituted as a new debtor.

67 It should be borne in mind that the appellants' complaints in respect of the judgment under appeal are limited to the General Court's assessment of the facts, without indicating precisely in what way the General Court allegedly erred in law in that regard, or the legal arguments relied on in support of that second ground of appeal. In accordance with the case-law cited in paragraphs 47 and 48 above, the second ground of appeal must be declared inadmissible.

68 In addition, it must be found that that second ground of appeal essentially echoes the appellants' arguments developed in connection with their first ground of appeal, but which had the effect of denying the existence of any agreement between SEMEA and the Commune de Millau concerning the alleged debt to the Commission.

69 Therefore, and in so far as the appellants contradict their own legal arguments, the second ground of appeal must be rejected as inadmissible (see, to that effect, order in Case C-495/06 P *Nijs* v *Court of Auditors* EU:C:2007:644, paragraphs 52 to 56).

The third ground of appeal

– Arguments of the parties

70 By their third ground of appeal, the appellants complain that the General Court erred in law in holding that the general 30-year limitation period was applicable and that the disputed debt was not therefore time-barred.

71 The appellants note, first, that, having taken over SEMEA's assets and liabilities, the Commune de Millau was entitled to rely on the same legal arguments against the Commission as those that SEMEA could have raised, including arguments relating to the 10-year limitation period for obligations laid down in the Commercial Code in the version in force at the material time ('the Commercial Code'). Secondly, in so far as SEMEA was a semi-public company of a commercial nature, the disputed debt arose in the context of a commercial relationship between SEMEA, a trader, and the Commission, a non-trader.

72 In the first place, the appellants maintain that the limitation period in respect of obligations does not depend on the administrative nature of the contract. In the absence of specific administrative law rules, the general rules relating to limitation periods must be applied. As the 10-year limitation period laid down in the Commercial Code is a special law which prevails over civil law rules, it must be applied to the commercial relationship at issue in the present case.

73 With regard to the judgment of the Conseil d'État of 31 July 1992 (No 69661), the appellants note that the administrative courts did not decide against applying the 10-year limitation period laid down in the Commercial Code because it is inapplicable as between a public-law corporation and a trader, but rather because the disputed obligations did not arise in the course of trade between the parties in question. Consequently, the nature of the contract at issue would not be such as to preclude the application of the 10-year limitation period laid down in the Commercial Code.

74 In the second place, the appellants argue that the General Court erred in its assessment of the provisions of the contract and the facts of the case in holding that the disputed debt could not be regarded as having arisen in the context of a commercial relationship between SEMEA and the Commission.

75 In that regard, the appellants state that the judgment of the Conseil d'État of 31 July 1992 was delivered in the entirely different context of agricultural refunds established within the framework of the common agricultural policy and cannot be applied to the present case. In the light of the contractual stipulations, the Commission is directly involved in the project at issue and has control of the work, so that it must be concluded that there is a commercial relationship between SEMEA and the Commission.

76 The Commission submits that the first part of the third ground of appeal must be rejected as inadmissible or, at least, as unfounded, in so far as it is based on an erroneous reading of the judgment under appeal. The Commission maintains that the General Court in no way based its reasoning concerning the limitation period in respect of the disputed debt on the administrative nature of the contract at issue.

77 So far as concerns the second part of the third ground of appeal, the Commission submits that the General Court rightly referred to the judgment of the Conseil d'État of 31 July 1992 in order to illustrate the principle that a contract for the payment of public financial assistance in the context of the performance of a public service, without profit or consideration, cannot be regarded as a commercial act, and the 10-year limitation period under Article 110-4 of the Commercial Code cannot therefore be applied thereto.

– Findings of the Court

78 As regards, in the first place, the appellants' argument that the administrative nature of the contract is irrelevant for the purpose of determining the limitation period applicable to the disputed debt, it must be stated that the General Court analysed the rules applicable to that contract in paragraphs 61 to 68 of the judgment under appeal, and found it to be administrative in nature.

79 Yet, in examining the limitation period applicable to the disputed debt in paragraphs 82 to 88 of the judgment under appeal, the General Court made no reference to the administrative nature of the contract at issue.

80 In so far as the administrative nature of that contract was irrelevant for the purpose of determining the limitation period applicable to the disputed debt, the argument in that regard must be rejected as ineffective.

81 In the second place, so far as concerns the criticism that the General Court erred in its assessment of the provisions of the contract at issue and the facts of the case, it must be noted that the General Court recalled, in paragraph 83 of the judgment under appeal, that the contract at issue related to the payment of a grant, by the Commission, for the performance of a contract under the European Union's regional policy.

82 The General Court inferred, on the basis of the judgment of the Conseil d'État of 31 July 1992, that 'the obligations deriving from it, including the disputed debt, cannot be regarded as having arisen between the Commission and SEMEA during trade'.

83 It follows from the foregoing that, in order to decide against applying the limitation period laid down in the Commercial Code, the General Court relied not on the fact that the contract bound a public-law corporation and a trader, contrary to what the appellants maintain, but on the fact that the contract at issue concerned the payment of a grant, by the Commission, for the performance of a contract under the European Union's regional policy.

84 Moreover, the appellants' argument that the context of the present case was entirely different to that in the case which gave rise to the judgment of the Conseil d'État of 31 July 1992 cannot be upheld. The disputed claim for repayment concerned the sums that the Commission had paid in the context of a regional policy and which could not be considered to be the result of obligations arising between the appellants and the Commission in the course of trade.

85 It follows from the foregoing that the third ground of appeal must be rejected as being in part ineffective and in part unfounded.

The fourth ground of appeal

– Arguments of the parties

86 By their fourth ground of appeal, the appellants criticise the General Court for having dismissed their counterclaim, finding that there was no direct causal link between the conduct of the Commission and the damage claimed by the appellants.

87 The appellants note that, between 27 April 1993 and 18 November 2005, the Commission did nothing to recover the sums it considered due. If the Commission had made contact with SEMEA earlier, SEMEA could have investigated and, if necessary, taken further action in respect of the claim for repayment.

88 The appellants maintain that the Commission's failure to act for a period of 12 years led SEMEA to consider that the Commission had waived repayment of the sums paid.

89 According to the appellants, such a failure to act amounts to an infringement of the Commission's duty of good administration within the meaning of Article 41(1) of the Charter of Fundamental Rights of the European Union, which should have been censured by the General Court.

90 The Commission submits that the fourth ground of appeal is inadmissible, in so far as it is intended to challenge the General Court's assessment of the facts.

– Findings of the Court

91 With regard to the appellants' argument relating to the Commission allegedly waiving repayment of the sums paid, it should be borne in mind that the General Court found, in paragraph 77 of the judgment under appeal, that the evidence in the file does not prove the existence of such a waiver.

92 Therefore, by that argument, the appellants are in fact disputing the General Court's assessment of the evidence in the file. Consequently, in accordance with the case-law cited in paragraphs 55 and 56 above, that argument must be rejected as inadmissible.

93 In so far as the appellants submit that the Commission has infringed its duty of good administration, it is not disputed that although the Commission requested repayment of the disputed debt by letter of 27 April 1993 — in respect of which SEMEA took no action — the Commission only made contact with SEMEA again by registered letter of 18 November 2005, the debit note only being sent by letter of 11 January 2006.

94 That is not sufficient, however, to call into question the findings made in paragraphs 108 and 109 of the judgment under appeal, according to which there was no direct causal link between the conduct of the Commission and the damage relied upon by the appellants with regard to the sum of EUR 41 012.

95 The General Court was therefore right to find that the claim for payment of the debt in the amount of EUR 41 012 concerned the recovery of sums overpaid and that, since that debt was not time-barred, SEMEA remained obliged to pay it in any event. In so far as the two actions are based on different pleas in law, the amount of the disputed debt was payable, even if the Commission were found to be non-contractually liable by virtue of the infringement of its duty of good administration.

96 On the other hand, so far as concerns default interest, it should be borne in mind that it is settled case-law that the non-contractual liability of the European Union and the exercise of the right to compensation for damage suffered under Article 340 TFEU depend on the satisfaction of a number of

conditions relating to the unlawfulness of the conduct of which the institutions are accused, the fact of damage and the existence of a causal link between that conduct and the damage complained of (see, inter alia, Case 26/81 *Oleifici Mediterranei* v *EEC* EU:C:1982:318, paragraph 16; Joined Cases 256/80, 257/80, 265/80, 267/80, 5/81, 51/81 and 282/82 *Birra Wührer and Others* v *Council and Commission* EU:C:1984:341, paragraph 9; and Case C-460/09 P *Inalca and Cremonini* v *Commission* EU:C:2013:111, paragraph 46).

97 With regard to the unlawful conduct of which the institution in question is accused, it should be borne in mind that, in accordance with the general principle of good administration, which is included among the guarantees conferred by the EU legal order in administrative proceedings and which is now enshrined in Article 41(1) of the Charter of Fundamental Rights of the European Union, it is for EU institutions to conduct recovery procedures with due diligence and to ensure that each procedural step is taken within a reasonable time following the previous step.

98 It is not disputed that, having requested repayment of the disputed debt by letter of 27 April 1993, the Commission took no action for more than 12 years, only making contact by registered letter of 18 November 2005.

99 In addition, such a failure to act cannot be justified by either the complexity of the case or other specific circumstances such as would justify that delay.

100 In those circumstances, the General Court was wrong to find, in paragraph 108 of the judgment under appeal, that there is no direct causal link between the conduct of the Commission and the damage relied upon.

101 As for whether there is damage, it is true that interest began to accrue by virtue of the fact that SEMEA did not immediately take action following the Commission’s claim for repayment of 27 April 1993.

102 However, the Commission’s failure to act for more than 12 years has, as the Advocate General noted in point 89 of her Opinion, resulted in the amount of default interest claimed now exceeding the disputed debt.

103 In accordance with point 90 of the Advocate General’s Opinion, it must be found that the default interest accrued during the period of the Commission’s inactivity of more than 12 years is directly attributable to the Commission’s conduct.

104 It follows from the foregoing that the judgment under appeal must be set aside in so far as it found, in the assessment of the counterclaim brought by the appellants, that there was no direct causal link between the conduct of the Commission and the damage allegedly sustained as a result of the order for payment of default interest.

The action before the General Court

105 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice, if the decision of the General Court is set aside the Court of Justice may give final judgment in the matter, where the state of the proceedings so permits. That is so in the present case.

106 In the light of the specific characteristics of the present case, judgment must be given on the counterclaim brought by the appellants pursuant to the order for payment of default interest.

107 It is apparent from paragraphs 97 to 104 above that the damage consisting in the default interest accrued in respect of the Commission's period of inactivity for more than 12 years is directly attributable to the Commission's wrongful conduct.

108 Nevertheless, the Court considers that the debt in the amount of EUR 41 012 which SEMEA ought to have repaid to the Commission was not time-barred on 18 November 2005, namely the date on which the Commission requested repayment.

109 The counterclaim brought by the appellants must therefore be upheld in part, and the Commission ordered to pay three quarters of the amount of default interest at the annual statutory rate applied in France that is due in respect of the period from 27 April 1993 to 18 November 2005.

Costs

110 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to the costs.

111 Under Article 138(1) of those rules, which apply to the procedure on appeal by virtue of Article 184(1) of those rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Article 138(3) of those rules states that where each party succeeds on some and fails on other heads, the parties are to bear their own costs. However, Article 138(3) also provides that if it appears justified in the circumstances of the case, the Court may order that one party, in addition to bearing its own costs, pay a proportion of the costs of the other party.

112 In the present case, the Court considers that the Commission must be ordered, in addition to bearing its own costs at first instance and on appeal, to pay one quarter of the costs incurred by the Commune de Millau and SEMEA in both sets of proceedings. The Commune de Millau and SEMEA must bear three quarters of their own costs incurred at first instance and on appeal.

On those grounds, the Court (First Chamber) hereby:

1. **Sets aside the judgment of the General Court of the European Union in Joined Cases T-168/10 and T-572/10 *Commission* v *SEMEA and Commune de Millau*, in so far as it found, in the assessment of the counterclaim brought by the Commune de Millau and the Société d'économie mixte d'équipement de l'Aveyron (SEMEA), that there is no direct causal link between the conduct of the European Commission and the damage allegedly sustained as a result of the order for payment of default interest;**

2. **Upholds in part the counterclaim brought by the Commune de Millau and the Société d'économie mixte d'équipement de l'Aveyron (SEMEA) and orders the European Commission to pay three quarters of the amount of default interest at the annual statutory rate applied in France that is due in respect of the period from 27 April 1993 to 18 November 2005;**

3. **Dismisses the appeal as to the remainder;**

4. **Orders the European Commission, in addition to bearing its own costs at first instance and on appeal, to pay one quarter of the costs incurred by the Commune de Millau and by the Société d'économie mixte d'équipement de l'Aveyron (SEMEA) in both sets of proceedings;**

5. Orders the Commune de Millau and the Société d'économie mixte d'équipement de l'Aveyron (SEMEA) to bear three quarters of their own costs incurred at first instance and on appeal.

[Signatures]