



Reports of Cases

OPINION OF ADVOCATE GENERAL
MENGOZZI
delivered on 18 June 2015¹

Case C-33/14 P

**Mory SA, in liquidation
Mory Team, in liquidation
Superga Invest
v**

European Commission

(Appeal — State aid — Action for annulment — Unlawful and incompatible aid — Recovery obligation — Economic continuity — Sui generis decision — Admissibility — Interest in bringing proceedings — Action before the national courts — Locus standi)

1. By the present appeal, Mory SA, Mory Team and Superga Invest (together, ‘the appellants’) seek to have set aside the order of the General Court of the European Union in *Mory and Others v Commission*² (‘the order under appeal’), by which that court dismissed as inadmissible on the ground of a lack of interest in bringing proceedings their action for the annulment of the Decision of the European Commission of 4 April 2012 concerning the takeover of assets of the Sernam group as part of its composition with creditors³ (‘the decision at issue’).

2. The present case arises in connection with the attempt to restructure the Sernam group, active in the market for express parcel and pallet delivery services, a matter which has given rise to several decisions by the Commission concerning the State aid granted to that group. The decision at issue is the fourth, and final, of those decisions. In that decision, classified by the Commission as ‘*sui generis*’, that institution, at the request of the French Government, found that there was no economic continuity between the Sernam group and the purchasers of its assets and informed that Government that there was no need to extend to those purchasers the recovery of unlawful and incompatible aid granted to the Sernam group. The appellants, who present themselves as having been direct competitors of that group, challenged that decision before the General Court. However, in the meantime, like the Sernam group, they have been placed in liquidation, which has raised the question of their interest in bringing proceedings before the General Court.

3. In short, this case raises several important questions concerning, first, the interest in bringing proceedings and in particular its relationship with *locus standi* and the conditions necessary for a party to have such an interest because proceedings have been brought before the national courts and, secondly, the conditions of admissibility for challenging decisions adopted by the Commission concerning economic continuity between the beneficiary of aid and the purchaser of some of the beneficiary’s assets.

¹ — Original language: French.

² — T-545/12, EU:T:2013:607.

³ — C(2012) 2401 final.

I – Background to the dispute

4. By decision adopted on 23 May 2001⁴ ('the Sernam 1 decision'), the Commission approved, under certain conditions, restructuring aid in favour of the Sernam group in the total amount of EUR 503 million.

5. By a second decision adopted in 2004⁵ ('the Sernam 2 decision'), the Commission found that some of the conditions imposed by the Sernam 1 decision had not been complied with, which had resulted in misuse of the authorised aid. In that context, first, the Commission declared that, subject to compliance with new conditions, the EUR 503 million in aid approved by the Sernam 1 decision was compatible with the internal market and, secondly, it found that there was EUR 41 million additional aid that was incompatible with the internal market and therefore had to be recovered by the French authorities.

6. Following complaints by competitors, including a company in the Mory group, which submitted that the Sernam 2 decision had been applied incorrectly, the Commission, by letter of 16 July 2008,⁶ informed the French Republic of its decision to initiate the procedure provided for in Article 108(2) TFEU regarding the application by the French Republic of the Sernam 2 decision.

7. On 27 June 2011, Mory SA and Mory Team ('the Mory companies') were placed into receivership by the tribunal de commerce de Bobigny (Commercial Court, Bobigny). In January and February 2012, the companies forming the Sernam group were also placed into receivership.

8. On 9 March 2012, the Commission adopted a third decision⁷ ('the Sernam 3 decision'). In that decision, the Commission found that State aid totalling EUR 503 million authorised by the Sernam 2 decision had been misused and that the Sernam group had benefited from that aid, in addition to State aid amounting to EUR 41 million and other State aid that was incompatible with the common market. In accordance with Article 2 of the enacting terms of that decision, the French Republic was to recover all such aid from the Sernam group.

9. On the same day, two takeover bids were sent to the insolvency administrator of the Sernam group, the first from Geodis Calberson ('Calberson'), the subsidiary of the Geodis group ('Geodis'), which was active in the mail services sector, and the second from BMV. Calberson's takeover bid was subject to the condition that 'no liability to repay all or part of the unlawful aid paid to Sernam may be transferred with the assets purchased or as a result of the purchase, or be imposed on the purchaser'. The bid submitted by BMV did not contain such a condition, but was presented as being inseparable from the bid submitted by Calberson and would lapse if the bid by Calberson was rejected.

10. On 23 March 2012, the French authorities requested that the Commission confirm that the obligation to repay the State aid imposed on the Sernam group by the Sernam 3 decision would not be extended to Geodis and BMV in the event of their takeover of part of the assets of the Sernam group as part of the court supervised administration.

4 — Decision concerning State aid NN 122/2000 (ex NJ 140/2000) (OJ 2001 C 268, p. 15).

5 — Decision 2006/367/EC of 20 October 2004 on the State aid partly implemented by France for the 'Sernam' company (OJ 2006 L 140, p. 1).

6 — Decision to initiate the procedure published in OJ 2009 C 4, p. 5.

7 — Decision 2012/398/EU on State aid SA.12522 (C-37/08) — France — Enforcing the Sernam 2 decision (OJ 2012 L 195, p. 19). That decision is the subject of an action for annulment brought by SNCF that is pending before the General Court (order in *SNCF v Commission*, T-242/12, EU:T:2014:313).

11. On 4 April 2012, the Commission adopted the decision at issue. It classified the decision as *sui generis* in accordance with the power conferred on the Commission to review State aid provided for in Article 108 TFEU and the obligation of sincere cooperation with Member States laid down in Article 4(3) TEU.⁸ It specified that that decision concerned only the subject-matter of the notification received and not whether or not the investment concerning the takeover of certain assets of the Sernam group was reasonable, and that it did not prejudice the assessment of those investments in light of Article 107 TFEU.⁹ Following the analysis of various factors, the Commission found that there was no economic continuity between the Sernam group and the purchasers of a part of its assets, Geodis and BMV. It therefore informed the French Republic that, in the light of that analysis and taking account of its commitments, there was no need to extend to Geodis and BMV the recovery of the State aid declared unlawful and incompatible in the Sernam 3 decision and from which the Sernam group had benefited.¹⁰

12. On 13 April 2012, the tribunal de commerce de Nanterre (Commercial Court, Nanterre) approved the takeover bids submitted by Calberson and BMV and ordered the transfer to those companies of certain assets of the Sernam group, to become effective on 7 May 2012.

13. On 10 July 2012, the Mory companies were placed into compulsory liquidation by the tribunal de commerce de Bobigny.

II – The procedure before the General Court and the order under appeal

14. By application lodged at the Registry of the General Court on 17 December 2012, the appellants brought an action for the annulment of the decision at issue.

15. By the order under appeal, the General Court dismissed the action as inadmissible on the ground of the appellants' lack of interest in bringing proceedings.

16. Having noted that, according to case-law, it is the applicant itself which must prove that it has an interest in making its application, the General Court found that none of the four arguments put forward by the appellants was such as to establish that they had an interest in bringing proceedings.¹¹ In the first place, the General Court rejected the appellants' argument that the fact that one of them had the status of an interested party during the administrative procedure which led to the adoption of the Sernam 3 decision and personally participated in that procedure established their interest in bringing proceedings against the decision at issue.¹² In the second place, the General Court rejected the argument that the appellants' interest in bringing proceedings was established by the two actions they had brought before the French courts, one for recovery of the State aid granted to the Sernam group and the other for damages.¹³ In the third place, the General Court rejected the argument that the appellants' interest in bringing proceedings was established by the fact that Superga Invest, as the main shareholder of Mory, was directly affected by the threats to competition suffered by Mory.¹⁴ Lastly, in the fourth place, the General Court rejected the argument that, by the decision at issue, the Commission had implicitly ruled out the possibility of initiating a formal investigation procedure, thus depriving the appellants of the benefit of the procedural right to intervene in order to submit their observations.¹⁵

8 — Paragraph 51 of the decision at issue.

9 — Paragraph 54 of the decision at issue.

10 — See paragraph 114 and part V, entitled 'Conclusion', of the decision at issue.

11 — Paragraphs 26 to 28 of the order under appeal.

12 — Paragraphs 29 to 35 of the order under appeal. In that order, the General Court refers to the Sernam 2 decision but in fact the appellants' argument was based on participation in the administrative procedure that led to the adoption of the Sernam 3 decision.

13 — Paragraphs 36 to 51 of the order under appeal.

14 — Paragraphs 52 to 54 of the order under appeal.

15 — Paragraphs 55 to 58 of the order under appeal.

17. As a result, the General Court concluded that, since the appellants had not established their interest in bringing proceedings against the decision at issue, their action had to be declared inadmissible.

III – The procedure before the Court of Justice and the forms of order sought

18. By their appeal, the appellants claim that the Court should:

- set aside the order under appeal;
- refer the case back to the General Court for an examination of the substance; and
- reserve the costs.

19. The Commission contends that the appeal should be dismissed and the appellants ordered to pay the costs.

20. By document lodged at the Court Registry on 19 May 2014, Calberson SAS applied, under the second paragraph of Article 40 of the Statute of the Court of Justice, for leave to intervene in the present case in support of the forms of order sought by the Commission. That application was dismissed by order of the President of the Court of 27 February 2015.

IV – Analysis

21. In support of their appeal, the appellants raise two grounds of appeal: the first alleges that the General Court erred in law when examining their interest in bringing proceedings for the annulment of the decision at issue; the second alleges infringement of the fourth paragraph of Article 263 TFEU, in that the General Court failed to consider whether they were directly and individually concerned by that decision.

A – Preliminary observations: the relationship between locus standi and an interest in bringing proceedings

22. Before examining the two grounds of appeal raised by the appellants, it is first necessary to analyse the argument which they put forward as a preliminary issue, namely that there is no dividing line between the concept of an interest in bringing proceedings, on the one hand, and that of direct and individual concern (namely, *locus standi*), on the other, since those concepts coincide fully. According to the appellants, in considering that those concepts are separate, the General Court infringed the fourth paragraph of Article 263 TFEU. Demonstrating that a person is directly and individually concerned is sufficient in itself to establish that his action is admissible.

23. That argument cannot succeed. It is clearly at odds with both the purpose of those concepts and the settled case-law, from which it is clear that *locus standi* and an interest in bringing proceedings are two separate conditions of admissibility that are analysed separately by the EU courts.¹⁶

16 — See, for example, judgments in *France and Others v Commission* (C-68/94 and C-30/95, EU:C:1998:148, paragraphs 48 to 58 and 74) and *Stichting Woonpunt and Others v Commission* (C-132/12 P, EU:C:2014:100, paragraphs 26 to 31, 42 to 64 and 67 to 75).

24. Accordingly, *locus standi* is the condition of admissibility on the basis of which it is possible to identify, from among all natural or legal persons, those persons who are entitled to bring an action for annulment of a European Union act. The possibility of challenging a European Union act in the courts is not open to everyone without distinction. It is open solely to those who are able to demonstrate that they are in a particular situation in relation to the European Union act whose lawfulness they wish to challenge. It is that particular situation that entitles them to seek from the EU courts effective judicial protection in relation to that act.

25. The fourth paragraph of Article 263 TFEU lays down the conditions under which a natural or legal person may bring an action for the annulment of a European Union act. Thus, in accordance with that provision, the following are in a particular situation which entitles them to bring such an action: first, natural or legal persons to whom the act at issue is addressed; secondly, persons to whom the act is of a direct and individual concern; and thirdly, persons to whom a regulatory act which does not entail implementing measures is of direct concern.¹⁷

26. An interest in bringing proceedings, on the other hand, while also being a condition of admissibility concerning the applicant, constitutes a different requirement.

27. Contrary to the appellants' submissions, even if the person who challenges the lawfulness of a European Union act before the EU courts has *locus standi*, that fact is not necessarily sufficient to ensure that his action will be admissible. In order for him to be able to bring an action for annulment before the EU courts, the applicant must also have an interest in bringing proceedings, namely an interest in having the contested measure annulled.

28. In accordance with case-law, such an interest presupposes that the annulment of the contested measure must of itself be capable of having legal consequences and that the action must be likely, if successful, to procure an advantage for the party who brought it.¹⁸ Therefore, in order for his action to be considered admissible, not only must the applicant be in a particular situation in relation to the act whose lawfulness he intends to challenge, but also the annulment of that act must have positive effects on his legal position. The interest that the applicant must have need not necessarily be characterised in terms of an economic interest or advantage. It may also relate to a requirement or a need for judicial protection.¹⁹ It is that requirement or need that justifies the possibility of bringing proceedings before the EU courts. If the applicant can derive no benefit from the fact that his action may be upheld, bringing proceedings before the court cannot be justified. Therefore, it is in order to ensure the proper administration of justice, by preventing the EU courts from having to deal with purely hypothetical questions, the answer to which is not capable of giving rise to legal consequences or of procuring an advantage for the applicant, that any person bringing legal proceedings must, irrespective of the legal remedy chosen, have an interest in bringing proceedings.²⁰

17 — See judgments in *Inuit Tapiriit Kanatami and Others v Parliament and Council* (C-583/11 P, EU:C:2013:625, paragraph 57) and *Telefónica v Commission* (C-274/12 P, EU:C:2013:852, paragraph 19).

18 — See, in particular, judgments in *ACEA v Commission* (C-319/09 P, EU:C:2011:857, paragraph 67) and *Stichting Woonlinie and Others v Commission* (C-133/12 P, EU:C:2014:105, paragraph 54).

19 — Such a characterisation of the interest in bringing proceedings is confirmed, on the one hand, in the wording of certain official languages of the European Union, such as German, which designates the interest in bringing proceedings by the term 'Rechtsschutzbedürfnis' or 'Rechtsschutzinteresse' (literally 'need' or 'interest in judicial protection') and, on the other hand, in the case-law of the Court, which refers to 'a vested and current interest requiring judicial protection' (see judgment in *Planet v Commission*, C-564/13 P, EU:C:2015:124, paragraphs 28 and 34).

20 — That view of the purpose of the condition requiring an interest in bringing proceedings is reflected in the wording used on many occasions by the General Court in its case-law, to the effect that the interest in bringing proceedings must exist in the interests of the proper administration of justice. That objective has been mentioned on several occasions in the case-law of the General Court. See, inter alia, judgment in *Lior v Commission and Commission v Lior* (T-192/01 and T-245/04, EU:T:2009:365, paragraph 247) and order in *Talanton v Commission* (T-165/13, EU:T:2014:1027, paragraph 34).

29. An interest in bringing proceedings, which is described in the case-law as an essential and fundamental prerequisite for any legal proceedings,²¹ must, in the light of the purpose of the action, exist at the stage of lodging the action, failing which the action will be inadmissible²² and must, on that date, be vested and current.²³ Accordingly, it cannot be assessed on the basis of a future, hypothetical event.²⁴ Moreover, the interest must continue until the final decision, failing which there will be no need to adjudicate.²⁵ Finally, as the General Court rightly observed in paragraph 27 of the order under appeal, it is the applicant who must prove that he has an interest in bringing proceedings.

30. It follows from the above considerations that, contrary to the appellants' submissions, in EU law, *locus standi* and an interest in bringing proceedings are two separate conditions of admissibility.²⁶ Moreover, that conclusion is confirmed by the fact that, in some cases, the EU courts have acknowledged that an applicant has *locus standi* but have declined to accept that the applicant has an interest in bringing proceedings.²⁷

B – The first ground of appeal, alleging errors in the examination of the appellants' interest in bringing proceedings

31. By the first ground of appeal, the appellants claim that the General Court erred by not finding that they had an interest in bringing proceedings against the decision at issue. That ground of appeal is divided into four parts, each relates to which one of the four arguments — set out in point 16 above — put forward by the appellants before the General Court in support of their claim that they have an interest in bringing proceedings, which was rejected by the General Court in the order under appeal.

32. While in the first and fourth parts, the appellants confuse arguments concerning *locus standi* and the interest in bringing proceedings, and the third part is put forward in the alternative to the other parts, it is in the second part, concerning the possibility of basing the interest in bringing proceedings on two actions that they have brought before the national courts, that the appellants' arguments concern solely their interest in bringing proceedings. I therefore consider it appropriate to analyse the second part of the first ground of appeal first of all.

21 — Order in *S. v Commission* (206/89 R, EU:C:1989:333, paragraph 8).

22 — Judgment in *Cañas v Commission* (C-269/12 P, EU:C:2013:415, paragraph 15 and the case-law cited).

23 — See, inter alia, judgment in *Planet v Commission* (C-564/13 P, EU:C:2015:124, paragraph 34).

24 — See judgments in *Stroghili v Court of Auditors* (204/85, EU:C:1987:21, paragraph 11); *Commission v Koninklijke FrieslandCampina* (C-519/07 P, EU:C:2009:556, paragraph 65), and *Planet v Commission* (C-564/13 P, EU:C:2015:124, paragraph 36) as well as the order in *Commission v Provincia di Imperia* (C-183/08 P, EU:C:2009:136, paragraph 26).

25 — Judgment in *Cañas v Commission* (C-269/12 P, EU:C:2013:415, paragraph 15 and the case-law cited).

26 — There is no denying, however, that there may be points where the two concepts meet, in particular in relation to the condition of requiring that the act in question be of direct concern, as defined by case-law.

27 — See, for example, judgment in *Société pour l'exportation des Sucres v Commission* (88/76, EU:C:1977:61, paragraphs 13 to 19). In some cases, the EU courts have found that, under certain conditions, an action against a Commission decision classifying aid as entirely compatible with the common market brought by the beneficiary of aid, who is therefore directly and individually concerned by that decision, is inadmissible for lack of sufficient legal interest in bringing proceedings. See judgments in *Nuove Industrie Molisane v Commission* (T-212/00, EU:T:2002:21, in particular paragraph 38) and *Sniace v Commission* (T-141/03, EU:T:2005:129, paragraph 62). The fact that a decision is beneficial to an applicant (who is directly and individually concerned by it) does not necessarily imply that he has no interest in bringing proceedings. The statement of reasons for that decision may have binding legal effects such as to affect the applicant's interests. See, in that regard, judgment in *Coca-Cola v Commission* (T-125/97 and T-127/97, EU:T:2000:84, paragraph 79), which concerned the action for annulment brought by the beneficiary of a decision declaring a concentration compatible with the common market.

1. The second part of the first ground of appeal: the interest in bringing proceedings and the proceedings brought before the national courts

33. By the second part of their first ground of appeal, the appellants refer to paragraphs 36 to 51 of the order under appeal and submit that the General Court committed errors of law and assessment in holding that the two actions brought before the French courts on the appellants' initiative do not establish their interest in bringing proceedings. The first of those actions was brought by the appellants before the tribunal administratif de Paris (Administrative Court, Paris) on 25 April 2007 and seeks to require the French State to recover the aid granted to the Sernam group. The second action was brought before the tribunal de commerce de Paris on 7 May 2013, namely after the action for annulment was brought before the General Court against the decision at issue, and seeks to obtain from the Sernam group and Geodis compensation for the damage that those companies have caused the appellants as a result of the competitive advantages which the former have derived as a result of the grant of unlawful aid. The appellants' complaints regarding each of those two sets of proceedings must be analysed separately.

a) The action for the recovery of State aid brought before the tribunal administratif de Paris

i) The order under appeal

34. The appellants challenge paragraphs 39 to 41 of the order under appeal, in which the General Court precluded the possibility that their interest in bringing proceedings could be based on the action that they brought before the tribunal administratif de Paris in 2007 to require the French State to recover the State aid granted to the Sernam group. In reaching that conclusion, the General Court held, first, that that action sought not compensation for the damage suffered but recovery of the aid granted to the Sernam group and, secondly, that the appellants had for many years taken no steps to obtain compensation for the alleged damage resulting from the distortion of competition created by that aid.

ii) Arguments of the parties

35. The appellants submit that the General Court erred in ruling out the possibility for them to base their interest in bringing proceedings on the action for the recovery of State aid that they brought before the tribunal administratif de Paris. Contrary to the impression given by the General Court, there is no provision which states that an interest in bringing proceedings against a European Union act may be justified solely by the bringing of an action for damages before the national courts. Other proceedings that have validly been brought before a national court may fully justify such an interest, such as the action that the appellants brought before the tribunal administratif de Paris. That action sought to obtain the recovery by the French State of incompatible aid from all of its successive beneficiaries, including Geodis. Moreover, the appellants expressly implicated Geodis in that action, as is clear from a number of documents submitted to the Court. The decision of the administrative court on that action for recovery is conditional on whether the decision at issue is annulled since, if it were annulled, that would enable the appellants to extend their application for the recovery of State aid to Geodis. In those circumstances, the General Court should have recognised that any annulment of the decision at issue would give rise to legal consequences for the action for recovery and would therefore procure an advantage for the appellants, which would provide a basis for their interest in bringing proceedings. The appellants also submit that a decision by the tribunal administratif de Paris ordering the French State to recover the unlawful State aid from Geodis would strengthen the prospects of success of the action for damages brought before the tribunal de commerce de Paris.

36. The Commission notes, on the other hand, that the Mory companies continue to exist only for the purposes of their liquidation. It is therefore inconceivable that they should have an interest in bringing proceedings based on the restoration of their competitive position as a result of recovery of the unlawful and incompatible aid granted to Sernam. Moreover, in their application before the General Court, the appellants invoked only the possibility of bringing an action for damages in order to seek to establish an interest in bringing proceedings. Furthermore, the argument based on the extension of the application for the recovery of aid to Geodis is inadmissible since that extension would have been carried out after the order under appeal was made and cannot therefore be considered when assessing its lawfulness. In addition, the application initiating proceedings before the General Court does not mention that argument since, at that time, Geodis had not yet acquired Sernam's assets. The extension of the action to Geodis is therefore by no means automatic. In the alternative, the Commission submits that, in any event, it has in no way been established that that argument has any basis or the slightest chance of success under national law.

37. Also, it appears, in the Commission's view, that the tribunal administratif de Paris was moving towards an order that there was no need to adjudicate. Once the Commission has ruled that the aid in question is incompatible and has ordered its recovery, as in the present case, the proceedings previously brought before the national court cease to have any purpose. Lastly, the argument that a decision by the tribunal administratif de Paris that is favourable to the appellants would strengthen the prospects of success of their action for damages is a new argument, which is therefore inadmissible and, in any case, unfounded.

iii) Analysis

38. It must be noted, as a preliminary point, that a reading of the application initiating the proceedings and of the observations on the objection of inadmissibility submitted by the appellants before the General Court clearly shows that they referred several times to the action for recovery which they brought before the tribunal administratif de Paris and that they were relying on that action to establish their interest in bringing proceedings. It follows that the argument based on that action is not, as such, a new factor in the appeal and must therefore be considered to be admissible.

39. That said, the argument used by the General Court in paragraph 40 of the order under appeal to dismiss the appellants' claim that they have an interest in bringing proceedings, based on the action for recovery brought before the tribunal administratif de Paris — namely that that action did not concern compensation for any damage suffered by them — and the related arguments of the appellants raise the general question as to which type of action brought by an applicant before a national court may form the basis for an interest in bringing proceedings before the EU courts. Is it only an action for damages which may form the basis of such an interest, as is apparent from the General Court's reasoning, or may that interest be established by any action seeking to remedy a threat to competition caused by incompatible aid, as the appellants claim?

40. In my view, the answer to that question lies in the definition of an interest in bringing proceedings, as developed by case-law,²⁸ in accordance with which an interest in bringing proceedings presupposes that the annulment of the contested act must be capable of procuring an advantage for the applicant. In the light of that definition, it must be concluded that an interest in bringing proceedings before the EU courts may be based on any action brought by an applicant before a national court in which the possible annulment of the act contested before the EU courts may procure an advantage for the applicant, in particular in relation to that action. That interpretation of an interest in bringing proceedings is confirmed by the fact that the Court has acknowledged the existence of an interest in bringing proceedings on the basis of legal proceedings other than an action for damages.²⁹

28 — See point 28 above and the case-law cited.

29 — See, for example, order in *Lech-Stahlwerke v Commission* (C-111/99 P, EU:C:2001:58, in particular paragraph 19) and footnote 44 below.

41. Therefore, in my view, the General Court has erred in law by considering, in paragraph 40 of the order under appeal, that the action brought by the appellants before the tribunal administratif de Paris was not capable of forming a basis for their interest in bringing proceedings before the General Court on the sole ground that that action did not concern compensation for any damage suffered by the appellants. The General Court should in fact have examined whether, in the action brought by them before that national court, the appellants could have benefited from the annulment of the decision at issue.

42. The question therefore arises as to whether the appellants could indeed have procured an advantage from the annulment of the decision at issue in their action before the tribunal administratif de Paris.

43. In that regard, it is first necessary to reject the Commission's argument that that action ceased to have any purpose following the Sernam 3 decision. Although a letter sent by the administrative court to the appellants that has been produced by them before the Court may reveal that the administrative court had doubts as to the appellants' intention of continuing with their action,³⁰ it must be noted that there is nothing in the file to substantiate the Commission's argument and that, in any event, it is not for the EU courts to find, in appeal proceedings, that an action brought before a national court has ceased to have any purpose.

44. However, the appellants submit, in essence, that they could have benefited in two ways from the action that brought before the tribunal administratif de Paris, which formed the basis of their interest in bringing proceedings. First, annulment of the decision at issue would enable them to extend the application for the recovery of the State aid to Geodis in that action. Secondly, a favourable decision by the tribunal administratif de Paris would strengthen the prospects of success of their action for damages brought before the tribunal de commerce.

45. In the first place, with regard to the possible extension to Geodis of the circle of persons from whom the State should recover the incompatible aid, the Commission submits that that argument is inadmissible, since it does not appear in the application initiating proceedings and the extension to Geodis of the application for the recovery of State aid is a matter subsequent to the order under appeal that cannot therefore be taken into consideration when assessing its lawfulness. It is common ground that, at the time the General Court made the order under appeal, no valid proceedings had been brought by the appellants against Geodis before the tribunal administratif de Paris.

46. However, it must be noted, as I have already mentioned in point 38 above, that in their application at first instance and in their observations on the objection of inadmissibility submitted to the General Court, the appellants actually stated that they had brought an action for the recovery of State aid before the tribunal administratif de Paris. In that context, they submitted, first, that the aim of that action was to require the French Ministry of the Economy to recover the unlawful aid from every possible beneficiary in receipt of that aid, which the Commission acknowledges, and, secondly, that there was a direct link between that action and the proceedings before the General Court, since, if Geodis was considered to have benefited from a transfer of the unlawful aid previously granted to the Sernam group, that company had to return it to the State.

47. In those circumstances, the Commission's submission that the argument in question is new and therefore inadmissible cannot be sustained. A separate question, to which I shall return shortly, is that of whether the fact that, when the General Court made the order under appeal, the action for recovery had not yet been extended to Geodis has an influence on the vested and current nature of any interest on the part of the appellants in bringing proceedings.

30 — In that letter of 14 November 2013, the judge-rapporteur at the tribunal administratif de Paris dealing with the case asked the appellants whether, following the adoption of the Sernam 3 decision by the Commission, they intended to continue with their action.

48. Once it has been accepted that that argument is admissible, its basis must be examined. In that regard, it must first be noted that, as I stated in point 11 above, by the decision at issue the Commission found that there was no economic continuity between the Sernam group, on the one hand, and Geodis and BMV, on the other, and that, for that reason, the French authorities did not need to extend to those two companies the recovery of the State aid granted to the Sernam group. However, since the action pending before the tribunal administratif de Paris concerns the recovery of that same aid from every beneficiary, the existence of a direct connection between the decision at issue and the national proceedings is, in my view, difficult to deny. By precluding the recovery of the aid in question from Geodis and BMV, the decision at issue is capable of having an impact on the proceedings pending before the tribunal administratif de Paris, in so far as that court will not be able to order the recovery of the State aid from those persons, if appropriate. It follows that, in principle, by removing an obstacle to the possible enlargement of the circle of persons from whom the aid may be recovered, the annulment of the decision at issue would procure an advantage for the appellants in relation to the action pending before that national court. None the less, in that regard, it seems to me that there are three relevant matters that require consideration.

49. First, the existence of a genuine advantage for the appellants in relation to the action pending before the tribunal administratif de Paris in the event of the annulment of the decision at issue — an advantage that would establish an interest in bringing proceedings — depends on the effect of that decision on the national proceedings. In other words, it must be determined whether the national court is bound by the decision at issue.

50. It must be noted that, pursuant to the fourth paragraph of Article 288 TFEU, decisions are binding in their entirety upon those to whom they are addressed. Consequently, the Member State to which a Commission decision concerning the recovery of unlawful aid incompatible with the internal market is addressed is obliged under that article to take all measures necessary to ensure implementation of that decision. Those decisions are binding on all the organs of the State to which they are addressed, including the courts of that State.³¹

51. In the present case, the decision at issue takes the form of a decision within the meaning of the fourth paragraph of Article 288 TFEU that is addressed to the French Republic. In the light of the case-law mentioned in the preceding point, its content is binding on the Member State to which it is addressed, including its courts. Accordingly, in my view, the tribunal administratif de Paris is bound by such a decision and, unless it is annulled, will not be able to contradict it by ordering the recovery of the State aid granted to the Sernam group from Geodis and BMV.³²

52. Secondly, it must be examined whether the fact that the action for recovery had not yet been extended to Geodis when the General Court made the order under appeal prevents the Court from recognising that the appellants have a current and vested interest in bringing proceedings. In that regard, as is clear from the documents in the file, the actual extension to Geodis of the action for recovery did indeed take place on a date after the order under appeal was made. However, when the application was lodged before the General Court, the action for recovery had already been commenced and it was still ongoing when the order under appeal was adopted. That action targeted all possible beneficiaries in receipt of the State aid in question, including, therefore, Geodis, in the event that, contrary to what was established in the decision at issue, Geodis was recognised as a successor beneficiary of that aid. Moreover, in their observations on the objection of inadmissibility submitted to the General Court, the appellants highlighted their interest in extending the recovery of the State aid to Geodis and the direct link between the decision at issue and the outcome of the

31 — See, in that regard, judgment in *Mediaset* (C-69/13, EU:C:2014:71, paragraph 23 and the case-law cited).

32 — See, in that regard, paragraphs 24 and 25 of the judgment in *Mediaset* (C-69/13, EU:C:2014:71), which concerned the position adopted by the Commission in letters concerning the amount of aid to be recovered from a given beneficiary.

proceedings pending before the national court. In those circumstances, I do not believe that the extension of the action for recovery to Geodis may be considered to be a purely hypothetical event that cannot form the basis of a current and vested interest in bringing proceedings before the General Court.

53. Thirdly, it is necessary to examine the Commission's argument that, since the Mory companies are in liquidation and are therefore no longer active on the market, they have no interest in restoring their competitive position through the recovery of the State aid and thus no interest in bringing proceedings against the decision at issue.

54. By that argument, the Commission is, in my view, confusing an interest in bringing proceedings before the national court with the interest required for bringing proceedings before the EU courts. As I have pointed out on several occasions, in accordance with the case-law of the EU courts, an interest in bringing proceedings presupposes that the annulment of the contested act is capable of procuring an advantage for the applicant. I have noted in that connection that the annulment of the decision at issue would remove an obstacle preventing the action for recovery pending before the national court from being extended to other potential beneficiaries of the State aid declared incompatible. This is the advantage for the appellants that establishes their interest in bringing proceedings against the decision at issue.

55. On the other hand, the application for recovery of State aid has been made before the tribunal administratif de Paris, not before the EU courts. To assert that the appellants no longer have an interest in recovering the State aid would be tantamount to declaring that they no longer have an interest in pursuing the national proceedings, a declaration which it is not for the EU court to make. It follows that, contrary to what it stated at the hearing, it is the Commission itself that, by its argument, risks introducing into the proceedings before the EU courts a condition for the admissibility of the action brought before the national court. That argument must therefore be rejected.

56. In the second place, with regard to the appellants' argument that their interest in bringing proceedings is justified by the fact that a favourable decision by the tribunal administratif de Paris strengthens the prospects of success of their action for damages before the tribunal de commerce, I note that, irrespective of the question of its admissibility, the appellants do not explain what constitutes the link between the two actions that would justify the claim that the prospects of the action for damages succeeding are strengthened. In those circumstances, that argument cannot succeed.

57. In so far as that argument must be understood as meaning that, if the tribunal administratif de Paris were to acknowledge the obligation to recover the aid from Geodis as a beneficiary of the aid, Geodis may be found liable for the damage suffered by the Mory companies, it is indissociable from the line of argument concerning the action for damages and will be examined in the section dealing into that line of argument.

58. It follows from all the foregoing that, by not finding that, in their action before the tribunal administratif de Paris, the appellants could procure an advantage from the annulment of the decision at issue, the General Court has, in my view, erred in law. I therefore propose that the order under appeal be set aside.

b) The action for damages brought before the tribunal de commerce de Paris

i) The order under appeal

59. The appellants then challenge paragraphs 42 to 50 of the order under appeal, in which the General Court held that they had not established that annulment of the decision at issue would facilitate the action for damages they brought before the tribunal de commerce de Paris seeking to have the Sernam group and Geodis declared jointly and severally liable for payment of compensation for the damage that those companies had caused the appellants by receiving the unlawful State aid. In that regard, the General Court held, first, that the annulment of the decision at issue would not procure any advantage for the appellants in so far as the action concerns the Sernam group, since the Sernam 2 decision had already stated that the aid that the Sernam group had received was unlawful and incompatible. Therefore, the applicants were entitled to bring an action for compensation as of the adoption of that decision.

60. Secondly, with regard to Geodis, the General Court held that, since it took over the business of the Sernam group on a date after that of the decision at issue, Geodis cannot be liable for the appellants' poor financial situation. Nor have the appellants established that Geodis could be held liable under national law for the alleged damage caused by the Sernam group solely because it took over some of the assets of that group. Moreover, the General Court took the view that, since the Mory companies had ceased all economic activity since their liquidation, they could not have suffered any subsequent damage as a result of Geodis taking over the assets of the Sernam group.

ii) Arguments of the parties

61. The appellants submit that the General Court was wrong to consider that the action for damages brought before the tribunal de commerce de Paris cannot form the basis of their interest in bringing proceedings. First, that action was not brought out of time. It was possible only after the adoption of the Sernam 3 decision declaring the aid incompatible, since the Sernam 1 and Sernam 2 decisions are conditional approval decisions. Secondly, the fact that the action for damages had not yet been lodged when the action for annulment was brought before the General Court does not support the conclusion that the appellants had no interest in bringing proceedings. That action was expressly mentioned in the application to the General Court and it was also brought before the adoption of the order under appeal. Moreover, the General Court could not — for the purposes of determining whether the appellants had an interest in bringing proceedings before it — substitute its assessment of the validity of an action for damages against Geodis for that of the national court and conclude that that action was bound to fail. An action against Geodis is, in any event, legitimate since Geodis, first, was responsible for the failure to apply the Sernam 1 decision and, secondly, should be considered the current beneficiary of the incompatible aid and, on that basis, liable for remedying the harmful consequences for the Mory companies, jointly and severally with the successor beneficiaries of that aid and its grantor. Finally, if the decision at issue were annulled, the appellants could invoke the principle of unjust enrichment against Geodis. As an argument in support of a more general plea that has already been set out before the General Court, that argument is admissible in an appeal.

62. According to the Commission, in order to prove an interest in bringing proceedings, it is not sufficient to rely on any future or present action for damages brought before a national court, regardless of the possibility of success. In accordance with case-law, an applicant must establish a genuine and clear interest in the annulment sought in an (albeit potential) action for damages before a national court, which cannot, however, be purely hypothetical. In other cases, the applicant's right may be exercised, if the conditions are satisfied, by raising an objection of unlawfulness before the national courts, which would prevent unnecessary disputes being brought before the EU courts. However, in the present case, a genuine interest in the annulment requested was clearly not demonstrated at first instance. The appellants lodged their action for damages only in order to

respond to the Commission's objection of inadmissibility, and did so more than a year after the Sernam 3 decision. The argument that Geodis could be considered liable for the failure to apply the Sernam 1 decision is a new argument that is inadmissible in appeal proceedings. It is also manifestly unfounded, since that decision imposed an obligation not on Geodis, but on the French State. Lastly, the argument based on unjust enrichment is also manifestly inadmissible, since it was put forward for the first time in the appeal. In any event, no serious argument has been submitted in support of that theory.

iii) Analysis

63. In order for an applicant to have a vested and current interest in bringing proceedings before the EU courts, based on an action, *inter alia* for damages, brought before a national court, must the applicant have already brought that action at the time the proceedings were brought before the EU court? Must that applicant prove — and if so, what is the standard of proof — that the action brought before the national court has reasonable prospects of success? To what extent must — or even, may — the EU court assess the prospects of success of the action brought before the national court in order to conclude that it is capable of forming the basis of a current and vested interest in bringing proceedings before it?

64. These are some of the questions raised in this part of the appeal.

65. In order to answer those questions, it is necessary, in my view, first, to bear in mind that case-law has defined an interest in bringing proceedings as a vested and current interest that cannot be assessed on the basis of a future, hypothetical event.³³ Secondly, I consider it useful to analyse the case-law, in particular the cases in which an interest in bringing proceedings before the EU courts has been examined in the light of the links between an action for annulment and a different action before the courts. Such an analysis will provide useful guidance.

– Analysis of the case-law: interest in bringing proceedings and judicial proceedings

66. An analysis of the relevant case-law makes it possible to identify three types of cases.

67. A first set of cases concerns those cases in which the existence of an interest in bringing proceedings has been examined in relation to the bringing of an action for damages against the European Union before the EU courts. In that type of case, according to settled case-law, an applicant has an interest in seeking the annulment of an act which directly affects him in order to obtain a finding, by the EU courts, that an unlawful act has been committed against him, so that that finding may then form the basis for *any* action for damages aimed at making proper reparation for the damage caused by the contested act.³⁴ In that connection, the Court has specified that retaining (and therefore, *a fortiori*, the existence) of an applicant's interest in bringing proceedings must be assessed in the light of specific circumstances, taking account, in particular, of the consequences of the alleged unlawfulness and the nature of the damage claimed to have been sustained.³⁵

33 — See the case-law cited in footnote 24 above. In its settled case-law, the General Court expands upon that definition and requires that, if the interest upon which an applicant relies concerns a future legal situation, he must demonstrate that the prejudice to that situation is already certain and that an applicant cannot therefore rely upon future uncertain circumstances to establish his interest in applying for annulment of the contested act. In that regard, see, *inter alia*, judgment in *Sniace v Commission* (T-141/03, EU:T:2005:129, paragraph 26). Unless I am mistaken, that wording has never been replicated by the Court of Justice. The order under appeal is based expressly on that case-law of the General Court (see paragraph 27 of the order under appeal).

34 — See, in that regard, judgments of the Court in *Könecke Fleischwarenfabrik v Commission* (76/79, EU:C:1980:68, paragraph 9); *France and Others v Commission* (C-68/94 and C-30/95, EU:C:1998:148, paragraph 74); *Abdulrahim v Council and Commission* (C-239/12 P, EU:C:2013:331, paragraph 64); order of the Court in *Commission v Provincia di Imperia* (C-183/08 P, EU:C:2009:136, paragraph 30) and judgments of the General Court in *Shanghai Excell M&E Enterprise and Shanghai Adepteck Precision v Council* (T-299/05, EU:T:2009:72 paragraphs 53 to 55) and *Éditions Odile Jacob v Commission* (T-471/11, EU:T:2014:739, paragraph 44, currently under appeal).

35 — Judgment in *Abdulrahim v Council and Commission* (C-239/12 P, EU:C:2013:331, paragraph 65).

68. Thus, it is clear that, according to case-law, in that first set of cases, the mere *possibility* of bringing an action for damages is sufficient to form the basis for a vested and current interest in bringing proceedings. For that purpose, moreover, it is in no way necessary for the action for damages to have already been brought at the time of bringing the action for annulment.

69. In that regard, it must also be observed, first, that, in that situation, a finding that the European Union has acted unlawfully is necessarily a prerequisite for an action for damages against the European Union itself and, secondly, that, in accordance with the case-law cited in points 29 and 65 above, the bringing of an action for damages of that kind must not, in any event, be purely hypothetical. Accordingly, in *Socratec v Commission*,³⁶ the General Court held, on the basis of a number of factors, that the action for damages against the European Union relied on by the applicant in that case to prove its interest in bringing proceedings was purely hypothetical. The General Court therefore found that the applicant had no interest in bringing proceedings and, accordingly, that its action was inadmissible.³⁷

70. A second set of cases, all settled by the General Court and including *Sniace v Commission*³⁸ and *Salvat père & fils and Others v Commission*,³⁹ to which the Commission referred in its pleadings, concern a different situation.⁴⁰ In those cases, the applicants claimed that their interest in bringing proceedings was based on the risk that third parties might bring legal proceedings against them before the national courts. The General Court adopted an approach to the effect that an interest in bringing proceedings can result either from the existence of a *genuine risk* that the applicants' legal position will be affected by legal proceedings, or from the existence of a *vested and present risk* of legal proceedings.⁴¹

71. Whereas, in *Sniace v Commission* and *Salvat père & fils and Others v Commission*, cited by the Commission, the General Court found that there was no genuine risk, in *TV2/Danmark and Others v Commission*, on the other hand, it found that such a risk did exist. In reaching that conclusion, the General Court took into consideration, inter alia, the fact that, after the action for annulment had been lodged before it, an action for damages had in fact been brought by a third party against the applicant in order to obtain compensation for the alleged damage caused by the use of the unlawful State aid in question. According to the General Court, the bringing of that action gave rise to a genuine risk of such an action being brought.⁴²

72. It is therefore also clear that, in that second set of cases, as in the first, according to case-law, the existence, on the date on which the action for annulment is brought before the EU courts, of a risk of legal proceedings that may affect the legal position of the applicant in relation to the contested act is also sufficient, provided that it is genuine, to establish an interest in bringing proceedings, and it is not necessary for the action to have already been commenced.

36 — T-269/03, EU:T:2009:211.

37 — In that case, the General Court based its finding regarding the purely hypothetical nature of the action for damages on the fact, first, that such an action had still not been brought several years after the alleged damage had been caused, secondly, that at the hearing the applicant had itself acknowledged that such an action was hypothetical and, thirdly, that the applicant had stated that its shareholders had not authorised it to bring such an action, even if the action for annulment that it had brought was successful (see paragraphs 45 to 47 of the judgment in *Socratec v Commission*, cited in the preceding footnote).

38 — T-141/03, EU:T:2005:129.

39 — T-136/05, EU:T:2007:295.

40 — That second category of cases includes, in addition to *Sniace v Commission* and *Salvat père & fils and Others v Commission* mentioned in the two preceding footnotes, the cases that gave rise to the judgment in *TV2/Danmark and Others v Commission* (T-309/04, T-317/04, T-329/04 and T-336/04, EU:T:2008:457, in particular paragraphs 67 to 82) and the order in *Schutzgemeinschaft Milch und Milcherzeugnisse v Commission* (T-113/11, EU:T:2014:756, see in particular paragraphs 32 to 34).

41 — Judgments in *Sniace v Commission* (T-141/03, EU:T:2005:129, paragraph 28); *Salvat père & fils and Others v Commission* (T-136/05, EU:T:2007:295, paragraph 43), and *TV2/Danmark and Others v Commission* (T-309/04, T-317/04, T-329/04 and T-336/04, EU:T:2008:457, paragraph 79).

42 — T-309/04, T-317/04, T-329/04 and T-336/04, EU:T:2008:457, paragraphs 79 to 81.

73. In a third set of cases, the EU courts have analysed an applicant's interest in bringing proceedings with regard to possible actions that may be brought by the applicant before the national courts. Thus, in *Lech-Stahlwerke v Commission*,⁴³ the Court acknowledged the existence of an interest in bringing proceedings on the part of the applicant based on an action that it might have been able to bring before a national court.⁴⁴ In the order in *First Data and Others v Commission*,⁴⁵ which concerned Article 101 TFEU, the General Court, by contrast, denied that the applicants had an interest in bringing proceedings, holding that the annulment of the decision at issue was not a necessary prerequisite for any action they might bring for damages against the recipient of a negative clearance decision.⁴⁶

74. The analysis of the case-law that I have just carried out allows, in my view, certain conclusions to be drawn as regards the possibility of relying on other legal proceedings in order to establish an interest in bringing proceedings in an action for annulment before the EU courts.

75. In the first place, in order for legal proceedings, in particular an action for damages, to be able to form the basis of an applicant's interest in bringing proceedings, it is not absolutely necessary for that action to have already been commenced when the action for annulment is brought before the EU court. However, at that time, the bringing of such an action must not be purely hypothetical, and there must be a genuine probability that such an action may be brought. The fact that such an action was brought in the course of proceedings has been regarded as giving rise to such a genuine probability.

76. In the second place, there must be a direct link between the possible annulment of the contested European Union act and the action (in particular, for damages) relied on in order to substantiate the claim that there is an interest in bringing proceedings to secure the annulment of that act. That direct link presupposes that the annulment of the contested act is necessary in order for the applicant's legal position to be affected in the legal proceedings invoked. As I mentioned in point 29 above, it is for the applicant to establish the existence of that direct link between the possible annulment of the European Union act and the effect on his legal position.

77. In the third place, it is clear that, in none of the cases examined did the EU courts engage in an analysis (still less a detailed analysis) of the prospects of success of the action invoked in order to establish an interest in bringing proceedings, regardless of whether that action had (or could have) been brought before the EU courts themselves or before a national court. In none of those cases did the EU courts reach the conclusion that there was no interest in bringing proceedings on the basis of an in-depth analysis of the prospects of success of the legal proceedings invoked.

43 — C-111/99 P, EU:C:2001:58.

44 — In that case, the applicant had challenged a Commission decision that categorised as prohibited State aid proposed financial aid in connection with which the Freistaat Bayern undertook to pay the applicant DEM 20 million. The Court dismissed the objection of inadmissibility raised by the Commission alleging a lack of legal interest in bringing proceedings following the Freistaat Bayern's abandonment of the intended restructuring, holding that it was 'not inconceivable that a national court with competence in the matter could order the Freistaat Bayern to pay [the appellant] the sum of DEM 20 million' (see paragraph 19 of the order in *Lech-Stahlwerke v Commission*).

45 — T-28/02, EU:T:2005:357.

46 — In that case, the General Court took the view that the fact that a national court before which an action for damages has been brought might take account of the Commission's assessment as regards the applicability of Article 101 TFEU was an uncertain possibility, and thus future and hypothetical (paragraphs 47 to 51). Similarly, in the judgment in *NBV and NVB v Commission* (T-138/89, EU:T:1992:95), the General Court considered that an assessment by the national court that differed from that of the Commission with regard to the requirement that there be an effect on trade between Member States laid down in Article 101 TFEU was an uncertain possibility (see paragraph 33; however, in that case, it appears that the General Court was referring to a possible action brought by third parties).

78. The question of the degree of probability of success of the action brought before the national court, which an applicant must prove in order to establish his interest in bringing proceedings and the related question of the assessment that must be made in that regard by the EU courts are delicate questions. They require the balancing of various requirements: on the one hand, the requirement that purely hypothetical questions, the answers to which are not capable of giving rise to legal consequences, should not be brought before the EU courts and, on the other, the requirement that the respective spheres of competence enjoyed by the EU courts and national courts should be respected.

79. From that point of view, although it is true that the EU courts must verify that the applicant has established that it has a genuine interest in the annulment requested in an, albeit potential, action before the national courts, it none the less must not — and cannot — take the place of the national court in order to rule on the substance of that action, as the Commission itself has rightly pointed out.

80. In those circumstances, in the light of the analysis of the case-law in points 67 to 73 above, I take the view that, if an applicant has proved that the action invoked in support of his claim that he has an interest in bringing proceedings is not hypothetical and that there is a direct link between the possible annulment of the contested European Union act and the effect on his legal position in that action, this should be sufficient to substantiate his claim that he has an interest in bringing proceedings, unless that action is artificial or fictitious or clearly unrealistic. An assessment, even a cursory assessment, of the prospects of success of an action brought before the national court, must necessarily include an examination of the substance of that action based on national law. Such an analysis does not, in my opinion, fall within the jurisdiction of the EU courts.

81. In that regard it must also be noted that it is true, as the Commission observed, that the possible dismissal of an action for annulment on the ground of a lack of interest in bringing proceedings leaves open the possibility, for the applicant, to challenge the validity of the European Union act that forms the subject-matter of that action in preliminary ruling proceedings, if it is subsequently apparent that the lawfulness of that act may be regarded as a decisive issue by the national court for the purpose of ruling on the action pending before it. Moreover, that situation has been mentioned in case-law.⁴⁷ However, that possibility does not detract from the fact that an applicant who has a current and vested interest in bringing proceedings, as defined by case-law,⁴⁸ and *locus standi* must be able to challenge the act before the EU courts.

– Application in the present case

82. It is therefore in the light of those principles that the complaints put forward by the appellants in respect of the order under appeal must be analysed. Accordingly, it is necessary to determine whether, as the General Court held, the annulment of the decision at issue would have procured no advantage for the appellants in the action for damages brought before the tribunal de commerce de Paris and therefore they had no interest in bringing proceedings against that decision.

83. In that regard, it is necessary, first of all, to reject the argument put forward by the Commission (set out in paragraph 41 of the order under appeal) that that action was brought out of time. Although the action for damages against the Sernam group and Geodis had not yet been brought when the action for annulment was lodged before the General Court, as I pointed out above, that is not, according to case-law, a decisive factor. In the present case, it is clear that the appellants did indeed refer to such an action in their application initiating proceedings. That action then came into

47 — See, for example, judgments in *NBV and NVB v Commission* (T-138/89, EU:T:1992:95, paragraph 33); *Sniace v Commission* (T-141/03, EU:T:2005:129, paragraph 40), and order in *First Data and Others v Commission* (T-28/02, EU:T:2005:357, paragraph 51).

48 — See points 28 and 29 above.

being in the course of the proceedings as a result of the lodging of an action for damages before the tribunal de commerce de Paris. In those circumstances I take the view that it cannot be maintained that, when the proceedings were brought before the General Court, the action for damages was purely hypothetical.⁴⁹ In addition, although the action for damages against the Sernam group could have been brought earlier, the action for damages against Geodis could not in any event have been brought until that company had acquired the assets of the Sernam group, which certainly took place after the decision at issue, as the General Court itself stated in paragraph 44 of the order under appeal.

84. Next, since the action for damages brought before the tribunal de commerce de Paris was directed at the Sernam group and Geodis jointly and severally, the General Court made a distinction between the damage allegedly caused to the appellants by the Sernam group and that allegedly caused by Geodis.

85. In the first place, with regard to the compensation for the alleged damage to the appellants caused by the Sernam group as a result of the benefits resulting from the grant of the State aid, I concur with the General Court's analysis in paragraph 43 of the order under appeal, to the effect that the annulment of the decision at issue could not confer any advantage on the appellants in that regard. The Sernam 2 and Sernam 3 decisions had already found that the Sernam group had benefited from unlawful and incompatible aid and could therefore already form the basis of an action for damages against the Sernam group. The decision at issue concerns, on the other hand, solely the question of whether there was economic continuity between the Sernam group and Geodis. In those circumstances, it is clear that the decision at issue cannot be invoked in support of any claim alleging liability on the part of the Sernam group. The annulment of that decision would have no consequence in that regard. In other words, there is no direct link between the annulment of the decision at issue and the action for damages against the Sernam group.⁵⁰

86. In the second place, with regard to compensation for the alleged damage to the appellants caused by Geodis, the General Court ruled out that Geodis could be held liable for the appellants' poor financial situation and their liquidation.⁵¹ The General Court went on to state that the appellants had not established that, under national law, Geodis could theoretically be held liable for the alleged damage caused to the appellants by the Sernam group merely because it had taken over some of its assets.⁵² Finally, the General Court considered that, as the Mory companies had ceased all economic activity since their liquidation, they could not suffer damage as a result of Geodis.

87. However, in my opinion, such findings by the General Court come close to — or even, at least in part, constitute — an assessment of the substance of the action pending before the national court, which is not a matter for the EU courts, as I stated in point 80 above. The fundamental question in establishing whether or not the appellants have an interest in bringing proceedings is not whether or not Geodis is liable for the damage allegedly suffered by the appellants, which it is for the national court to determine.

88. Once it is established that the action is not clearly unrealistic,⁵³ the relevant issue is, rather, to determine whether the appellants have demonstrated to the requisite legal standard the existence of a direct link between the possible annulment of the decision at issue and the action for damages brought against Geodis and relied on in support of their claim that they have an interest in bringing proceedings, so that the annulment of that decision is capable of procuring an advantage for the appellants in that action. In that regard, the appellants put forward two arguments.

49 — Moreover, there is nothing in the file to substantiate the Commission's argument that the action is artificial as it was brought solely for the purpose of responding to its objection of inadmissibility.

50 — See point 76 above.

51 — Paragraphs 44 to 46 of the order under appeal.

52 — Paragraph 47 of the order under appeal.

53 — See point 80 above.

89. With regard, first, to the argument that an action against Geodis is legitimate since Geodis is liable for the failure to implement the Sernam 1 decision, irrespective of whether that argument is admissible, it is clear that it concerns a fact established in the Sernam 2 decision that is unrelated to the decision at issue. It cannot therefore create any link between possible annulment of the decision at issue and the action for damages. That argument is therefore irrelevant.

90. Next, the applicants submit that, if Geodis were to be regarded as the current beneficiary of the incompatible aid, it should, on that basis, be considered jointly and severally liable, together with the other beneficiaries and grantors of that aid, for compensating the Mory companies for the harm caused. That argument is at the heart of the action brought before the tribunal de commerce de Paris, in which the appellants claimed that the national court should find that, by receiving incompatible State aid, Geodis (and the other previous beneficiaries and its grantor) committed a wrongful act and must be deemed liable for the harm caused by that act.

91. In that regard, it has already been stated several times that in the decision at issue, in concluding that there was no economic continuity between the Sernam group and Geodis, the Commission found that Geodis, by taking over the assets of the Sernam group, could not be considered to have benefited from the aid granted to that group. However, without there being any need to analyse the basis of that action under national law, I consider that that conclusion in the decision at issue is likely to compromise the action brought by the appellants against Geodis, since it removes the premise on which that action is based, namely that Geodis may be considered to be a beneficiary of the State aid granted to the Sernam group. Furthermore, as I stated in points 49 to 51 above, that decision is binding on the national court.

92. Accordingly, the annulment of the decision at issue may produce effects in the action for damages brought before the tribunal de commerce de Paris. The existence of that action may therefore, in my opinion, establish the appellants' interest in bringing proceedings against the decision at issue. Therefore, by denying the existence of such an interest based on that action, the General Court erred in law.

93. Lastly, the appellants submit that their claim that they have an interest in bringing proceedings is also justified by the fact that, if the decision at issue were annulled, they could put before the tribunal de commerce de Paris an additional argument based on the principle of unjust enrichment.⁵⁴ The Commission argues that this is a new argument put forward for the first time, which is therefore inadmissible in appeal proceedings.

94. Without examining in greater depth the issue, which I have already had occasion to define as 'delicate',⁵⁵ of the distinction between an (admissible) new argument and an (inadmissible) new plea in law, it is sufficient to note here that, according to case-law, a party cannot, in principle, put forward for the first time before the Court of Justice a plea in law which it did not raise before the General Court. However, a new argument which merely develops or expands on the argument presented before the General Court is not a new plea and must be regarded as the legitimate extension of a plea already raised at an earlier stage in the proceedings and is therefore admissible.⁵⁶

54 — In the present case, according to the appellants, they have incurred a loss as they have lost business volume as a result of Sernam maintaining its presence on the market due to the incompatible aid and Geodis has been enriched to their detriment, having taken over the activities of Sernam which benefited from the unlawful aid, and, therefore, its business volume.

55 — See my Opinion in *Areva and Others v Commission* (C-247/11 P and C-253/11 P, EU:C:2013:579, points 110 to 116 and the case-law cited). In that same context, I also stated that a complaint which is raised on a legal basis different from that of the pleas put forward before the General Court must be regarded as a new plea, which must therefore be declared inadmissible, whereas a complaint put forward in support of a plea already raised before the General Court may constitute an admissible argument (see, in particular, points 112 and 113 and the case-law cited).

56 — See the case-law cited in points 110 to 116 of my Opinion in *Areva and Others v Commission* (C-247/11 P and C-253/11 P, EU:C:2013:579).

95. In the present case, the appellants, in response to the objection of inadmissibility raised by the Commission before the General Court, submitted that they had an interest in bringing proceedings against the decision at issue because of the direct impact that that decision would have on the action for damages that they brought before the tribunal de commerce de Paris. It is common ground that, at first instance, the appellants at no time referred to the principle of unjust enrichment.

96. Without there being any need to examine whether it would be open to the appellants to bring such an action before the national court in the pending action, I note that an action alleging unjust enrichment has a different legal basis from an action for damages.

97. In my opinion, the argument put forward by the applicants that their interest in obtaining the annulment of the decision at issue could be based on a different action from the one they relied on at first instance cannot be considered to be included in the plea in law previously raised before the General Court. Accordingly, that argument constitutes a new plea in law which cannot provide a basis for assessing the lawfulness of the General Court's analysis. It is therefore inadmissible in the appeal proceedings.

98. In the light of all the foregoing, I consider that the second part of the appeal must be upheld and, therefore, that the order under appeal must be set aside.

2. The first and fourth parts of the first ground of appeal: the status of interested party and the nature of the contested decision

99. The first and fourth parts of the first ground of appeal must, in my opinion, be analysed together since certain aspects of the arguments put forward by the appellants in those parts overlap, particularly with regard to the classification of the decision at issue. In those two parts, the appellants refer to paragraphs 29 to 35 and 55 to 58 respectively of the order under appeal and submit that the General Court committed several errors of law and infringed their rights.

a) The order under appeal

100. In paragraphs 29 to 35 of the order under appeal, the General Court rejected the appellants' argument that participation by one of them in the administrative procedure which led to the Sernam 3 decision conferred on them an interest in bringing proceedings against the decision at issue. The General Court, first, observed that that argument seemed to be an attempt to establish *locus standi* rather than an interest in bringing proceedings. Next, the General Court took the view that, according to case-law, in order to establish their *locus standi*, the appellants should have demonstrated that the decision at issue was capable of substantially affecting their position on the market, which was not possible as the Mory companies ceased to be active from the time they were put into liquidation. Lastly, referring to the general scheme of the procedure for monitoring State aid, in particular Article 14 of Regulation (EC) No 659/1999,⁵⁷ the General Court classified the decision at issue as a decision concerning the arrangements for the recovery of unlawful and incompatible aid, an issue that concerned only the Commission and the Member State concerned.

101. In paragraphs 55 to 58 of the order under appeal, the General Court rejected the argument that, by the decision at issue, the Commission had implicitly ruled out the possibility of initiating a formal investigation procedure, thus depriving the appellants of the procedural right to intervene in order to submit observations. The General Court stated, in that regard, first, that, if the appellants had wanted the Commission to initiate a formal investigation procedure, it was for them to request it to do so, not to challenge a decision which, since it covered relations regarding the arrangements for the recovery of

⁵⁷ — Council Regulation of 22 March 1999 laying down detailed rules for the application of Article [108 TFEU] (OJ 1999 L 83, p. 1).

unlawful and incompatible aid, concerned only relations between the Commission and the Member State concerned. Secondly, according to the General Court, by the decision at issue, the Commission made no finding as to the existence and compatibility of any aid on the basis of Article 108 TFEU, but merely answered the question raised by the French authorities as to whether the obligation to repay the aid which had been imposed on the Sernam group by the Sernam 2 decision would be extended to their potential purchasers, Geodis and BMV.

b) Arguments of the parties

– Arguments of the appellants

102. In the first part of their first ground of appeal, which relates to paragraphs 29 to 35 of the order under appeal, the appellants submit, in the first place, that the General Court contradicted itself in that it relied on case-law to the effect an applicant must always demonstrate that the decision on the compatibility of State aid is capable of affecting its position on the market in order to dispute the existence of an interest in bringing proceedings but then went on to state that, by the decision at issue, the Commission made no finding as to the existence or compatibility of any aid with Article 108 TFEU.

103. In the second place, the appellants claim that the approach adopted by the General Court, which inferred from Article 14 of Regulation No 659/1999 that the issue of the arrangements for the recovery of incompatible aid concern only the Commission and the Member State affected by the recovery, has the effect of precluding, in principle, any party other than that Member State from having an interest in bringing proceedings for the annulment of a decision concerning the arrangements for the recovery of aid. Such an approach, however, contradicts the fourth paragraph of Article 263 TFEU, which provides that proceedings against a decision may be brought by any natural or legal person directly and individually concerned by the decision.

104. In the third place, the General Court maintains the confusion as to the classification of the decision at issue in order to avoid revealing the difference in approach from that followed in the judgment in *Ryanair v Commission*,⁵⁸ which concerned a situation identical to that addressed in the decision at issue.

105. In the fourth part of their first ground of appeal, which relates to paragraphs 55 to 58 of the order under appeal, the appellants contend, first, that, contrary to what the General Court suggests, it is clear from the file that they had indeed informed the Commission of the risk that a takeover of the Sernam group's assets by Geodis would bring about a further transfer of unlawful aid and, therefore, of the risks that the Sernam 3 decision would be circumvented. By adopting the decision at issue, the Commission ruled out the initiation of an in-depth investigation procedure regarding the incorrect application of the Sernam 3 decision, thereby infringing the appellants' procedural rights by depriving them of their rights to submit their observations on the conditions for the transfer to Geodis of the assets that had benefited from the unlawful aid. According to the appellants, that situation corresponds exactly to that analysed in *Ryanair v Commission*.⁵⁹ As in that case, the appellants have been deprived, by the decision at issue, of the possibility of securing an in-depth investigation, even though, in the present case, such an investigation would have concerned not new aid but the incorrect application of the Sernam 3 decision.

58 — T-123/09, EU:T:2012:164; judgment upheld by the Court (C-287/12 P, EU:C:2013:395).

59 — See footnote 58 above.

106. Next, the appellants dispute the Commission's classification of the decision at issue as *sui generis* and claim that the General Court sidestepped giving a ruling on whether they are individually concerned by that decision in order to avoid the issue of that classification. They also dispute the classification of the decision at issue — in paragraph 33 of the order under appeal — as a decision concerning the arrangements for the recovery of State aid. The question raised by the decision at issue is not whether new aid was granted to Geodis but whether the conditions for the takeover by Geodis of Sernam's assets constitute a correct application of the Sernam 3 decision (absence of economic continuity meaning that no benefit continues to be derived from the State aid) or, on the contrary, an incorrect application of that decision (namely circumvention on the part of the French authorities). It is possible to combine Articles 14 and 16 of Regulation No 659/1999 and to classify an arrangement for the recovery of incompatible aid as a circumvention of the recovery obligation, and therefore as misuse of aid within the meaning of Article 16 of that regulation.

107. Lastly, according to the appellants, the reasons given by the General Court for granting them, in spite of the fact they are in liquidation, leave to intervene in support of the forms of order sought by the Commission in the action brought by SNCF against the Sernam 3 decision⁶⁰ demonstrate their interest in bringing proceedings in connection with the present proceedings which concern a decision that is the extension of the Sernam 3 decision.

– Arguments of the Commission

108. With regard to the first and fourth parts, the Commission submits, first of all, that the appellants' arguments relate to their *locus standi*, not to their interest in bringing proceedings. Those arguments cannot therefore demonstrate that they have an interest in bringing proceedings against the decision at issue. That is particularly true with regard to the first part, since the status of interested party in respect of the initial decisions does not necessarily lead to the status of interested party in respect of a subsequent decision, since the situation of an operator may also have changed over time. With regard to the fourth part, the Commission disregards the liquidation of the Mory companies, which took place before they lodged their action for annulment. Since those companies were no longer competitors of Sernam and were not competitors of Geodis, it is, according to the Commission, hard to see what advantage the applicants could procure from any judgment annulling the decision at issue.

109. Next, the status of interested party would be relevant only if the appellants had sought the annulment of a decision taken at the end of a preliminary examination stage by which the Commission decided not to raise objections to a notified measure. However, the decision at issue is not such a decision. The Commission had already adopted a final decision, the Sernam 3 decision, in which it set out its conclusions on the existence of aid paid to Sernam, the incompatibility of that aid and its recovery. The true context of the decision at issue is in fact that of sincere cooperation between the Member State and the Commission with regard to the arrangements for recovery. Generally, questions similar to that raised by the French authorities are dealt with by a simple exchange of correspondence between the Commission services and the national authorities.

110. Lastly, even if it were to be held that the decision at issue is not the mere expression of a process of sincere cooperation, it may none the less be treated only as a final decision. In the present case, the decision at issue is necessarily related to the Sernam 3 decision, which is a final decision, to which, in a sense, the decision at issue is directly ancillary and supplementary. The appellants must therefore demonstrate that their competitive position is substantially affected by the decision at issue, not simply that their procedural rights have been infringed.

⁶⁰ — Order in *SNCF v Commission* (T-242/12, EU:T:2014:313).

111. In that regard, the present case is different to *Ryanair v Commission*.⁶¹ Unlike that case, in the present case the Commission has not been asked to reach a decision on whether the proposed sale constituted aid, since the sale was of assets belonging to a private entity in which the State no longer has shareholding, and the Commission did not give its view on whether or not the buyer behaved like a private operator in a market economy. Next, it is not possible to treat the decision at issue as a decision taken on the basis of Article 16 of Regulation No 659/1999.

c) Analysis

112. Both the order under appeal and the appellants' arguments relating to the two parts in question confuse arguments concerning *locus standi* and the issue of proving the existence of an interest in bringing proceedings. I have already stated that these are separate conditions of admissibility.⁶²

113. In those circumstances, it should be recalled that the General Court declared the action inadmissible on the ground that the appellants had no interest in bringing proceedings⁶³ and that the first ground of appeal in the present proceedings alleges errors in law regarding the finding that the appellants had no interest in bringing proceedings. Therefore, the complaints raised in the two parts analysed here must be analysed having regard to the interest in bringing proceedings.

i) The first part

114. In the first part of the first ground of appeal, the appellants dispute the General Court's conclusion that the status of interested party that one of them had in the administrative procedure which led to the Sernam 3 decision does not establish their interest in bringing proceedings against the decision at issue.

115. However, irrespective of the General Court's reasoning in paragraphs 31 to 33 of the order under appeal to substantiate that conclusion — reasoning which, first, concerns *locus standi* and, secondly, in my opinion, contains incorrect assertions to which I shall return later — I consider that the conclusion reached by the General Court is not, as such, vitiated by error.

116. Although, in State aid matters, the status of interested party in the procedure that led to the adoption of a decision may be a relevant factor in establishing *locus standi*,⁶⁴ it does not necessarily give rise, as such, to an interest in having annulled the decision adopted at the end of that procedure, even less so in having annulled a decision which, though linked to the first, is a different decision. As I stated in point 28 above, for the purposes of establishing an interest in bringing proceedings, it is necessary to demonstrate that the annulment of the contested act is capable of procuring, in itself, an advantage for the applicant. The mere fact of having had the status of interested party in the administrative procedure does not mean, per se, that annulment will procure such a benefit.

117. From that point of view, the appellants' argument mentioned in point 102 above based on an alleged contradiction in the General Court's reasoning is, in my opinion, ineffective, in so far as the case-law mentioned by the General Court in paragraph 31 of the order under appeal concerns *locus standi*, not an interest in bringing proceedings. Therefore, even if there was a contradiction in the General Court's reasoning, this would have no impact on the — correct — conclusion that it reached.

61 — See footnote 58 above.

62 — See points 23 to 30 above.

63 — See paragraph 59 of the order under appeal.

64 — In particular, in the case of decisions not to raise objections based on Article 4(3) of Regulation No 659/1999. See judgments in *Cook v Commission* (C-198/91, EU:C:1993:197, paragraph 23); *Matra v Commission* (C-225/91, EU:C:1993:239, paragraph 17), and *Commission v Kronoply and Kronotex* (C-83/09 P, EU:C:2011:341, paragraphs 47 and 48 and the case-law cited).

Similarly, the appellants' arguments based on the judgment in *Ryanair v Commission*⁶⁵ seem to me to be ineffective in the context of the first part. The arguments in that judgment concerning the admissibility of the application for annulment concern *locus standi*, not the interest in bringing proceedings. However, by acknowledging that Ryanair's action was admissible, both the General Court and the Court of Justice implicitly acknowledged that Ryanair had an interest in bringing proceedings, and therefore any similarity between these cases may be relevant. I shall return to that issue below, in connection with the analysis of the fourth part, in which I shall also deal with the argument set out in point 103 above, the answer to which requires the classification of the decision at issue.⁶⁶

118. It follows from the foregoing considerations that, in my opinion, the first part of the first ground of appeal must be rejected.

ii) The fourth part

119. In the fourth part of the first ground of appeal, the appellants dispute the General Court's analysis by which it denied their interest in bringing proceedings against the decision at issue by rejecting their argument that, by that decision, the Commission had implicitly ruled out the possibility of initiating a formal investigation procedure, thus depriving the appellants of the procedural right to intervene in order to submit their observations. The appellants also dispute the Commission's classification of the decision at issue as a *sui generis* decision,⁶⁷ and the General Court's classification of it as a decision concerning the arrangements for the recovery of State aid concerning solely the Commission and the Member State concerned.⁶⁸

120. If the decision at issue should actually be classified as a decision ruling out the possibility of initiating a formal investigation procedure, as the appellants propose, its annulment could allow the appellants — provided that they are entitled to do so as interested parties, which is a separate question — to participate in any formal investigation procedure. In such a case, the annulment of the decision at issue could therefore, at least potentially, procure an advantage for the appellants, namely the restoration of their procedural rights. In that case, it cannot therefore be ruled out that they may have an interest in bringing proceedings against the decision at issue.

121. The question of the legal classification of the decision at issue therefore arises.

– Decisions concerning economic continuity and the case-law

122. A decision of the same type as the decision at issue, concerning *exclusively* the issue of the existence of economic continuity, has, unless I am mistaken, not yet been examined in the case-law. There are, however, several cases in which the Commission has examined this issue.⁶⁹

65 — See footnote 58 above.

66 — See, respectively, points 126 to 128 and 144 and point 139 below.

67 — See paragraph 51 of the decision at issue.

68 — See paragraphs 33 and 56 of the order under appeal.

69 — It must be noted that, at present, several cases are pending before the General Court concerning decisions in which the Commission has analysed whether there is economic continuity between the beneficiary of State aid and the purchaser of the beneficiary's assets. I refer in particular, first, to *Larko v Commission* (T-412/14) and *Larymnis Larko v Commission* (T-576/14), which concern the Commission Decision of 27 March 2014 [SG-Greffe (2014) D/4621/28-3-2014] addressed to the Hellenic Republic in relation to the State aid implemented for the limited company named 'Geniki Metalleftiki kai Metallourgiki Anonymi Etaireia NEA LARKO' (NEW LARKO), and, secondly, to *Italy v Commission* (T-673/14); *SEA v Commission* (T-674/14), and *Airport Handling v Commission* (T-688/14), which all concern Commission Decision C(2014) 4537 final of 9 July 2014, notified on 10 July 2014, concerning the establishment, by the company SEA SpA, of the company Airport Handling SpA. I clearly cannot give my opinion on those pending cases, but I shall none the less take them into account in my analysis.

123. In the Seleco case, which gave rise to the judgment in *Italy and SIM 2 Multimedia v Commission*,⁷⁰ the Commission found that there was economic continuity between the beneficiary of incompatible State aid (in that case, Seleco SpA) and the purchaser of that company's assets (Multimedia). That finding was made in the context of a decision⁷¹ establishing the existence of incompatible State aid, adopted after the formal investigation procedure had been initiated under Article 108(2) TFEU.⁷²

124. Similarly, in the Olympic Airlines case,⁷³ the Commission found that there was economic continuity between the beneficiary of aid declared unlawful and incompatible in a previous decision (dating from 2002)⁷⁴ and the purchaser of its assets. As in the Seleco case, that finding was made in the context of a decision adopted after the initiation of the formal investigation procedure.⁷⁵ However, in that same decision, the Commission found, inter alia, that new State aid had been granted in favour of the purchaser of those assets.⁷⁶ It was in the analysis of whether new State aid had been granted to the purchaser of those assets that the finding of economic continuity was made. In the same context, the Commission concluded that the new separate legal entity that had taken over the assets of the former beneficiary had been established to circumvent the recovery obligation in order to avoid the recovery of the aid found to be unlawful and incompatible in the 2002 decision.⁷⁷

125. It must also be noted that, in that case, the issue of possible circumvention of the obligation to recover aid by means of a legal arrangement had been addressed in the decision to initiate the procedure⁷⁸ in the context of an analysis of other measures that may have constituted State aid. In that decision, the Commission stated that it had serious doubts on account of the possibility that the establishment of the company that had taken over the assets itself constituted State aid.⁷⁹

126. Subsequently, the question of economic continuity was raised in the Alitalia case, which gave rise to the judgments in *Ryanair v Commission* by the General Court and the Court of Justice,⁸⁰ invoked on several occasions by the appellants.

127. In that case, in a first decision,⁸¹ adopted following a formal investigation procedure, the Commission had found incompatible aid had been granted to Alitalia and required that that aid be recovered from that company. Then, in a second decision,⁸² adopted on the same day as the first, the Commission, following notification by the Italian authorities, examined the measure relating to the sale of Alitalia's assets. In that context, it found, first, that the procedure followed for the sale of those

70 — C-328/99 and C-399/00, EU:C:2003:252.

71 — Commission Decision 2000/536/EC of 2 June 1999 concerning State aid granted by Italy to Seleco SpA (OJ 2000 L 227, p. 24; see, in particular, paragraphs 116 to 120 specifically). In the judgment cited in the preceding footnote, the Court of Justice partially annulled that decision on the ground of infringement of the obligation to state reasons.

72 — Formerly Article 88(2) EC.

73 — In that case, the EU courts gave several judgments. Those that concern us here are, first, the judgment in *Greece and Others v Commission* (T-415/05, T-416/05 and T-423/05, EU:T:2010:386), concerning the action for annulment of Commission Decision C(2005) 2706 final of 14 September 2005 on State aid for Olympiaki Aeroporia Ypiresies AE [C 11/2004 (ex NN 4/2003) — Olympiaki Aeroporia — Restructuring and privatisation], and, secondly, the judgment in *Commission v Greece* (C-415/03, EU:C:2005:287), concerning the action against the Hellenic Republic for failure to fulfil its obligation to recover the aid found to be unlawful and incompatible in Commission Decision 2003/372/EC of 11 December 2002 on aid granted by Greece to Olympic Airways (OJ 2003 L 132, p. 1).

74 — Decision 2003/372 (see preceding footnote).

75 — Decision C(2005) 2706 final (see footnote 73).

76 — Ibid. Article 1.

77 — See paragraphs 178 to 183 of Decision C(2005) 2706 final.

78 — Commission Decision of 16 March 2004, State aid No C 11/04 — Olympic Airways (OJ 2004 C 192, p. 2).

79 — In addition, in the same context, the Commission mentioned that it had brought the infringement proceedings that gave rise to the judgment in *Commission v Greece* (C-415/03, EU:C:2005:287), in which the Court found that the operation in question was indeed aimed at circumventing the recovery of aid (see paragraphs 33 and 34 of that judgment).

80 — T-123/09, EU:T:2012:164 and C-287/12 P, EU:C:2013:395.

81 — Commission Decision 2009/155/EC of 12 November 2008 on the loan of EUR 300 million granted by Italy to Alitalia No C 26/08 (ex NN 31/08) (OJ 2009 L 52, p. 3).

82 — Commission Decision C(2008) 6745 final of 12 November 2008 concerning State aid No 510/2008 — Italy — Sale of assets of the Alitalia airline company.

assets did not lead to the grant of aid in favour of the purchasers⁸³ and, secondly, that the transfer of those assets in accordance with that procedure did not entail economic continuity between Alitalia and the purchasers of those assets.⁸⁴ The Commission concluded that the notified measure, as amended by the undertakings given by the Italian authorities, did not constitute aid since those undertakings were complied with in full.

128. When examining the question of the admissibility of the action brought by Ryanair, a competitor of Alitalia, against both the first and the second decisions, the General Court took the view that the second contested decision was a decision adopted at the conclusion of the preliminary examination stage, under Article 4(2) of Regulation No 659/1999, whereby the Commission found that the notified measure did not constitute aid and that, by that decision, the Commission impliedly refused to open the formal investigation procedure.⁸⁵ That assessment has (implicitly) been confirmed in appeal proceedings by the Court of Justice.⁸⁶

129. The Larko⁸⁷ case concerns the privatisation of a company, Larko, controlled by the Greek State. Following notification by the Greek authorities, the Commission found that the arrangements for that privatisation, as established by the Greek authorities, in particular, the structure of the sale of some of that company's assets, did not constitute State aid. In the same decision, the Commission also found that the sale of the assets in accordance with those arrangements did not give rise to economic continuity with the future purchaser of those assets, with the result that, in the event of a negative decision being adopted in a procedure initiated by the Commission concerning certain measures adopted in favour of Larko, any recovery obligation would not be extended to the purchaser. In that decision, the Commission expressly classified the part of the decision concerning economic continuity as a '*sui generis*' decision, just as it did in the decision at issue.⁸⁸

130. On the other hand, in the *Airport Handling* decision,⁸⁹ the Commission examined economic continuity in the context of a decision to initiate a formal investigation procedure under Article 108(2) TFEU.⁹⁰ That decision followed a decision finding that incompatible aid had been granted to Sea Handling.⁹¹ The Italian authorities asked the Commission to confirm, first, that the procedure initiated for the sale of Sea Handling's assets and the establishment of a new company (Airport Handling) which purchased those assets did not create economic continuity that would result in a transfer of the obligation to recover the incompatible aid from Airport Handling. Secondly, the Italian authorities asked the Commission to confirm that the capitalisation of Airport Handling (by an investment of EUR 25 million) did not constitute State aid. The Commission, having doubts as to whether the measures in question constituted State aid, initiated the formal investigation procedure.

131. A number of conclusions may be drawn from this overview of the decisions concerning economic continuity between the beneficiary of the aid and the purchaser of its assets.

132. First, the finding as to the existence or absence of economic continuity may be made in different contexts. Thus, as in the *Seleco* case, it may be made in connection with provisions concerning the recovery of aid declared incompatible in a final decision adopted following a formal investigation procedure. However, as in the *Olympic Airlines* case, it may also be confused with the analysis of the existence of aid where the transaction whereby the assets are sold is itself capable of constituting

83 — Paragraphs 92 to 127 of Decision C(2008) 6745 final.

84 — Paragraphs 128 to 151 of Decision C(2008) 6745 final.

85 — Paragraph 68 of the judgment of the General Court (T-123/09, EU:T:2012:164).

86 — See paragraphs 54 to 62 of the judgment of the Court of Justice (C-287/12 P, EU:C:2013:395).

87 — See references in footnote 69 above.

88 — See paragraph 47 of that decision.

89 — See references in footnote 69 above.

90 — See paragraph 26 of the order in *Airport Handling v Commission* (T-688/14 R, EU:T:2014:1010).

91 — Decision C(2013) 1668 of 19 December 2012.

aid.⁹² Finally, as in *Ryanair v Commission*, it may be connected to, whilst remaining separate from, the analysis of the existence of new aid.⁹³ Accordingly, the legal nature of a decision confirming the existence or absence of economic continuity may be assessed only on a case-by-case basis, taking account of the context in which the analysis takes place.

133. Secondly, the finding confirming the existence or the absence of economic continuity between the beneficiary of State aid and the purchaser of its assets always presupposes, in any event, a decision finding that that aid is incompatible and must be recovered from the beneficiary.⁹⁴ A finding as to whether or not there is economic continuity is intended to determine whether or not the purchased assets retain the benefit of the aid which was declared incompatible and granted to the transferor who benefited from it. Such a finding therefore follows and is strictly linked to a declaration that the measure constituting aid is incompatible.

– The classification of the decision at issue

134. In the present case, the decision at issue was adopted by the Commission on the initiative of the French authorities, which requested that the Commission confirm that, under certain conditions, the obligation to repay the State aid imposed on the Sernam group by the Sernam 3 decision would not be extended to companies in the Geodis and BMV groups in the event of their takeover of the assets of the Sernam group.

135. In that decision, having described the context in which it was intervening, the Commission first of all gave a detailed description of the two offers and the undertakings given by the French Republic.⁹⁵ Next, having classified that decision as a '*sui generis*' decision based on the obligation of sincere cooperation between the Commission and the Member States, the Commission states that the decision concerns solely the issue of economic continuity and does not concern — or prejudice — the assessment of the acquisition in the light of Article 107(1) TFEU.⁹⁶ Finally, the Commission carries out an assessment to determine whether the transfer of the assets in question is such as to establish economic continuity between the Sernam group and the potential purchasers.⁹⁷ To that end, it examines the purpose of the sale, the transfer price, the independence of the new owners and shareholders, the time at which the transfer took place and the economic logic of the transaction and concludes that there is no economic continuity, and therefore no obligation to recover aid from the purchasers of the assets.⁹⁸

136. It must therefore be concluded that the decision at issue concerns solely the issue as to the existence or the absence of economic continuity between the Sernam group on the one hand and Geodis and BMV on the other. It is therefore a specific decision that is not directly comparable to any of the decisions analysed in points 123 to 130 above. In that regard, the parties put forward different arguments concerning the legal nature of that decision.

137. In the first place, I am not convinced by the approach adopted by the Commission and repeated by the General Court to the effect that the contested decision concerns only the arrangements for the recovery of the aid declared incompatible and its only true context is therefore that of sincere cooperation between the Member State concerned and the Commission.

92 — The Airport Handling case seems, *prima facie*, to be a similar case.

93 — In the Ryanair case, that analysis was contained in a decision not to initiate the formal investigation procedure.

94 — In the Larko case, the decision that the aid was incompatible had not yet been adopted by the Commission, and the finding that there was no economic continuity was therefore preventive in nature 'in the event that' the Commission should adopt such a decision.

95 — Paragraphs 14 to 50 of the decision at issue.

96 — Paragraph 54 of the decision at issue.

97 — See paragraph 60 of the decision at issue.

98 — Paragraphs 62 to 107 of the decision at issue.

138. When questioned at the hearing on that point, the Commission itself acknowledged that a decision concerning economic continuity does not concern solely the arrangements for the recovery of incompatible aid, but also concerns the transfer of the advantage arising from the grant of that aid. Such a decision therefore concerns the beneficiary of individual aid that has been declared incompatible, namely the undertaking that benefits from that aid (or does not, depending on whether there is economic continuity). Accordingly, it is a decision concerning the individual aid itself, in its 'subjective dimension', not solely the arrangements for its recovery. In other words, such a decision aims to verify, following an assessment of a number of factors, whether or not the purchaser of the assets must be considered a beneficiary of the aid that has already been declared incompatible.

139. Next, even less convincing, in my view, is the position — which may be inferred from a reading of paragraphs 33 and 56 of the order under appeal and which was contemplated by the Commission itself at the hearing — that, as that decision concerns only the recovery of the aid — a question that concerns only the Commission and the Member State concerned — third parties, such as competitors, cannot even challenge it. In that regard, I share the appellants' view that such an approach is clearly contrary to the fourth paragraph of Article 263 TFEU. As such a decision constitutes an actionable measure⁹⁹ and the third party has an interest in bringing proceedings and *locus standi*, he must be given the opportunity to challenge such a decision before the EU courts.

140. In the second place, the argument put forward by the appellants based on Article 16 of Regulation No 659/1999 does not appear to me to be relevant. That provision concerns the misuse of aid, namely, as is clear from Article 1(g) of Regulation No 659/1999, a situation in which aid is used by the beneficiary in breach of a decision not to raise objections, a positive decision or a conditional decision.¹⁰⁰ However, it is clear that the Sernam 3 decision does not belong to any of those three categories of decision, but is a decision concerning the misuse of aid which declares the aid paid to the Sernam group unlawful and incompatible. The appellants cannot therefore rely on that provision in order to claim a misuse of aid declared incompatible.

141. In the third place, it is necessary to examine the argument put forward by the appellants that the decision at issue constitutes a decision comparable to an implied decision not to initiate the in-depth investigation procedure.

142. In that regard, I must acknowledge that certain arguments may support such an approach. Thus, it may be argued that changing the beneficiary of individual aid constitutes so substantial a change that it results in new aid,¹⁰¹ which must be subject to a new compatibility assessment. In that situation, a procedural analogy may perhaps be drawn from the fact that the decision at issue was adopted, like a decision not to raise objections, following notification by the French authorities.

143. However, as I stated in point 133 above, a decision on economic continuity, such as the decision at issue, presupposes the existence, at least potential,¹⁰² of a negative decision within the meaning of Article 7(5) of Regulation No 659/1999 or, as in the present case, of a decision finding the aid has been misused from which the obligation to recover the incompatible aid arises. Such a decision concerns the possible transfer to a new beneficiary of aid that has already been declared incompatible, following the sale of the assets in question. Since the aid to be recovered has already been declared

99 — To that end, the decision must produce legal effects which are binding on and capable of affecting the interests of the applicant by bringing about a distinct change in his legal position; see, *inter alia*, judgment in *Deutsche Post v Commission* (C-77/12 P, EU:C:2013:695, paragraph 51 and the case-law cited).

100 — See, respectively, Article 4(3) and Article 7(3) and (4) of Regulation No 659/1999.

101 — To that end, it might be possible to refer to the definition of an 'alteration to existing aid' within the meaning of Article 1(c), laid down in Article 4(1) of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Regulation No 659/1999 (OJ 2004 L 140, p. 1), in accordance with which 'an alteration to existing aid shall mean any change, other than modifications of a purely formal or administrative nature which cannot affect the evaluation of the compatibility of the aid measure with the common market'.

102 — See footnote 94 above.

incompatible, this precludes, in my opinion, the possibility of carrying out of a new examination regarding the compatibility of that aid, which could lead to a decision that it is compatible. In other words, the decision on economic continuity cannot under any circumstances call into question the decision declaring that the aid in question is incompatible and ordering its recovery.

144. It is a separate question whether, by the transaction to acquire the assets, the purchasers are receiving new State aid. That question, which was examined in the first part of the second decision in *Ryanair v Commission*,¹⁰³ is, however, expressly ruled out in the decision at issue in which, in paragraph 54, the Commission expressly stated that that decision did not prejudice the assessment of those investments in the light of Article 107 TFEU. Moreover, that is the essential difference between the decision at issue in *Ryanair v Commission*, which was classified by the General Court as a decision not to raise objections, and the decision at issue. The second decision adopted in *Ryanair v Commission* included the analysis of a measure that had been notified by the Italian authorities in order to determine whether or not that measure constituted new State aid.¹⁰⁴

145. The decision at issue also differs from the decisions adopted in the Olympic Airlines case in so far as, in the decision at issue, the analysis of economic continuity is totally independent and in no way associated, as in those decisions, with the analysis of the existence of new aid granted to the purchasers of Sernam group's assets.

146. In those circumstances, in view of the absence, in the decision at issue, of any analysis of whether the purchasers received new aid, I am inclined to conclude that the situation in that decision is more akin to a situation such as that in the decision adopted in the Seleco case. In that case, the question of economic continuity was resolved, in the context of a final decision finding the aid to be incompatible, as a question concerning the successor beneficiary of the aid declared incompatible, from which the aid had to be recovered. In that regard, it must be noted that the Commission has itself confirmed in its written submissions that, if it had been aware of the possibility of and the arrangements for the takeover of the assets analysed in the decision at issue, it would have been able to decide on that question in the Sernam 3 decision.

147. In the light of that analysis, I am inclined to take the view that the decision at issue constitutes a decision concerning the possible transfer of aid, which has already been declared incompatible by the Commission in the Sernam 3 decision, to a new beneficiary, from which that aid should possibly be recovered. It therefore constitutes a decision which is related and supplementary to the Sernam 3 decision, intended to supplement its content¹⁰⁵ in the light of new facts arising after the adoption of the Sernam 3 decision.¹⁰⁶

148. It follows that the appellants' complaint alleging that the General Court erred in law in that it refused to acknowledge their interest in bringing proceedings by not classifying the decision at issue as a decision ruling out the initiation of an in-depth investigation procedure must be rejected.

149. In the light of the foregoing considerations, I take the view that the first and the fourth parts of the first ground of appeal must be rejected.

103 — See paragraphs 92 to 127 of the decision mentioned in footnote 82 above.

104 — Since that Member State transferred the assets of a state-owned company, the question arose as to whether that sale of a public asset was capable of containing an element of aid. In the present case, the sale of assets is between a private company (vendor) and a company that has (again) become the subsidiary of a public company (SNCF).

105 — See, in that regard, judgment in *Mediaset* (C-69/13, EU:C:2014:71, paragraph 27).

106 — See, by analogy, paragraphs 51 and 52 of the judgment in *HGA and Others v Commission* (C-630/11 P to C-633/11 P, EU:C:2013:387), concerning, however, a decision to initiate a formal investigation procedure. In that judgment, the Court also considered that the fact that the provisions governing procedure in State aid cases do not provide expressly for the possibility of adopting such a decision did not prevent the Commission from adopting a decision to extend the formal investigation procedure if the decision to initiate the procedure was based on an incomplete set of facts, provided, however, that the extension does not undermine the procedural rights of the parties concerned.

3. The third part of the first ground of appeal: Superga Invest's interest in bringing proceedings

150. By the third part of the first ground of appeal, the appellants take issue with the General Court for finding, in paragraphs 52 and 53 of the order under appeal, that Superga Invest did not have an interest in bringing proceedings by failing to recognise that that interest arises from the interest in bringing proceedings of the Mory companies, in which it is the main shareholder. First, Superga Invest has, in the same way as the Mory companies, suffered the past consequences of the damage caused by the payment of incompatible aid to Sernam over a period of ten years and therefore, like them, has an interest in bringing proceedings in order to obtain compensation for the damage. Secondly, that company also has an interest in bringing proceedings in all of the actions seeking to identify Geodis as the purchaser and current beneficiary of the incompatible aid forming the subject-matter of the Sernam 3 decision and as being jointly and severally liable with the previous beneficiaries of the aid and SNCF for the damage caused by that aid.

151. The Commission submits that this part of the first ground of appeal is ineffective since the Mory companies themselves have no interest in bringing proceedings for the annulment of the decision at issue.

152. In that regard, it must be noted that it is not disputed that Superga Invest is the main shareholder in the Mory companies and that, with those companies, it has brought an action for damages before the tribunal de commerce de Paris seeking from the Sernam group and Geodis compensation for the damage that those companies have caused them as a result of the competitive advantages they enjoyed as a result of the grant of incompatible aid.

153. In point 92 above, I concluded that the annulment of the decision at issue could produce effects in that action before the national court and that, therefore, the existence of that action could establish the appellants' interest in bringing proceedings against the decision at issue. That conclusion also applies to Superga Invest, which therefore has an interest in bringing proceedings for the annulment of that decision.

154. It follows that, by concluding that Superga Invest had no interest in bringing proceedings, the General Court erred in law and therefore the third part of the first ground of appeal must also be upheld.

4. Conclusion on the first ground of appeal

155. Since, in my opinion, the second and third parts of the first ground of appeal must be upheld, it follows that the order under appeal must be set aside in so far as it declared that the appellants had no interest in bringing proceedings against the decision at issue.

C – The second ground of appeal, alleging infringement of the fourth paragraph of Article 263 TFEU

156. By the second ground of appeal, the appellants submit that, by not finding that they were directly and individually concerned by the decision at issue, the General Court infringed the fourth paragraph of Article 263 TFEU. The order under appeal in fact examines questions relating to individual concern from the perspective of an interest in bringing proceedings. In the light of the judgment in *Ryanair v Commission*,¹⁰⁷ there is no doubt that the appellants are individually concerned by the decision at issue. There is a clear contradiction in acknowledging that the appellants are individually concerned and disputing their interest in bringing proceedings, since individual concern is in itself sufficient to establish an interest in bringing proceedings.

¹⁰⁷ — T-123/09, EU:T:2012:164.

157. The Commission submits that the General Court did not examine the question of *locus standi*, since such an examination was not necessary for the purpose of concluding that the action was inadmissible, in the absence of any interest in bringing proceedings. Next, when the General Court, nevertheless, responded in detail to arguments which related more to the appellants' *locus standi* than to their interest in bringing proceedings, it did so cautiously, treating the issue as a somewhat secondary issue, having stated that the appellants had confused the two concepts.

158. The second ground of appeal is based on the premise that, where an applicant has *locus standi* to bring proceedings for the annulment of a European Union act, he automatically has an interest in bringing proceedings. However, I have already pointed out in points 23 to 30 above that *locus standi* and an interest in bringing proceedings are two separate conditions of admissibility. The premise on which the second ground of appeal is based is therefore incorrect.

159. While, as I have already stated above, in some paragraphs of the order under appeal, the General Court has, in order to respond to the appellants' arguments, mixed arguments concerning interest in bringing proceedings and *locus standi*, it is none the less clear that in that order the General Court did not directly address the issue of the appellants' *locus standi*. This was unnecessary, in the General Court's view, since it had concluded that the action was inadmissible in any event for lack of interest in bringing proceedings.¹⁰⁸

160. However, since the General Court's conclusion based on the appellants' lack of interest in bringing proceedings is, in my opinion, incorrect — as I said in the analysis of the second and third parts of the first ground of appeal — it follows that the General Court should have analysed the appellants' *locus standi*. Consequently, by failing to do so, the General Court erred in law. In those circumstances, the second ground of appeal must also be upheld.

D – Conclusion on the appeal

161. In the light of the foregoing analysis, I propose that the Court allow the appeal and set aside the order under appeal.

V – The admissibility of the action at first instance

162. In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice, if the appeal is well-founded, the Court may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.

163. In the present case, I consider that, although the Court of Justice is not in a position at this stage of the procedure to give judgment on the substance of the action brought before the General Court, it nevertheless has the information necessary to give final judgment on the issue of the admissibility of that action for annulment of the decision at issue.

164. First, if the Court decides to follow my proposal, the appellants' interest in bringing proceedings must be considered to be established.

¹⁰⁸ — See paragraph 109 of the order under appeal.

165. Secondly, following the discussions which took place between the parties before the General Court and before the Court of Justice in the appeal — since one of the grounds of appeal raised before the Court concerned *locus standi* — I consider that the Court has all of the information necessary to give final judgment on the issue of the appellants' *locus standi*.¹⁰⁹

166. In that regard, it must be noted that the fourth paragraph of Article 263 TFEU provides for two situations in which natural or legal persons are accorded standing to institute proceedings against a European Union act not addressed to them. First, such proceedings may be instituted if the act is of direct and individual concern to them. Second, they may bring proceedings against a regulatory act not entailing implementing measures if that act is of direct concern to them.¹¹⁰ Since the decision at issue was addressed to the French Republic, it is necessary to examine whether the appellants fall within one of those two situations.

167. In the first place, it must be immediately ruled out that they may have *locus standi* on the basis of the second situation, since the decision at issue is not a regulatory act within the meaning of the fourth paragraph of Article 263 TFEU because it is not of general application.¹¹¹

168. It is therefore necessary to ascertain whether the appellants are directly and individually concerned by the decision at issue.

169. In that regard, as I pointed out in point 147 above, since the decision at issue is an adjunct to the Sernam 3 decision, as a decision related and supplementary to it, and is intended to supplement the content of that decision in the light of new facts arising after the adoption of the Sernam 3 decision, it must be concluded that it has the same legal nature and, therefore, also the same conditions of admissibility. In particular, in points 138 and 147 above, I expressed the view that the decision at issue is a decision that concerns the assessment of the 'subjective dimension' of aid that has already been declared incompatible in an earlier decision and in which the Commission assessed the possibility of that aid being transferred to a new beneficiary from which it may have to be recovered.

170. In the present case, in their action before the General Court, the appellants not only submitted that the Commission lacked competence and that the decision had no legal basis, but also disputed the substance of the assessment carried out by the Commission to determine whether the purchasers of Sernam's assets should be considered beneficiaries of aid that had been declared incompatible in the Sernam 3 decision.

171. In those circumstances, it must be noted that, according to the settled case-law of the Court, persons other than those to whom a decision is addressed may claim to be individually concerned only if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and, by virtue of those factors, distinguishes them individually just as in the case of the person addressed.¹¹²

109 — Such a solution, first, is necessary in view of the principle of procedural economy and, secondly, cannot infringe the parties' rights of defence as they have been given the opportunity to make submissions concerning *locus standi* both at first instance and in the appeal proceedings.

110 — Judgment in *Stichting Woonpunt and Others v Commission* (C-132/12 P, EU:C:2014:100, paragraph 44).

111 — See judgment in *Inuit Tapiriit Kanatami and Others v Parliament and Council* (C-583/11 P, EU:C:2013:625, paragraphs 51, 60 and 61). According to case-law, a measure is of general application if it applies to objectively determined situations and produces legal effects with respect to categories of persons envisaged in general and in the abstract. See judgment in *AJD Tuna* (C-221/09, EU:C:2011:153, paragraph 51).

112 — See, inter alia, judgments in *Plaumann v Commission* (25/62, EU:C:1963:17, pp. 96, 107); *Spain v Lenzing* (C-525/04 P, EU:C:2007:698, paragraph 30), and *Stichting Woonpunt and Others v Commission* (C-132/12 P, EU:C:2014:100, paragraph 57).

172. As regards the field of State aid in particular, applicants who dispute the merits of a decision appraising aid taken on the basis of Article 108(3) TFEU or at the end of the formal investigation procedure are considered to be individually concerned by that decision if their market position is substantially affected by the aid to which the contested decision relates. In that regard, in addition to the undertaking in receipt of aid, competing undertakings have been recognised as individually concerned by a Commission decision terminating the formal investigation procedure where they have played an active role in that procedure, provided that their market position is substantially affected by the aid measure which is the subject of the contested decision.¹¹³

173. In the light of the considerations set out in points 169 and 170 above, I take the view that the case-law cited applies to the admissibility of an action for annulment of a decision such as the decision at issue.

174. However, it is clear that, at the time they brought their action before the General Court, namely on 17 December 2012, the Mory companies had already been in liquidation since 10 July 2012. On that basis, the General Court held, in paragraph 32 of the order under appeal, that, as the Mory companies had ceased to be active on the market since their liquidation, their position on the market could not be substantially affected by the possible transfer to a new beneficiary of the incompatible aid that formed the subject-matter of the decision at issue. That conclusion, which has at no point been called into question by the appellants, even though it was mentioned on several occasions by the Commission in its response to the appeal, forms part of the assessment of the facts for which the General Court alone has jurisdiction.¹¹⁴ With regard to Superga Invest, the appellants have not disputed the General Court's finding in paragraph 52 of the order under appeal that Superga Invest is not active in the mail services sector and cannot therefore be classified as a competitor.

175. In those circumstances, none of the appellants may claim that their market position is substantially affected by the aid which was previously declared incompatible in the Sernam 3 decision and the possible transfer of which to a new beneficiary forms the subject-matter of the decision at issue. It follows that the requirement that they are individually concerned is not met and, therefore, their appeal must, in my view, be declared inadmissible.

VI – Costs

176. 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, it is to make a decision as to costs.

177. Under Article 138(1) of those Rules, which are applicable to the procedure on appeal by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

178. In the present case, the appellants have succeeded in the appeal but their action at first instance has been declared inadmissible. However, in the appeal proceedings, the appellants did not claim that the other party should be ordered to pay the costs. In those circumstances, I consider that it is appropriate to order each party to bear its own costs in connection with the present appeal. The costs relating to the procedure at first instance are to be borne by the appellants.

¹¹³ — Judgment in *Sniace v Commission* (C-260/05 P, EU:C:2007:700, paragraphs 54 and 55 and the case-law cited).

¹¹⁴ — Judgment in *Sniace v Commission* (C-260/05 P, EU:C:2007:700, paragraph 60).

VII – Conclusion

179. In the light of the foregoing considerations, I propose that the Court should:

- set aside the order of the General Court in *Mory and Others v Commission* (T-545/12, EU:T:2013:607);
- dismiss as inadmissible the action brought by Mory SA, Mory Team and Superga Invest for annulment of European Commission Decision C(2012) 2401 final of 4 April 2012 concerning the takeover of assets of the Sernam group as part of its composition with creditors;
- order each party to bear its own costs relating to the appeal proceedings;
- order Mory SA, Mory Team and Superga Invest to bear the costs of the proceedings before the General Court.