Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

17 September 2015*

(Appeal — State aid — Actions for annulment — Article 263 TFEU — Admissibility — Unlawful and incompatible aid — Obligation to recover — European Commission decision not to extend the recovery obligation to the successor of the aid beneficiary — Interest in bringing proceedings — Action for damages and for the recovery of aid before the national courts — Locus standi — Appellant not individually concerned)

In Case C-33/14 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 22 January 2014,

Mory SA, in liquidation, established in Pantin (France),

Mory Team, in liquidation, established in Pantin,

Superga Invest, formerly Compagnie française superga d'investissement dans le service (CFSIS), established in Miraumont (France),

represented by B. Vatier and F. Loubières, avocats, with an address for service in Luxembourg,

appellants,

the other party to the proceedings being:

European Commission, represented by T. Maxian Rusche and B. Stromsky, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (Third Chamber),

composed of M. Ilešič, President of the Chamber, A. Ó Caoimh (Rapporteur), C. Toader, E. Jarašiūnas and C.G. Fernlund, Judges,

Advocate General: P. Mengozzi,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 27 April 2015,

after hearing the Opinion of the Advocate General at the sitting on 18 June 2015,

* Language of the case: French.

gives the following

Judgment

1 By their appeal, Mory SA, Mory Team and Superga Invest request the Court to set aside the order of the General Court of the European Union in *Mory and Others* v *Commission* (T-545/12, EU:T:2013:607) ('the order under appeal'), by which the General Court dismissed the action brought by the appellants for annulment of 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 ('the decision at issue').

Background to the dispute

2 The appellants regard themselves as having been direct competitors of Financière Sernam and of its subsidiaries, Sernam Services and Aster (together, 'the Sernam group'). Mory SA and Mory Team (together, 'the Mory companies') were engaged in the traditional and express mail services sector before they were put into compulsory liquidation. Superga Invest, formerly Compagnie française superga d'investissement dans le service (CFSIS), was the main shareholder of the Mory companies.

3 By decision of 23 May 2001 concerning State aid NN 122/2000 (ex NJ 140/2000) (OJ 2001 C 199, p. 15), the Commission approved aid for the restructuring of the Sernam group ('the Sernam 1 Decision').

4 By 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) ('the Sernam 2 Decision'), the Commission confirmed that the aid approved by the Sernam 1 Decision was compatible with the internal market under certain conditions. It also established the presence of supplementary aid incompatible with the internal market and which must, consequently, be recovered by the French Republic.

5 By letter of 16 July 2008, the Commission informed the French Republic of its decision to initiate the formal investigation procedure laid down in Article 108(2) TFEU concerning the application by France of the Sernam 2 Decision. That decision was published in the *Official Journal of the European Union* on 9 January 2009 (OJ 2009 C 4, p. 5).

6 On 27 June 2011, the Mory companies were placed in court-supervised administration by the tribunal de commerce de Bobigny (Bobigny Commercial Court, France).

7 On 31 January 2012, Financière Sernam and Sernam Services were placed in court-supervised administration by the tribunal de commerce de Nanterre (Nanterre Commercial Court, France).

8 On 3 February 2012, Aster was put into compulsory liquidation with continuation of trading by the tribunal de commerce de Pontoise (Pontoise Commercial Court, France).

9 On 9 March 2012, the Commission adopted Decision 2012/398/EU on State aid SA.12522 (C 37/08) — France — Enforcing the Sernam 2 Decision (OJ 2012 L 195, p. 19) ('the Sernam 3 Decision'). Article 1 of the operative part of that decision states that the Sernam group benefited from unlawful State aid which was incompatible with the internal market ('the aid at issue'). Under Article 2 of the operative part, the French Republic is required to recover the aid at issue from that group.

10 On the same day, two takeover offers were sent to the administrator of the Sernam group, the first issued by Geodis Calberson ('Calberson'), a subsidiary of the Geodis group ('Geodis') engaged in the mail services sector, and the second by BMV. The takeover offer from Calberson was subject to the

condition that 'no obligation of any type and in particular no recovery charges relating to all or part of the aid [at issue] paid [to the Sernam group] may be transferred with the assets taken over or as a result of the takeover, or be charged to the successor'. The offer submitted by BMV was not subject to such a condition, but was submitted as an integral part of the offer submitted by Calberson and would lapse if Calberson's bid were rejected.

11 On 23 March 2012, the French Republic requested the Commission to confirm that the obligation to repay the aid at issue would not be extended to Geodis and BMV, in the event that the latter took over part of the assets of the Sernam group.

12 By the decision at issue, the Commission informed the French Republic that the recovery obligation imposed on the Sernam group under Article 2 of the Sernam 3 Decision did not require to be extended to Geodis and BMV, due to the lack of economic continuity between the Sernam group and those two potential successors. The Commission stated, in paragraph 54 of the decision at issue, that the latter did not apply to the reasonableness or otherwise of the successors' investment consisting of the takeover of certain of the assets of the Sernam group and that, consequently, it did not prejudge the assessment of that investment in the light of Article 107(1) TFEU.

13 On 10 April 2012, Calberson submitted a new takeover offer with the administrator of the Sernam group which did not include the condition attached to its initial takeover offer.

14 On 13 April 2012, the tribunal de commerce de Nanterre approved the takeover offer submitted by Calberson and by BMV and ordered the transfer in their favour of certain assets of Sernam Services, becoming effective on 7 May 2012.

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

The proceedings before the General Court and the judgment under appeal

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

17 By document lodged at the Registry of the General Court on 25 March 2013, the Commission raised an objection of inadmissibility pursuant to Article 114(1) of the Rules of Procedure of the General Court, alleging, first, that the appellants had failed to establish that they had an interest in bringing proceedings against the decision at issue and, secondly, that they were not individually concerned by that decision, within the meaning of the fourth paragraph of Article 263 TFEU.

18 In the order under appeal, the General Court decided that the appellants had not substantiated their interest in bringing proceedings against the decision at issue and that, therefore, their action must be declared inadmissible on that sole ground, without it being necessary to examine the plea of inadmissibility raised by the Commission alleging that the appellants were not individually concerned by the decision at issue. In particular, that Court held that neither the action brought by the Mory companies, on 25 April 2007, before the tribunal administratif de Paris (Paris Commercial Court, France) seeking recovery of the aid at issue, nor the action brought by them on 7 May 2013 before the tribunal de commerce de Paris seeking an order that the Sernam group and Geodis were, in particular, jointly and severally liable to compensate for the damage that those companies caused them, were capable of giving them such an interest.

Forms of order sought and the procedure before the Court of Justice

19 By their appeal, the appellants request the Court to:

— set aside the order under appeal;

— refer the case back to the General Court to be considered on its merits, and

— reserve the costs.

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

21 By document lodged with the Court Registry on 19 May 2014, Calberson applied, on the basis of the second subparagraph of Article 40 of the Statute of the Court of Justice of the European Union, for leave to intervene in the present case in support of the form of order sought by the Commission.

22 That application was rejected by order of the President of the Court of 27 February 2015.

The application for reopening of the oral procedure

23 Following the delivery of the Opinion of the Advocate General, the appellants, by document lodged at the Court Registry on 29 June 2015, applied for the oral part of the procedure to be reopened. In support of that application, the appellants claimed, in essence, that the new arguments presented by the Advocate General in his Opinion concerning, in particular, the classification of the decision at issue, for the purposes of determining *locus standi* within the meaning of Article 263 TFEU, and the consequences of those arguments for the consideration of the appeal, required to be debated *inter partes*, in the event that the Court decides to give a definitive ruling on the dispute.

24 It must be recalled that the Statute of the Court of Justice and the Rules of Procedure of the Court make no provision for interested parties to submit observations in response to the Advocate General's Opinion (see judgment in *Vnuk*, C-162/13, EU:C:2014:2146, paragraph 30 and the case-law cited).

25 Pursuant to the second paragraph of Article 252 TFEU, it is the duty of the Advocate General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice, require the Advocate General's involvement. The Court is not bound either by the Advocate General's Opinion or by the reasoning on which it is based (see judgment in *Commission* v *Parker Hannifin Manufacturing and Parker-Hannifin*, C-434/13 P, EU:C:2014:2456, paragraph 29 and the case-law cited).

26 Consequently, a party's disagreement with the Opinion of the Advocate General, irrespective of the questions that he examines in his Opinion, cannot in itself constitute grounds justifying the reopening of the oral part of the procedure (judgment in *E.ON Energie* v *Commission*, C-89/11 P, EU:C:2012:738, paragraph 62).

27 However, the Court may at any moment, having heard the Advocate General, order the reopening of the oral part of the procedure under Article 83 of its Rules of Procedure if, inter alia, it considers that it lacks sufficient information or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice (judgment in *Nordzucker*, C-148/14, EU:C:2015:287, paragraph 24).

28 That is not the position in the present case. The appellants and the Commission have presented, both during the written part of the procedure and the oral part thereof, all their arguments of fact and law in support of their claims, including in relation to *locus standi* within the meaning of Article 263 TFEU. Therefore, the Court considers, after hearing the Advocate General, that it has before it all the necessary information to give judgment and that that information has been the subject of debate before it.

29 In the light of the foregoing, the Court considers that there is no need to reopen the oral part of the procedure.

The appeal

30 The appellants put forward two grounds in support of their appeal. The first alleges that the General Court committed several errors of law in its assessment of their interest in bringing an action for annulment of the decision at issue. The second ground of appeal alleges an infringement of the fourth paragraph of Article 263 TFEU in so far as the General Court failed to find that they were directly and individually concerned by that decision.

31 As a preliminary point, the appellants claim that there is no dividing line between the concepts of an interest in bringing proceedings and 'direct or individual concern'. Those two concepts merge completely as regards the assessment of the admissibility of an action brought by a party which is not the addressee of a decision, within the meaning of the fourth paragraph of Article 263 TFEU. It is illogical to consider that a person who is directly and individually concerned by a decision does not have an interest in bringing proceedings. Likewise, it is inconceivable that a person could have an interest in bringing proceedings without being directly and individually concerned by a decision. By holding that those two concepts are distinct, the General Court infringed the fourth paragraph of Article 263 TFEU. Merely showing that a person is directly and individually concerned suffices to establish the admissibility of his action.

The first ground of appeal

Arguments of the parties

32 By their first ground of appeal, the appellants claim that the General Court committed a member of errors of law in the examination which led it to hold that they had not established their interest in bringing proceedings for annulment of the decision at issue.

33 In the first place, the appellants claim that the General Court's reasoning is vitiated by a number of contradictions and errors of law where it held, in paragraphs 29 to 35 of the order under appeal, that Mory's participation in the administrative procedure prior to the adoption of the Sernam 2 Decision was not capable of conferring on it an interest in bringing proceedings.

34 First of all, the General Court contradicted itself in so far as, having in particular invoked, in paragraph 31 of the order under appeal, in support of its decision that the appellants did not have an interest in bringing proceedings, the case-law concerning State aid according to which an applicant must always show that the decision that aid is compatible with the internal market is capable of affecting its position on the market, it stated, in paragraph 57 of that order, that the Commission did not take a position, in the decision at issue, on the existence and potential compatibility of aid on the basis of Article 108 TFEU.

35 Next, the General Court's finding, in paragraph 33 of the order under appeal, that the question of procedures for recovering the aid at issue is a matter solely for the Commission and the Member State concerned, would exclude, in principle, a party, other than that Member State, having an interest in the decision ordering recovery having an interest in bringing proceedings against a decision relating to procedures for recovering that aid. Such an assessment contradicts the fourth paragraph of Article 263 TFEU, in accordance with which an action against such a decision is open to any person directly and individually concerned by that decision.

36 Finally, the General Court confused, first, the concepts of 'an interest in bringing proceedings' and 'person concerned' and, secondly, the nature of the decision at issue, since the order under appeal classified it sometimes as a *sui generis* decision, sometimes as a decision relating solely to the procedures for recovering aid and as a decision concerning the existence or absence of a transfer of incompatible aid and the circumvention of a recovery decision. That confusion obfuscates the fact that the General Court did not adopt, in the order under appeal, the same approach as that which it had followed in the judgment in *Ryanair* v *Commission* (T-123/09, EU:T:2012:164).

37 In the second place, the appellants consider that the General Court committed errors of law and of assessment when it held, in paragraphs 36 to 51 of the order under appeal, that the actions brought before the national courts for recovery of the aid at issue and compensation for damage suffered did not give them an interest in bringing proceedings before the EU Courts.

38 First of all, the appellants claim, in that regard, that the General Court wrongly held that an interest in bringing proceedings against an EU decision can be substantiated only where a party is entitled to bring an action for damages before the national courts. That interest could also result from an action for effective recovery of aid by the Member State concerned. In this case, Mory brought such proceedings before the tribunal administratif de Paris seeking an order that the French State must recover the aid at issue from all the successive beneficiaries thereof, including Geodis. Neither the Commission nor the General Court is competent to contest the appellants' standing and interest in the context of those proceedings, as long as they were validly brought and are ongoing.

39 Next, the appellants claim that the General Court wrongly held that their interest in bringing proceedings was not established on the ground that they failed to take any step for several years in order to recover damages for the harm suffered as a result of the distortion of competition created by the aid at issue. The bringing of the action for damages before the tribunal de commerce de Paris became possible only after the adoption of the Sernam 3 Decision declaring that aid to be incompatible with the internal market. Moreover, that action was referred to in the application before the General Court and brought before the adoption of the order under appeal. In any event, it was not open to the General Court to replace the analysis of the merits of the action for damages against Geodis carried out by the national court with its own analysis in order to hold that that action could not succeed and that the success of the action for annulment brought before it had no impact on the success of the action for damages pending before the national courts.

40 Finally, the appellants consider that an action for damages before the national court against Geodis is valid in law, since the latter should be regarded as the actual beneficiary of the aid at issue and, on that basis, as being responsible for compensating the harm caused to the Mory companies by the grant of that aid, jointly and severally with the successive beneficiaries and their provider, the Société nationale des chemins de fer français (SNCF). Furthermore, if the decision at issue was annulled, the appellants could rely before the national court on the concept of French law known as 'enrichissement sans cause' ('unjust enrichment') against Geodis.

41 In the third place, the appellants complain that the General Court held that Superga Invest had no interest in bringing proceedings by refusing to consider that such an interest derived from the interest of the Mory companies, whose main shareholder is Superga Invest.

42 In the fourth place, the appellants complain that the General Court held, in paragraphs 54 to 58 of the order under appeal, that their procedural right to secure the instigation of a formal investigation procedure under Article 108(2) TFEU had not been infringed.

43 First of all, the appellants claim that, while they had brought to the attention of the Commission the existence of risks of circumvention due to the envisaged transfer, that institution, by adopting the decision at issue, ruled out the opening of a detailed investigation procedure and infringed their procedural rights. The appellants were therefore prevented from obtaining a detailed examination, not of new aid, but of the unlawful application of the Sernam 3 Decision.

44 Next, the appellants consider that the General Court deliberately avoided examining whether they were directly and individually concerned by the decision at issue in order to avoid addressing the question of the nature of the decision at issue, which was classified by the Commission as a *sui generis* decision. Being individually affected by that decision, the appellants are entitled to challenge it in order that the General Court may determine whether the Commission was competent to adopt that decision notwithstanding the lack of a legal basis.

45 Finally, the appellants complain that the General Court held, in paragraph 33 of the order under appeal, that given that the decision at issue relates not to the compatibility of State aid with the internal market, but to the procedures for recovering the aid at issue, it concerns only the Commission and the Member State which is required to recover the aid. The question to be examined is therefore not whether new aid was granted to Geodis, but whether the conditions in which the takeover of the assets of the Sernam group by Geodis were to take place constituted a correct application of the Sernam 3 Decision or, on the contrary, an unlawful application of that decision. Since a procedure for recovery may constitute an unlawful application of a decision on the recovery of aid, the Commission should initiate the formal investigation procedure if it has serious doubts in that regard.

46 According to the Commission, the appellants' claims are unfounded for two reasons. First, at the time the action for annulment was lodged, the Mory companies were in liquidation and were therefore no longer the competitors of any undertaking. Secondly, the annulment of the decision at issue is not of real interest in the context of an action for damages before the national court on account of the competitive disadvantage suffered by them in the past.

47 The Commission contends, as a preliminary point, that the arguments advanced in the first and fourth places in the context of this ground of appeal relate not to the appellants' interest in bringing proceedings but to their *locus standi*. Those arguments cannot, therefore, prove such an interest in bringing proceedings against the decision at issue.

48 As to the remainder, the Commission considers that neither the action for recovery nor the action for damages brought before the national courts grants the appellants an interest in bringing proceedings before the EU Courts.

49 As regards the first of those actions brought before the tribunal administratif de Paris, the Commission contends that, since the Mory companies continue to exist only for the purposes of their winding up, they cannot have an interest in bringing proceedings to have their competitive position restored through recovery of the aid at issue. In their application before the General Court, the appellants moreover invoked only the possibility of bringing an action for damages to try to substantiate an interest in bringing proceedings. Furthermore, it is not open to the appellants to invoke the argument at the appeal stage that the action for recovery before the tribunal administratif de Paris also covers recovery of the aid at issue from Geodis. That extension of the action took place after the order under appeal was delivered and the application before the General Court does not include that argument.

50 In the alternative, the Commission considers that it is not in any way established that that action before the tribunal administratif de Paris is well founded and has the slightest chance of success under national law. In addition, it appears that, following the adoption of the Sernam 3 Decision, the national court in question found that it was moving towards the adoption of an order that there was no need to adjudicate. Once the Commission made a decision, as in the present case, declaring the aid at issue incompatible with the internal market and ordering the recovery thereof, the proceedings brought earlier before the national court would lose their purpose.

51 As regards the second of those actions brought before the tribunal de commerce de Paris, the Commission contends that it does not suffice, in order to substantiate an interest in the annulment of a Commission decision, for an applicant before the EU Courts to rely on any action for damages capable of being lodged in the future or, as the case may be, which has already been lodged before a national court, on the ground that the annulment of that decision by the EU Courts would facilitate success in its action for damages, without showing, in addition, that that action is reasonably likely to result in the annulment of the Commission decision. In that context, although the General Court may not substitute itself for the national court in order to rule on the merits of the action for damages pending before the national court, it is nevertheless required to ensure that the applicants have established a real interest in applying for annulment of a Commission decision in order to substantiate that action for damages.

52 In the present case, the Commission considers that such evidence is lacking. The General Court's assessment of that point is correct, an assessment which, moreover, comes within the factual sphere not subject to review by the Court on appeal. The appellants lodged their application for damages only in response to the argument presented by the Commission in its objection of inadmissibility more than one year after the adoption of the Sernam 3 Decision. As regards the possibility of invoking an argument against Geodis based on the concept of French law known as 'enrichissement sans cause', it was presented for the first time in the appeal and is, on that ground, manifestly inadmissible. In any event, no serious arguments have been presented in support of that concept.

53 Finally, the Commission considers that the General Court was correct to hold, in paragraph 53 of the order under appeal, that since the Mory companies are no longer active, they cannot suffer from any competitive threat, the consequences of which would be borne by Superga Invest.

Findings of the Court

54 By their first ground of appeal, the appellants claim that the General Court committed a number of errors of law by holding that they had failed to establish their interest in bringing proceedings for annulment of the decision at issue, within the meaning of the fourth paragraph of Article 263 TFEU.

55 According to the Court's settled case-law, an action for annulment brought by a natural or legal person is admissible only in so far as that person has an interest in having the contested act annulled. Such an interest requires that the annulment of that act must be capable, in itself, of having legal consequences and that the action may therefore, through its outcome, procure an advantage to the party which brought it (see, inter alia, to that effect, judgments in *Commission* v *Koninklijke FrieslandCampina*, C-519/07 P, EU:C:2009:556, paragraph 63; *ACEA* v *Commission*, C-319/09 P, EU:C:2011:857, paragraph 67; *Stichting Woonpunt and Others* v *Commission*, C-132/12 P, EU:C:2014:100, paragraph 67; and *Stichting Woonlinie and Others* v *Commission*, C-133/12 P, EU:C:2014:105, paragraph 54).

56 An appellant's interest in bringing proceedings must be vested and current (see, to that effect, judgments in *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 34). It may not concern a future and

hypothetical situation (see, to that effect, judgments in *Stroghili* v *Court of Auditors*, 204/85, EU:C:1987:21, paragraph 11, and *Cañas* v *Commission*, C-269/12 P, EU:C:2013:415, paragraphs 16 and 17).

57 That interest must, in the light of the purpose of the action, exist at the stage of lodging the action, failing which the action will be inadmissible, and continue until the final decision, failing which there will be no need to adjudicate (see, to that effect, judgments in *Abdulrahim* v *Council and Commission*, C-239/12 P, EU:C:2013:331, paragarph 61, and *Cañas* v *Commission*, C-269/12 P, EU:C:2013:415, paragraph 15).

58 The interest in bringing proceedings is an essential and fundamental prerequisite for any legal proceedings (see, to that effect, order in *S.* v *Commission*, 206/89 R, EU:C:1989:333, paragraph 8, and judgment in *Andechser Molkerei Scheitz* v *Commission*, C-682/13 P, EU:C:2015:356, paragraph 27).

59 Moreover, the admissibility of an action brought by a natural or legal person against an act which is not addressed to them, in accordance with the fourth paragraph of Article 263 TFEU, is subject to the condition that they be accorded standing to bring proceedings, which arises in two situations. First, such proceedings may be instituted if the act is of direct and individual concern to them. Second, such persons may bring proceedings against a regulatory act not entailing implementing measures if that act is of direct concern to them (see, to that effect, inter alia, judgments in *Telefónica* v *Commission*, C-274/12 P, EU:C:2013:852, paragraph 19, and *Stichting Woonpunt and Others* v *Commission*, C-132/12 P, EU:C:2014:100, paragraph 44).

60 In this case, it should be noted, in the first place, that the General Court held, in paragraph 59 of the order under appeal, that the action for annulment of the decision at issue brought by the appellants under the fourth paragraph of Article 263 TFEU was inadmissible, on the sole ground that the appellants did not justify their interest in bringing proceedings, without examining, in addition, whether those appellants had *locus standi* within the meaning of that provision.

61 In those circumstances, it appears that the grounds on which the General Court held, in paragraphs 29 to 35 and 55 to 58 of the order under appeal, that, first, Mory was not individually concerned by the decision at issue and, secondly, the appellants were not denied, in the absence of initiation of the formal investigation procedure provided for in Article 108(2) TFEU, the benefit of their procedural rights, are not capable of supporting the operative part of that order, since those grounds concern the examination not of the interest but *locus standi*, as the General Court moreover held itself in paragraphs 30 and 34 of that order.

62 In that regard, the appellants are wrong to claim that the mere fact that a natural or legal person is directly and individually concerned necessarily indicates his interest in bringing proceedings. As is apparent from paragraphs 55 to 59 of the present judgment, an interest in bringing proceedings and *locus standi* are distinct conditions for admissibility which must be satisfied by a natural or legal person cumulatively in order to be admissible to bring an action for annulment under the fourth paragraph of Article 263 TFEU (see, to that effect, inter alia, judgments in *Stichting Woonpunt and Others* v *Commission*, C-132/12 P, EU:C:2014:100, paragraphs 67 and 68, and *Stichting Woonlinie and Others* v *Commission*, C-133/12 P, EU:C:2014:105, paragraphs 54 and 55).

63 It follows from the foregoing considerations that the line of argument put forward by the appellants in the context of the first ground in support of their appeal, in so far as it complains that the order under appeal held that the appellants did not have *locus standi*, must be rejected as being, in part, ineffective and, in part, unfounded.

64 In the second place, it is necessary to examine the appellants' first ground of appeal in so far as it is directed against the findings of the General Court, set out in paragraphs 36 to 51 of the order under appeal, by which it rejected the appellants' line of argument that their interest in bringing proceedings

resulted, in this case, from the action brought by the Mory companies, on 25 April 2007, before the tribunal administratif de Paris seeking recovery of the aid at issue, and the action for damages brought by them on 7 May 2013 before the tribunal de commerce de Paris seeking an order that the Sernam group and Geodis be held jointly and severally liable to reimburse the damage that those companies caused the appellants.

65 In that regard, the General Court held, first, in paragraphs 39 and 40 of the order under appeal that the action for recovery of the aid at issue brought before the national court did not seek damages for the harm which the appellants claimed to have suffered.

66 Secondly, the General Court, after noting, in paragraph 41 of the order under appeal, that the appellants had failed to bring any action for several years for damages for harm suffered as a result of the distortion of competition created by that aid, held, in paragraphs 42 to 49 of that order, that the action brought by the appellants before the tribunal de commerce de Paris, after the bringing of the action for annulment before the EU Courts, also did not grant them an interest in bringing proceedings before the latter, since they had failed to show that Geodis was likely to cause them harm, thereby giving them a basis for bringing an action for damages against the latter before the national court.

67 In that regard, the General Court, first of all, held in paragraphs 44 and 45 of the order under appeal that, since the assets of the Sernam group were taken over on a date after the Mory companies' composition with their creditors, that takeover could not be the cause of their compulsory liquidation and that, as a result, Geodis could not be held responsible for their poor financial situation. Next, the General Court stated, in paragraph 47 of that order, that it was also not established that Geodis could, merely on the ground that it had taken over the assets of the Sernam group, be held theoretically responsible under national law for the alleged harm which that group had caused to the appellants. Finally, in so far as the appellants referred to the damage which could be caused to them by Geodis taking over certain of the assets of the Sernam group without being required to repay the aid at issue, the General Court held, in paragraph 48 of that order, that since the Mory companies had ceased all economic activity since their liquidation they could not suffer any harm caused by the transfee.

68 It must be observed at the outset that although it is known that the General Court has exclusive jurisdiction to find and appraise the facts and, in principle, to examine the evidence it accepts in support of those facts, the Court of Justice has jurisdiction to carry out a review, provided that the General Court has defined their legal nature and determined the legal consequences (see, to that effect, judgment in *E.ON Energie* v *Commission*, C-89/11 P, EU:C:2012:738, paragraphs 64 and 65 and the case-law cited). Consequently, the question whether, in the light of such facts and evidence, the annulment of the decision at issue by the EU Courts is capable of granting the appellants a benefit in the context of an action brought before the national courts, which may establish their interest in bringing proceedings before the EU Courts, is a question of law which comes within the Court's review in the context of an appeal.

69 It should be noted that, according to the Court's settled case-law, an application for annulment may retain an interest as a basis for a possible action for damages (see, to that effect, judgments 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, point 74; orders in *Lech-Stahlwerke* v *Commission*, C-111/99 P, EU:C:2001:58, paragraphs 19 and 20; *Commission* v *Provincia di Imperia*, C-183/08 P, EU:C:2009:136, paragraph 30; and judgment in *Abdulrahim* v *Council and Commission*, C-239/12 P, EU:C:2013:331, paragraph 64).

70 The continuation of such an interest in bringing proceedings must be assessed in the light of the specific circumstances, taking account, in particular, of the consequences of the alleged unlawfulness and of the nature of the damage claimed to have been sustained (judgment in *Abdulrahim* v *Council and Commission*, C-239/12 P, EU:C:2013:331, paragraph 65).

71 In this case, as is apparent, in essence, from paragraph 46 of the order under appeal, the harm alleged by the appellants is due to the fact that the Sernam group benefited, for 10 years, from aid which is unlawful and incompatible with the internal market, granted by the French Republic and the recovery of which was ordered by the Commission in the Sernam 3 Decision.

72 By the decision at issue, the Commission informed the French Republic that that obligation to recover would not be extended to Geodis in the event that the latter took over part of the assets of the Sernam group, since, in the absence of economic continuity, it was not established that Geodis would actually benefit from the aid at issue.

73 It follows from that that, as a result of the adoption of that decision, Geodis, which effectively took over part of the assets of the Sernam group, is not affected by that obligation to recover, since it cannot be regarded as a beneficiary of the aid at issue.

74 As stated by the Advocate General in point 91 of his Opinion, that fact alone is capable of showing that the appellants have an interest in applying for annulment of the decision at issue, since the action for damages before the national courts, in so far as it seeks compensation for harm allegedly suffered by them as a result of the grant of the aid at issue, is based precisely on the premiss that Geodis must, as transferee, be regarded as the beneficiary of that aid.

75 Since the annulment of the decision at issue is likely to have the result that Geodis should henceforth be regarded as the beneficiary of the aid at issue, the grant of which caused the damage alleged by the appellants, such an annulment would, in itself, be capable of increasing the likelihood that the action for damages brought before the tribunal de commerce de Paris would be successful in so far as that action is directed against Geodis and, therefore, that the appellants would benefit in the context of that action.

76 In that regard, contrary to the finding made by the General Court in paragraph 47 of the order under appeal, the appellants cannot be required to show that, under national law, Geodis could in fact be held responsible for the damage alleged solely on the basis of the takeover of the assets of the Sernam group. It is not for the EU Courts, for the purpose of determining an interest in bringing proceedings before them, to assess the likelihood that an action brought before the national courts under national law is well founded and, therefore, to substitute itself for those courts in making such an assessment. It is, by contrast, necessary, but sufficient, that, by its outcome, the action for annulment brought before the EU Courts would be capable of benefiting the party which brought it. That is so in this case, as follows from paragraphs 74 and 75 of the present judgment.

77 It is also irrelevant, contrary to what was stated by the General Court in paragraph 48 of the order under appeal, that the Mory companies had ceased all economic activity after their liquidation, since the damage alleged by the appellants, as the Commission itself acknowledged at the hearing, results precisely from the distortion of competition created by the grant of the aid at issue over a period during which it is agreed that the Mory companies carried out an economic activity on the market concerned and, therefore, were competitors of the beneficiary of that aid.

78 For the same reason, it is irrelevant that the takeover by Geodis of certain assets of the Sernam group, since it took place after the date on which the Mory companies were put into administration, as noted by the General Court in paragraphs 44 and 45 of the order under appeal, was not the cause of those companies being put into compulsory liquidation.

79 It should be added that the Commission is also wrong to criticise the appellants, at the stage of present appeal, for having their action for damages before the national court on a date after that at which they brought their action for annulment before the General Court. It is apparent from the Court's case-law referred to in paragraphs 56 and 69 of this judgment that the possibility of an action for damages suffices to justify such an interest in bringing proceedings, in so far as that interest is not hypothetical.

In the present case, it is not disputed that the appellants referred to the commencement of that action for damages in their application lodged before the General Court and that that action, as is apparent from paragraph 42 of the order under appeal, was indeed brought before the adoption of the order under appeal.

80 Furthermore, it should also be noted that the annulment of the decision at issue would also, in itself, be capable of benefiting the appellants in the action they have brought before the tribunal administratif de Paris seeking an order that the French State must recover the aid at issue, since that annulment would have as its effect that Geodis would no longer be necessarily subject to the obligation to repay deriving from the decision at issue, so that the annulment of the latter is liable to increase the likelihood that the action brought before the tribunal de commerce de Paris would be successful.

81 The General Court, therefore, erred in law by holding in paragraph 40 of the order under appeal that that action was not capable of conferring on the appellants an interest in bringing proceedings on the sole ground that that action did not seek compensation for the damage allegedly suffered, since the interest in bringing proceedings, as the Advocate General stated in point 40 of his Opinion, could arise from any action before the national courts in the context of which the possible annulment of the contested act before the EU Courts is capable of benefiting the applicant.

82 In that regard, the Commission is wrong to argue that the action brought by the appellants before the tribunal administratif de Paris is not capable of establishing the appellants' interest in bringing proceedings before the EU Courts on the ground that that action seeks solely to obtain recovery of the aid at issue not from Geodis but from the Sernam group. It is clearly apparent from the documents before the Court that that action extended to the successive beneficiaries of the aid at issue. Since the appellants, moreover, referred expressly to that extension of their action in their written submissions before the General Court, it is necessary to reject the objection of inadmissibility raised by the Commission on the ground that that argument was not presented by the appellants in the proceedings before the General Court.

83 Furthermore, while it is true that it cannot be ruled out that the adoption of the Sernam 3 Decision, in so far as it orders the recovery of the aid at issue, or the cessation of the economic activities of the Mory companies may, as the case may be, affect the appellants' interest in bringing proceedings before the tribunal administratif de Paris, that fact is, by contrast, of no relevance whatsoever, contrary to what was asserted by the Commission, in particular at the hearing, to the interest of those appellants in bringing proceedings before the EU Courts, since, by its outcome, the action for annulment brought before those courts is capable of affecting the outcome of the action before the national court seeking recovery of the aid at issue.

84 It follows from the above, in particular from paragraphs 77, 78 and 83 of this judgment, that the General Court also erred in law by holding, in paragraphs 52 to 54 of the order under appeal, that Superga Invest, as the main shareholder of the Mory companies, had not established its interest in bringing proceedings, since, as those companies were no longer active, they could not suffer from any competitive disadvantage, the consequences of which would be suffered by Superga Invest. Since Superga Invest's interest in bringing proceedings is associated with that of the Mory companies, it also has, for the same reasons, such an interest before the EU Courts.

85 In the light of all the foregoing, it must be held that the General Court erred in law by holding that the appellants had failed to establish their interest in bringing proceedings for annulment of the decision at issue, within the meaning of the fourth paragraph of Article 263 TFEU.

86 In those circumstances, the appellants' first ground in support of their appeal should be declared well founded.

87 The order under appeal must accordingly be set aside, and there is no need to examine the second ground of appeal put forward by the appellants in support of their appeal.

The action before the General Court

88 Under Article 61 of the Statute of the Court of Justice, if the appeal is well founded, the Court is to quash the decision of the General Court. It may therefore 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.

89 In this case, the Court considers that it has the information necessary to rule definitively on the objection of inadmissibility raised by the Commission during the proceedings at first instance.

90 In the first place, it is necessary, for the reasons set out in paragraphs 74 to 85 of the present judgment, to reject that objection of inadmissibility in so far as it claims that the appellants have no interest in bringing proceedings.

91 In the second place, in so far as that objection claims that the appellants have no interest in bringing proceedings, it should be noted that, as has already been stated in paragraph 59 of the present judgment, the fourth paragraph of Article 263 TFEU provides for two situations in which natural or legal persons are granted standing to institute proceedings against an EU 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.

92 As the decision at issue, which was addressed to the French Republic, does not constitute a regulatory act under the fourth paragraph of Article 263 TFEU, since it is not an act of general application (see, to that effect, judgment in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 56), it is necessary to determine whether the appellants are directly and individually concerned by that decision, within the meaning of that provision.

93 According to the Court's settled case-law, 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 by such a decision (see, inter alia, judgments in *Plaumann* v *Commission*, 25/62, EU:C:1963:17, p. 107; *Sniace* v *Commission*, C-260/05 P, EU:C:2007:700, paragraph 53; *3F* v *Commission*, C-319/07 P, EU:C:2009:435, paragraph 29; and *T & L Sugars and Sidul Açúcares* v *Commission*, C-456/13 P, EU:C:2015:284, paragraph 63).

94 As the action at first instance concerned a Commission decision on State aid, it must be borne in mind that, in the context of the procedure for reviewing State aid provided for in Article 108 TFEU, the preliminary stage of the procedure for reviewing aid under Article 108(3) TFEU, which is intended merely to allow the Commission to form a prima facie opinion on the partial or complete conformity of the aid in question, must be distinguished from the stage of the review under Article 108(2) TFEU. It is only at the latter stage, which is designed to enable the Commission to be fully informed of all the facts of the case, that the Treaty imposes an obligation on the Commission to give the parties concerned notice to submit their comments (see, inter alia, judgment in *3F* v *Commission*, C-319/07 P, EU:C:2009:435, paragraph 30 and the case-law cited).

95 It follows that, where, without initiating the formal review procedure under Article 108(2) TFEU, the Commission finds, on the basis of Article 108(3) TFEU, that aid is compatible with the common market, the persons intended to benefit from those procedural guarantees may secure compliance

therewith only if they are able to challenge that decision before the EU Courts. For those reasons, an action for the annulment of such a decision brought by a person who is concerned within the meaning of Article 108(2) TFEU is to be declared to be admissible where that person seeks, by instituting proceedings, to safeguard the procedural rights available to him under the latter provision (see, to that effect, judgments in *3F* v *Commission*, C-319/07 P, EU:C:2009:435, paragraph 31 and the case-law cited, and *Commission* v *Kronoply and Kronotex*, C-83/09 P, EU:C:2011:341, paragraph 47).

96 The Court has had occasion to observe that such concerned parties are any persons, undertakings or associations whose interests might be affected by the granting of aid, that is, in particular, undertakings competing with the recipients of the aid and trade associations (see, inter alia, judgment in *3F* v *Commission*, C-319/07 P, EU:C:2009:435, paragraph 32 and the case-law cited).

97 On the other hand, if the applicant calls into question the merits of the decision appraising the aid taken on the basis of Article 108(3) TFEU or after the formal investigation procedure, the mere fact that it may be regarded as concerned within the meaning of Article 108(2) TFEU cannot suffice to render the action admissible. It must then demonstrate that it has a particular status within the meaning of the case-law referred to in paragraph 93 of the present judgment. That applies in particular where the applicant's market position is substantially affected by the aid to which the decision at issue relates (see, to that effect, judgments in *Commission* v *Aktionsgemeinschaft Recht und Eigentum*, C-78/03 P, EU:C:2005:761, paragraph 37 and the case-law cited, and *British Aggregates* v *Commission*, C-487/06 P, EU:C:2008:757, paragraph 30).

98 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 examination procedure where they have played an active role in that procedure, provided that their position on the market is substantially affected by the aid which is the subject of the decision at issue (see judgment in *Sniace* v *Commission*, C-260/05 P, EU:C:2007:700, paragraph 55 and the case-law cited).

99 As regards the determination of such an effect, the Court has had occasion to clarify that the mere fact that a measure such as the decision at issue may exercise an influence on the competitive relationships existing on the relevant market and that the undertaking concerned was in a competitive relationship with the addressee of that measure cannot in any event suffice for that undertaking to be regarded as being individually concerned by that measure (see, to that effect, judgment in *British Aggregates* v *Commission*, C-487/06 P, EU:C:2008:757, paragraph 47).

100 Therefore, an undertaking cannot rely solely on its status as a competitor of the undertaking in receipt of aid but must additionally show that its circumstances distinguish it in a similar way to the undertaking in receipt of the aid (see, inter alia, judgment in *British Aggregates* v *Commission*, C-487/06 P, EU:C:2008:757, paragraph 48).

101 In this case, as is apparent from paragraph 72 of the present judgment, by the decision at issue, the Commission informed the French Republic that the obligation to recover aid which is unlawful and incompatible imposed on that Member State by the Sernam 3 Decision would not be extended to Geodis in the event that the latter took over part of the assets of the Sernam group, since, in the absence of economic continuity, it was not established that Geodis would actually benefit from that aid.

102 Moreover, it follows expressly from paragraph 54 of the decision at issue that it does not apply to the reasonableness or otherwise of the investment carried out by Geodis, consisting of the takeover of part of the assets of the Sernam group and that, consequently, it did not prejudge the assessment of that investment by the Commission in the light of Article 107(1) TFEU.

103 It follows that the aid which, under the decision at issue, cannot be recovered from the transferee of part of the assets of their initial beneficiary is specifically and exclusively the aid which was already the subject of the Sernam 3 Decision.

104 As the Advocate General stated in points 147 and 169 of his Opinion, the decision at issue must, therefore, be regarded as a decision which is related and complementary to the Sernam 3 Decision, in so far as it defines the scope thereof as regards the status of beneficiary of the aid at issue and, therefore, as regards that of the party obliged to repay that aid, following the occurrence of an event after the adoption of that decision, namely, in this case, the acquisition by a third party of part of the assets of the initial beneficiary of that aid.

105 It is not disputed that the Sernam 3 Decision was adopted by the Commission after the formal investigation procedure provided for in Article 108(2) TFEU.

106 In those circumstances, the appellants can be regarded as individually concerned by the decision at issue, within the meaning of the fourth paragraph of Article 263 TFEU, if they show, inter alia, that their position on the market has been substantially affected by the grant of the aid at issue. By contrast, the mere fact that they might be regarded as interested within the meaning of Article 108(2) TFEU cannot suffice to render the action admissible.

107 In this case, the appellants claim that the Mory companies are individually concerned by the decision at issue, since, by not opening the formal investigation procedure, the Commission deprived those companies of procedural rights afforded them by Article 108(2) TFEU, in particular with a view to claiming that that institution lacks competence to adopt that decision. Moreover, the Mory companies have shown the existence of an interest in bringing proceedings. In addition, they participated in the administrative procedure which led to the adoption of the Sernam 3 Decision and they questioned the Commission the day before the adoption of the decision at issue concerning the legal basis that institution intended to rely on for that purpose. Furthermore, those companies are the sole parties to have brought an action before the French courts seeking an order that the French authorities must recover the aid at issue from the beneficiaries thereof and, in addition to Superga Invest, they have brought an action before those courts for compensation for damage suffered as a result of the grant of that aid.

108 Moreover, the appellants claim, for the sake of completeness, that the competitive position of the Mory companies was substantially affected by the aid at issue. Those companies were even forced to cease their activities for reasons they consider are linked to the grant of that aid. As regards Superga Invest, it also suffered, as a shareholder of the Mory companies, from the anticompetitive effects of that aid, especially as it could itself decide to enter the market concerned.

109 In that regard, it should be noted that, in accordance with the case-law referred to in paragraphs 62, 97 and 98 of the present judgment, the alleged infringement of procedural rights afforded the Mory companies by Article 108(2) TFEU, their interest in bringing proceedings and the active role they played in the context of the procedure which led to the adoption of the Sernam 3 Decision and the decision at issue are not capable, in the present case, of distinguishing them for the purposes of the fourth paragraph of Article 263 TFEU. As regards the fact that the appellants brought actions before the national courts seeking, first, an order that the French authorities must recover the aid at issue and, secondly, for compensation for the damage suffered as a result of the grant of that aid, it also cannot, as such, suffice to distinguish them for the purposes of that provision, since anybody could potentially bring such an action.

110 Moreover, while the appellants claim, albeit on an alternative ground for the sake of completeness, that the competitive position of the Mory companies was substantially affected by the aid at issue, in particular in so far as those companies were forced to cease their activities, it must be held that, neither in their action at first instance, nor in the context of the present appeal, have they adduced

evidence to substantiate that claim. In addition, they have failed to provide the Court with any information concerning the structure of the market at issue and their competitive position on that market. As regards Superga Invest, it is not disputed that it is not active on the market concerned and that it cannot, therefore, be classified as a competitor of the beneficiary of the aid at issue. Furthermore, since the Mory companies have not shown that their competitive position was substantially affected by that aid, Superga Invest may not derive *locus standi* in that regard on the sole basis of its status as shareholder of those companies.

111 Consequently, none of the appellants may be considered to be individually concerned by the decision at issue, within the meaning of the fourth paragraph of Article 263 TFEU.

112 Therefore, the objection of inadmissibility of the action for annulment brought by the appellants before the General Court, raised by the Commission during the proceedings at first instance, must be upheld in so far as that objection claims that the appellants have no interest in bringing proceedings and, therefore, that action must be dismissed as inadmissible.

Costs

113 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to costs. Under Article 138(2) of those Rules, applicable to appeal proceedings 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.

114 Since the appeal brought by the appellants has been upheld, but their action for annulment dismissed, each of the parties is to bear its own costs relating both to the proceedings at first instance and to the appeal.

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

1. **Sets aside the Order of the General Court of the European Union in *Mory and Others* v *Commission* (T-545/12, EU:T:2013:607);**

2. **Dismisses as inadmissible the action for annulment brought by Mory SA, Mory Team and Superga Invest against Decision C(2012) 2401 final of the Commission of 4 April 2012 concerning the takeover of assets of the Sernam group as part of its composition with creditors;**

3. **Orders Mory SA, Mory Team, Superga Invest and the European Commission to bear their own costs relating both to the proceedings at first instance and to the appeal.**

[Signatures]