Reports of Cases

ORDER OF THE GENERAL COURT (Ninth Chamber)

23 November 2015*

(Action for annulment — Functioning of financial markets — Regulation (EU) No 537/2014 — Legislative act — Applicant not individually concerned — Inadmissibility)

In Case T-640/14,

Carsten René Beul, residing in Neuwied (Germany), represented initially by K.-G. Stümper, and subsequently by H.-M. Pott and T. Eckhold, lawyers,

applicant,

v

European Parliament, represented by P. Schonard and D. Warin, acting as Agents,

and

Council of the European Union, represented by R. Wiemann and N. Rouam, acting as Agents,

defendants,

ACTION for annulment of Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (OJ 2014 L 158, p. 77),

THE GENERAL COURT (Ninth Chamber),

composed of G. Berardis, President, O. Czúcz (Rapporteur) and A. Popescu, Judges,

Registrar: E. Coulon,

makes the following

* Language of the case: German.

Order

Facts, procedure and forms of order sought by the parties

1 The applicant, Mr Carsten René Beul, is an accountant who is approved under the Gesetz über eine Berufsordnung der Wirtschaftsprüfer (Wirtschaftsprüferordnung, German law on accountants). Accordingly, he is authorised under German legislation to carry out statutory audits of the accounts of undertakings, including public-interest undertakings.

2 On 16 April 2014, the European Parliament and the Council of the European Union adopted Regulation (EU) No 537/2014 of the European Parliament and of the Council on specific requirements regarding the statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (OJ 2014 L 158, p. 77, the 'contested regulation').

3 According to Article 1 of the contested regulation, which defines its subject matter, the regulation lays down requirements for the carrying out of the statutory audit of annual and consolidated financial statements of public-interest entities, rules on the organisation and selection of statutory auditors and audit firms by public-interest entities to promote their independence and the avoidance of conflicts of interest and rules on the supervision of compliance by statutory auditors and audit firms with those requirements.

4 By application lodged at the Registry of the General Court on 20 August 2014, the applicant brought the present action.

5 By separate documents lodged at the Court Registry on 27 and 28 November 2014 respectively, the Parliament and the Council raised objections of inadmissibility under Article 114(1) of the Rules of Procedure of the General Court of 2 May 1991. The applicant lodged his observations on those objections on 12 January 2015.

6 By a document lodged at the Court Registry on 18 December 2014 the European Commission sought leave to intervene in the present proceedings to support the arguments advanced by the Parliament and the Council.

7 By a document lodged at the Court Registry on 22 December 2014, the Parliament indicated that it did not oppose the Commission's application to intervene. Neither the applicant nor the Council made observations on that application.

8 The applicant claims that the Court should annul the contested regulation.

9 The Parliament claims that the Court should:

— dismiss the action as inadmissible;

— alternatively, if the Court rejects the objection or decides to reserve its decision on admissibility until it rules on the substance of the case, allow it a further period to submit its observations, including its observations as to whether the action is well founded;

— order the applicant to pay the costs.

10 The Council contends that the Court should:

— dismiss the action as inadmissible;

— order the applicant to pay the costs.

Law

11 Under Article 130(1) of the Rules of Procedure of the General Court, on the application of the defendant, the Court may decide on inadmissibility or lack of competence without going to the substance of the case. In the present case, the Court considers it has sufficient information from the documents in the file and has decided to give a decision without taking further steps in the proceedings.

12 In the present case, the Parliament and the Council assert that the contested regulation is a legislative act and accordingly that it is not a regulatory act within the meaning of the fourth paragraph of Article 263 TFEU. Furthermore, they consider that the applicant is neither directly nor individually concerned by the contested regulation. On that basis, they argue, the action is inadmissible under Article 263 TFEU.

13 The applicant considers that he is directly and individually concerned by the contested regulation, on the basis that it makes a change to the structure of the body which is competent to supervise his professional activity.

14 It should be noted at the outset that, under the fourth paragraph of Article 263 TFEU, '[a]ny natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures'.

15 It should be emphasised that the contested regulation is not addressed to the applicant. Consequently, he does not have a right of action by virtue of the first situation envisaged by the fourth paragraph of Article 263 TFEU.

16 Furthermore, it is apparent from the preamble to the contested regulation that the legal basis of the regulation is Article 114 TFEU, relating to the approximation of laws, and that it was adopted jointly by the Parliament and the Council under the ordinary legislative procedure.

17 In this regard, it is apparent from Article 289(1) and (3) TFEU that legal acts adopted under the procedure defined in Article 294 TFEU, referred to as 'the ordinary legislative procedure' constitute legislative acts.

18 It follows that the contested regulation is a legislative act.

19 According to the case-law, the expression 'regulatory act' within the meaning of the fourth paragraph of Article 263 TFEU does not include legislative acts (judgments of 3 October 2013 in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, ECR, EU:C:2013:625, paragraph 61, and of 25 October 2011 in *Microban (Europe)* v *Commission*, T-262/10, ECR, EU:T:2011:623, paragraph 21).

20 It follows that, equally, the applicant does not have a right of action by virtue of the third situation envisaged by the fourth paragraph of Article 263 TFEU.

21 Thus, the present action is admissible only in so far as the contested regulation is of direct and individual concern to the applicant, by virtue of the second situation envisaged by the fourth paragraph of Article 263 TFEU.

22 The Court considers it useful to begin the examination of the admissibility of the action by considering the issue of whether the applicant is individually concerned.

Whether the applicant is individually concerned by the contested regulation

23 It should be observed that the contested regulation contains rules intended to ensure the independence of the authorities which are competent to supervise the activities of statutory auditors and audit firms which audit the accounts of public-interest entities. Article 21 of the regulation provides as follows:

'The competent authorities shall be independent of statutory auditors and audit firms.

…

A person shall not be a member of the governing body, or responsible for the decision-making, of those authorities if during his or her involvement or in the course of the three previous years that person:

(a) has carried out statutory audits;

(b) held voting rights in an audit firm;

(c) was member of the administrative, management or supervisory body of an audit firm;

(d) was a partner, employee of, or otherwise contracted by, an audit firm.

…'

24 In their objections of inadmissibility, the Parliament and the Council assert that the applicant is not individually concerned by the contested regulation. They consider that he does not belong to a limited class of traders and that he has not put forward any specific circumstance which individually distinguishes him for the purposes of the rules identified in the case-law.

25 The applicant asserts that he is individually concerned by the contested regulation and that the adoption of that regulation causes prejudice to him by reason of the change in the body which is competent to supervise his professional activity.

26 The applicant reads Article 21 as bringing about a change in his legal position. In his view, before the contested regulation entered into force, the body competent to supervise and inspect his activities, including those relating to the certification of the accounts of public-interest undertakings, was the Wirtschaftsprüferkammer (chamber of accountants, 'WPK'). According to the applicant, the WPK was administered entirely autonomously and its members were democratically elected from amongst the members of the accountancy profession.

27 By contrast, he argues, Article 21 of the contested regulation provides expressly that members of the accountancy profession may not perform any function in the supervision of the auditing of public-interest undertakings.

28 Thus, according to the applicant, in bringing about — necessarily — a change in the composition of the authority which is competent to supervise the activity of statutory auditing of the accounts of public-interest entities, the contested regulation alters the legal framework in which he carries out that activity. That alteration impinges on his fundamental freedom to choose an occupation, enshrined in Article 15 of the Charter of Fundamental Rights of the European Union, in that it affects the autonomy of the regime of professional supervision.

29 The applicant adds that, in order to carry out his activity, he must seek instructions to perform an audit from each competent organ of the companies and other undertakings to be audited. Having regard to the contested regulation, those organs can only give such instructions if he declares to them that he is subject to the supervision of the competent authority, the composition of which will be altered following the entry into force of the contested regulation. Hence, he argues, the contested regulation forces him to submit to the supervision of the new competent authority. If, after the formation of this new authority, the applicant is confronted in the exercise of his profession with questions concerning the auditing of public-interest undertakings, he will be obliged to consult the new authority, and the WPK will be unable to provide him with any response. Only the new authority will be competent in relation to general supervision, prevention of infringements and provision of official advice to members of the accountancy profession.

30 More specifically, the applicant considers that he is individually concerned by the contested regulation in that his right to carry out his professional activity under the supervision of an administratively autonomous body is reduced to nothing. He refers in this regard to the judgment of 18 May 1995 in *Codorniu* v *Council* (C-309/89, ECR, EU:C:1994:197, paragraphs 21 and 22), and deduces therefrom, in relation to individual concern, that it suffices for the contested act to undermine an established status which is enjoyed by the party seeking annulment of that act.

31 As a preliminary matter, it should be stated that a physical or legal person is individually concerned by an act which is not addressed to that person only if that act 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 a decision (see, to that effect, judgments in *Plaumann* v *Commission*, 25/62, EU:C:1963:17, pp. 95, 107, and *Unión de Pequeños Agricultores* v *Council*, C-50/00 P, ECR, EU:C:2002:462, paragraph 36).

32 According to the 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 generally and in the abstract (order in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, T-18/10, ECR, EU:T:2011:419, paragraph 63).

33 That is so in the present case. Under the second paragraph of Article 288 TFEU, the regulation has general application, is binding in its entirety and is directly applicable in all Member States.

34 With regard to the criteria established by the case-law referred to in paragraph 32 above, it should be noted that the contested regulation lays down specific requirements for the statutory auditing of public-interest entities with general application, in order to ensure the approximation of the laws and administrative practices of the Member States in that area. The same applies to Article 21 of that regulation, which is criticised by the applicant, and which lays down conditions intended to ensure the independence of the authorities which are competent to supervise the activities of statutory auditors, in so far as statutory audit of public-interest entities is concerned. All of the rules contained in the contested regulation are directly applicable in all Member States.

35 Furthermore, the situations and persons to which the contested regulation applies are objectively determined, since it is stated in Article 2 of the contested regulation that it applies, first, to statutory auditors and audit firms carrying out statutory audits of public-interest entities, and secondly, to public-interest entities. The same is true of Article 21, which lays down the requirements relating to the composition of the supervisory authorities, requirements which must be observed by the Member States in forming those authorities.

36 It is apparent from the foregoing that the categories of persons to which the contested regulation applies are envisaged generally and in the abstract.

37 It follows that the contested regulation and, in particular, Article 21 thereof, is of general application.

38 However, it should be noted that the fact that a disputed provision is, by its nature and scope, a provision of general application inasmuch as it applies to the traders concerned in general, does not of itself prevent it being of individual concern to some (judgments in *Belgium and Forum 187* v *Commission*, C-182/03 and C-217/03, ECR, EU:C:2006:416, paragraph 58, and *Sahlstedt and Others* v *Commission*, C-362/06 P, ECR, EU:C:2009:243, paragraph 29).

39 First, in this regard, it should be observed that the fact that the contested regulation applies to situations which are objectively determined by its own provisions and produces legal effects with respect to categories of persons envisaged generally and in the abstract shows that it is not of individual concern (*Sahlstedt and Others* v *Commission*, cited in paragraph 38 above, EU:C:2009:243, paragraph 31; see, to that effect, order in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, cited in paragraph 32 above, EU:T:2011:419, paragraph 89).

40 In the present case, the contested regulation concerns the applicant only in his capacity as a statutory auditor who carries out the activity of examining the accounts of public-interest entities, a situation which is objectively envisaged by the contested regulation, without the legislature having taken account of the individual situation of the members of that profession in any way. Furthermore, the requirements concerning the composition of the bodies responsible for the supervision of statutory auditors carrying out that activity are formulated in a general manner and apply indiscriminately to all traders and all authorities falling within the scope of the contested regulation.

41 Secondly, according to the case-law, where the contested measure affects a group of persons who were identified or identifiable when that measure was adopted by reason of criteria specific to the members of the group, those persons may be individually concerned by that measure inasmuch as they form part of a limited class of traders and that can be the case particularly when the decision alters rights acquired by the individual prior to its adoption (*Stichting Woonpunt and Others* v *Commission*, C-132/12 P, ECR, EU:C:2014:100, paragraph 59).

42 However, in the present case, the persons affected by the requirements described in Article 21 of the contested regulation were neither identified nor identifiable when the contested regulation was adopted.

43 Article 44 of the contested regulation provides that the regulation applies from 17 June 2016. It is therefore within that period that the Member States must, where applicable, reorganise the competent authorities in question in order to meet the requirements described in Article 21 of the contested regulation.

44 In this regard, the applicant himself explains that, at the time the action was brought, the WPK was still competent to supervise statutory auditors in relation to the examination of the accounts of public-interest entities, and that this situation will continue until the supervisory competence of the WPK is transferred to a body meeting the criteria set out in Article 21 of the contested regulation. From that time onward, all German statutory auditors who have begun or begin activities relating to the examination of the accounts of public-interest entities after the adoption of the contested regulation, but before the transfer of supervisory competence, are or will be in exactly the same situation as the applicant: the supervision of their activity will pass from the WPK, made up of practising members of the accountancy profession, to another body which meets the requirements described in Article 21 of the contested regulation; that is, a body which cannot, in particular, include statutory auditors who are in practice or have been in practice in the three preceding years among the members of its governing body, or among those responsible for decision-making.

45 Thus, an unknown number of traders can be added to the category of persons to which the applicant belonged when the contested regulation was adopted, such that that category cannot be regarded as a limited class. On the contrary, it is an indeterminate and indeterminable group of operators that is concerned, the class of which may increase in size after adoption of the contested regulation (see, to this effect, judgment of 14 November 1984 in *Intermills* v *Commission*, 323/82, ECR EU:C:1984:345, paragraph 16, and order of 3 April 2014 in *CFE-CGC France Télécom-Orange* v *Commission*, T-2/13, EU:T:2014:226, paragraph 51).

46 Traders belonging to an open category of this kind are not individually concerned by the measure at issue (see, to this effect *CFE-CGC France Télécom-Orange* v *Commission*, cited in paragraph 45 above, EU:T:2014:226, paragraph 52).

47 Thirdly, it should be emphasised that the applicant does not rely on any factor recognised by the case-law which could individually distinguish him. He refers to an acquired right he claims to have to be supervised by an autonomous professional body made up of members of his profession. Even on the assumption that such a right exists and can be taken into account for the purposes of assessing individual concern, it bears emphasis that every other German statutory auditor has such a right and that this right, in relation to the examination of the accounts of public-interest entities, is to be abolished indiscriminately, as regards all of those auditors, with the transfer of supervisory competence to another body which meets the criteria laid down in Article 21 of the contested regulation.

48 Accordingly the factual context of the present case differs from that of *Codorniu* v *Council*, cited in paragraph 30 above (EU:C:1994:197). In that case, the applicant was individually distinguished by the fact that it was the proprietor of the trade mark ‘Grand Crémant de Codorniu’ and the regulation at issue prevented it from using that trade mark, in that it reserved the use of the term ‘crémant’ to French and Luxembourg producers alone. The Court emphasised that this fact individually distinguished the applicant from any other trader (*Codorniu* v *Council*, cited in paragraph 30 above, EU:C:1994:197, paragraphs 21 and 22). The present case does not concern the use of a trade mark, which is — necessarily — individual by its nature, but the use of a claimed right to be supervised by a professional body made up of practising members of the accountancy profession. Such a right, even assuming it were established, would not individually distinguish the applicant in any way from the indeterminate and indeterminable group of traders who are practising members of that profession and who examine the accounts of public-interest entities.

49 Having regard to those considerations, it must be concluded that the applicant is not individually concerned either by the contested regulation in general, or by Article 21 of that regulation, which he challenges in his application.

50 Accordingly, as the criteria of direct and individual concern are cumulative requirements of admissibility, where this is examined with regard to the second situation envisaged by the fourth paragraph of Article 263 TFEU, it is unnecessary to consider whether the applicant is directly concerned by the contested regulation.

51 It follows from all of the foregoing that the applicant does not have capacity to act under the fourth paragraph of Article 263 TFEU.

The applicant’s right to an effective remedy

52 The applicant relies on Article 19 TEU and on the first paragraph of Article 47 of the Charter of Fundamental Rights and argues that, having regard to those provisions, his right to an effective remedy entails that this action is admissible.

53 As a preliminary matter, it should be observed that judicial review of compliance with the European Union legal order is ensured, as can be seen from Article 19(1) TEU, by the Court of Justice and the courts and tribunals of the Member States (judgment in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, cited in paragraph 19 above, EU:C:2013:625, paragraph 90).

54 According to the case-law, the FEU Treaty has established, by Articles 263 TFEU and 277 TFEU, on the one hand, and Article 267 TFEU, on the other, a complete system of legal remedies and procedures designed to ensure judicial review of the legality of European Union acts, and has entrusted such review to the European Union judicature (judgments in *Unión de Pequeños Agricultores* v *Council*, cited in paragraph 31 above, EU:C:2002:462, paragraph 40, and *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, cited in paragraph 19 above, EU:C:2013:625, paragraph 92).

55 Accordingly, natural or legal persons who cannot, by reason of the conditions of admissibility stated in the fourth paragraph of Article 263 TFEU, directly challenge European Union acts of general application have protection against the application to them of those acts. Where responsibility for the implementation of those acts lies with the EU institutions, those persons are entitled to bring a direct action before the Courts of the European Union against the implementing measures under the conditions stated in the fourth paragraph of Article 263 TFEU, and to plead, pursuant to Article 277 TFEU, in support of that action, the illegality of the general act at issue. Where that implementation is a matter for the Member States, they may plead the invalidity of the European Union act at issue before the national courts and tribunals and cause the latter to request a preliminary ruling from the Court of Justice, pursuant to Article 267 TFEU (judgment in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, cited in paragraph 19 above, EU:C:2013:625, paragraph 93).

56 In this respect, it should be stated that in proceedings before the national courts, individual parties have the right to challenge before the courts the legality of any decision or other national measure relative to the application to them of a European Union act of general application, by pleading the invalidity of such an act (judgment in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, cited in paragraph 19 above, EU:C:2013:625, paragraph 94).

57 It follows that requests for preliminary rulings which seek to ascertain the validity of a measure constitute, like actions for annulment, means for reviewing the legality of European Union acts (judgment in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, cited in paragraph 19 above, EU:C:2013:625, paragraph 95).

58 By contrast, in relation to the protection conferred by Article 47 of the Charter of Fundamental Rights, it must be observed that that article is not intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to the admissibility of direct actions brought before the Courts of the European Union (judgment in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, cited in paragraph 19 above, EU:C:2013:625, paragraph 97).

59 It follows that the applicant cannot validly claim that the present action for annulment should be admissible on the basis of Article 47 of the Charter of Fundamental Rights, when he does not have capacity to act under the fourth paragraph of Article 263 TFEU.

60 Therefore, the present complaint must be rejected.

61 In the light of all of the foregoing considerations, the objection of inadmissibility raised by the Parliament and the Council should be upheld and, accordingly, the action should be dismissed as inadmissible.

62 It also follows that it is unnecessary to rule on the application to intervene made by the Commission.

Costs

63 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

64 Since the applicant has been unsuccessful in his action, he must be ordered to bear his own costs and to pay those of the Parliament and the Council, in accordance with their pleadings.

65 Furthermore, pursuant to Article 144(10) of the Rules of Procedure, the Commission and the Parliament are to bear their own costs relating to the application to intervene. As is apparent from paragraph 7 above, the applicant and the Council have not incurred any costs in that regard.

On those grounds,

THE GENERAL COURT (Ninth Chamber)

hereby orders:

1. **The action is dismissed as inadmissible.**

2. **It is unnecessary to rule on the application to intervene made by the European Commission.**

3. **Mr Carsten René Beul is ordered to bear his own costs and pay those incurred by the European Parliament and the Council of the European Union.**

4. **The Commission and the Parliament are ordered to bear their own costs relating to the application to intervene.**

Luxembourg, 23 November 2015.

E. Coulon
Registrar

G. Berardis
President