Reports of Cases

JUDGMENT OF THE GENERAL COURT (Third Chamber)

4 July 2017 *

(Seventh Framework Programme for research, technological development and demonstration activities (2007-2013) — Grant agreements for the PlayMancer, Mobiserv and PowerUp projects — Article 299 TFEU — Enforceable decision — Actions for annulment — Challengeable act — Admissibility — Proportionality — Duty of diligence — Obligation to state reasons)

In Case T-234/15,

Sistema Teknolotzis AE — Efarmogon Ilektronikis kai Pliroforikis, established in Athens (Greece), represented by E. Georgilas, lawyer,

applicant,

v

European Commission, represented by J. Estrada de Solà and L. Di Paolo, acting as Agents, assisted by E. Politis, lawyer,

defendant,

APPLICATION on the basis of Article 263 TFEU seeking the annulment of Commission Decision C(2015) 1677 final of 10 March 2015 constituting writ of execution for the enforced recovery from the applicant of the sum of EUR 716 334.05 together with interest,

THE GENERAL COURT (Third Chamber),

composed of S. Frimodt Nielsen, President, V. Kreuschitz (Rapporteur) and N. Półtorak, Judges,

Registrar: E. Coulon,

gives the following

Judgment [1]

…

Law

…

* Language of the case: Greek.

1 — Only the paragraphs of this judgment which the Court considers it appropriate to publish are reproduced here.

Admissibility

Introduction

…

80 Prior to the examination of the Commission's plea of inadmissibility, it must be recalled that, by virtue of Article 299 TFEU, acts of the Commission which impose a pecuniary obligation on persons other than States, are to be enforceable. Enforcement is to be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement is to be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State is to designate for this purpose and make known to the Commission and to the Court of Justice of the European Union. When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority. Enforcement may be suspended only by a decision of the Court of Justice of the European Union. However, the courts of the country concerned are to have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

81 In addition, Article 79(2) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1; 'the Financial Regulation') provides that the institution may formally establish an amount as being receivable from persons other than Member States by means of a decision which is to be enforceable within the meaning of Article 299 TFEU.

The confirmatory nature of the contested decision

82 The Commission alleges, in essence, that the contested decision merely confirms the earlier decisions rejecting the payment facilities requested by the applicant.

83 First of all, it is appropriate to recall that an action for annulment is available in the case of all measures adopted by the institutions, whatever their nature or form, which are intended to have legal effects (see judgment of 6 April 2000, *Spain* v *Commission*, C-443/97, EU:C:2000:190, paragraph 27 and the case-law cited), that is to say, which bring about a change to the legal situation as it existed before they were adopted (see, to that effect, judgment of 29 June 1995, *Spain* v *Commission*, C-135/93, EU:C:1995:201, paragraph 21).

84 A measure merely confirming an initial decision does not affect the interested party's situation and, accordingly, does not constitute a measure against which an action for annulment could be brought (see, to that effect, judgments of 25 May 1993, *Foyer culturel du Sart-Tilman* v *Commission*, C-199/91, EU:C:1993:205, paragraph 23; of 9 December 2004, *Commission* v *Greencore*, C-123/03 P, EU:C:2004:783, paragraph 39, and order of 27 November 2015, *Italy* v *Commission*, T-809/14, not published, EU:T:2015:970, paragraph 29). In accordance with settled case-law, an action for the annulment of a measure which merely confirms a previous decision that has become final is inadmissible. A measure is regarded as merely confirmatory of a previous decision if it contains no new factor as compared with the previous measure and was not preceded by a re-examination of the circumstances of the person to whom that measure was addressed (judgments of 7 February 2001, *Inpesca* v *Commission*, T-186/98, EU:T:2001:42, paragraph 44; of 22 May 2012, *Sviluppo Globale* v *Commission*, T-6/10, not published, EU:T:2012:245, paragraph 22; and of 2 June 2016, *Moreda-Riviere Trefilerías and Others* v *Commission*, T-426/10 to T-429/10 and T-438/12 to T-441/12, EU:T:2016:335, paragraph 545). Thus, the confirmatory or other nature of a measure cannot be determined solely with reference to its content as compared with that of the previous decision which it confirms. The nature

of the contested measure must also be appraised in the light of the nature of the request to which it constitutes a reply (see judgment of 7 February 2001, *Inpesca* v *Commission*, EU:T:2001:42, paragraph 45 and the case-law cited).

85 The general scheme and purpose of the case-law concerning purely confirmatory measures seek to ensure compliance with the time limits allowed for legal remedies and observance of *res judicata* (see, to that effect, judgments of 18 December 2007, *Weißenfels* v *Parliament*, C-135/06 P, EU:C:2007:812, paragraph 54 and the case-law cited, and of 19 February 2009, *Gorostiaga Atxalandabaso* v *Parliament*, C-308/07 P, EU:C:2009:103, paragraph 58 and the case-law cited) and, accordingly, to protect the principle of legal certainty (see, to that effect, judgments of 18 January 2007, *PKK and KNK* v *Council*, C-229/05 P, EU:C:2007:32, paragraph 101; of 18 October 2007, *Commission* v *Parliament and Council*, C-299/05, EU:C:2007:608, paragraph 29, and order of 29 June 2009, *Cofra* v *Commission*, C-295/08 P, not published, EU:C:2009:407, paragraphs 53 and 54). It is thus settled case-law that the purpose of the case-law whereby an action for the annulment of a decision which merely confirms a previous decision not contested within the time limit for bringing proceedings is inadmissible is to prevent an applicant from being able, indirectly, to challenge the legality of a decision which he did not contest in good time and which has accordingly become definitive (judgment of 4 March 2015, *United Kingdom* v *ECB*, T-496/11, EU:T:2015:133, paragraph 59).

86 Furthermore, it must be borne in mind that the power of interpretation and application of the provisions of the Treaty conferred on the EU judicature as regards actions for annulment lodged on the basis of Article 263 TFEU does not apply where the applicant's legal position falls within the contractual relationships whose legal status is governed by the national law agreed to by the contracting parties (judgment of 9 September 2015, *Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro* v *Commission*, C-506/13 P, EU:C:2015:562, paragraph 18).

87 Were the EU judicature to hold that it had jurisdiction to adjudicate on the annulment of acts falling within purely contractual relationships, not only would it risk rendering Article 272 TFEU — which grants the Courts of the European Union jurisdiction pursuant to an arbitration clause — meaningless, but it would also risk, where the contract does not contain such a clause, extending its jurisdiction beyond the limits laid down by Article 274 TFEU, which specifically gives national courts or tribunals ordinary jurisdiction over disputes to which the European Union is a party (see judgment of 9 September 2015, *Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro* v *Commission*, C-506/13 P, EU:C:2015:562, paragraph 19 and the case-law cited).

88 It follows therefrom that, where there is a contract between the applicant and one of the institutions, an action may be brought before the European Union judicature on the basis of Article 263 TFEU only where the contested measure aims to produce binding legal effects falling outside of the contractual relationship between the parties and which involve the exercise of the prerogatives of a public authority conferred on the contracting institution acting in its capacity as an administrative authority (judgment of 9 September 2015, *Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro* v *Commission*, C-506/13 P, EU:C:2015:562, paragraph 20).

89 Thus, it has been held that an action for annulment is inadmissible when it is brought against a debit note or payment demand in the context of the agreement between the Commission and the applicant and when its object is the recovery of a debt arising from the provisions of that agreement (see, to that effect, order of 6 January 2015, *St'art and Others* v *Commission*, T-93/14, not published, EU:T:2015:11, paragraphs 31 to 33).

90 Conversely, a decision enforceable within the meaning of Article 299 TFEU constitutes a challengeable act pursuant to Article 263 TFEU when that decision, in the absence of any contrary indication in the FEU Treaty, is among those referred to in Article 288 TFEU. The merits of such an enforceable decision can be disputed only before the court hearing the proceedings for annulment, on the basis of

Article 263 TFEU (order of 13 September 2011, *CEVA* v *Commission*, T-224/09, not published, EU:T:2011:462, paragraph 59, and judgment of 27 September 2012, *Applied Microengineering* v *Commission*, T-387/09, EU:T:2012:501, paragraph 38).

91 The General Court also held that that was the case, in particular, when an enforceable decision was adopted for the purposes of recovering a debt stemming from a contract concluded by an institution. Even if a contract of that type expressly allows such decisions to be issued, their legal nature remains defined not by the contract or the national law applicable to it but by Article 299 TFEU. That provision does not provide for any legal derogation in respect of enforceable decisions adopted for the purposes of recovering a contractual debt (see, to that effect, judgment of 27 September 2012, *Applied Microengineering* v *Commission*, T-387/09, EU:T:2012:501, paragraph 39). As the legal effects of an enforceable decision originate from the exercise of public powers, the adoption of such a decision constitutes the manifestation of the exercise by the Commission of its public powers. Moreover, it must be pointed out that the act enforceable within the meaning of Article 299 TFEU, adopted by the Commission, definitively establishes its intention to pursue the recovery of its debts (see, to that effect, order of 8 May 2013, *Talanton* v *Commission*, T-165/13 R, not published, EU:T:2013:235, paragraph 18).

92 In the present case, in order for the contested decision to be treated as a purely confirmatory decision, it is necessary, inter alia, for the earlier measures adopted by the Commission to be decisions open to actions for annulment (see paragraphs 84 and 85 above). In addition, in order for the measures prior to the contested decision to be decisions open to actions for annulment, it is necessary for them to produce binding legal effects outside the contractual relationship between the parties and for them to entail the exercise of public powers conferred on the institution in its capacity as an administrative authority (see paragraph 88 above).

93 The measures prior to the contested decision are, for the PlayMancer project, the Commission's refusal, set out in its letter of 31 July 2013, to allow the applicant to pay its debt in instalments over seven years and its tacit refusal to extend the deadline for payment of the applicant's debt following its request of 2 June 2014; for the Mobiserv project, the Commission's refusal of 6 March 2013 to grant the applicant an extension of the deadline for payment of its debt and, for the PowerUp project, the Commission's refusal of 19 August 2014 to grant the applicant an additional period within which to pay its debt.

94 However, those refusals by the Commission to grant payment facilities to the applicant do not produce binding legal effects outside the contractual relationship between the Commission and the applicant in the context of the PlayMancer, Mobiserv and PowerUp projects. Moreover, those refusals do not involve the exercise of public powers conferred on the Commission in its capacity as an administrative authority. Finally, there can be no question of a circumvention of the time limit for bringing an action for annulment, since the refusals in question form part of the contractual relationship between the Commission and the applicant and a dispute before the EU Courts, under Article 272 TFEU, concerning contractual rights and obligations is not subject to the same procedural time limit.

95 Accordingly, the Commission is incorrect to assert that the applicant's action is inadmissible on the ground that the contested decision is a confirmatory decision as regards the earlier refusals by the Commission to grant the applicant payment facilities.

…

On those grounds,

THE GENERAL COURT (Third Chamber)

hereby:

1. Dismisses the action;

2. Orders Sistema Teknolotzis AE — Efarmogon Ilektronikis kai Pliroforikis to pay the costs.

Frimodt Nielsen Kreuschitz Półtorak

Delivered in open court in Luxembourg on 4 July 2017.

[Signatures]