



## Reports of Cases

ORDER OF THE GENERAL COURT (First Chamber)

12 January 2017\*

(Action for annulment — State aid — Extension of concession contracts — Motorway investment plan in France — Decision not to raise any objections — Association — Act not of individual concern — Regulatory act entailing implementing measures — Inadmissibility))

In Case T-242/15,

**Automobile club des avocats (ACDA)**, established in Paris (France),

**Organisation des transporteurs routiers européens (OTRE)**, established in Bordeaux (France),

**Fédération française des motards en colère (FFMC)**, established in Paris,

**Fédération française de motocyclisme**, established in Paris,

**Union nationale des automobile clubs**, established in Paris,

represented by M. Lesage, lawyer,

applicants,

v

**European Commission**, represented by L. Flynn and R. Sauer, acting as Agents,

defendant,

**ACTION** on the basis of Article 263 TFEU seeking the annulment of Commission Decision C(2014) 7850 final of 28 October 2014 on State aid SA.2014/N 38271 — France — Motorway investment plan,

THE GENERAL COURT (First Chamber),

composed of I. Pelikánová, President, P. Nihoul (Rapporteur) and J. Svingenssen, Judges,

Registrar: E. Coulon,

makes the following

\* Language of the case: French.

## Order

### Background to the dispute

- 1 The applicants, the Automobile club des avocats (ACDA), the Organisation des transporteurs routiers européens (OTRE), the Fédération française des motards en colère (FFMC), the Fédération française de motocyclisme and the Union nationale des automobile clubs, are associations with the aim of defending road users.
- 2 On 16 May 2014, the French authorities notified the Commission of a motorway investment plan with the aim of extending the duration of certain motorway concession contracts in exchange for the financing, by the companies concerned, of works to be carried out during their concession.
- 3 On 28 October 2014, the Commission adopted Decision C(2014) 7850 final, on State aid SA.2014/N 38271 — France — Motorway investment plan ('the contested decision').
- 4 In the contested decision, the Commission found that the measure at issue constituted State Aid within the meaning of Article 107(1) TFEU, but that the aid concerned could be declared compatible with the internal market under Article 106(2) TFEU. Therefore, it decided not to raise any objections against that measure. That decision was taken in the light of, inter alia, the commitments entered into by the French authorities.

### Procedure and forms of order sought

- 5 By application lodged at the Court Registry on 18 May 2015, the applicants brought the present action.
- 6 By separate document lodged at the Court Registry on 3 August 2015, the Commission raised an objection of inadmissibility under Article 130(1) of the Rules of Procedure of the General Court.
- 7 On 7 September 2015, the French Republic lodged an application to intervene in support of the form of order sought by the Commission.
- 8 The applicants did not submit any observations on the objection of inadmissibility.
- 9 The applicants claim that the Court should annul the contested decision.
- 10 The Commission contends that the Court should:
  - dismiss the action as manifestly inadmissible;
  - order the applicants to pay the costs.

### Law

- 11 In support of its objection of inadmissibility, the Commission contends, primarily, that the lawyer representing the applicants cannot be considered, for the purposes of the present case, to be an independent third party with regard to one of the applicants since he is the vice-president of the management board of the ACDA. Therefore, the action was not brought in accordance with the third and fourth paragraphs of Article 19 and the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union or Article 73(1) of the Rules of Procedure.

- 12 In the alternative, the Commission contends that the applicants and their members do not have legal standing under the fourth paragraph of Article 263 TFEU on the ground, first, that the contested decision is not of individual concern to them and, secondly, that it does not constitute a regulatory act not entailing implementing measures.
- 13 Under Article 130(1) and (7) of the Rules of Procedure, the Court may rule on inadmissibility or lack of competence, if the defendant so requests, without making a decision on the substance of the case.
- 14 In the present case, the Court considers that it has sufficient information from the documents in the file and has decided to give a decision without taking further steps in the proceedings.
- 15 In so far as the main argument raised by the Commission, if it were to be accepted, could result only in the inadmissibility of the action in respect of one of the applicants, the Court considers it appropriate to examine first the objection of inadmissibility raised in the alternative by the Commission.
- 16 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'.
- 17 The fourth paragraph of Article 263 TFEU therefore distinguishes three situations in which an action for annulment brought by a natural or legal person may be declared admissible and it is necessary to examine if one of those situations actually exists in the present case in order to adopt a position on the objection raised by the Commission.
- 18 Inasmuch as it is not disputed that the contested decision was addressed to the French authorities and not to the applicants, the present action cannot be found admissible having regard to the first situation provided for in the fourth paragraph of Article 263 TFEU. Consequently, the admissibility of the action is still to be examined having regard, in turn, to the other two situations provided for in the fourth paragraph of that article.
- 19 In those circumstances, as provided in the second and third situations in the fourth paragraph of Article 263 TFEU, the present action is admissible solely if the contested decision is of direct and individual concern to the applicants or if the contested decision is of direct concern to them and that decision constitutes a regulatory act which does not entail implementing measures.

*Direct and individual concern to the applicants*

- 20 According to the fourth paragraph of Article 263 TFEU, natural or legal persons may bring an action for annulment in particular against European Acts which are not addressed to them in so far as those acts are of direct and individual concern to them.
- 21 Case-law provides that persons other than those to whom a decision is addressed may claim to be individually concerned only if that decision affects them by virtue of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and thus distinguishes them individually just as in the case of the person to whom the decision is addressed (judgment of 15 July 1963, *Plaumann v Commission* 25/62, EU:C:1963:17, p. 107).
- 22 As regards whether the association is individually concerned, it has been held that an association which is responsible for protecting the collective interests of its members could be regarded as individually concerned by a final decision of the Commission on State aid in two sets of circumstances, namely, first, if it can prove an interest of its own, in particular because its position as a negotiator has been

affected by the act of which annulment is sought, or, secondly, where its members or some of them themselves have *locus standi* (see order of 29 March 2012, *Asociación Española de Banca v Commission*, T-236/10, EU:T:2012:176, paragraph 19 and the case-law cited).

- 23 In the present case, the applicants present themselves as associations regrouping road users, with the task of defending the latter's interests:
- the ACDA regroups practising or trainee lawyers and qualified legal professionals and its purpose is to protect the fundamental rights of road users;
  - the OTRE ensures the representation and defence of the non-material and professional interests of the road transport operators who are its members;
  - the FFMC, for its part, regroups users of two-wheeled and three-wheeled motor vehicles (from motorised cycles to large cylinder motorbikes), acts for road safety and shared road use and defends its members in their capacity as road users and as consumers;
  - the Fédération française de motocyclisme regroups associations organising sports events or any other motorcyclist activity and touring clubs and its purpose is, in particular, to carry out activities in relation to road safety and public roads;
  - lastly, the Union nationale des automobile clubs seeks to encourage relations between French car clubs and between its members and European car clubs.
- 24 The applicants have moreover stated that they are acting on their own behalf and in their members' interest.
- 25 However, the applicants have not, with regard to themselves, put forward any evidence indicating that their own interest would be affected. In particular, it is not apparent from the file that they intervened in the procedure which led to the adoption of the contested decision. In general, the General Court does not have before it any evidence demonstrating that the applicants' position in any negotiation would have been affected by that decision.
- 26 Whether the contested decision is of individual concern to the applicants thus depends on whether an action for annulment of the contested decision brought by the members of the applicants would be admissible.
- 27 In that regard, it must be held that the applicants in the present case have not put forward any information seeking to demonstrate that their members are individually concerned by the contested decision, in a manner similar to that of an addressee.
- 28 On the contrary, it is apparent from the file that the members of the applicants are allegedly affected by the contested decision in their general capacity as road and motorway users.
- 29 In the application, the applicants essentially state that the tariffs applied by the companies holding motorway concession contracts are excessive in France and that their members are affected in their capacity as users of those transport connections.
- 30 In particular, the applicants claim that, in France, the companies holding motorway concessions offset any rise in taxes, State fee or charges imposed upon them by an increase in the price of road tolls and, in general, adopt tariff increases which are excessive for users and disproportionate in relation to the service delivered.

- 31 The applicants also submit that, in France, the excessive profits which result from motorway tolls for the companies holding motorway concessions in exchange for their commitment to construct, finance and run the conceded motorway network are tantamount to schemes under which those companies are overcompensated.
- 32 The applicants claim that that situation will persist should the duration of the concession contracts authorised by the Commission in the contested decision be extended.
- 33 In this respect, it must be observed that the concern claimed by the applicants on behalf of their members is no different from the concern which may be claimed by all users of the roads in question, in particular in so far as the road tolls charged in France by the companies holding motorway concessions are allegedly excessive and liable to increase in the period for which the duration of the concession contracts has been extended.
- 34 Thus, the contested decision does not affect the applicants' members by reason of certain attributes which are particular to them or by reason of a factual situation which distinguishes them individually in the same way as in the case of an addressee of that decision.
- 35 It must therefore be concluded that the applicants are not individually concerned by the contested decision and consequently do not meet the condition required for admissibility, in the second situation provided for in the fourth paragraph of Article 263 TFEU.
- 36 Consequently, it is not necessary to establish whether the applicants are also directly concerned by the contested decision.

*The characterisation of the contested decision as a regulatory act which does not entail implementing measures*

- 37 According to the last limb of the sentence in the fourth paragraph of Article 263 TFEU, natural or legal persons may bring proceedings for annulment of a regulatory act which does not entail implementing measures and is of direct concern to them.
- 38 The concept of a 'regulatory act which ... does not entail implementing measures', within the meaning of the fourth paragraph of Article 263 TFEU, must be interpreted in the light of that provision's objective, which consists in preventing an individual from being obliged to infringe the law in order to have access to a court. Where a regulatory act directly affects the legal situation of a natural or legal person without requiring implementing measures, that person could be denied effective judicial protection if he did not have a direct legal remedy before the European Union judicature for the purpose of challenging the legality of the regulatory act. Natural or legal persons in that situation, although directly concerned by the act in question, would be able to obtain a judicial review of that act only after having infringed its provisions, by pleading that those provisions are unlawful in proceedings initiated against them before the national courts (judgment of 19 December 2013, *Telefónica v Commission*, C-274/12 P, EU:C:2013:852, paragraph 27).
- 39 On the other hand, where a regulatory act entails implementing measures judicial review is ensured (see, to that effect, judgments of 23 April 1986, *Les Verts v Parliament*, C-294/83, EU:C:1986:166, paragraph 23; of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 93; and of 19 December 2013, *Telefónica v Commission*, C-274/12 P, EU:C:2013:852, paragraph 28).
- 40 Where responsibility for the implementation of a regulatory act lies with the institutions, bodies, offices or agencies of the European Union, natural or legal persons are entitled to bring a direct action before the European Union judicature against the implementing acts under the conditions stated in the fourth

paragraph of Article 263 TFEU, and to plead in support of that action, pursuant to Article 277 TFEU, the illegality of the basic act at issue (judgments of 23 April 1986, *Les Verts v Parliament*, C-294/83, EU:C:1986:166, paragraph 23; of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 93; and of 19 December 2013, *Telefónica v Commission*, C-274/12 P, EU:C:2013:852, paragraph 29).

- 41 Where the implementation of a regulatory act is a matter for the Member States, natural or legal persons may challenge the validity of the national implementing measure before a national court or tribunal and, in those proceedings, plead the invalidity of the basic act at issue and cause that court or tribunal to request a preliminary ruling from the Court of Justice, pursuant to Article 267 TFEU (judgments of 23 April 1986, *Les Verts v Parliament*, C-294/83, EU:C:1986:166, paragraph 23; of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 93; and of 19 December 2013, *Telefónica v Commission*, C-274/12 P, EU:C:2013:852, paragraph 29).
- 42 In the present case, it must be observed that the Commission, in the operative part of the contested decision, does not set out the specific and actual consequences of the declaration of compatibility of the aid in question with the internal market either for the beneficiaries of that aid or for any other person who or which might be affected in any way by the measure at issue.
- 43 However, it is apparent from the contested decision that the concession contracts concluded between the French State and the companies holding the motorway concessions in question must be completed by addendums approved by decree in order to insert the detailed procedures for the investment plan, that is to say, in particular, the works to be carried out, the extension of the duration of the concessions, the measures intended to ensure the follow-up of the works, the absence of overcompensation together with the commitments entered into by the French authorities towards the Commission in the procedure under which the measure at issue was examined.
- 44 The specific, actual consequences of the contested decision with regard to the applicants and their members are therefore to be shown in the national measures which thus have the character of measures implementing that decision, for the purposes of the last limb of the sentence in the fourth paragraph of Article 263 TFEU (see, to that effect, order of 21 April 2016 in *Royal Scandinavian Casino Århus v Commission*, C-541/14 P, not published, EU:C:2016:302, paragraph 47).
- 45 Pursuant to case-law, the Member States must ensure that it is possible for natural or legal persons to challenge the national measures implementing an act of the European Union before the national courts. The Court has thus pointed out that it is for the Member States to establish a system of legal remedies and procedures which ensure respect for the fundamental right to effective judicial protection (judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 100, and order of 21 April 2016, *Royal Scandinavian Casino Århus v Commission*, C-541/14 P, not published, EU:C:2016:302, paragraph 51).
- 46 Under the second subparagraph of Article 19(1) TEU, Member States are to provide remedies sufficient to ensure effective judicial protection in the fields covered by EU law (see, to that effect, judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 101).
- 47 Moreover, in the absence of EU rules governing the matter, it is for each Member State to designate, with due observance of the requirements stemming from EU law, the courts and tribunals with jurisdiction and to lay down the detailed procedural rules governing actions brought to safeguard rights which individuals derive from EU law (judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 102).

48 Regardless of whether the contested decision constitutes a regulatory act within the meaning of the fourth paragraph of Article 263 TFEU, it must therefore be concluded that the present action does not meet the condition, as to the absence of implementing measures, required for it to be found admissible having regard to the third situation provided for in that provision.

49 Consequently, in the light of all the foregoing considerations, the present action must be dismissed in its entirety as inadmissible without it being necessary to rule on the Commission's line of argument based on the fact that the applicants are not represented by a lawyer who is an independent third party.

*The application to intervene*

50 Under Article 142(2) of the Rules of Procedure, there is no need to adjudicate on the application to intervene submitted by the French Republic.

**Costs**

51 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.

52 Since the applicants have been unsuccessful, they must, in accordance with the form of order sought by the Commission, be ordered to pay, in addition to their own costs, the costs incurred by the Commission.

53 Furthermore, pursuant to Article 144(10) of the Rules of Procedure, the French Republic must bear its own costs relating to the application to intervene.

On those grounds,

THE GENERAL COURT (First Chamber)

hereby orders:

1. **The action is dismissed as inadmissible.**
2. **There is no need to adjudicate on the application to intervene submitted by the French Republic.**
3. **The Automobile club des avocats (ACDA), the Organisation des transporteurs routiers européens (OTRE), the Fédération française des motards en colère (FFMC), the Fédération française de motocyclisme and the Union nationale des automobile clubs shall bear their own costs and pay those incurred by the European Commission.**
4. **The French Republic shall bear its own costs in relation to the application to intervene.**

Luxembourg, 12 January 2017.

E. Coulon  
Registrar

I. Pelikánová  
President