Reports of Cases

JUDGMENT OF THE COURT (Tenth Chamber)

16 November 2017*

(Appeal — Arbitration clause — Sixth framework programme for research, technological development and demonstration activities (2002-2006) — Partial repayment of the sums paid to the appellant — Liquidated damages)

In Case C-250/16 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 2 May 2016,

Ludwig-Bölkow-Systemtechnik GmbH, established in Ottobrunn (Germany), represented by M. Núñez Müller, Rechtsanwalt,

appellant,

the other party to the proceedings being:

European Commission, represented by T. Maxian Rusche and F. Moro, acting as Agents,

defendant at first instance,

THE COURT (Tenth Chamber),

composed of A. Borg Barthet (Rapporteur), acting as President of the Chamber, M. Berger and F. Biltgen, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By its appeal, Ludwig-Bölkow-Systemtechnik GmbH asks the Court to set aside the judgment of the General Court of the European Union of 19 February 2016, *Ludwig-Bölkow-Systemtechnik* v *Commission* (T-53/14, not published, EU:T:2016:88, 'the judgment under appeal'), upholding in part

* Language of the case: German.

its action seeking a declaration, first, that the European Commission was not entitled to request it to repay advances paid under three agreements and, second, that the appellant was not required to pay liquidated damages to the Commission.

Background

2 The background to the dispute is set out as follows in paragraphs 1 to 19 of the judgment under appeal:

‘1 In accordance with Regulation (EC) No 2321/2002 of the European Parliament and of the Council of 16 December 2002 concerning the rules for the participation of undertakings, research centres and universities in, and for the dissemination of research results for, the implementation of the European Community Sixth Framework Programme (2002-2006) (OJ 2002 L 335, p. 23), and within the framework provided for by Decision No 1513/2002/EC of the European Parliament and of the Council of 27 June 2002 concerning the Sixth Framework Programme of the European Community for research, technological development and demonstration activities, contributing to the creation of the European Research Area and to innovation (2002-2006) (OJ 2002 L 232, p. 1), the Commission of the European Communities concluded three grant agreements with, amongst other parties, the appellant, [Ludwig-Bölkow-Systemtechnik], a technology and strategy consulting company, active principally in the fields of energy, mobility and sustainability.

2 For the first agreement, corresponding to the project entitled ‘Development of a harmonised “European Hydrogen Energy Roadmap” by a balanced group of partners from industry, European regions and technical and socio-economic scenario and modelling experts’ (‘the HyWays project’), as well as the second agreement, corresponding to the project entitled ‘Handbook for Approval of Hydrogen Refuelling Stations’ (‘the HyApproval project’), the appellant acted as coordinator. As regards the third agreement, corresponding to the project ‘Harmonisation of Standards and Regulations for a sustainable Hydrogen and Fuel Cell Technology’ (‘the HarmonHy project’), it was only one of the contractors of the consortium.

3 Article 12 of each agreement states that the agreement is governed by Belgian law.

4 Article 13 of those agreements stipulates a jurisdiction clause, under which the General Court is to have sole jurisdiction to hear any disputes between the Commission and the contractors concerning their validity, their application or their interpretation.

5 The general conditions, which, pursuant to Article 14 of each agreement, form an integral part of the agreement, include Part A, concerning, in particular, the performance of the projects at issue, termination of the agreements and responsibility (Articles II.2 to II.18), Part B, on financial provisions and controls, audits, recoveries and sanctions (Articles II.19 to II.31) and Part C, concerning intellectual property rights (Articles II.32 to II.36).

6 Article II.19(1) of the general conditions defines the costs eligible for EU financing and states the following:

‘Eligible costs incurred for the implementation of the project must fulfil all of the following conditions:
(a) they must be actual, economic and necessary for the implementation of the project;
(b) they must be determined in accordance with the usual accounting principles of the contractor;
(c) they must be incurred during the duration of the project as identified in Article 4.2 …;
(d) they must be recorded in the accounts of the contractor that incurred them, no later than at the date of the establishment of the audit certificate referred to in Article II.26. The accounting procedures used in the recording of costs and receipts shall respect the

accounting rules of the State in which the contractor is established as well as permit the direct reconciliation between the costs and receipts incurred for the implementation of the project and the overall statement of accounts relating to the overall business activity of the contractor…'

7 Article II.19(2)(a) to (h) of the general conditions mentions eight categories of non-eligible costs. Article II.19(2)(i) further states that all the costs which do not meet the conditions established in paragraph 1 are non-eligible.

8 Articles II.20 and II.21 of the general conditions define two types of costs which are eligible under the conditions in Article II.19, namely, first, direct costs, which are directly attributable to the projects, and, second, indirect costs, which are not directly attributable to the projects but can be identified and justified by the contractor's accounting system as being incurred in direct relationship with the direct costs.

9 Article II.22(1) of the general conditions sets out three cost reporting models, including the full cost model used for the attribution by the contractors of direct and indirect eligible costs and the full cost/flat-rate model used by the contractors for the attribution of direct eligible costs and a flat-rate for indirect costs. That flat-rate is equal to 20% of all direct costs less the cost of subcontracts, which is deemed to cover any indirect costs incurred by the contractor under the project.

10 The second subparagraph of Article II.24(2) of the general conditions provides that the Union's financial contribution cannot give rise to any profit for the contractors.

11 In accordance with Article II.29(1) of the general conditions, the Commission may carry out audits at any time during the agreement and up to five years after the end of the project. Those audits may concern scientific, financial, technological and other aspects, such as accounting and management principles, relating to the proper execution of the project and the agreement.

12 Article II.30 of the general conditions is drafted as follows:

'Without prejudice to any other measures provided for in this [agreement], the contractors agree that the [Union], with the aim of protecting its financial interests, is entitled to claim liquidated damages from a contractor who is found to have overstated expenditure and who has consequently received an unjustified financial contribution from the [Union]. Liquidated damages are due in addition to the recovery of the unjustified financial contribution from the contractor.

1. Any amount of liquidated damages shall be proportionate to the overstated expenditure and unjustified portion of the [Union] contribution. The following formula shall be used to calculate any possible liquidated damages:

   Liquidated damages = unjustified financial contribution × (overstated expenditure/total claimed)

   The calculation of any liquidated damages shall only take into consideration the period relating to the contractor's claim for the [Union] contribution for that period. It shall not be calculated in relation to the entire [Union] contribution.
2. The Commission shall inform the contractor which it considers liable to pay liquidated damages in writing of its claim by way of a registered letter with acknowledgement of receipt. The contractor shall have a period of 30 days to answer the [Union's] claim.
3. The procedure for repayment of unjustified financial contribution and for payment of liquidated damages will be determined in accordance with the provisions of Article II.31.

4. The Commission shall be entitled to compensation in respect of any overstated expenditure which comes to light after the agreement has been completed, in accordance with the provisions of paragraphs 1 to 6.
5. These provisions shall be without prejudice to any administrative or financial sanctions that the Commission may impose on any defaulting contractor in accordance with the Financial Regulation or to any other civil remedy to which the [Union] or any other contractor may be entitled. Furthermore, these provisions shall not preclude any criminal proceedings which may be initiated by the Member States' authorities.
6. Further, as established by the Financial Regulation, any contractor declared to be in grave breach of its contractual obligations shall be liable to financial penalties of between 2% and 10% of the value of the [Union's] financial contribution received by that contractor. The rate may be increased to between 4% and 20% in the event of a repeated breach in the five years following the first breach.'

13 In February 2008, the Commission carried out, in accordance with Article II.29 of the general conditions, an audit regarding the proper performance of the agreements at issue.

14 On 17 March 2011, the Commission sent the appellant a draft audit report. By letters of 21 and 22 April 2011, the appellant expressed a view on that draft.

15 On 25 July 2011, the Commission sent the appellant the final version of the audit report. The report found that the appellant had set its eligible personnel costs too high. Furthermore, according to that report, costs relating to research were wrongly treated as management costs. Finally, interest on advances in the total sum of EUR 1 707.40 was not declared.

16 The Commission informed the appellant that it would send debit notes for the three agreements, which at that date, had been completed and for which the amount of the Union's financial contribution had been paid in full.

17 From 10 August 2011 to 11 November 2013, correspondence between the appellant and the Commission continued, in the course of which the parties disagreed on the findings of the final audit report.

18 On 9 December 2013, the Commission sent several debit notes to the appellant. It is apparent from those notes that the amount to be recovered by the Commission amounted to EUR 218 539.62 in respect of the HyWays project, EUR 75 407.06 in respect of the HyApproval project and EUR 47 128.39 in respect of the HarmonHy project. Moreover, the Commission claimed liquidated damages from the appellant in accordance with Article II.30 of the general conditions, namely EUR 60 402.30 in respect of the HyWays project, EUR 11 019.61 in respect of the HyApproval project, and EUR 10 002.17 in respect of the HarmonHy project.

19 After the action was brought, the Commission issued to the appellant credit notes No 3 233 150 004, 3 233 150 005 and 3 233 150 006, in the sum of EUR 108 753.52, EUR 10 875.35 and EUR 23 404.88 respectively.'

The action before the General Court and the judgment under appeal

3 By an action lodged at the Court Registry on 20 January 2014, the appellant brought proceedings seeking a declaration, first, that the Commission had not calculated the costs of the three projects in accordance with the contractual requirements, second, that in the context of the HyWays project, the amount of the Union's financial contribution received by the appellant was less than that appearing in two debit notes issued by the Commission, third, that the Commission had wrongly reclassified management costs as research costs in the HyApproval project, fourth, that the appellant was not

required to pay liquidated damages to the Commission within the context of the three projects and, finally, fifth, that the Commission had wrongly issued the debit notes in question, the amounts owed by the appellant being less than those appearing in those notes.

4 In support of its application, the appellant put forward, in essence, four pleas in law. The first plea in law was based on the erroneous nature of the Commission's refusal to accept the project costs calculation method suggested by the appellant. By its second plea in law, the appellant alleged that the Commission had, wrongly, claimed that it had benefited under the HyWays project from a financial contribution in the amount of EUR 604 240.79. The third plea in law concerned the erroneous character of the reclassification of certain costs incurred in the context of the agreement relating to the HyApproval project. Finally, the fourth plea in law related to the erroneous nature of the claim for liquidated damages submitted by the Commission.

5 Concerning the second and third heads of claim, the General Court held that there was no longer any need to adjudicate on them, since the Commission, by issuing credit notes No 3 233 150 004 and No 3 233 150 006, had accepted the merits of the appellant's claims.

6 The General Court rejected the appellant's first head of claim concerning the method for calculating the project costs. In particular, it found, in paragraph 58 of the judgment under appeal, that the Commission had, rightly, dismissed the appellant's preferred costs calculation method on the ground that that method led to declaring costs that were not actual, economic or necessary for the implementation of the project within the meaning of Article II.19(1) of the general conditions.

7 As regards the fourth head of claim relating to the liquidated damages, the General Court examined whether the Commission's application of Article II.30 of the general conditions in the circumstances of this case complied with the rules of the Belgian Civil Code regulating the use of penalty clauses. It considered, following that examination, that in accordance with Article 1231 of the Belgian Civil Code, the sums owed by the appellant by way of liquidated damages must be reduced to an amount equivalent to 10% of the advances it had unduly received.

Forms of order sought by the parties

8 By its appeal, the appellant asks the Court to:

– set aside the judgment under appeal in that the General Court rejected the appellant's first and fifth heads of claim;

– set aside the judgment under appeal in that the General Court ruled that the sums owed by the appellant by way of liquidated damages were reduced to an amount equivalent to 10% of the advances which had to be repaid in the context of the HyWays, HyApproval and HarmonHy projects and find that the appellant did not have to pay any amount by way of liquidated damages;

– set aside the judgment under appeal in that the General Court ordered the appellant to bear its own costs, and

– order the Commission to pay the costs of the proceedings both on appeal and at first instance.

9 The Commission contends that the Court should dismiss the appeal and order the appellant to pay the costs.

10 It maintains that the appeal is inadmissible inasmuch as concerns the allocation of the costs decided by the General Court in the judgment under appeal relating to the second and third heads of claim of the action, in relation to which the Court ruled that there was no longer any need to adjudicate.

The appeal

The grounds of appeal to the extent that they relate to the agreements at issue

11 In support of its appeal, the appellant relies on five grounds alleging failure to state reasons, breach of the principle of good faith, distortion of evidence, infringement of Articles 1162, 1134 and 1135 of the Belgian Civil Code and, finally, errors in law regarding the application of liquidated damages.

The first ground of appeal

– Arguments of the parties

12 By its first ground, the appellant claims that the General Court breached its obligation to state reasons, in paragraphs 51, 55 and 58 of the judgment under appeal, when it rejected the hourly rate calculation method used by the appellant, on the ground that that method gave rise to higher costs 'which were neither actual, economic, nor necessary for the implementation of the project' and had, furthermore, the effect of making the Commission participate in 'covering all the appellant's costs, independently of any analysis of their relation to the projects'.

13 The appellant argues that the grounds set out in those paragraphs are incomprehensible in that the ratio it favoured (costs/accountable hours of work) has a much closer connection to the projects referred to in the agreement than the ratio used by the Commission (costs/total hours of work (accountable and non-accountable)). The latter includes not only other projects but also all the hours of work with no connection to the projects.

14 In its reply, the appellant indicates that the knowledge acquired in the context of project-follow-up and improvement guarantees and enhances the quality of all the projects, including the projects at issue. It follows that the costs corresponding to project-follow-up and knowledge acquisition are eligible costs, under Article II.19(1) and Article II.20(1) of the general conditions.

15 The Commission contends that the first ground of appeal must be rejected.

– Findings of the Court

16 It should be borne in mind that the duty to state reasons established by Article 296 TFEU is an essential procedural requirement which must be distinguished from the question whether the reasoning is well founded, which is concerned with the substantive legality of the measure at issue. The reasoning of a decision consists in a formal statement of the grounds on which that decision is based. If those grounds are vitiated by errors, the latter will vitiate the substantive legality of the decision, but not the statement of reasons in it, which may be adequate even though it sets out reasons which are incorrect. It follows that objections and arguments intended to establish that a measure is not well founded are irrelevant in the context of a ground of appeal alleging an inadequate statement of reasons or a lack of such a statement (judgment of 18 June 2015, *Ipatau* v *Council*, C-535/14 P, EU:C:2015:407, paragraph 37 and the case-law cited).

17 Inasmuch as the argument relied on by the appellant in support of the first ground of appeal can be understood either as disputing the merits of the General Court's findings relating to the hourly rate calculation method or as submitting that the General Court gave, in paragraphs 51, 55 and 58 of the judgment under appeal, reasons for its findings in a contradictory and equivocal way, that argument must be rejected as unfounded.

18 The General Court noted, in paragraphs 46 to 48 of that judgment, the specific characteristics of Union funding awarded in the context of grants before checking, in the light of those characteristics, whether the Commission was entitled to dismiss the method of determining eligible costs applied by the appellant on the basis that it did not comply with the contractual provisions.

19 In paragraph 51 of that judgment, the General Court indicated that the appellant's calculation method 'has the effect of excluding from the calculation of the hourly rate some hours of work undertaken by its partners, such as those relating to project-follow-up, knowledge acquisition, participation in conferences, business development and follow up of contacts with customers, on the ground that they are not dedicated to providing services to all its employers and, consequently, are not chargeable'. According to the General Court, it 'follows that the basis serving as denominator is smaller than that constituted by all the hours of work and that, consequently, the hourly rate is higher', so that 'once applied to the hours actually worked in the context of the projects, it results in a costs declaration of a higher amount'.

20 In paragraph 55 of the judgment under appeal, the General Court noted that 'the reduction of the hourly rate calculation basis and the resulting increase of the level of eligible costs have the effect of making the Commission participate in covering all the [appellant's] costs, independently of any analysis of their connection with the projects the subject of Union funding'. The General Court concluded, in paragraph 56 of that judgment, that 'while such an approach may properly be understood in the context of a standard contract for services, … it is not compatible with the specificities of the grant agreements at issue'.

21 It follows that the General Court considered that knowing whether the rate applied by the appellant had a close connection with the projects at issue in the grant agreements was not conclusive; what was conclusive was whether, in accordance with that rate, the costs were allocated to all the hours of work, which guaranteed that the Union's budget does not fund the costs relating to project-follow-up, knowledge acquisition, participation in conferences, business development and follow up of contacts with customers.

22 It is therefore without contradiction that the General Court found, in paragraph 58 of the judgment under appeal, that the Commission was entitled to reject the appellant's preferred method of recording costs on the ground that it led to declaring costs which were not actual, economic or necessary for the implementation of the project within the meaning of Article II.19 of the general conditions.

23 It follows from the above that the first ground of appeal must be rejected.

The second ground of appeal

– Arguments of the parties

24 By its second ground of appeal, the appellant claims that the General Court, by not accepting that the Commission had breached the principle of good faith that must govern the relations between the Union's institutions and market operators, itself failed to apply that principle.

25 By the first part of the second ground of appeal, the appellant maintains that the Commission breached that principle in that it omitted to specify, in Article II.19 et seq. of the general conditions, the way in which the eligible costs had to be calculated by the contractor. It considers that the Commission merely formulated general principles and referred, in Article II.19(1)(b) of the general conditions, to the usual accounting principles of the contractor. It states that the principle of good faith is part of the general principles of EU law established by the Court. It refers in this respect to several judgments

including those of 12 July 1957, *Algera and Others* v *Common Assembly* (7/56 and 3/57 to 7/57, EU:C:1957:7, pp. 55 and 56), as well as of 29 April 2004, *IPK-München and Commission* (C-199/01 P and C-200/01 P, EU:C:2004:249, paragraph 78).

26 By the second part of the second ground of appeal, the appellant considers that the General Court also breached that principle, by rejecting, in paragraphs 50 to 63 of the judgment under appeal, its preferred hourly rate calculation method and by merely stating, in paragraph 59 of that judgment, that the reference to the full cost model was not capable of demonstrating that the calculation method used by the appellant complied with Article II.19(1)(a) of the general conditions.

27 The Commission maintains, primarily, that the second ground of appeal must be rejected as inadmissible and, alternatively, that it is unfounded.

– *Findings of the Court*

28 As regards the first part of the second ground of appeal alleging that the Commission breached the EU law principle of good faith, it must be noted that, by the argument put forward in support, the appellant merely challenges the Commission's decision. Accordingly, such a line of argument, which is not directed against the judgment under appeal, is inadmissible in an appeal.

29 As regards the second part of that ground of appeal, alleging the breach, by the General Court, of the principle of good faith, it must be noted that, according to the case-law of the Court of Justice, to allow a party to put forward for the first time before the Court of Justice a plea in law which it did not raise before the General Court would in effect allow that party to bring before the Court of Justice a wider case than that heard by the General Court. In an appeal, the Court's jurisdiction is, as a general rule, confined to a review of the assessment by the General Court of the pleas argued before it. However, an argument which was not raised at first instance does not constitute a new plea that is inadmissible at the appeal stage if it is simply an amplification of an argument already developed in the context of a plea set out in the application before the General Court (judgment of 28 July 2016 in *Tomana and Others* v *Council and Commission*, C-330/15 P, not published, EU:C:2016:601, paragraphs 33 and the case-law cited).

30 Inasmuch as, by the second part of that ground of appeal, the appellant submits that the General Court should have held that the Commission had infringed the principle of good faith, it must be noted that such an argument was not raised before the General Court. Consequently, it amounts to a new argument and must be considered inadmissible.

31 The second ground of appeal must therefore be declared inadmissible.

The third ground of appeal

– *Arguments of the parties*

32 By its third ground of appeal, the appellant criticises the General Court for distorting the evidence.

33 By the first part of that ground of appeal, the appellant maintains that the General Court distorted the clear sense of the evidence and the facts which it adduced in support of its argument by finding, in paragraphs 55, 56 and 58 of the judgment under appeal, that the method of recording costs relied on by the appellant led it to declare costs which were neither actual, economic nor necessary for the implementation of the projects and, therefore, could not be considered as eligible for the implementation of the projects at issue. It states, in that respect, that the General Court noted, in paragraph 46 of that judgment, 'that eligible costs [could] not result in the contractor making a profit'.

First, the appellant had alleged, in the context of its action at first instance, that its calculation method did not result in it making a profit, but could, on the contrary, at most result in covering its costs linked to the projects, whereas the Commission's calculation method resulted in significant losses for it. Second, the ground set out in paragraph 58 of that judgment is based on incorrect elements, in that they are contrary to those pleaded and proven by the appellant.

34 By the second part of that ground of appeal, the appellant alleges that the General Court held, without gathering evidence regarding the calculation method it relied on, that it had made a profit and that the sufficiently close connection between the costs claimed and the projects at issue was lacking.

35 By the third part of that ground of appeal, the appellant complains that the General Court did not define 'all the costs' when it stated, in paragraph 55 of the judgment under appeal, that the appellant's calculation method had the effect of making the Commission participate in 'covering all the appellant's costs'.

36 Finally, by the fourth part of the third ground of appeal, the appellant claims that the General Court manifestly distorted the Commission's argument, in that it considered, in paragraph 61 of the judgment under appeal, that the interpretation of Article II.19 et seq. of the general conditions was 'clear'. The interpretation of those conditions was ambiguous for the Commission, too, since, for the numerator of the ratio of the hourly rate, it took into account sometimes 'staffing costs' and sometimes 'all the costs'.

37 The Commission contends that the third ground of appeal must be rejected.

– *Findings of the Court*

38 According to settled case-law, the General Court has exclusive jurisdiction to establish the facts, except where the substantive inaccuracy of its findings is apparent from the documents submitted to it, and to assess the evidence accepted. The establishment of those facts and the assessment of that evidence therefore do not, save where the clear sense of the evidence has been distorted, constitute a point of law which is subject as such to review by the Court of Justice (judgment of 29 October 2015, *Commission* v *ANKO*, C-78/14 P, EU:C:2015:732, paragraph 22 and the case-law cited).

39 Where an appellant alleges distortion of the evidence by the General Court, it must, under Article 256 TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union and Article 168(1)(d) of the Rules of Procedure, indicate precisely the evidence alleged to have been distorted by the General Court and show the errors of appraisal which, in its view, led to such distortion. In addition, according to the Court's settled case-law, that distortion must be obvious from the documents in the Court's file, without any need to carry out a new assessment of the facts and the evidence (judgment of 30 November 2016, *Commission* v *France and Orange*, C-486/15 P, EU:C:2016:912, paragraph 99 as well as the case-law cited).

40 Although, by its third ground of appeal, the appellant alleges distortion of the evidence, the fact remains that, by the first and fourth parts put forward in support of that ground, the appellant merely criticises the factual findings of the General Court, first, in paragraphs 55, 56 and 58 of the judgment under appeal, according to which, in essence, the appellant's calculation method leads to declaring costs which were neither actual, economic, nor necessary for the implementation of the projects at issue and, second, in paragraph 61 of that judgment, according to which Article II.19 to II.21 of the general conditions were 'clear'. The appellant seeks, in reality, to obtain from the Court a new assessment of the facts in that respect, without indicating precisely which evidence was distorted by the General Court. The first and fourth parts of the third ground of appeal must, therefore, be found inadmissible.

41 Regarding the second part of that ground, the General Court cannot be criticised for failing to gather necessary evidence, since it was for the appellant to submit, where appropriate, all the evidence presenting and substantiating its arguments in the context of the action which it initiated before the General Court (see, to that effect, order of 30 June 2015, *Evropaïki Dynamiki* v *Commission*, C-575/14 P, not published, EU:C:2015:443, paragraph 21).

42 Concerning the third part of the third ground of appeal, by which the appellant complains that the General Court did not define the expression 'all the costs', in paragraph 55 of the judgment under appeal, it is sufficient to state that that allegation is difficult to understand and lacks relevance in the context of a ground of appeal alleging distortion of evidence, in that it does not relate to evidence.

43 It follows that the third ground of appeal must be rejected as in part inadmissible and in part unfounded.

The fourth ground of appeal

– *Arguments of the parties*

44 By its fourth ground of appeal, the appellant maintains that the General Court infringed Articles 1162, 1134 and 1135 of the Belgian Civil Code, by holding, in paragraph 61 of the judgment under appeal, that the interpretation of Article II.19 to II.21 of the general conditions was clear as regards the contested method of determining costs and that there was, accordingly, no need to refer to the principles of Belgian civil law.

45 It claims, in that regard, that it was for the Commission to state clearly, and before the conclusion of the agreements at issue, the detailed rules for determining costs. It claims that since those clarifications were not provided, the agreements were imprecise on that point. They should, therefore, have been interpreted in the light of the aforementioned Belgian provisions, which provide that, in the event of a doubt regarding the interpretation of an agreement, that agreement should be interpreted to the disadvantage of the party who stipulated it and in favour of the party which contracted the obligation, and that the parties to the contract are under an obligation to perform agreements in good faith. According to the appellant, the General Court should have found that the hourly rate calculation method which it suggested was compatible with the general conditions of the agreements at issue and the aforementioned provisions of the Belgian Civil Code. It claims that, in these circumstances, the General Court should have considered the contested debit notes as contrary to the agreements and, therefore, unlawful.

46 The appellant also claims in that regard that, in accordance with the case-law of the Court, and in particular the judgment of 26 February 2015, *Planet* v *Commission* (C-564/13 P, EU:C:2015:124, paragraph 21), the interpretation and application of Articles 1162, 1134 and 1135 of the Belgian Civil Code, as falling under the national law applicable to the agreements by reason of an arbitration clause, is a question of law which may be presented to the Court in the context of an appeal.

47 The Commission maintains that the fourth ground of appeal must be rejected as inadmissible or ineffective.

– *Findings of the Court*

48 By its fourth ground of appeal, the appellant complains, in essence, in paragraphs 61 of the contested decision, that the General Court did not apply Articles 1162, 1134 and 1135 of the Belgian Civil Code, on the ground that the definition of the eligible indirect and direct costs in Articles II.19 to II.21 of the general conditions was clear and, accordingly, there was no need to apply the Belgian civil law principles of contract interpretation.

49 It must nevertheless be noted that, by doing so, the appellant in fact disputes the interpretation of Articles II.19 to II.21 of the general conditions of the grant agreements which the General Court held to be clear. The interpretation of a term of a contract by the General Court constitutes a question of fact which cannot be subject, as such, to review by the Court of Justice in the context of an appeal (see to that effect, judgment of 29 October 2015, *Commission* v *ANKO*, C-78/14 P, EU:C:2015:732, paragraph 23).

50 It follows that the fourth ground of appeal must be rejected as inadmissible.

The fifth ground of appeal

– *Arguments of the parties*

51 By the first part raised in support of the fifth ground of appeal, the appellant maintains that the General Court failed to comply with its duty to state reasons, in that, in paragraph 79 of the judgment under appeal, it rejected as 'manifestly unfounded' the appellant's argument alleging a contradiction between Article II.30 of the general conditions and the accepted principles of morality protected by Article 1172 of the Belgian Civil Code, without giving any further detail in that regard.

52 By the second part of that ground, the appellant complains that the General Court failed to consider the question of the invalidity of Article II.30 of the general conditions, although, in its view, that Article infringes Articles 1172 and 1231 of the Belgian Civil Code. The appellant acknowledges that the General Court limited the consequences of the application of Article II.30 of the general conditions. To that effect, it considered, first, in paragraph 94 of the judgment under appeal, that that Article could not apply to the mere harm linked to the delay in repayment of the unduly paid advances. It applied, second, the possibility set out in Article 1231 of the Belgian Civil Code of restricting the amount of the liquidated damages that the Commission is entitled to claim to 10% of the amount of the advances to be repaid. In doing so, the General Court reduced the amounts to repay, whilst maintaining the applicability of Article II.30 of the general conditions to the present case. The appellant claims that the General Court should have held Article II.30 to be invalid on the ground that it is contrary to Article 1172 of the Belgian Civil Code and, therefore, held that the appellant was not under an obligation to pay any damages.

53 The appellant refers, in that regard, to the settled case-law in the field of unfair terms in respect of consumers, according to which the Court considered that the competent court cannot reduce unfair general conditions of a contract to the part of them that is still valid, but must, on the contrary, exclude their application to the other party to the contract (judgment of 14 June 2012, *Banco Español de Crédito*, C-618/10, EU:C:2012:349, paragraph 58 et seq.). The appellant considers that that case-law can be applied to the present case in that it is, like consumers, the weaker party to the EU's grant agreement, upon which the Commission's contractual general conditions are imposed, with no ability to negotiate them.

54 The Commission contends that the fifth ground of appeal must be rejected.

– *Findings of the Court*

55 As regards the first part of the fifth ground of appeal, alleging a failure to state reasons, it must be recalled, that, according to settled case-law, in the context of an appeal, first, the purpose of review by the Court of Justice is, inter alia, to consider whether the General Court addressed, to the requisite legal standard, all the arguments raised by the appellant and, secondly, that a plea alleging that the General Court failed to rule on arguments relied on at first instance amounts essentially to pleading a breach of the obligation to state reasons which derives from Article 36 of the Statute of the Court of Justice of the European Union, applicable to the General Court by virtue of the first paragraph of Article 53 of that statute, and Article 117 of the Rules of Procedure of the General Court (judgment of 11 May 2017, *Dyson* v *Commission*, C-44/16 P, EU:C:2017:357, paragraph 37 and the case-law cited).

56 In that regard, it follows from the Court's settled case-law that the General Court's duty to state reasons does not require it to provide an account which follows exhaustively and one by one all the arguments put forward by the parties to the case, and that the General Court's reasoning may therefore be implicit, on condition that it enables the persons concerned to know why it has not upheld their arguments and provides the Court of Justice with sufficient material for it to exercise its power of review (judgment of 11 May 2017, *Dyson* v *Commission*, C-44/16 P, EU:C:2017:357, paragraph 38, and the case-law cited).

57 In the present case, the General Court, in paragraph 79 of the judgment under appeal, rejected, as manifestly unfounded, the appellant's argument alleging a contradiction between Article II.30 of the general conditions and the accepted principles of morality protected by Article 1172 of the Belgian Civil Code. In doing so, it merely rejected that argument without indicating any reason in support of its finding.

58 Whilst it is true that the appellant's claim was rejected as being 'manifestly' unfounded, it remains the case that the rejection of an argument relied on by an appellant, however manifest, does not exonerate the General Court from its duty to state reasons for its decision. The General Court therefore vitiated its assessment by a failure to state sufficient reasons; it is not, however, in the present case, such as to result in the annulment of the judgment under appeal.

59 As the General Court indicated in paragraph 76 of the judgment under appeal, the examination of the fourth head of claim, relating to the liquidated damages, entailed checking whether the Commission's application of that point in the circumstances of the present case complied with the rules of the Belgian Civil Code regulating the use of penalty clauses. Since the Belgian law, applicable to the contested grant agreements, provides for the use of those clauses and such a penalty clause has the effect, in accordance with Article 1229 of the Belgian Civil Code and, as the General Court noted, in paragraphs 81 and 82 of the judgment under appeal, of compensating for the delay in performance of the main obligation or its non-performance, the penalty clause set out in Article II.30 of the general conditions cannot, consequently, be considered as illegal or contrary to the accepted principles of morality.

60 As regards the second part of the fifth ground of appeal, it must be noted that it is based on the premiss that Articles 1172 and 1231 of the Belgian Civil Code were infringed.

61 As follows from the examination of the first part of the fifth ground of appeal, the General Court did not infringe Article 1172 of the Belgian Civil Code. As regards Article 1231 of that code, it is sufficient to note that, as the General Court rightly stated, in paragraph 90 of the judgment under appeal, that provision does not create a condition for the validity of a penalty clause, but enables the court to reduce the sum claimed by the creditor when it manifestly exceeds the amount that the parties were entitled to fix to make good the harm resulting from the non-performance of the agreement at issue.

62 Furthermore, as for the argument based on the judgment of 14 June 2012, *Banco Español de Crédito* (C-618/10, EU:C:2012:349), maintaining that the General Court should have declared Article II.30 of the general conditions inapplicable, it must be noted that it is relied on for the first time before the Court and that it must be rejected on the same grounds as those set out in paragraph 29 of the present judgment.

63 It follows that the ground of appeal cannot be upheld.

The grounds of appeal in so far as they relate to the costs at first instance

64 The appellant seeks the annulment of point 4 of the operative part of the judgment under appeal, in that the General Court ordered it to pay its own costs, including for the second and third heads of claims of the action, which did not proceed to judgment.

65 It should be recalled that, as provided in the second paragraph of Article 58 of the Statute of the Court of Justice of the European Union, 'no appeal shall lie regarding only the amount of the costs or the party ordered to pay them'. Moreover, according to settled case-law, where all the other grounds of appeal put forward in an appeal have been rejected, any ground of appeal challenging the decision of the General Court on costs must be rejected as inadmissible by virtue of that provision (see, in particular, order of 16 September 2005, *Schmoldt and Others* v *Commission*, C-342/04 P, not published, EU:C:2005:562, paragraph 65 and the case-law cited).

66 It follows that since all the other grounds put forward in the appeal have been rejected, any ground challenging the decision of the General Court on costs must be declared inadmissible.

67 It follows from all of the foregoing considerations that the appeal must be dismissed in its entirety.

Costs

68 Under Article 138(1) of the Rules of Procedure, which applies 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. Since the Commission has applied for costs to be awarded against the appellant and the latter has been unsuccessful, the appellant must be ordered to pay the costs.

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

1. Dismisses the appeal;

2. Orders Ludwig-Bölkow-Systemtechnik GmbH to pay the costs.

[Signatures]