Reports of Cases

JUDGMENT OF THE GENERAL COURT (Eighth Chamber, Extended Composition)

7 November 2019*

(Law governing the institutions — European Parliament — Decision declaring certain expenditure of a political party ineligible for the purposes of a grant for 2015 — Decision awarding a grant for 2017 and making provision for pre-financing at the rate of 33% of the maximum grant amount and an obligation to provide a bank guarantee — Obligation of impartiality — Rights of the defence — Financial Regulation — Rules of application of the Financial Regulation — Regulation (EC) No 2004/2003 — Proportionality — Equal treatment)

In Case T-48/17,

Alliance for Direct Democracy in Europe ASBL (ADDE), established in Brussels (Belgium), represented initially by L. Defalque and L. Ruessmann, subsequently by M. Modrikanen and finally by Y. Rimokh, lawyers,

applicant,

v

European Parliament, represented by C. Burgos and S. Alves, acting as Agents,

defendant,

APPLICATION pursuant to Article 263 TFEU seeking annulment, first, of the decision of the Parliament of 21 November 2016 declaring certain expenditure ineligible for the purposes of a grant for 2015 and, second, of Parliament Decision FINS-2017-13 of 12 December 2016 concerning the award of a grant to the applicant for 2017, in so far as that decision limits the pre-financing to 33% of the maximum grant amount, subject to the provision of a bank guarantee,

THE GENERAL COURT (Eighth Chamber, Extended Composition),

composed of A.M. Collins (Rapporteur), President, M. Kancheva, R. Barents, J. Passer and G. De Baere, Judges,

Registrar: F. Oller, Administrator,

having regard to the written part of the procedure and further to the hearing on 8 May 2019,

gives the following

* Language of the case: English.

Judgment

Background to the dispute

1 The applicant, Alliance for Direct Democracy in Europe ASBL (ADDE), is a political party at European level within the meaning of Article 2(3) of Regulation (EC) No 2004/2003 of the European Parliament and of the Council of 4 November 2003 on the regulations governing political parties at European level and the rules regarding their funding (OJ 2003 L 297, p. 1).

2 On 30 September 2014, the applicant, under Article 4 of Regulation No 2004/2003, applied for funding from the general budget of the European Union for the 2015 financial year.

3 At its meeting of 15 December 2014, the Bureau of the European Parliament adopted decision FINS-2015-14 awarding a maximum grant of EUR 1 241 725 to the applicant for the 2015 financial year.

4 On 18 April 2016, the external auditor adopted its audit report which considered expenditure in the sum of EUR 157 935.05 to be ineligible for the 2015 financial year.

5 From May 2016, the Parliament's services performed additional checks. Following those checks, on 23 May 2016, Parliament sent the applicant a letter informing it of a decision of its Bureau of 9 May 2016 which specified the criteria for interpreting the prohibition of the financing of referenda campaigns.

6 On 26 and 27 September 2016, the Parliament's services carried out an inspection visit at the premises of the applicant.

7 On 30 September 2016, the applicant applied for funding from the general budget of the European Union for the 2017 financial year.

8 By letter dated 14 October 2016, the Director-General for Finance of the Parliament informed the applicant that, following the external audit report and the additional checks performed by the Parliament's services, a number of expenditure items were considered to be ineligible for the 2015 financial year. The applicant was invited to submit its observations by 4 November 2016 at the latest.

9 On 2 November 2016, the applicant submitted its observations on the letter of the Director-General for Finance of the Parliament of 14 October 2016. In addition, it requested to be heard at the meeting of the Bureau of the Parliament scheduled in order to adopt the decision on the final report which it had submitted for the 2015 financial year.

10 On 10 November 2016, the Secretary-General of the Parliament invited the Bureau of the Parliament to adopt the decision on the final report which the applicant had submitted for the 2015 financial year, declaring certain expenditure to be ineligible.

11 At its meeting on 21 November 2016, the Bureau of the Parliament examined the final report submitted by the applicant for the 2015 financial year following the closure of its accounts for that financial year. It declared the sum of EUR 500 615.55 to be ineligible and fixed the final grant amount awarded to the applicant at EUR 820 725.08. Accordingly, it requested the applicant to reimburse the sum of EUR 172 654.92 ('the contested decision relating to the 2015 financial year').

12 On 5 December 2016, the Secretary-General of the Parliament invited the Bureau to adopt its decision on the applications for funding from the general budget of the European Union for the 2017 financial year, submitted by a number of political parties and political foundations at European level, including the applicant.

13 At its meeting of 12 December 2016, the Bureau of the European Parliament adopted decision FINS-2017-13, awarding a maximum grant of EUR 1 102 642.71 to the applicant for the 2017 financial year and providing that the pre-financing would be limited to 33% of the maximum amount of the grant, subject to the provision of a first demand bank guarantee ('the contested decision relating to the 2017 financial year'). That decision was signed and sent to the applicant on 15 December 2016.

Procedure and forms of order sought

14 By application lodged at the Registry of the General Court on 27 January 2017, the applicant brought the present action.

15 By separate document lodged at the Court Registry on the same day, the applicant made an application for interim measures. That application was dismissed by order of 14 March 2017, *ADDE* v *European Parliament* (T-48/17 R, not published, EU:T:2017:170). The costs of those proceedings were reserved.

16 Following the conclusion of the written part of the proceedings, the applicant was summoned to a hearing initially scheduled for 6 June 2018, which was deferred due to the applicant's representative not being available.

17 By document lodged at the Registry of the General Court on 30 July 2018, the applicant applied for legal aid under Article 147 of the Rules of Procedure of the General Court. In the light of the Parliament's observations, and after asking the applicant certain questions and inviting it to lodge certain documents by way of measures of organisation of procedure under Article 89 of the Rules of Procedure, the Court dismissed the application for legal aid by order of 5 April 2019, *ADDE* v *European Parliament* (T-48/17 AJ, not published).

18 After the applicant appointed a new representative, the parties presented oral argument and their answers to the questions put by the Court at the hearing on 8 May 2019.

19 The applicant claims that the Court should:

– annul the contested decision relating to the 2015 financial year;

– annul the contested decision relating to the 2017 financial year in so far as it limits the pre-financing to 33% of the maximum grant amount subject to a bank guarantee being provided;

– order the Parliament to pay the costs.

20 The Parliament contends that the Court should:

– dismiss the action as unfounded;

– order the applicant to pay the costs, including those incurred in the proceedings for interim measures.

Law

The application to annul the contested decision relating to the 2015 financial year

21 In support of the application for annulment of the decision declaring certain expenditure ineligible for the 2015 financial year, the applicant raises three pleas in law alleging, first, infringement of the principle of good administration and of the rights of the defence, second, infringement of Articles 7 to 9 of Regulation No 2004/2003 and, third, infringement of the principles of proportionality and equal treatment.

22 Since the application does not contain any arguments developing the third plea, which is therefore formulated in an abstract manner, that plea is inadmissible because mere reliance on the principle of EU law which is alleged to have been breached, without stating the legal and factual particulars on which that allegation is based, does not satisfy the requirements of Article 76(d) of the Rules of Procedure (judgment of 3 May 2007, *Spain* v *Commission*, T-219/04, EU:T:2007:121, paragraph 89).

The alleged infringement of the principle of good administration and of the rights of the defence

23 The first part of the plea advanced in support of the application for annulment of the contested decision relating to the 2015 financial year is divided into two parts. By the first part of that plea, the applicant submits that the Parliament infringed the principle of good administration and Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter') in so far as the contested decision relating to the 2015 financial year is neither fair nor impartial on account of the composition of the Bureau of the Parliament. In particular, the applicant states that that Bureau, composed of the President and the 14 Vice-Presidents of the Parliament, does not include a single representative of the 'Eurosceptic' parties. Therefore, in view of its composition, the Bureau is not in a position to ensure the exercise of an impartial and objective control of the funds allocated to European political parties and to the political foundations linked to them. That is confirmed, moreover, by the creation of an independent authority for those purposes, pursuant to Article 6 of Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations (OJ 2014 L 317, p. 1).

24 In addition, the applicant claims that Ms Ulrike Lunacek, a Vice-President of the Parliament who belongs to the Group of the Greens/European Free Alliance, and who is a member of the Parliament's Bureau, made public statements before the meeting that led to the adoption of the contested decision relating to the 2015 financial year, which demonstrated her hostility and lack of impartiality towards the applicant.

25 By the second part of the first plea advanced in support of the application for annulment of the contested decision relating to the 2015 financial year, the applicant claims infringement of the rights of the defence, and in particular the right to be heard, guaranteed by Article 41(2)(a) of the Charter and Rule 224 of the Parliament's Rules of Procedure in force at that time. It submits that its written observations of 2 November 2016 were not communicated to the Bureau of the Parliament. In its opinion, the note sent by the Secretary-General of the Parliament to the Bureau merely indicated that those observations were available on request. It also argues that, despite a request in that regard, the applicant was not invited to be heard by the Bureau at the meeting during which the contested decision relating to the 2015 financial year was adopted. Finally, the applicant states that the contested decision relating to the 2015 financial year had already been adopted and signed before the Bureau of the Parliament meeting on 21 November 2016, since the decision was sent to the applicant by email before the meeting was scheduled to end.

26 In the reply, the applicant adds that its written observations of 2 November 2016 were not taken into consideration, commented on or rejected by the Director-General for Finance of the Parliament or by the Secretary-General of the Parliament in his note to the Bureau of the Parliament. In its opinion, that letter from the Director-General for Finance of 14 October 2016, sent to the applicant, and the note from the Secretary-General of 10 November 2016, sent to the Bureau, are identical. In the light of those considerations, the applicant submits that its right to be heard by the competent authority, namely the Bureau, has been infringed.

27 The Parliament disputes the applicant's arguments.

28 As regards the infringement of the principle of good administration, the Parliament submits that the applicant has not put forward any evidence as to the alleged lack of impartiality of its Bureau. Moreover, the competence of the Bureau to take decisions on the funding of political parties at European level stems from Rule 224 of the Rules of Procedure of the European Parliament in force at that time and from Article 4 of the Decision of the Bureau of the Parliament of 29 March 2004 laying down the procedures for implementing Regulation No 2004/2003, as amended (OJ 2014 C 63, p. 1, 'the Bureau's decision of 29 March 2004'), against which the applicant has not raised any plea of illegality. Furthermore, the Parliament states that Regulation No 1141/2014 is inapplicable in the present case and, in any event, the competence to take decisions on applications for funding still belongs to the Parliament and not the independent authority created by that regulation.

29 In the rejoinder, the Parliament submits that the applicant's claims regarding the lack of impartiality of a member of its Bureau concerned only one member of that body. Moreover, in its opinion the statements in question do not demonstrate a lack of impartiality, but merely state that that member had already examined the issue and had decided how she was going to vote at the meeting of the Bureau.

30 With regard to the alleged infringement of the rights of the defence and the right to be heard, the Parliament submits that the applicant was invited to submit its observations on the fact that a number of expenditure items risked being considered ineligible for the 2015 financial year, which it did on 2 November 2016. In its opinion, those observations were examined by its Director-General for Finance, who considered that they were incapable of invalidating the finding that the expenditure at issue was ineligible. Moreover, it states that the note from its Secretary-General of 10 November 2019 inviting its Bureau to adopt the contested decision relating to the 2015 financial year made express reference to those observations. In addition, it states that that note added that those observations were available from its Secretariat on request. Finally, with regard to the claim that that decision was adopted and signed before the meeting of the Bureau, the Parliament contends that although that decision was prepared in advance of that meeting, it was sent to the applicant only after the Bureau had examined and adopted it.

31 The Court considers that it is appropriate to examine, first, the second part of the first plea advanced in support of the application for annulment of the contested decision relating to the 2015 financial year.

32 Under Article 41(2)(a) of the Charter, the right to good administration includes, inter alia, the right of every person to be heard before any individual measure which would affect him or her adversely is taken.

33 Under Rule 224(3) of the Parliament's Rules of Procedure in force at the time, the Bureau of the Parliament, at the end of the budget year, is to approve the beneficiary political parties' final activity reports and final financial statements. Under paragraph 5 of that article, the Bureau must act on the basis of a proposal from the Secretary-General. Except in the cases set out in paragraphs 1 and 4 of that article, the Bureau must, before taking a decision, hear the representatives of the political party concerned.

34 Furthermore, observance of the rights of the defence is a general principle of EU law which applies when the authorities are minded to adopt in respect of a person a measure which will adversely affect that person. In accordance with that principle, the addressees of decisions which significantly affect their interests must be placed in a position in which they can effectively make known their views as regards the information on which the authorities intend to base their decision. They must be given a sufficient period of time in which to do so (judgment of 18 December 2008, *Sopropé*, C-349/07, EU:C:2008:746, paragraphs 36 and 37).

35 First, as regards the applicant's complaint that it was not heard, specifically in the context of a hearing at the meeting of the Bureau of the Parliament which led to the adoption of the contested decision relating to the 2015 financial year, it is sufficient to state that neither the specific applicable rules nor the general principle of observance of the rights of the defence gives the applicant the right to a formal hearing, the opportunity to submit its observations in writing being sufficient to ensure observance of the right to be heard (see, by analogy, judgments of 27 September 2005, *Common Market Fertilizers* v *Commission*, T-134/03 and T-135/03, EU:T:2005:339, paragraph 108, and of 6 September 2013, *Bank Melli Iran* v *Council*, T-35/10 and T-7/11, EU:T:2013:397, paragraph 105). It is also common ground that the applicant had the opportunity to submit its written observations on 2 November 2016.

36 Secondly, with regard to the applicant's complaint that its written observations of 2 November 2016 were not sent to the Bureau of the Parliament, it should be noted that paragraphs 5 and 6 of the note of the Secretary-General of the Parliament of 10 November 2016 inviting the Bureau of the Parliament to adopt the contested decision relating to the 2015 financial year refer to those observations, indicating that they were taken into account and adding that the original documents are available on request from the Secretariat of the Parliament. This head of claim cannot, therefore, be upheld.

37 Thirdly, the Court rejects the applicant's claim that the contested decision relating to the 2015 financial year had been adopted and signed before the meeting of the Bureau of the Parliament, given that that decision had been sent to the applicant by email of 21 November 2016 at 19:16, that is to say, before the end of that meeting. As the Parliament rightly contends, nothing precludes a draft decision from being prepared before that meeting, as in the present case. In addition, the Parliament makes it clear that that decision was sent to the applicant only after the Bureau had examined the issue and adopted the decision in question. It must be observed that the applicant has not provided any evidence to conclude that that assertion is incorrect. That complaint must therefore be rejected.

38 Fourthly, with regard to the applicant's argument that its written observations of 2 November 2016 were not taken into consideration, commented on or refuted by the Director-General for Finance of the Parliament or by the Secretary-General of the Parliament in the latter's note of 10 November 2016, it must be pointed out that that note expressly refers to those observations and indicates that they were taken into consideration for the purposes of the proposal at issue. Therefore, the Parliament cannot be held liable for an infringement of the applicant's rights of the defence in that respect. In so far as the applicant considers that the contested decision relating to the 2015 financial year does not adequately respond to the arguments set out in its observations, it is for the applicant to challenge the merits of that decision, as indeed it did in the second plea advanced in support of the application for annulment of the contested decision relating to the 2015 financial year.

39 Therefore, the second part of the first plea advanced in support of the application for annulment of the contested decision relating to the 2015 financial year must be rejected as unfounded.

40 As regards the first part of the first plea advanced in support of the application for annulment of the contested decision relating to the 2015 financial year, it must be stated that, under Article 41(1) of the Charter entitled 'Right to good administration', every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

41 In that regard, it should be recalled that the right to have one's affairs handled impartially by the institutions of the Union, guaranteed by Article 41(1) of the Charter, reflects a general principle of EU law (see, to that effect, judgment of 20 December 2017, *Spain* v *Council*, C-521/15, EU:C:2017:982, paragraphs 88 and 89).

42 According to the case-law, the principle of good administration means inter alia the obligation on the competent institution to examine all the relevant particulars of the case concerned with care and impartiality (see, to that effect, judgment of 8 June 2017, *Schniga* v *CPVO*, C-625/15 P, EU:C:2017:435, paragraph 47).

43 Further, the requirement of impartiality encompasses, on the one hand, subjective impartiality, in so far as no member of the institution concerned who is responsible for the matter may show bias or personal prejudice, and, on the other hand, objective impartiality, in so far as the institution concerned must offer sufficient guarantees to exclude any legitimate doubt as to any possible bias (see judgments of 11 July 2013, *Ziegler* v *Commission*, C-439/11 P, EU:C:2013:513, paragraph 155; of 20 December 2017, *Spain* v *Council*, C-521/15, EU:C:2017:982, paragraph 91; and of 27 March 2019, *August Wolff and Remedia* v *Commission*, C-680/16 P, EU:C:2019:257, paragraph 27).

44 More particularly, with regard to statements that may call into question the requirements for impartiality, it should be recalled that what is important is their real meaning, not their literal form. In addition, the issue whether the statements are capable of constituting an infringement of the right to good administration, specifically the right to have one's affairs treated impartially, must be handled in the context of the particular circumstances in which the statement at issue was made. In particular, it is necessary to examine whether the statements are limited to highlighting the risk of infringement of the applicable rules or anticipate a final decision in that respect (see, to that effect, judgment of 30 September 2003, *Atlantic Container Line and Others* v *Commission*, T-191/98 and T-212/98 to T-214/98, EU:T:2003:245, paragraphs 445 and 448).

45 In addition, where the Parliament has a broad discretion, the Court's review of the exercise of that discretion is limited to checking that the rules governing the procedure and statement of reasons are complied with, the facts are correct and there is no manifest error of assessment or misuse of powers (see, to that effect, judgments of 20 May 2009, *VIP Car Solutions* v *Parliament*, T-89/07, EU:T:2009:163, paragraph 56, and of 10 November 2015, *GSA and SGI* v *Parliament*, T-321/15, not published, EU:T:2015:834, paragraph 33). Where EU institutions have such a discretion, respect for the rights guaranteed by the EU legal order in administrative procedures, including the principles of good administration and in particular the requirement for impartiality, are of fundamental importance (see, to that effect, judgment of 21 November 1991, *Technische Universität München*, C-269/90, EU:C:1991:438, paragraph 14). In the present case, with regard to an administrative procedure concerning legal assessments and complex accounting, the Parliament has a certain discretion to adopt a decision on the eligibility of expenditure incurred by the applicant in the 2015 financial year by virtue, inter alia, of Articles 7 and 8 of Regulation No 2004/2003.

46 The present case will be examined in the light of those considerations.

47 In the first place, the applicant submits that, by its very nature, the composition of the Bureau of the Parliament is sufficient in itself to call into question the impartiality of that body. That argument cannot be upheld for three reasons.

48 It should be noted, first of all, that the Bureau of the Parliament is a collegiate body, composed of the President and the 14 Vice-Presidents of the Parliament, who are all elected by the Members of Parliament under Rules 16 and 17 of the Parliament's Rules of Procedure in force at the time. Therefore, the composition of that body is intended to reflect the plurality of the Parliament itself.

49 Next, it is irrelevant that Regulation No 1141/2014 created an independent authority to exercise certain functions relating to political foundations at European level, given that that regulation does not apply to the facts of the present dispute. According to Article 41, that regulation did not become applicable until 1 January 2017. In any case, according to Article 18(4) of that regulation, read in conjunction with Article 5(1) of the Decision of the Bureau of the Parliament of 12 June 2017 laying down the procedures for implementing Regulation No 1141/2014 (OJ 2017 C 205, p. 2), competence in taking decisions on funding applications still rests with the Bureau.

50 Finally, as the Parliament correctly indicates, it has to be found that the applicant has raised no plea of illegality under Article 277 TFEU against the provisions governing the composition of the Bureau of the Parliament and its competence to take decisions on the funding of political parties and foundations at European level, such as Rules 24 and 25 of the Parliament's Rules of Procedure in force at the time and Article 4 of the Bureau's decision of 29 March 2004.

51 In the second place, with regard to the conduct of the members of the Bureau of the Parliament, the applicant claims that that member made public statements demonstrating her lack of impartiality towards the applicant before the meeting of the Bureau of 21 November 2016.

52 In order to assess the merits of the applicant's complaint relating to the statements made by a member of the Bureau of the Parliament, it is necessary to take into account a number of factors, such as the content of the statements at issue, the duties of the person who made the statements and the role actually played by that person in the decision-making process.

53 With regard to the statements at issue, in the present case on 17 November 2016, the political group to which the member in question of the Bureau of the Parliament belongs issued a press release containing the statement, made by that member, that 'we expect the audit report to be confirmed at the European Parliament Bureau meeting on Monday, and look forward to a firm and unequivocal response from the Parliament authorities' and that 'the money must be paid back and UKIP held to account for its fraudulent manipulation of the British electorate'. That press release added that the applicant was a political party at European level, dominated by UKIP, that is to say, the UK Independence Party.

54 Moreover, on 18 November 2016, the member in question of the Bureau of the Parliament published on social media the following comment, 'it takes exceptional nerve to disparage the EU at every opportunity while illegally cashing in on EU funds'. In response to a comment from a third person on social media, the member of the Bureau added the following: 'I'm talking here about the fraudulent use of funds!'.

55 The minutes of the meeting of the Bureau of the Parliament on 21 November 2016, available online at the Parliament's website and about which the Court questioned the Parliament at the hearing, mention the fact that the member of the Bureau attended the meeting and took part in the discussions which led to the adoption of the contested decision relating the 2015 financial year. Moreover, according to the minutes, the only statement from a member of the Bureau during the discussion of that item on the agenda was that of the member in question, which leads to the conclusion that that person played an active role in the discussions, although the decision was taken on a proposal from the Secretary-General of the Parliament.

56 Therefore, it must be stated that the member of the Bureau of the Parliament made comments which, from the point of view of an external observer, allowed the inference that that member had prejudged the issue before the contested decision relating to the 2015 financial year was adopted. The comments were not limited to stating that there was a risk of an infringement of the applicable rules, but indicated that receiving the funds was 'illegal' and 'fraudulent'. Moreover, even if that member did not

have the role of rapporteur or president, the Parliament accepted at the hearing that the member in question was, with another member, responsible within the bureau for monitoring files relating to the funding of political parties at European level.

57 In addition, the arguments advanced by the Parliament in its rejoinder that those comments came from a single member of its Bureau and merely demonstrated that the member in question had examined the issue and had already decided how she was going to vote are not convincing.

58 First, the fact that the doubts over the appearances of impartiality concern only one person within the collegiate body made up of 15 members is not necessarily decisive, bearing in mind that that person could have had a decisive influence during the deliberations (see, to that effect and by analogy, ECtHR, 23 April 2015, *Morice v. France*, EC:ECHR:2015:0423JUD 002936910, paragraph 89). In that regard, it is worth recalling the active role played by the member in question at the meeting of the Bureau, as is apparent from the minutes (see paragraph 55 above).

59 Secondly, as regards the Parliament's argument that the statements at issue were limited to indicating which way the member in question of its Bureau intended to vote, it should be pointed out that it is important that the Bureau adopts its decisions impartially, but also that it provides sufficient guarantees to exclude, in that respect, any legitimate doubt, in accordance with the case-law cited in paragraph 43 above. Given the categorical and unequivocal content of those statements made before the contested decision relating to the 2015 financial year was adopted, it must be stated that the appearances of impartiality were seriously compromised in the present case.

60 In that context, the Parliament cannot validly argue that the member of its Bureau who made the statements at issue was entitled to express her personal point of view, because, as a rule, members of a collegiate body cannot express their personal point of view publicly on an ongoing case without making the requirement of impartiality meaningless.

61 The Parliament must provide sufficient guarantees to rule out any doubt over the lack of bias of its members when taking administrative decisions, which means that the members are to abstain from making public statements relating to the proper or improper management of funds by political parties at European level when the files are being examined.

62 In the light of the foregoing, the Court upholds the first part of the first plea advanced in support of the application for annulment of the contested decision relating to the 2015 financial year.

Alleged infringement of Articles 7 to 9 of Regulation No 2004/2003

63 By the second plea advanced in support of the application for annulment of the contested decision relating to the 2015 financial year, the applicant submits that the Parliament infringed Articles 7 to 9 of Regulation No 2004/2003 by considering certain expenditure to be ineligible in so far as it had been used to fund national political parties and a referendum campaign. In particular, the applicant disputes the findings as to the ineligibility of, first, the financing of certain opinion polls in the United Kingdom, second, the payments made to three consultants in the United Kingdom and, third, certain payments connected with the Parti populaire of Belgium. Fourth, the applicant disputes the merits of that decision in so far as it considers the payments to a supplier to be ineligible on account of an alleged conflict of interests.

64 In view of the conclusion from the examination of the first plea advanced in support of the application for annulment of the contested decision relating to the 2015 financial year in the present case, the Court considers that, for the second plea, it is appropriate to rule only on the complaint concerning the declaration that the expenditure relating to an opinion poll conducted in seven Member States in December 2015 was ineligible.

65 The applicant disputes the Parliament's interpretation that the financing of the poll in seven Member States contravenes Article 7(1) of Regulation No 2004/2003 regarding the prohibition of the indirect funding of a national political party. In addition, it disputes the fact that the expenditure relating to that opinion poll may be declared ineligible due to the prohibition of the financing of referenda campaigns as provided for in the fourth paragraph of Article 8 of that regulation.

66 The Parliament disputes the applicant's arguments.

67 The Parliament argues that the opinion polls conducted after the legislative elections in the United Kingdom, between June and December 2015, partially concerned issues of national politics, but mainly the referendum on Brexit. In the rejoinder, it suggests that the poll conducted in seven Member States contained questions regarding the United Kingdom's membership of the EU and the position of those surveyed in the light of the Brexit referendum.

68 In reply to the questions posed by the Court at the hearing, the Parliament submitted that the opinion poll conducted in seven Member States was oriented towards the United Kingdom and essentially concerned the referendum on Brexit, for the benefit of UKIP.

69 As regards the opinion polls conducted after the legislative elections in the United Kingdom, between June and December 2015, it is apparent from the contested decision relating to the 2015 financial year that the associated expenditure was considered to be ineligible for two reasons, that is to say, the prohibition of the indirect funding of a national political party, provided for in Article 7(1) of Regulation No 2004/2003, and the prohibition of the financing of referenda campaigns, laid down in the fourth paragraph of Article 8 of that regulation. According to that decision, those polls mainly concerned the Brexit referendum, and some also partially concerned issues of national politics.

70 Under Article 7(1) of Regulation No 2004/2003, the funding of political parties at European level from the general budget of the European Union or from any other source may not be used for the direct or indirect funding of other political parties, and in particular national parties or candidates.

71 It must be observed that indirect funding of a national party occurs when it obtains a financial advantage, even though there is no direct transfer of funds, for example by saving on expenses which would otherwise be due (judgment of 27 November 2018, *Mouvement pour une Europe des nations et des libertés* v *Parliament*, T-829/16, under appeal, EU:T:2018:840, paragraph 72). For the purposes of that assessment, reference should be made to a range of elements, in particular geographic and time elements, and elements concerning the content of the financed measure (see, to that effect, judgment of 27 November 2018, *Mouvement pour une Europe des nations et des libertés* v *Parliament*, T-829/16, under appeal, EU:T:2018:840, paragraph 83).

72 With regard to the prohibition of the financing of referenda campaigns, it should be pointed out that the fourth paragraph of Article 8 of Regulation No 2004/2003 provides that eligible expenditure cannot be used to finance referenda campaigns.

73 Moreover, in its decision of 9 May 2016, the Bureau of the Parliament made it clear that the issue whether an activity of a political party at European level constituted a referendum campaign is dependent, in particular, on certain conditions, that is to say, first, whether the possibility of holding such a referendum had already been brought to the public's attention, even if it had not been officially announced; second, whether there was a direct and obvious link between the activity in question of the political party and the issue covered by the referendum; and, third, whether the activity in question of the political party was close in time to the planned date of the referendum, even if that date is unofficial. In that regard, it must be stated that the Parliament does not deny that the contested decision relating to the 2015 financial year applies the criteria stipulated in the Bureau's decision of 9 May 2016.

74 It is in the light of those considerations that the Court will examine the merits of the contested decision relating to the 2015 financial year in so far as it considers the expenditure connected with the opinion poll conducted in seven Member States to be ineligible.

75 It is apparent from the examination of the document containing the results of the opinion polls conducted in seven Member States that it was conducted in Belgium, France, Hungary, the Netherlands, Poland, Sweden and the United Kingdom, on a sample of around 1 000 people in each State. The questions, which were the same in the seven Member States, concerned the EU membership of those States, how the participants would vote in an eventual EU membership referendum, reforming the conditions for EU membership, the handling of the refugee crisis by the Federal Republic of Germany, the admission of refugees by each of the seven Member States, threats to the security of the seven Member States, the participation of the seven Member States in a European Armed Force and the Schengen area.

76 First, it must be observed that that part of the opinion poll conducted in the seven Member States relating to the United Kingdom falls within the scope of the prohibition of the financing of referenda campaigns, provided for in the fourth paragraph of Article 8 of Regulation No 2004/2003, given that the legislation relating to the holding of the referendum in the United Kingdom was finally approved in December 2015, that is to say, at the time of the poll, and that the content of that part was closely connected, to a large extent, with that referendum.

77 However, it must also be observed that those considerations are not applicable as regards that part of the opinion poll conducted in the six other Member States, where no such referendum was planned at the time. Furthermore, the Parliament has not argued, let alone demonstrated, that that part could be of any use in the referendum campaign on Brexit in the United Kingdom. Therefore, from that perspective, that part of the opinion poll cannot be regarded as being intended to finance a referendum campaign.

78 Secondly, as regards the prohibition of the indirect funding of a national political party, the Court rejects the Parliament's argument that that part of the opinion poll relating to the other six Member States would be of any use to UKIP. Indeed, it has not been demonstrated that the content of that part might be of any use to UKIP. In addition, it should be made clear that that part was conducted in six Member States other than the United Kingdom, where UKIP is not established.

79 In the light of the foregoing, the present complaint must be upheld.

80 In view of the findings in paragraphs 62 to 79 above, it is appropriate to annul the contested decision relating to the 2015 financial year.

The application to annul the contested decision relating to the 2017 financial year

81 In support of the application for annulment of the decision relating to the 2017 financial year, the applicant raises three pleas in law alleging, first, infringement of the principle of good administration and of the rights of the defence, second, infringement of Article 134 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') and of Article 206 of Commission Delegated Regulation (EU) No 1268/12 of 29 October 2012 on the Rules of Application of Regulation No 966/2012 (OJ 2012 L 362, p. 1, 'the rules of application of the Financial Regulation') and, third, infringement of the principles of proportionality and of equal treatment.

The alleged infringement of the principle of good administration and of the rights of the defence

82 The first plea advanced in support of the application for annulment of the contested decision relating to the 2017 financial year is divided into two parts. By the first part, the applicant submits that the Parliament infringed the principle of good administration and Article 41 of the Charter. In that regard, the applicant refers to the arguments developed in the context of the first part of the first plea advanced in support of the application for annulment of the decision relating to the 2015 financial year, set out in paragraph 23 above.

83 By the second part of the first plea advanced in support of the application for annulment of the contested decision relating to the 2017 financial year, the applicant claims infringement of the rights of the defence, and in particular the right to be heard, guaranteed by Article 41(2)(a) of the Charter and Rule 224 of the Parliament's Rules of Procedure in force at that time. In support of that part, the applicant refers first to the arguments developed in the context of the second part of the first plea advanced in support of the application for annulment of the decision relating to the 2015 financial year, set out in paragraph 25 above. Secondly, it adds that the contested decision relating to the 2017 financial year is based on a 'complementary opinion' of the external auditors on its financial viability which has not been communicated to it and on which it was not able to comment. Thirdly, it claims that the contested decision negatively affected it since it was unable to obtain the bank guarantee requested and that this ultimately led to its liquidation on 26 April 2017.

84 The Parliament disputes the applicant's arguments.

85 It should be pointed out that, as regards the first part of the first plea advanced in support of the application for annulment of the decision relating to the 2017 financial year, the applicant refers to the arguments developed in the application for annulment of the contested decision relating to the 2015 financial year, without, however, relying on a lack of impartiality resulting from the statements made by a member of the Bureau of the Parliament before the contested decision relating to the 2017 financial year was adopted.

86 In so far as the applicant relies on a lack of impartiality on the part of the Bureau of the Parliament as a result of its composition, the Court rejects the first part of the first plea advanced in support of the application for annulment of the decision relating to the 2017 financial year as unfounded for the same reasons as those set out in paragraphs 40 to 50 above.

87 With regard to the second part of the first plea advanced in support of the application for annulment of the contested decision relating to the 2017 financial year concerning the right to be heard, it should be pointed out, first of all, that, under Rule 224(1) of the Parliament's Rules of Procedure in force at the time, the Bureau of the Parliament is to take a decision on any application for funding submitted by a political party at European level. In addition, according to paragraph 5 of that article, except in the cases set out in paragraphs 1 and 4, the Bureau must, before taking a decision, hear the representatives of the political party concerned.

88 Therefore, it must be held that Rule 224 of the Parliament's Rules of Procedure in force at the time does not give political parties a specific right to be heard before the Bureau of the Parliament adopts its decision on their applications for funding.

89 Notwithstanding that finding in relation to Rule 224 of the Parliament's Rules of Procedure in force at the time, it is necessary to examine whether, in the circumstances of the case, the applicant may validly rely on a right to be heard derived directly from Article 41(2) of the Charter. It is clear from the case-law that respect for the rights of the defence is a fundamental principle of EU law which must be guaranteed even in the absence of any rules or where the applicable legislation does not expressly

provide for such a procedural requirement (see, to that effect, judgments of 22 November 2012, *M.*, C-277/11, EU:C:2012:744, paragraph 86, and of 9 July 1999, *New Europe Consulting and Brown* v *Commission*, T-231/97, EU:T:1999:146, paragraph 42).

90 As a rule, where a person makes an application to an EU institution, including an application for funding, the right to be heard must be regarded as having been respected where the institution adopts its decision on conclusion of the procedure, on the basis of the evidence submitted by the applicant, without giving the applicant an additional opportunity to be heard beyond the arguments which he was able to advance when his application was made (see, to that effect, judgments of 13 December 1995, *Windpark Groothusen* v *Commission*, T-109/94, EU:T:1995:211, paragraph 48, and of 15 September 2016, *AEDEC* v *Commission*, T-91/15, not published, EU:T:2016:477, paragraph 24; see also, to that effect and by analogy, judgment of 30 April 2014, *Euris Consult* v *Parliament*, T-637/11, EU:T:2014:237, paragraph 119).

91 However, exceptionally, it is possible to rely on an infringement of the right to be heard where the EU institution relies on considerations of fact or law of which the applicant was not aware or on evidence other than that provided by the applicant (see, to that effect, judgments of 13 December 1995, *Windpark Groothusen* v *Commission*, T-109/94, EU:T:1995:211, paragraph 48; of 30 April 2014, *Euris Consult* v *Parliament*, T-637/11, EU:T:2014:237, paragraph 119; and of 15 September 2016, *AEDEC* v *Commission*, T-91/15, not published, EU:T:2016:477, paragraph 24) or where it criticises certain conduct on the part of the applicant without giving him the opportunity to make his views known effectively (see, to that effect, judgment of 9 July 1999, *New Europe Consulting and Brown* v *Commission*, T-231/97, EU:T:1999:146, paragraphs 5 and 42 to 44). Moreover, it should be pointed out that, in proceedings relating to the payment of customs duties, it has been held that there was an infringement of the rights of the defence where the applicant had not been in a position to make known his views effectively on the relevance of the facts or documents in the contested act (see, to that effect, judgments of 21 November 1991, *Technische Universität München*, C-269/90, EU:C:1991:438, paragraph 25; of 19 February 1998, *Eyckeler & Malt* v *Commission*, T-42/96, EU:T:1998:40, paragraphs 86 to 88; and of 17 September 1998, *Primex Produkte Import-Export and Others* v *Commission*, T-50/96, EU:T:1998:223, paragraphs 63 to 71).

92 It is in the light of those considerations that the Court will examine the complaint relied on by the applicant.

93 In the present case, first, the contested decision relating to the 2017 financial year is clearly an individual measure in respect of the applicant, within the meaning of Article 41(2) of the Charter.

94 Secondly, contrary to what the Parliament contends, it is an individual measure which adversely affects the applicant, because the decision to grant funding is subject to conditions imposing an appreciable burden, namely the requirement to provide a bank guarantee and the limiting of pre-financing to 33% of the maximum amount of the grant (see, to that effect and by analogy, judgment of 23 October 1974, *Transocean Marine Paint Association* v *Commission*, 17/74, EU:C:1974:106, paragraphs 15 to 17, concerning infringement of the right to be heard in the context of the grant of an exemption subject to conditions under the provision which became Article 101(3) TFEU).

95 Thirdly, the applicant claims that the contested decision relating to the 2017 financial year is based on a ‘complementary opinion’ of the external auditors on its financial viability which has not been communicated to it and on which it was not able to comment.

96 In that regard, even though the Parliament accepts that it did not communicate the ‘complementary opinion’ at issue to the applicant as such before the contested decision relating to the 2017 financial year was adopted, it must be stated that the notes of the Secretary-General of the Parliament of 10 November and 5 December 2016 asking the Bureau to adopt the contested decisions, provided by the applicant itself, mentioned the external auditors’ doubts over the applicant’s financial viability.

When questioned at the hearing, the applicant confirmed that it received a copy of the Secretary-General's note of 10 November 2016 in the course of that same month. In addition, those doubts over the applicant's financial viability also appeared in the external auditors' audit report of 18 April 2016, which the applicant acknowledged having read in a letter of 10 May 2016 to the external auditors.

97 Therefore, given that the applicant was aware of the doubts over its financial viability which formed the basis of the contested decision relating to the 2017 financial year, it cannot rely on an infringement of the right to be heard on matters of fact of which it was already aware before the adoption of the contested decision relating to the 2017 financial year.

98 In the light of the foregoing, the Court rejects the first plea advanced in support of the application for annulment of the contested decision relating to the 2017 financial year as unfounded.

Alleged infringement of Article 134 of the Financial Regulation and of Article 206 of the Rules of Application of the Financial Regulation

99 By the second plea advanced in support of the application for annulment of the contested decision relating to the 2017 financial year, the applicant submits that limiting the pre-financing to 33% of the maximum grant amount subject to a bank guarantee being provided is contrary to Article 134 of the Financial Regulation and Article 206 of the Rules of Application of the Financial Regulation.

100 In that regard, the applicant submits that Article 134 of the Financial Regulation and Article 206 of the Rules of Application of the Financial Regulation must be interpreted in the light of Article 204j of the Financial Regulation, introduced by Regulation (EU, Euratom) No 1142/2014 of the European Parliament and of the Council of 22 October 2014 amending Regulation (EU, Euratom) No 966/2012 as regards the financing of European political parties (OJ 2014 L 317, p. 28). The applicant claims that it has not been in any of the situations identified in that provision as permitting the requirement that a bank guarantee be provided.

101 The applicant adds that the limiting of pre-financing to 33% of the maximum grant amount subject to a bank guarantee being provided is clearly wrong, since the contested decision relating to the 2017 financial year was taken having regard to its financial situation at the end of 2015 and not when those measures were adopted, that is to say, December 2016. This has been confirmed by the external auditor. According to the applicant, its financial position was sound in December 2016. In particular, it claims that it obtained commitments from potential donors and several national delegations had agreed to increase their contribution for an amount of between EUR 30 000 and EUR 100 000.

102 Finally, the applicant reiterates that the consideration by the Parliament of an external audit on its financial viability, which has not been communicated to it, constitutes an infringement of its rights of defence.

103 The Parliament disputes the applicant's arguments.

104 Pursuant to Article 134(1) of the Financial Regulation, entitled 'Pre-financing guarantee', the authorising officer responsible may, if he or she deems it appropriate and proportionate, on a case-by-case basis and subject to risk analysis, require the beneficiary to lodge a guarantee in advance in order to limit the financial risks connected with the payment of pre-financing.

105 Under Article 206(1) of the Rules of Application of the Financial Regulation, in order to limit the financial risks connected with the pre-financing, the authorising officer responsible may, on the basis of a risk assessment, require the beneficiary to lodge a guarantee in advance, for up to the same amount as the pre-financing, except for low value grants, or split the payment into several instalments.

106 In addition, it is apparent from Article 6 of the Bureau's decision of 29 March 2004 that, unless the Bureau of the Parliament decides otherwise, the grant will be paid to beneficiaries in the form of pre-financing in one instalment of 80% of the maximum amount of the grant within 15 days following the date of the grant award decision. It is possible to have 100% pre-financing of the grant, if the recipient provides a pre-financing guarantee in accordance with Article 206 of the Rules of Application of the Financial Regulation, covering 40% of the grant awarded.

107 It is apparent from a combined reading of the provisions referred to in paragraphs 104 to 106 above that the Parliament has the power, first, to require a bank guarantee to be provided and, secondly, to limit the amount of the pre-financing in order to limit the financial risk for the European Union connected with the pre-financing.

108 It follows from the examination of the provisions referred to in paragraphs 104 to 106 above that the Parliament has a margin of discretion when determining, first, whether there is a financial risk for the European Union, and secondly, the appropriate and necessary measures for protecting the European Union against that risk. In particular, the Parliament has a margin of discretion when deciding whether it is appropriate to combine both types of measures referred to in paragraph 107 above and when determining, as appropriate, the amount of the pre-financing.

109 It is in the light of those principles that the Court will examine the applicant's arguments in the second plea advanced in support of the application for annulment of the contested decision relating to the 2017 financial year.

110 First, as the Parliament rightly contends, Article 204j of the Financial Regulation, introduced by Regulation No 1142/2014, does not apply to the facts giving rise to the present dispute. According to Article 2, that regulation did not become applicable until 1 January 2017. In any event, the interpretation of that provision put forward by the applicant is incorrect, because it is apparent from its wording that the Parliament may require a guarantee to be provided beforehand where the political party in question is at imminent risk, inter alia, of being declared bankrupt or made the subject of liquidation proceedings, and not only where it is already in such a situation.

111 Secondly, the Parliament did not err, on 12 December 2016, when the contested decision relating to the 2017 financial year was adopted, in taking into consideration the contested decision relating to the 2015 financial year, adopted only a matter of days beforehand, that is to say on 21 November 2016, declaring the sum of EUR 500 615.55 to be ineligible and requesting reimbursement of EUR 172 654.92. In addition, the Parliament did not err in taking into consideration the 'complementary opinion' of the external auditor, on the basis of available information, calling into question the applicant's financial viability in the absence of additional own resources.

112 Moreover, even though, at the meeting of the applicant's Board on 6 December 2016 and at the General Meeting on the same day, discussions took place on the need to obtain additional resources in the sum of EUR 100 000, the minutes of those meetings do not provide any information to anticipate reasonably that it would obtain that amount.

113 In the light of those factors, it must be concluded that the Parliament was entitled to consider, without committing a manifest error of assessment, that there was a financial risk for the European Union if the grant awarded for the 2017 financial year was made available to the applicant.

114 With regard to the applicant's argument relating to the infringement of the rights of the defence concerning the 'complementary opinion', which repeats the second part of the first plea advanced in support of the application for annulment of the contested decision relating to the 2017 financial year, that must be rejected for the same reasons as those set out in paragraphs 87 to 95 above.

115 In the light of the foregoing, the Court rejects the second plea advanced in support of the application for annulment of the contested decision relating to the 2017 financial year as unfounded.

Alleged infringement of the principles of proportionality and equal treatment

116 In the third plea advanced in support of the application for annulment of the contested decision relating to the 2017 financial year, the applicant relies on, first, infringement of the principle of proportionality and, secondly, infringement of the principle of equal treatment.

117 First, the applicant submits that the contested decision relating to the 2017 financial year is contrary to the principle of proportionality since the Parliament could have proposed alternative measures, for example, terminating the grant where the beneficiary is declared bankrupt or is the subject of liquidation proceedings or, alternatively, merely limiting the pre-financing to 33% of the amount of the grant without the requirement for a bank guarantee.

118 Secondly, the applicant relies on infringement of the principle of equal treatment in so far as the Parliament requested that other beneficiaries, whose financial viability was also in question, propose measures to improve their financial situation. Although that was considered, the Parliament did not give the applicant that opportunity and immediately decided to limit the pre-financing amount subject to a bank guarantee being provided.

119 The Parliament disputes the applicant's arguments.

120 First, it should be recalled that the principle of proportionality, which is one of the general principles of EU law, requires acts adopted by EU institutions not to exceed the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued by the legislation in question; where there is a choice between several appropriate measures, recourse must be had to the least onerous (judgment of 11 June 2009, *Agrana Zucker*, C-33/08, EU:C:2009:367, paragraph 31).

121 As was indicated in paragraphs 107 to 108 above, it is apparent from the applicable provisions in the present case that the Parliament has a margin of discretion when determining, first, whether there is a financial risk for the European Union, and then, the appropriate and necessary measures for protecting the European Union against that risk.

122 In the present plea, the applicant disputes the need for the measures adopted by the Parliament, that is to say, the limiting of pre-financing to 33% of the total grant together with the requirement for a bank guarantee.

123 It must be observed that the alternative measures cited by the applicant could not have safeguarded the financial interests of the European Union in the same way as the measures adopted by the Parliament. Terminating the grant where the beneficiary is declared bankrupt or is the subject of liquidation proceedings does not ensure that the Parliament will be able to recover any disbursed funds. The same applies to merely limiting the pre-financing to 33% of the amount of the grant without requiring a bank guarantee, which could not ensure any recovery of the sums disbursed by the Parliament.

124 Therefore, in view of the Parliament's margin of discretion when determining the appropriate and necessary measures for protecting the European Union against a financial risk, the applicant's complaint alleging infringement of the principle of proportionality must be rejected.

125 Secondly, the principle of equal treatment is a general principle of EU law, of which the principle of non-discrimination is a particular expression. That principle requires comparable situations not to be treated differently and different situations not to be treated alike, unless such treatment is objectively justified (judgment of 5 July 2017, *Fries*, C-190/16, EU:C:2017:513, paragraphs 29 and 30).

126 In that regard, it should be pointed out, first, that it is apparent from the minutes of the meeting of the Bureau of the Parliament of 12 December 2016, during which the contested decision relating to the 2017 financial year was adopted, that the Bureau adopted similar measures reducing the financial risk relating to seven recipients, including the applicant.

127 In addition, even if it is correct that, according to the notes of the Secretary-General to the Bureau of the Parliament of 5 September 2016, concerning other beneficiaries, and of 10 November 2016, concerning the applicant, the Parliament envisaged asking some beneficiaries for measures to improve their financial situation, that possibility was envisaged for everyone in connection with the grant applications for the 2017 financial year. Furthermore, there is no indication that the Parliament actually offered that possibility to some beneficiaries, but not to the applicant.

128 In the light of the foregoing, the Court rejects the applicant's complaint alleging infringement of the principle of equal treatment and consequently the third plea advanced in support of the application for annulment of the contested decision relating to the 2017 financial year in its entirety as unfounded.

129 Accordingly, the Court dismisses the application for annulment of the contested decision relating to the 2017 financial year as unfounded.

Costs

130 Under Article 134(3) of the Rules of Procedure, where each party succeeds on some and fails on other heads, the parties are to bear their own costs. In the present case, since the application for annulment of the contested decision relating to the 2015 financial year was upheld, while the application for annulment of the contested decision relating to the 2017 financial year was dismissed, it is appropriate to order each party to bear its own costs, including those relating to the interim proceedings.

On those grounds,

THE GENERAL COURT (Eighth Chamber, Extended Composition)

hereby:

1. **Annuls the decision of the Parliament of 21 November 2016 declaring certain expenditure ineligible for a grant in respect of financial year 2015;**

2. **Dismisses the application for annulment of Parliament Decision FINS-2017-13 of 12 December 2016 concerning the award of a grant to the applicant for 2017;**

3. **Orders Alliance for Direct Democracy in Europe ASBL and the European Parliament to bear their own costs, including those relating to the interim proceedings.**

Collins Kancheva Barents

Passer De Baere

Delivered in open court in Luxembourg on 7 November 2019.

E. Coulon
Registrar

A. M. Collins
President