

**Operative part of the order**

1. There is no longer any need to adjudicate on the application for annulment of Decision P8\_TA(2017)0056 of the Parliament of 2 March 2017 to withdraw the parliamentary immunity of Ms Marion Anne Perrine Le Pen.
2. The remainder of the action is dismissed.
3. Ms Le Pen shall bear her own costs and pay those incurred by the Parliament.

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(<sup>1</sup>) OJ C 231, 17.7.2017.

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**Order of the General Court of 14 December 2017 — Rogesa v Commission**

(Case T-475/17) (<sup>1</sup>)

*(Action for annulment — Access to documents — Regulation (EC) No 1049/2001 — Regulation (EC) No 1367/2006 — Documents concerning an installation producing a mixture of pellets and sintered ore — Implied refusal of access — Express decision adopted before the action was brought — Application for an order that there is no need to adjudicate — Interest in bringing proceedings — Manifest inadmissibility)*

(2018/C 052/44)

Language of the case: German

**Parties**

*Applicant:* Rogesa Roheisengesellschaft Saar mbH (Dillingen, Germany) (represented by: S. Altenschmidt and A. Sitzer, lawyers)

*Defendant:* European Commission (represented by: H. Krämer, acting as Agent)

**Re:**

Application based on Article 263 TFEU and seeking, primarily, annulment of the Commission's implied decision of 20 June 2017 and, in the alternative, of the decision of 11 July 2017 refusing to grant access to the document Ares (2017) 1684109 of 2 November 2009 and the document Ares (2017) 1685639 of 29 November 2009.

**Operative part of the order**

1. The action is dismissed as being manifestly inadmissible.
2. Rogesa Roheisengesellschaft Saar mbH and the European Commission shall bear their own respective costs.

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(<sup>1</sup>) OJ C 318, 25.9.2017.

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**Action brought on 22 November 2017 — Comprojecto-Projetos e Construções and Others v ECB**

(Case T-768/17)

(2018/C 052/45)

Language of the case: Portuguese

**Parties**

*Applicants:* Comprojecto-Projetos e Construções, Lda. (Lisbon, Portugal), Paulo Eduardo Matos Gomes de Azevedo (Lisbon), Julião Maria Gomes de Azevedo (Lisbon), Isabel Maria Matos Gomes de Azevedo (Lisbon) (represented by: M. A. Ribeiro, lawyer)

*Defendant:* European Central Bank

### **Form of order sought**

The applicants claim that the General Court should:

- Annul the contested acts, in particular:
  - (i) The defendant's decision to refuse to act;
  - (ii) The defendant's decision not to initiate infringement proceedings;
  - (iii) The decision of the Governor of the Banco de Portugal and of the other 'officials' who took a position on the complaints and claims presented between 26 June 2013 and 22 April 2015.
- On those grounds, they request the General Court to make a ruling:
  - (i) That allows the applicants to annul the decision of the judges concerning the claim for compensation brought against the BCP [Banco Comercial Português];
  - (ii) That allows the applicants to bring an action for recovery against the Portuguese State;
  - (iii) That allows an assessment to be made as to whether the Member State /Prosecution Service/OPG [Office of the Prosecutor General] had reasons to refuse to intervene in the civil action;
  - (iv) That allows an assessment to be made as to whether the Member State /Prosecution Service/OPG had valid grounds not to report this case to OLAF.
- If the Court considers that the applicants' claims are well founded, order the ECB, under the provisions of the articles 268 TFEU and 340 TFEU, to pay the amount of EUR 4 582 825,80, plus interest for late payment, calculated at the legal rate, which accrues until actual payment, together with such other expenses and compensation for damages arising after the interventions made;
- However, taking into account the provisions of Article 280 TFEU and that the acts 'of the European Central Bank which impose a pecuniary obligation on persons other than States, shall be enforceable', as provided for in Article 299 TFEU, the General Court must require the defendant to request that such amounts be settled by the BCP;
- Taking into account that the national central bank is the 'administrative authority competent either to decide on complaints or to initiate appropriate legal proceedings', in accordance with the provisions of Article 11(1)(b) of Directive 2005/29/EC, and of Articles 81(1) and 83(1) of Directive 2007/64/EC, and of Article 96(1)(b) — 'Additional penalties' — of DL [decree-law] 317/2009, the defendant's agent must request the BCP to 'immediately' credit the abovementioned amounts to the accounts of the applicants.
- The defendant:
  - (i) Shall require its agent, the national central bank, to request the BCP to submit the abovementioned elements. If under the provisions of Article 13(2) of the BCP Organic Law, the credit institution does not present those elements, the Bank of Portugal must require the credit institution to pay the amounts in question 'immediately' into the applicants' accounts;
  - (ii) Given that the credit institution may have to 'immediately' compensate the applicants, the provisions of Articles 41 (2)(a), the second paragraph of Article 47 and Article 49(1) of the Charter of Fundamental Rights of the European Union ('the CFREU') must be complied with, that is, as occurs in relation to the Banco de Portugal and the Prosecution Service/OPG, taking into account the provisions of Article 3 of Regulation No. 2532/98 concerning the powers of the European Central Bank to impose sanctions, the ECB must decide on whether to 'initiate an infringement procedure', calling on the BCP to take action, so that that credit institution must take a decision and cannot abstain;

- Notwithstanding that, under Article 256(1) TFEU, the General Court does not have jurisdiction if the national central bank does not acknowledge that it ‘failed to fulfil an obligation under the Treaties, that bank shall be required to take the necessary measures to comply with the judgment of the Court, in accordance with the provisions of Article 271(d) TFEU the question must be referred to the Supreme Court;
- Even though it is also not a matter for the General Court, if the ECJ considers that the applicants’ action is well founded, in accordance with the provisions of Article 264 TFEU, the General Court must propose to the Supreme Court to annul the decision of the national central bank, which decision was adopted by the defendant and, having regard to the provisions of Article 41(1)(c) of the CFREU, of the second paragraph of Article 296 TFEU and Article 11(3)(c) of Directive 2005/29/EC, a substantiated decision must be adopted;
- The applicants request that the defendant and the Court serve notice and request the Portuguese State/Prosecution Service/OPG to take action and to rule on the acts committed by BCP;
- The applicants call on the defendant to report the present case to OLAF;
- In accordance with Article 134(1) of the Rules of Procedure of the General Court, the applicants seek reimbursement of the costs of the proceedings, which must be duly assessed.

### **Pleas in law and main arguments**

In support of the action, the applicant relies on the following pleas in law:

1. Infringement of the obligation to state reasons laid down in Article 41(2)(c) of the Charter of Fundamental Rights of the European Union, in the second paragraph of Article 296 TFEU and in the Article 11(3) of Directive 2005/29/EC. <sup>(1)</sup>
2. Independently of the ‘burglary’ theft of the ‘safe’, BCP knew, or ought to have known, that the financial system was being used for the purpose of money laundering and, consequently, the credit institution was aware that there was fraud or tax evasion contributing to the loss of EU budget revenue. Those acts are ‘unlawful, undermine the Union’s financial interests’ and fall within ‘overriding reasons of public interest’ which ‘constitute a legitimate objective capable of justifying an impediment to the freedom to provide services’.
3. Irrespective of the way in which an amount of more than EUR 1 000 000 has been stolen from the ‘safe’, detriment is caused to the ‘financial interests of the Union’ and, in particular, to the revenue which supports the ‘EU budget, as well as [revenue] covered by the budget of the institutions, bodies, offices and agencies, and by the budgets managed and controlled by them’; therefore, these are also acts which constitute an ‘irregularity’ due to ‘infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the European Union or budgets managed by it, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities or by an unjustified item of expenditure’.
4. Where a credit institution, a Member State/national central bank, the European Central Bank or the Member State/ Prosecution Service/OPG are aware of such breaches or practices, allow them and do not condemn them, they encourage non-compliance with the provisions of Article 310(5) and (6) TFEU and Article 325(1), (2) and (3) TFEU and allow the credit institution in question to perform acts constituting an ‘irregularity’ due to infringement of the provisions of Article 1(2) of Regulation No 2988/95. <sup>(2)</sup>
5. By adopting the act by which it rejected the application calling on it to take action, the defendant found a way, inter alia:
  - (i) not to report the case to OLAF;
  - (ii) not to initiate ‘infringement’ proceedings against the credit institution BCP;
  - (iii) to postpone the decision of the civil courts, before which a claim for compensation against BCP and others has been pending since 1 February 2010;
  - (iv) not to irreversibly condemn its agent, Banco de Portugal, in the context of the administrative action brought on 27 October 2015 and currently pending before the Tribunal Administrativo e Fiscal de Sintra, which has not yet ruled on the matter.

6. Breach of the duty of impartiality, misuse of powers and breach of essential procedural requirements by the defendant's agent, Banco de Portugal.

- <sup>(1)</sup> Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22).
- <sup>(2)</sup> Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1).

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**Action brought on 29 November 2017 — US v ECB**

**(Case T-780/17)**

(2018/C 052/46)

*Language of the case: French*

**Parties**

*Applicant:* US (represented by: L. Levi and A. Blot, lawyers)

*Defendant:* European Central Bank

**Form of order sought**

— Declare this action admissible and well-founded;

In consequence:

- Annul the 2016 staff report (covering the period from 1 September 2015 to 1 September 2016) and the decision dated 15 December 2016 on the Annual salary and bonus review ('ASBR') for 2016, served on the applicant on 30 November 2016 and 9 January 2017 respectively;
- Annul the decision of the ECB of 3 May 2017 rejecting the applicant's requests of 15 February 2017 and 9 March 2017 for administrative review;
- Annul the decision of the EBC of 12 September 2017, served on the applicant on 19 September 2017, rejecting his claim brought on 7 July 2017;
- Award damages for the losses suffered;
- Order the defendant to pay all the costs.

**Pleas in law and main arguments**

In support of the action, the applicant relies on four pleas in law as regards the application for annulment of the 2016 staff report.

1. First plea in law, alleging infringement of the obligation to state reasons, in that the applicant's staff report merely sets out general, repetitive and circular criticisms.
2. Second plea in law, alleging manifest errors of assessment vitiating the contested report.
3. Third plea in law, alleging misuse of power, harassment suffered by the applicant and infringement of the duty of care and the principle of sound administration.
4. Fourth plea in law, alleging a procedural irregularity committed by the defendant when drawing up the contested report.