Reports of Cases

ORDER OF THE GENERAL COURT (Eighth Chamber)

30 April 2019 *

(Actions for annulment — EAGF and EAFRD — Commission Implementing Decision — Notification to the addressee — Publication of the decision in the *Official Journal of the European Union* — Period within which proceedings must be commenced — Point from which time starts to run — Out of time — Inadmissibility)

In Case T-530/18,

Romania, represented by C.-R. Canțăr, E. Gane, C.-M. Florescu and O.-C. Ichim, acting as Agents,

applicant,

v

European Commission, represented by J. Aquilina and L. Radu Bouyon, acting as Agents,

defendant,

ACTION under Article 263 TFEU for the partial annulment of Commission Implementing Decision (EU) 2018/873 of 13 June 2018 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2018 L 152, p. 29) in so far as it excludes certain expenditure incurred by Romania,

THE GENERAL COURT (Eighth Chamber),

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

Registrar: E. Coulon,

makes the following

Order

Background to the dispute

1 On 13 June 2018, the European Commission adopted Implementing Decision (EU) 2018/873 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2018 L 152, p. 29; 'the contested decision'). By the contested decision, the

* Language of the case: Romanian.

Commission applied to Romania a financial correction of a total sum of EUR 90 133 370.64 concerning, inter alia, sub-measure 1a with regard to measures subject to the Integrated Administration and Control System (IACS) in the context of 'Rural Development EAFRD' for the years 2015 and 2016 and sub-measures 3a, 5a, 3b and 4b with regard to non-area-related measures in the context of 'Rural Development EAFRD Axis 2' for the year 2014.

2 Article 1 of the contested decision provides:

'The amounts set out in the Annex and related to expenditure incurred by the Member States' accredited paying agencies and declared under the EAGF or the EAFRD shall be excluded from Union financing.'

3 Article 2 of the contested decision provides, inter alia:

'This Decision is addressed to … Romania …'

4 On 14 June 2018, the contested decision was notified to the Permanent Representation of Romania to the European Union under document C(2018) 3826.

5 On 15 June 2018, the contested decision was published in the *Official Journal of the European Union*.

Procedure and forms of order sought

6 By application lodged at the Court Registry on 7 September 2018, Romania brought this action.

7 By separate document lodged at the Court Registry on 12 October 2018, the Commission raised an objection of inadmissibility under Article 130(1) of the Rules of Procedure of the General Court.

8 On 26 November 2018, Romania submitted its observations on the objection of inadmissibility raised by the Commission.

9 By a measure of organisation of procedure of 24 January 2019, the Court asked the Commission to supply information about potential differences between the notified text and the published text of the contested decision.

10 By letter of 4 February 2019, the Commission complied with the Court's request by supplying the information requested.

11 In its application, Romania contends that the Court should:

– annul the contested decision in part:

  – in so far as it concerns sub-measure 1a in its entirety (the sum of EUR 13 184 846.61 for the years 2015 and 2016);

  – in so far as it concerns sub-measures 3a, 5a, 3b and 4b in their entirety (the sum of EUR 45 532 000.96 for the years 2014, 2015 and 2016) or, in the alternative, in part, in respect of the period prior to 19 September 2015 (the sum of EUR 21 315 857.50);

– order the Commission to pay the costs.

12 In its objection of inadmissibility, the Commission contends that the Court should:

– declare the action inadmissible and dismiss it;

– order Romania to pay the costs.

13 In its observations on the objection of inadmissibility, Romania reiterates its heads of claim and also contends that the Court should declare the action admissible.

Law

14 Pursuant to Article 130(1) of the Rules of Procedure, the Court may, if the defendant so requests, rule on the question of inadmissibility without going to the substance of the case.

15 In the present case, the Court considers that it has sufficient information from the material in the file and has decided to give a decision without taking further steps in the proceedings.

16 In support of its objection of inadmissibility, the Commission submits that the action, brought on 7 September 2018, was out of time. According to the Commission, the contested decision was notified to the Permanent Representation of Romania on 14 June 2018 and the period within which proceedings could be instituted therefore expired on 24 August 2018.

17 In its observations on the objection of inadmissibility, Romania submits that the action is admissible.

18 In the first place, Romania argues that the sixth paragraph of Article 263 TFEU cannot be interpreted as meaning that the starting point of the two-month period for instituting proceedings for the annulment of an act of the European Union is, automatically and generally speaking, the time that the act enters into force or takes legal effect, because Article 297 TFEU precludes such a conclusion.

19 In the second place, Romania claims that the starting point of the two-month period for instituting proceedings for the annulment of an act which must be notified but which, following a long-standing practice adopted by the author of the act, is also published in the Official Journal, must invariably be the publication of that act.

20 In the third place, Romania submits that this approach is all the more appropriate in view of the actual circumstances in which the contested decision was notified to the Romanian authorities and published. In the present case, the legal uncertainty arising from the fact that the contested decision was not only notified but also published is accentuated by the differences between the text sent by the Commission to the Permanent Representation of Romania on 14 June 2018 and the text published in the Official Journal on 15 June 2018, which show that the notified text is, to say the least, incomplete.

21 In conclusion, Romania considers that the regularity of the notification procedure was compromised by the incompleteness of the notified text. In practice, the time when Romania was acquainted, with sufficient clarity and precision, with the content of the contested decision and the grounds on which that decision was based was, in its view, the time of complete publication. Consequently, the two-month period for instituting proceedings began to run on the date of publication of the contested decision in the Official Journal, that is, on 15 June 2018, to which must be added 14 days as provided for in Article 59 of the Rules of Procedure and a further 10 days on account of distance as provided for in Article 60 of those rules.

22 In that regard, it should be recalled, first, that, under the sixth paragraph of Article 263 TFEU, annulment proceedings must be instituted 'within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be'.

23 In addition, in accordance with Article 60 of the Rules of Procedure, the procedural time limits shall be extended on account of distance by a single period of 10 days.

24 It is settled case-law that the time limits prescribed in Article 263 TFEU are a matter of public policy and are not subject to the discretion of the parties or the Court (judgment of 23 January 1997, *Coen*, C-246/95, EU:C:1997:33, paragraph 21; orders of 19 April 2016, *Portugal* v *Commission*, T-550/15, not published, EU:T:2016:237, paragraph 22, and of 19 April 2016, *Portugal* v *Commission*, T-551/15, not published, EU:T:2016:238, paragraph 22).

25 The purpose of EU rules on time limits is to serve the requirements of legal certainty and the need to avoid any discrimination or arbitrary treatment in the administration of justice (see, to that effect, orders of 16 November 2010, *Internationale Fruchtimport Gesellschaft Weichert* v *Commission*, C-73/10 P, EU:C:2010:684, paragraph 52; of 18 December 2012, *Germany* v *Commission*, T-205/11, not published, EU:T:2012:704, paragraph 40; and of 19 April 2016, *Portugal* v *Commission*, T-550/15, not published, EU:T:2016:237, paragraph 23).

26 It should be recalled, secondly, that, for the purposes of the sixth paragraph of Article 263 TFEU, notification is the operation by which the author of a decision of individual relevance, such as a decision taken under the third subparagraph of Article 297(2) TFEU, communicates the decision to the addressees and thus puts them in a position to take cognisance of its content and the grounds on which it was based (orders of 2 October 2014, *Page Protective Services* v *EEAS*, C-501/13 P, not published, EU:C:2014:2259, paragraph 30; of 18 December 2012, *Hungary* v *Commission*, T-320/11, not published, EU:T:2012:705, paragraph 19 and the case-law cited; and of 19 April 2016, *Portugal* v *Commission*, T-550/15, not published, EU:T:2016:237, paragraph 24).

27 Furthermore, according to the third subparagraph of Article 297(2) TFEU, by contrast with acts which must be published in the Official Journal, decisions which specify to whom they are addressed must be notified to those to whom they are addressed and take effect upon such notification (judgment of 17 May 2017, *Portugal* v *Commission*, C-337/16 P, EU:C:2017:381, paragraph 35; orders of 18 December 2012, *Hungary* v *Commission*, T-320/11, not published, EU:T:2012:705, paragraph 20, and of 19 April 2016, *Portugal* v *Commission*, T-550/15, not published, EU:T:2016:237, paragraph 25).

28 It follows from a combined reading of the sixth paragraph of Article 263 TFEU and the third subparagraph of Article 297(2) TFEU that, so far as actions for annulment are concerned, the date to be taken into account for the purposes of determining the starting point of the period prescribed for instituting proceedings is the date of publication, when such publication, which is a precondition for the coming into force of the act, is provided for in that Treaty, and the date of notification in the other cases referred to in the third subparagraph of Article 297(2) TFEU, amongst which is that of decisions which specify those to whom they are addressed (judgment of 17 May 2017, *Portugal* v *Commission*, C-337/16 P, EU:C:2017:381, paragraph 36).

29 The Court of Justice has confirmed that interpretation of the sixth paragraph of Article 263 TFEU by holding that, as regards an act specifying those to whom it is addressed, only the text which is notified to those addressees is authentic, even if that act may also have been published in the Official Journal (judgments of 13 July 1966, *Consten and Grundig* v *Commission*, 56/64 and 58/64, EU:C:1966:41, p. 337, and of 17 May 2017, *Portugal* v *Commission*, C-337/16 P, EU:C:2017:381, paragraph 37).

30 In the present case, the contested decision expressly designates Romania as an addressee, as is clear from Article 2 thereof, and was notified to the Permanent Representation of Romania on 14 June 2018. Indeed, Romania does not deny that it was an addressee of the contested decision nor that it received notification of the contested decision on 14 June 2018.

31 Therefore, pursuant to the third subparagraph of Article 297(2) TFEU, the contested decision, being an act of individual relevance of which Romania was an addressee, took effect with regard to Romania by means of its notification on 14 June 2018. As a result of that notification, Romania was in a position to become acquainted with the content of said decision and the grounds on which it was based.

32 It must therefore be held that the period prescribed for instituting proceedings against the contested decision began to run from the time of its notification to the Permanent Representation of Romania and not from the time of its publication in the Official Journal.

33 Moreover, Article 59 of the Rules of Procedure is not applicable to the present case, as it only applies in a situation where the time limit allowed for instituting proceedings against a measure adopted by an institution runs from the publication of that measure in the Official Journal.

34 That conclusion cannot be invalidated by the arguments put forward by Romania.

35 Romania argues, in essence, that the period prescribed for instituting proceedings began to run in the present case on publication of the contested decision in the Official Journal, rather than on its notification. That conclusion is based, first, on the lack of correlation between the starting point of the period prescribed for instituting annulment proceedings against a measure adopted by an institution and the time when that measure enters into force; secondly, on the atypical circumstances resulting from an established practice on the part of the Commission to publish such decisions whilst also notifying them to their addressees; and, thirdly, on differences between the notified text and the published text of the contested decision.

36 In the first place, Romania argues that it is apparent from the case-law that the time of entry into force or taking legal effect does not automatically and invariably constitute the start of the two-month period for instituting annulment proceedings, and that it is the function of effectively communicating the content of the EU act which is relevant for the exercise of the right to bring proceedings. The lack of correlation between the starting point of the period prescribed for instituting annulment proceedings against a measure adopted by an EU institution and the time when that measure enters into force means that the starting point of the period for instituting proceedings against the contested decision could be its subsequent publication in the Official Journal, even though it had already entered into force and taken effect with regard to Romania.

37 In that regard, it should be noted that Romania's arguments are premissed on a confusion between the conditions relating to the admissibility of an action for annulment, referred to in Article 263 TFEU, and those relating to the validity of the act challenged by such an action (see, to that effect, order of 11 December 2006, *MMT* v *Commission*, T-392/05, not published, EU:T:2006:382, paragraph 33). Those arguments therefore cannot call into question the relevance of notification of the contested decision as the starting point for the period prescribed for instituting proceedings.

38 Furthermore, Romania's arguments are ineffective to the extent that they cite various case-law in which publication was indeed the starting point of the period prescribed for instituting proceedings but only because there was no notification of the act in question to the applicant concerned. In the present case, Romania, as an addressee of the contested decision, duly received notification thereof and it is that notification that constitutes the starting point of the period for Romania to institute proceedings.

39 Thus, in relation to Romania's claim that, in the judgment of 10 March 1998, *Germany* v *Council* (C-122/95, EU:C:1998:94, paragraph 35), the Court of Justice confirmed that the starting point of the period prescribed for instituting proceedings against an EU act is publication of that act, even though publication is of no relevance for the coming into force of the act in question, it should be recalled that, in that case, the disputed act was a regulation adopted following the conclusion by the European Union of an international agreement, that is to say, an act of general application addressed to all the Member States, the publication of which in the Official Journal caused the period for instituting proceedings to start to run, and for which there was no notification (see, to that effect, order of 4 July 2012, *ICO Satellite* v *Commission*, T-350/09, not published, EU:T:2012:341, paragraph 36). In the aforementioned judgment, the Court of Justice declared that the criterion of the day on which a measure came to the knowledge of an applicant, as the starting point of the period prescribed for instituting proceedings, is subsidiary to the criteria of publication or notification of the measure. It does not follow that the criterion of notification is subsidiary to that of publication.

40 Similarly, as regards the related claim that, in the order of 21 November 2005, *Tramarin* v *Commission* (T-426/04, EU:T:2005:405, paragraph 49), the General Court declared that, 'as regards measures which, according to the established practice of the institution concerned, are published … it was the date of publication which made the period in which to institute proceedings start to run', it should be noted that, in that case, it was not the applicant, but a third party, who was the addressee of the decision that was the subject of notification. In the present case, the contested decision was duly notified to Romania, as an addressee of the contested decision.

41 Furthermore, as regards the reference to the judgment of 23 April 2013, *Gbagbo and Others* v *Council* (C-478/11 P to C-482/11 P, EU:C:2013:258, paragraphs 58 and 59), it is sufficient to note that the Court of Justice held that the sixth paragraph of Article 263 TFEU would not be applied consistently if, when applied to persons and entities who are named in the lists contained in the annexes to measures adopted on the basis of provisions relating to the Common Foreign and Security Policy, the starting point for the calculation of the period for bringing an action for annulment was fixed as the date of publication of the measure at issue and not as the date when that measure was communicated to them. According to the Court of Justice, it followed that, while the entry into force of measures such as the contested measures was indeed effected by their publication, the period for the bringing of an action for the annulment of those measures under the fourth paragraph of Article 263 TFEU ran, for each of those persons and entities, from the date of the communication which they were required to receive. It is evident from that judgment that the criterion of notification or individual communication must be used as the starting point for the period for instituting proceedings, even when the criterion of publication determines the entry into force of the act in question. That case-law cannot, therefore, in any way serve Romania's argument that the starting point for the period for instituting proceedings is publication and in fact — quite the contrary — it formally rejects that argument even in a situation where publication determines the act in question coming into force and taking legal effect.

42 In the second place, Romania submits that it is the long-standing practice of the Commission to publish in the Official Journal its decisions excluding from EU financing certain expenditure incurred under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD), whilst also notifying them to their addressees. In atypical circumstances such as these where an act of individual relevance is also published, the means by which the addressees become acquainted with the content of the act and the grounds on which it is based, putting them in a position to exercise their right to institute proceedings within the two-month period prescribed by the sixth paragraph of Article 263 TFEU, could be publication rather than notification. Therefore, where an act has been brought to the knowledge of the addressee by two means, in the present case these being through publication and through notification, the principles of legal certainty and of the right to effective judicial protection require that the starting point for the two-month period for instituting annulment proceedings is the date of publication of the act rather than the date of its notification.

43 In that regard, it should first of all be recalled that, in the judgment of 15 September 1998, *BP Chemicals* v *Commission* (T-11/95, EU:T:1998:199, paragraphs 48 to 51), the General Court found that it was consistent practice for Commission decisions such as that in the case leading to that judgment, namely a State aid decision, to be published and that the applicant in that case could reasonably expect the decision at issue to be published in the Official Journal. However, even though the Court found, in essence, that it was therefore with effect from that publication that the period for instituting proceedings against the decision in question began to run, it specified that such was the case if, and only if, the decision at issue had not been previously notified to the applicant. Consequently, it follows from that judgment that, even if it is indeed the consistent practice of the Commission to publish decisions, such as the one at issue in the present case, excluding certain expenditure from EU agricultural financing, it is the notification of that decision to the Member State addressees thereof, rather than its publication in the Official Journal, that must be taken into account for the purposes of calculating the period for instituting proceedings, when publication occurs subsequently (see, to that effect, orders of 23 November 2015, *Slovenia* v *Commission*, T-118/15, not published, EU:T:2015:912, paragraphs 27 and 28, and of 19 April 2016, *Portugal* v *Commission*, T-550/15, not published, EU:T:2016:237, paragraphs 35 and 36). In the present case, it is common ground that the contested decision was notified to Romania prior to its publication.

44 Further, Romania cannot validly claim, given the circumstances, that the Commission gave the addressees a legitimate expectation that publication in the Official Journal would take place every time it adopted decisions such as the contested decision or that this would lead to the consequences normally resulting from the publication of acts which are required under EU law to be published. Romania does not adduce any evidence to show that the Commission gave it precise assurances to that effect (see, to that effect, judgment of 16 December 2010, *Kahla Thüringen Porzellan* v *Commission*, C-537/08 P, EU:C:2010:769, paragraph 63 and the case-law cited; orders of 23 November 2015, *Slovenia* v *Commission*, T-118/15, not published, EU:T:2015:912, paragraph 28, and of 19 April 2016, *Portugal* v *Commission*, T-550/15, not published, EU:T:2016:237, paragraph 37).

45 In addition, with regard to the claim that such an interpretation of Article 263 TFEU is contrary to the principle of legal certainty and the right to effective judicial protection, suffice it to note that, according to settled case-law, such an interpretation is entirely consistent with the purpose of time limits for lodging complaints and bringing actions, the aim being to ensure legal certainty by preventing EU measures which produce legal effects from being called into question indefinitely (judgments of 7 July 1971, *Müllers* v *ESC*, 79/70, EU:C:1971:79, paragraph 18; of 17 February 1972, *Richez-Parise* v *Commission*, 40/71, EU:C:1972:9, paragraph 6; and of 12 July 1984, *Moussis* v *Commission*, 227/83, EU:C:1984:276, paragraph 12) and to serve the need to avoid any discrimination or arbitrary treatment in the administration of justice (judgments of 4 February 1987, *Cladakis* v *Commission*, 276/85, EU:C:1987:57, paragraph 11; of 29 June 2000, *Politi* v *ETF*, C-154/99 P, EU:C:2000:354, paragraph 15; and of 5 March 2008, *Combescot* v *Commission*, T-414/06 P, EU:T:2008:58, paragraph 43).

46 Furthermore, as regards the related claim that, in the judgment of 19 December 2012, *Leno Merken* (C-149/11, EU:C:2012:816, paragraph 39), the Court of Justice confirmed that, where the wording of a provision is unclear, account must be taken of the context of that provision and of its aims, it is sufficient to note that it is common ground that the wording of Article 263 TFEU, read either alone or in conjunction with Article 297 TFEU, does not give rise to any doubt (see, to that effect, orders of 23 November 2015, *Slovenia* v *Commission*, T-118/15, not published, EU:T:2015:912, paragraph 31, and of 19 April 2016, *Portugal* v *Commission*, T-550/15, not published, EU:T:2016:237, paragraph 33).

47 Ultimately, the conclusion must be drawn that it is precisely through the adoption of the sole criterion of notification as the starting point of the period for instituting annulment proceedings against acts which designate their addressees that legal certainty and effective judicial protection can be guaranteed, unlike in the case of a hybrid solution such as that advocated by Romania, where the

addressee of an act who has been duly notified thereof must make further enquiries as to the publication of the act in the Official Journal which, not being mandatory, is merely a possibility and thus uncertain.

48 In the third place, Romania argues, in essence, that the starting point of the period for instituting proceedings should be the complete publication, rather than the incomplete notification, of the contested decision. According to Romania, as a result of differences between the text of the contested decision notified on 14 June 2018 and the text published on 15 June 2018, notification to the Permanent Representation of Romania was incomplete and did not enable it to become acquainted with the content of the act. In that regard, first of all, it alleges that there are differences in the provisions referring to other Member States. In addition, with respect to the provisions referring to Romania, it alleges that, in budget items 6701 and 6711, the information in the fifth column corresponding to the 'Certification' measure for the financial years 2015 and 2014 respectively is incomplete with regard to the reasons 'MLE EAFRD NON-IACS' and 'MLE EAFRD IACS' since, in the version as notified, there is only an ambiguous reference to 'amount' ('sumă' in Romanian). According to Romania, those differences affect key aspects such as the measures, reasons and type of corrections and have a direct bearing on the decision to initiate annulment proceedings and on the way in which those proceedings should be formulated. Furthermore, Romania maintains that some of the differences centre on the use of the wording 'estimated by amount' which is disputed in the application.

49 In that regard, it should be noted that, according to the case-law, a decision is properly notified provided that it is communicated to the person to whom it is addressed and the latter is put in a position to become acquainted with it. The Court of Justice has held the latter requirement to be fulfilled when the addressee has been put in a position to become acquainted with the content of that decision and the grounds on which it is based (see judgments of 17 May 2017, *Portugal* v *Commission*, C-337/16 P, EU:C:2017:381, paragraphs 47 and 48, and of 21 March 2019, *Eco-Bat Technologies and Others* v *Commission*, C-312/18 P, not published, EU:C:2019:235, paragraphs 25 and 26).

50 It follows that a purely formal error or an omission which, albeit not purely formal, does not prevent the addressee of the notified decision from becoming acquainted with the content of that decision and the grounds on which it is based, has no effect on the application of the period laid down by the sixth paragraph of Article 263 TFEU for instituting proceedings (see, to that effect, judgments of 17 May 2017, *Portugal* v *Commission*, C-337/16 P, EU:C:2017:381, paragraphs 48 to 50, and of 21 March 2019, *Eco-Bat Technologies and Others* v *Commission*, C-312/18 P, not published, EU:C:2019:235, paragraph 27).

51 In the present case, first of all, the alleged potential differences in the provisions referring to other Member States must be dismissed as they are, in any event, irrelevant and ineffective for the purposes of Romania's action (see, to that effect, order of 19 April 2016, *Portugal* v *Commission*, T-550/15, not published, EU:T:2016:237, paragraph 42).

52 As for the provisions referring to Romania, it is certainly the case, as the Commission confirmed in its reply to the question from the Court, that there are minor differences between the notified version and the published version of the fifth column of the table in the annex to the contested decision. In the version notified to the Permanent Representation of Romania, problems during the printing of the table appearing in the annex to the contested decision meant that the word 'estimată' ('estimated') used in the correction type 'sumă estimată' ('estimated by amount') did not appear, as it overspilled the borders of the cells in the table for certain budget items, leaving only the word 'sumă' ('amount') visible. The problem did not arise in the version subsequently published in the Official Journal.

53 However, the printing problem in question clearly does not hinder comprehension of the information contained in the annex. It must be noted that only four types of corrections can be listed in the fifth column. The first of these is 'one off', for corrections where ineligible amounts are identifiable

('punctuală' or 'calculată' in Romanian); the second is 'flat rate', for flat rate corrections ('rată forfetară' in Romanian); the third is 'estimated by amount', for corrections extrapolated on the basis of a known amount ('sumă estimată' in Romanian); and the fourth is 'extrapolated', for corrections extrapolated on the basis of a known percentage ('extrapolate' in Romanian). Since the Romanian names of three of the types of corrections are completely different from the word 'sumă' ('amount'), it is quite clear and unambiguous that the latter can correspond only to the type of correction 'sumă estimată' ('estimated by amount').

54 Furthermore, the Commission observes that Romania also received the tables in question by email from its Secretariat-General on 15 June 2018. That being the case, merely reading the annex sent by email would have been sufficient to clarify those differences.

55 In addition, to the extent that Romania disputes the use of the wording 'sumă estimată' ('estimated by amount'), it should be noted, as the Commission confirmed in its reply to the question from the Court, that two corrections were in fact wrongly classified as 'sumă estimată' ('estimated by amount') instead of 'rată forfetară' ('flat rate').

56 However, it must be noted that the latter error appeared both in the text notified by the Commission to the Permanent Representation of Romania on 14 June 2018 and in the text published in the Official Journal on 15 June 2018, so that Romania cannot claim that such an error prevented it from instituting proceedings within the prescribed period.

57 What is more, the Commission states that the aforementioned minor drafting error was not made in the administrative proceedings nor in the summary report, which contains the grounds for the contested decision. That being the case, there could not have been any confusion as regards the nature of the correction.

58 Consequently, it must be held that the minor differences between the notified text and the published text resulting from a printing problem affecting the table in the annex to the contested decision and a minor drafting error common to both those texts were not such as to prevent Romania from becoming acquainted, with sufficient clarity and precision, with the content of the contested decision and the grounds on which it was based or to institute proceedings against it within the prescribed period (see, to that effect, order of 19 April 2016, *Portugal* v *Commission*, T-550/15, not published, EU:T:2016:237, paragraph 43).

59 It is therefore appropriate to confirm the conclusion set out in paragraph 32 above that the period prescribed for instituting proceedings against the contested decision began to run from the time of its notification to the Permanent Representation of Romania and not from the time of its publication in the Official Journal.

60 Therefore, having regard to all of the foregoing considerations and pursuant to Articles 58 and 60 of the Rules of Procedure, the period for instituting proceedings, including the extension on account of distance, expired at midnight on 24 August 2018.

61 Romania did not lodge its application until 7 September 2018.

62 It follows that the action was clearly brought after the expiry of the prescribed period and was, therefore, out of time.

63 Lastly, Romania has not proved — or even alleged — the existence either of an excusable mistake or of unforeseeable circumstances or *force majeure* such as would permit derogation from the prescribed time limit on the basis of the second paragraph of Article 45 of the Statute of the Court of Justice of the European Union, which is applicable to proceedings before the General Court pursuant to Article 53 of that Statute.

64 It follows from all the foregoing that the action must be dismissed in its entirety as inadmissible.

Costs

65 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

66 Since Romania has been unsuccessful, it must be ordered to bear its own costs and to pay those of the Commission in accordance with the latter's pleadings.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby orders:

1. The action is dismissed as inadmissible.

2. Romania shall bear its own costs and pay those incurred by the European Commission.

Luxembourg, 30 April 2019.

E. Coulon
Registrar

A.M. Collins
President