

2. The second ground of appeal is based on the absence of any checks on the Commission's activity. The system of public aid therefore becomes a *carte blanche* for the institutions of the executive to specify any of the named areas or areas otherwise additionally determined by them as compatible with the common market.
3. The third ground of appeal is based on an error of assessment regarding the point at which the limitation period for submitting the application started to run. The appellant took the view that in the EU there is a mechanism which ensures that the Commission continuously monitors whether the public aid provided under Article 107 TFEU (Treaty on the Functioning of the European Union) affects the common market or not, as provided for in Article 108(1) TFEU. The appellant therefore addressed to the Commission his request that the situation with regard to public aid provided in the Czech Republic in the framework of the OPEI programme should be verified. The Commission rejected that request, from which the applicant has determined that the monitoring system envisaged in Article 108 TFEU does not function. The appellant considered an action before the European Court of Justice to be only a last resort, and hoped that he would not need to use this option. The appellant took exceptional pains to warn the Commission of the deficiencies in the proposal for and implementation of the OPEI and it therefore categorically cannot be stated that the appellant was inactive during the limitation period.
4. The fourth ground of appeal is based on an overriding legal interest. Irrespective of the court's decision on whether the appellant's claim is time-barred or not, the appellant takes the view that, having regard to the impact of the issue addressed not only at national level, but also throughout Europe, it is essential that the Court of Justice express its view on the issue of who bears liability for an incorrect subvention policy: the European Union or a Member State.

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**Appeal brought on 13 April 2021 by Évariste Boshab against the judgment of the General Court  
(Seventh Chamber) delivered on 3 February 2021 in Case T-111/19, Évariste Boshab v Council of the  
European Union**

**(Case C-242/21 P)**

(2021/C 217/45)

*Language of the case: French*

#### **Parties**

*Appellant:* Évariste Boshab (represented by: T. Bontinck, P. De Wolf, T. Payan, A. Guillerme, lawyers)

*Other party to the proceedings:* Council of the European Union

#### **Form of order sought**

The appellant claims that the Court should:

- set aside the judgment of the General Court of the European Union notified on 3 February 2021, *Évariste Boshab v Council of the European Union* (T-111/19);
- dispose of the case in the main proceedings and annul Council Decision (CFSP) 2018/1940 of 10 December 2018 in so far as it retains the appellant at number 8 of the Annex to Decision 2010/788/CFSP and Council Implementing Regulation (EU) 2018/1931 of 10 September 2018 in so far as it retains the appellant at number 8 of Annex Ia to Regulation (EC) No 1183/2005;<sup>(1)</sup>
- order the Council of the European Union to pay the costs of both sets of proceedings.

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

By his appeal, the appellant seeks to have the judgment of the General Court of the European Union of 3 February 2021, *Évariste Boshab v Council of the European Union* in case T-111/19 set aside, in support of which he relies on two grounds of appeal alleging infringement of the rights of the defence and a manifest error of assessment.

As regards the first ground of appeal, the appellant alleges that the General Court infringed the rights of the defence and in particular his right to a fair hearing, in that:

- it held that the late notification by the Council of the European Union, without the appellant being able to submit his observations before the decision at issue renewing the restrictive measures, was not an infringement of the right to a fair hearing since it was not new evidence; and
- it did not draw the appropriate conclusions from the fact that the Council did not, in the present case, undertake any investigation.

Concerning the second ground of appeal, the appellant maintains that the General Court committed a manifest error of assessment, in that:

- it did not take into account that restrictive measures are precautionary and, by definition, provisional, their validity always depending on whether the factual and legal circumstances which led to their adoption continue to apply and on the need to continue them in order to achieve their objective;
- it did not find that the evidence adduced by the Council was in any way capable of substantiating any conduct falling within the test for inclusion in the disputed lists, namely acts constituting serious human rights violations; and
- it did not criticise the fact that the Council did not examine the evidence submitted by the appellant in the review procedure and did not undertake, on that basis, its own investigations.

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(<sup>1</sup>) Council Regulation (EC) No 1183/2005 of 18 July 2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo, OJ 2005 L 193, p. 1 (ES, CS, DA, DE, ET, EL, EN, FR, IT, LV, LT, HU, NL, PL, PT, SK, SL, FI, SV), OJ 2008 L 352 M, p. 231 (MT).

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## Action brought on 22 April 2021 — European Parliament v Council of the European Union

(Case C-259/21)

(2021/C 217/46)

*Language of the case: French*

### Parties

*Applicant:* European Parliament (represented by: I. Liukkonen, I. Terwinghe, acting as Agents)

*Defendant:* Council of the European Union

### Form of order sought

The applicant claims that the Court should:

- annul Articles 15 to 17, 20 and 59(2) of Council Regulation (EU) 2021/92 of 28 January 2021 fixing for 2021 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters; (<sup>1</sup>)
- order the Council to pay the costs.

### Pleas in law and main arguments

According to the Parliament, the legislative acts governing the matter, namely Articles 10(4) and 15 of Regulation (EU) 2019/1241 (<sup>2</sup>) and Article 9 of Regulation (EU) 2019/472 (<sup>3</sup>) provide that measures such as those referred to in the present action are to be adopted by delegated acts referred to in Article 290 TFEU.