



Reports of Cases

ORDER OF THE COURT (Grand Chamber)

1 August 2022*

(Appeal – Intervention – State aid – Aid scheme implemented by the Kingdom of Belgium – Admission of interventions in appeal proceedings against a judgment of the General Court – Annulment of the decision of the General Court – Referral of the case back to the General Court – Decision of the General Court refusing to place on the case file written observations on the judgment effecting that referral lodged by an intervener in the appeal – Implied decision of the General Court refusing to grant an intervener in the appeal the status of intervener before the General Court – Admissibility of the appeal – Status of intervener before the General Court of an intervener in the appeal)

In Case C-31/22 P(I),

APPEAL under the first paragraph of Article 57 of the Statute of the Court of Justice of the European Union, brought on 10 January 2022,

Atlas Copco Airpower NV, established in Antwerp (Belgium),

Atlas Copco AB, established in Nacka (Sweden),

represented by A. von Bonin, Rechtsanwalt, O.W. Brouwer, A. Pliego Selie and T.C. van Helfteren, advocaten,

appellants,

the other parties to the proceedings being:

Magnetrol International NV, established in Zele (Belgium), represented by H. Gilliams and L. Goossens, advocaten,

applicant at first instance,

European Commission, represented by P.-J. Loewenthal and F. Tomat, acting as Agents,

defendant at first instance,

THE COURT (Grand Chamber),

* Language of the case: English.

composed of K. Lenaerts, President, L. Bay Larsen (Rapporteur), Vice-President, A. Arabadjiev, C. Lycourgos, E. Regan, I. Jarukaitis, N. Jääskinen and I. Ziemele, Presidents of Chambers, M. Ilešič, P.G. Xuereb, N. Piçarra, L.S. Rossi, A. Kumin, N. Wahl and O. Spineanu-Matei, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 14 July 2022,

makes the following

Order

- 1 By their appeal, Atlas Copco Airpower NV and Atlas Copco AB seek the annulment of the decision of the General Court of the European Union of 6 December 2021 by which it refused to grant them the status of intervener in Case T-263/16 RENV and place on the file in that case the written observations lodged by them on the conclusions to be drawn from the judgment of the Court of Justice of 16 September 2021, *Commission v Belgium and Magnetrol International* (C-337/19 P, EU:C:2021:741), for the outcome of the proceedings in that case ('the contested decision').

Legal context

- 2 Article 1(3)(c) of the Rules of Procedure of the General Court states that, for the purposes of those Rules of Procedure, 'party' and 'parties', unless otherwise specified, means any party to the proceedings, including interveners.
- 3 Article 60 of those Rules of Procedure provides that the procedural time limits are to be extended on account of distance by a single period of 10 days.
- 4 Article 79 of the said Rules of Procedure provides:

'A notice shall be published in the *Official Journal of the European Union* indicating the date of lodging of an application initiating proceedings, the names of the main parties, the form of order sought by the applicant and a summary of the pleas in law and of the main supporting arguments.'
- 5 Articles 142 to 145 of the same Rules of Procedure lay down the rules governing intervention before the General Court.
- 6 Article 143(1) of the Rules of Procedure of the General Court provides that 'an application to intervene must be submitted within six weeks of the publication of the notice referred to in Article 79'.

7 Under Article 215 of those Rules of Procedure:

‘Where the Court of Justice sets aside a judgment or an order of the General Court and refers the case back to that Court, the latter shall be seised of the case by the decision so referring it.’

8 Article 217 of the said Rules of Procedure is worded as follows:

‘1. Where the decision later set aside by the Court of Justice was made after the written procedure before the General Court on the substance of the case had been closed, the parties to the proceedings before the General Court may lodge their written observations on the conclusions to be drawn from the decision of the Court of Justice for the outcome of the proceedings within two months of the service on them of the decision of the Court of Justice. This time limit may not be extended.

...

3. The President may, if the circumstances so justify, allow supplementary statements of written observations to be lodged.’

9 Article 219 of the same Rules of Procedure provides:

‘The General Court shall decide on the costs relating to the proceedings instituted before it and to the proceedings on the appeal before the Court of Justice.’

Facts

10 By Decision (EU) 2016/1699 of 11 January 2016 on the excess profit exemption State aid scheme SA.37667 (2015/C) (ex 2015/NN) implemented by Belgium (OJ 2016 L 260, p. 61; ‘the Commission decision’), the European Commission found that certain exemptions granted by the Kingdom of Belgium constituted an aid scheme, within the meaning of Article 107(1) TFEU, which was incompatible with the internal market and which had been implemented in breach of Article 108(3) TFEU. The Commission ordered that the aid granted be recovered from the beneficiaries, a definitive list of which was to be drawn up by the Kingdom of Belgium following the decision.

The proceedings before the General Court and before the Court of Justice and the contested decision

11 By applications lodged at the Registry of the General Court on 22 March and 25 May 2016, the Kingdom of Belgium and Magnetrol International NV brought actions for the annulment of the Commission decision, registered as Cases T-131/16 and T-263/16, respectively.

12 By application lodged at the Registry of the General Court on 31 May 2016, Atlas Copco Airpower and Atlas Copco brought an action for the annulment of that decision, registered as Case T-278/16.

13 By letter of 20 February 2018, the Registrar of the General Court informed them that the President of the General Court Chamber seised of the case had decided to stay the proceedings in Case T-278/16 until the outcome of the proceedings in Cases T-131/16 and T-263/16.

- 14 By order of 17 May 2018, the President of the Seventh Chamber, Extended Composition, of the General Court decided to join Cases T-131/16 and T-263/16 for the purposes of the oral part of the procedure and the decision closing the proceedings.
- 15 By judgment of 14 February 2019, *Belgium and Magnetrol International v Commission* (T-131/16 and T-263/16, EU:T:2019:91), the General Court annulled the Commission decision.
- 16 On 24 April 2019, the Commission lodged an appeal against that judgment. That appeal was registered as Case C-337/19 P.
- 17 By orders of 15 October 2019, *Commission v Belgium and Magnetrol International*, the President of the Court admitted the intervention of Anheuser-Busch InBev SA/NV, Ampar BVBA, Atlas Copco Airpower and Atlas Copco (C-337/19 P, not published, EU:C:2019:909), and of Soudal NV and Esko-Graphics BVBA (C-337/19 P, not published, EU:C:2019:915), in support of the form of order sought by Magnetrol International.
- 18 By judgment of 16 September 2021, *Commission v Belgium and Magnetrol International* (C-337/19 P, EU:C:2021:741), the Court:
 - set aside the judgment of the General Court of 14 February 2019, *Belgium and Magnetrol International v Commission* (T-131/16 and T-263/16, EU:T:2019:91);
 - rejected the first and second pleas in the action in Case T-131/16 and the first plea and the first part of the third plea of the action in Case T-263/16;
 - referred the case back to the General Court for it to rule on the third to fifth pleas in the action in Case T-131/16 and on the second plea, the second and third parts of the third plea and the fourth plea in Case T-263/16; and
 - reserved the costs.
- 19 On 25 November 2021, Atlas Copco Airpower and Atlas Copco lodged with the General Court, on the basis of Article 217 of its Rules of Procedure, observations on the conclusions to be drawn from the judgment of 16 September 2021, *Commission v Belgium and Magnetrol International* (C-337/19 P, EU:C:2021:741), for the outcome of the proceedings in Case T-263/16 RENV ('the observations in question').
- 20 By letter dated 6 December 2021, notified to Atlas Copco Airpower and Atlas Copco on 17 December 2021, the Registrar of the General Court informed them that, since those observations did not constitute a document provided for by the Rules of Procedure of the General Court, the President of the Chamber seised of the case had decided not to place them on the file in that case.
- 21 By letter of 29 December 2021, addressed to the President of the General Court and its members, Atlas Copco Airpower and Atlas Copco, relying in particular on the order of the President of the Court of Justice of 15 October 2019, *Commission v Belgium and Magnetrol International* (C-337/19 P, not published, EU:C:2019:909), and on the case-law of the General Court, requested, first, a correction of that court's 'oversight' and, second, confirmation of their status as interveners before the General Court, requesting a reply within five days.

Forms of order sought by the parties

- 22 Atlas Copco Airpower and Atlas Copco claim that the Court should:
- annul the contested decision and
 - find that the appellants retained their status as interveners in Case T-263/16 RENV after that case was referred back to the General Court by the Court.
- 23 The Commission contends that the Court should:
- dismiss the appeal and
 - order Atlas Copco Airpower and Atlas Copco to pay the costs.
- 24 Without formally making any submissions, Magnetrol International takes the view that the Court must confirm Atlas Copco Airpower's and Atlas Copco's status as interveners in Case T-263/16 RENV.

The appeal

Admissibility of the appeal

Arguments

- 25 The Commission contends that the appeal is inadmissible.
- 26 It submits that, although the first paragraph of Article 57 of the Statute of the Court of Justice of the European Union provides that any person whose application to intervene has been dismissed may appeal against the General Court decision dismissing that application, the appellants did not, in the present case, lodge any application to intervene before the General Court.
- 27 The General Court adopted only one decision, namely not to place the observations in question on the file in Case T-263/16 RENV. However, the appeal is not directed against that decision. Moreover, such a decision does not fall within the scope of the decisions referred to in Articles 56 and 57 of the Statute of the Court of Justice of the European Union and, therefore, is not open to appeal.
- 28 In the Commission's view, the present appeal is in reality intended to circumvent the decision of the President of the Chamber seised of the case before the General Court to stay the proceedings in Case T-278/16 until the outcome of the proceedings in Cases T-131/16 and T-263/16, although that decision is not open to appeal either. The risk of such a circumvention has already been identified, in paragraph 19 of the order of the President of the Court of 10 September 2019, *Council v K. Chrysostomides & Co. and Others* (C-597/18 P, not published, EU:C:2019:743), during the examination of an application to intervene submitted by an applicant in a case that had been stayed following the designation of certain cases as 'pilot' cases.

29 According to Atlas Copco Airpower and Atlas Copco, the General Court's decision not to place the observations in question on the file in Case T-263/16 RENV constitutes a refusal to admit them as interveners in that case, a refusal against which an appeal may be brought under the first paragraph of Article 57 of the Statute of the Court of Justice of the European Union.

Assessment

30 As a preliminary point, in order to examine the admissibility of the appeal, it is appropriate to determine the scope of the decision contained in the letter of the Registrar of the General Court dated 6 December 2021.

31 In that regard, it is important to note that Article 217(1) of the Rules of Procedure of the General Court provides that, where the Court of Justice sets aside a decision of the General Court and decides to refer the case back to the latter after the written procedure on the substance had been closed, the parties to the proceedings before the General Court may submit their written observations on the conclusions to be drawn from the decision of the Court of Justice for the outcome of the proceedings within two months of service of that decision.

32 It is common ground, first, that the present case corresponds to the scenario referred to in that provision and, second, that the observations in question were lodged within the period prescribed in the said provision, plus the extension on account of distance laid down in Article 60 of those Rules of Procedure, such that the rejection of those observations is not based on the fact that they were lodged too late.

33 It follows that, despite its summary nature, the letter of the Registrar of the General Court dated 6 December 2021 must be understood, in so far as it mentions the General Court's refusal to place the observations in question on the file in Case T-263/16 RENV on the ground that they constitute a document not provided for by the Rules of Procedure of the General Court, as reflecting the decision of the General Court to refuse to grant the appellants the status of interveners in that case, which they consider that they acquired automatically on account of their admission to intervene in the appeal in Case C-337/19 P.

34 In that context, the present appeal must be considered, in the light of the fact that it criticises that letter in its entirety and denounces in particular the incorrectness of the General Court's refusal to place the observations in question on the file in Case T-263/16 RENV, as seeking to annul the contested decision not only in that it refuses to grant the appellants the status of interveners in that case, but also in that it refuses to place those observations on the file in the said case.

35 Accordingly, the Commission's argument that the present appeal is directed against a decision which the General Court did not adopt must be rejected.

36 So far as concerns the right to bring an appeal against the contested decision, the first paragraph of Article 57 of the Statute of the Court of Justice of the European Union provides that an appeal may be brought before the Court against decisions of the General Court dismissing an application to intervene, by any person whose application has been dismissed.

37 In the present case, it is admittedly common ground that, by the contested decision, the General Court did not dismiss an application to intervene, the appellants not having submitted such an application to the General Court.

- 38 Nevertheless, it should also be noted that the scope of the decision, inherent in the letter of the Registrar of the General Court dated 6 December 2021, to refuse to grant the appellants the status of interveners in Case T-263/16 RENV is similar to that which would have flowed from a decision of the General Court to dismiss an application to intervene submitted by the appellants, namely that those two decisions deprive a party which claims to enjoy, pursuant to the second paragraph of Article 40 of the Statute of the Court of Justice of the European Union, a particular procedural position, by reason of its interest in the result of the case, of all the rights inherent in that position.
- 39 Moreover, where the Court has deemed an appeal well founded, set aside the decision of the General Court and referred the case back to it for judgment, it cannot reasonably be expected of an intervener in that appeal, which considers itself automatically to have the status of intervener before the General Court, to submit a formal application to intervene to that latter court for the sole purpose of bringing an appeal, under the first paragraph of Article 57 of the Statute of the Court of Justice of the European Union, against the decision dismissing that application.
- 40 Such an application could, in any event, only be dismissed by the General Court as being out of time, since Article 143(1) of its Rules of Procedure, read in conjunction with Article 79 of those Rules of Procedure, provides that an application to intervene must be submitted within six weeks of the publication in the *Official Journal of the European Union* of the notice which initially announced the lodging of the application initiating proceedings in the case concerned.
- 41 In that context, to consider that an intervener in an appeal in a case, which claims to enjoy the status of intervener before the General Court automatically following the referral of that case back to that court, cannot bring an appeal under the first paragraph of Article 57 of the Statute of the Court of Justice of the European Union against a decision of the General Court refusing it that status, on the sole ground that the General Court did not formally dismiss an application to intervene, would deprive the party concerned of all judicial protection enabling it to defend the procedural rights before the General Court which it considers to derive from Article 40 of that statute, even though the very purpose of the first paragraph of Article 57 of the said statute is to guarantee that protection.
- 42 In the event that the said intervener in the appeal rightly relied on its status as intervener before the General Court in a case that had been referred back to it by the Court of Justice – a matter which is intended to be decided at the stage of the examination of the merits of the present appeal and cannot therefore be settled at the stage of the assessment of its admissibility – no other remedy would be open to it to assert its procedural rights arising under Article 40 of the same statute.
- 43 Thus, in the first place, an intervener in an appeal cannot bring, under Article 56 of the Statute of the Court of Justice of the European Union, an appeal against a decision of the General Court denying it the status of intervener in the case that has been referred back to that court by the Court of Justice.
- 44 That provision provides that an appeal may be brought against final decisions of the General Court and decisions of that court disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility.

- 45 In the present case, it should be pointed out that the contested decision does not close the proceedings in Case T-263/16 RENV before the General Court nor does it dispose, even in part, of the substantive issues in that case.
- 46 Moreover, while that decision does indeed dispose of a procedural issue relating to the appellants' status as interveners before the General Court, that issue does not relate to a plea of lack of competence or inadmissibility.
- 47 The Court of Justice has held, however, that appeals brought under Article 56 of the Statute of the Court of Justice of the European Union against decisions of the General Court disposing of a procedural issue of a different nature from those referred to in that provision must be dismissed as inadmissible (see, to that effect, order of 4 October 1999, *Commission v ADT Projekt*, C-349/99 P, EU:C:1999:475, paragraphs 10 and 11, and judgment of 8 January 2002, *France v Monsanto and Commission*, C-248/99 P, EU:C:2002:1, paragraph 46).
- 48 Furthermore, it is important to note that, when it decides on a procedural issue relating to a plea of lack of competence or inadmissibility, the General Court rules on a request from a party for it to close the proceedings without going to the substance of the case, which is why such a decision must be capable of being referred to the Court of Justice without awaiting a decision on the merits. That is not the case, however, with a decision disposing of a procedural issue relating to an intervention.
- 49 The Court has thus held that the decision by which the General Court grants an application to intervene cannot be the subject of an appeal under Article 56 of the Statute of the Court of Justice of the European Union (see, to that effect, judgment of 29 July 2019, *Bayerische Motoren Werke and Freistaat Sachsen v Commission*, C-654/17 P, EU:C:2019:634, paragraphs 29 and 30).
- 50 That solution must, in the light of the foregoing, be applied also to an appeal brought against a decision of the General Court refusing to grant an intervener the status of intervener in a case that has been referred back to it by the Court of Justice.
- 51 In the second place, the lodging of an appeal under Article 56 of the Statute of the Court of Justice of the European Union against the decision closing the proceedings in which the person concerned claims to have the status of intervener cannot confer on that person sufficient judicial protection, since that remedy is open only to the parties before the General Court and the exercise of such a remedy would not, in any event, enable the usefulness of a possible intervention before the General Court to be preserved by admitting that person at a stage of the proceedings where that intervention can effectively contribute to the proceedings before that court.
- 52 In the light of the foregoing, the decision by which the General Court, by refusing to place on the file of a case which has been referred back to it by the Court of Justice after annulment of its decision, the observations of an intervener in the appeal, on the ground that they constitute a document not provided for in the Rules of Procedure of the General Court, implicitly denies that intervener the status of intervener in that case is liable to be the subject of an appeal on the basis of the first paragraph of Article 57 of the Statute of the Court of Justice of the European Union.

- 53 The fact that that person had brought an action for annulment the examination of which was suspended by the General Court pending the decision to be taken in the proceedings in which the said person claims to enjoy the status of intervener is not, contrary to what the Commission claims, such as to preclude such an appeal from being brought against a decision of the General Court denying that person that status.
- 54 It is true that the principle of the proper administration of justice would be infringed if the applicants in cases stayed following the designation of certain cases as ‘pilot’ cases were granted, simply by virtue of that status, leave to intervene in them (see, to that effect, order of the President of the Court of 10 September 2019, *Council v K. Chrysostomides & Co. and Others*, C-597/18 P, not published, EU:C:2019:743, paragraph 19).
- 55 However, first, that consideration relates to the merits of the decision refusing to grant the status of intervener to a person claiming it and is therefore irrelevant to the assessment of the admissibility of an appeal brought against that decision.
- 56 Second, while the Commission argues, in essence, that the admissibility of such an appeal would make it possible, in practice, to challenge before the Court a decision of the General Court to stay proceedings even though that decision cannot be appealed, it must nevertheless be noted that, in the event of annulment of the decision of the General Court denying the appellant in the case in question the status of intervener in another case before the General Court, such a decision to stay would continue to produce all of its effects.
- 57 In the light of all those factors, the plea of inadmissibility raised by the Commission must be rejected.

Substance

Arguments

- 58 Atlas Copco Airpower and Atlas Copco submit, by a single ground of appeal, that the General Court committed two errors of law, the first relating to the refusal to grant them the status of interveners in Case T-263/16 RENV, and the second relating to the refusal to place on the file the observations which they wish to lodge on the conclusions to be drawn from the judgment of 16 September 2021, *Commission v Belgium and Magnetrol International* (C-337/19 P, EU:C:2021:741).
- 59 In the first place, as the General Court has consistently considered, it is in the interests of the proper administration of justice and to ensure the continuity of debate that, where a party has been granted leave to intervene in an appeal, it retains its status as intervener if the case is referred back to the General Court after the latter’s decision has been annulled. Accordingly, the appellants ought to have been regarded as interveners in Case T-263/16 RENV without having to submit an application to intervene before the General Court.
- 60 That solution is also justified, as is apparent from the case-law of the General Court, in order to enable that court to rule on the costs, when those costs were reserved by the Court of Justice before the case in question was referred back to the General Court. That is precisely the case here.

- 61 In the second place, the General Court erred in law in deciding not to place the observations in question on the file. Article 217(1) of the Rules of Procedure of the General Court, which does not define the concept of ‘parties to the proceedings before the General Court’, does not preclude the interveners in the appeal from acquiring the status of ‘parties to the proceedings before the General Court’ on the occasion of appeal proceedings.
- 62 The Commission is of the view that the General Court was justified in denying the appellants the status of interveners in Case T-263/16 RENV.
- 63 Article 217(1) of the Rules of Procedure of the General Court allows, following the referral of the case by the Court of Justice back to the General Court, the lodging of written observations not by ‘the parties to the proceedings before the Court of Justice’ or the ‘parties to the appeal’, but only by the ‘parties to the proceedings before the General Court’. Article 1(2)(c) of those Rules of Procedure clarifies the scope of that Article 217(1) by defining the terms ‘parties’ and ‘party’ as referring to ‘any party to the proceedings, including interveners’.
- 64 Since the appellants cannot rely on the status of ‘parties to the proceedings before the General Court’, to allow the present appeal would be tantamount to creating a category of *sui generis* intervener, which would be subject neither to the time limit prescribed in Article 143(1) of the Rules of Procedure of the General Court nor to the conditions laid down in Article 143(2) of those Rules of Procedure. If the intervention of such parties were admitted, the Commission would not have the possibility of responding to the observations they lodged. In addition, such a solution would lead, in practice, to a circumvention of the measures for staying certain proceedings adopted to allow the designation and priority treatment of ‘pilot’ cases.
- 65 Furthermore, the case-law of the General Court cited by the appellants is limited to two decisions, the most recent of which is the subject of an appeal in which the Commission is contesting the status of intervener before the General Court of an intervener in the appeal. The appellants’ situation can be distinguished, moreover, from that of the parties at issue in the cases which gave rise to those two decisions of the General Court.
- 66 Incidentally, the solution adopted by the General Court does not infringe the parties’ fundamental procedural rights, since they could have intervened before the General Court by following the procedure laid down in the Rules of Procedure of the General Court, provided that they observed the time limits applicable to that procedure.

Assessment

- 67 Article 1(2)(c) of the Rules of Procedure of the General Court states that, for the purposes of those Rules of Procedure, ‘party’ and ‘parties’, unless otherwise specified, means any party to the proceedings, including interveners.
- 68 However, that general provision does not specify the cases in which the General Court must grant to a person the status of intervener before it.
- 69 In that regard, although Articles 142 to 145 of those Rules of Procedure govern the system of intervention before the General Court by setting out the rules for submitting applications to intervene and for examining such applications, they do not deal with the status to be accorded to

persons who have been admitted by the Court of Justice to intervene in a case at the appeal stage, where the Court has deemed the appeal well founded, set aside the decision of the General Court and referred the case back to that court for judgment.

- 70 Similarly, Articles 217 and 218 of the same Rules of Procedure, the purpose of which is to determine the conduct of the procedure and the rules applicable thereto in proceedings brought after a decision of the General Court has been set aside and the case referred back to it, do not contain any rule specifying the status, in such proceedings, of interveners in the appeal.
- 71 In that context, it is important to note that, as the appellants state, the General Court's examination of a case following a decision of the Court of Justice setting aside the decision of the General Court and referring that case back to that court is a continuation of the appeal proceedings before the Court of Justice.
- 72 That continuation is explicitly reflected in the Rules of Procedure of the General Court. First of all, it is apparent from Article 215 of those Rules of Procedure that the General Court is directly seised by the decision of the Court of Justice setting aside the decision of the General Court and referring the case back to it for judgment. Next, pursuant to Article 217 of those Rules of Procedure, the time limit allowed for lodging observations on the conclusions to be drawn from the decision of the Court of Justice for the outcome of the proceedings runs from the service of that decision. Finally, Article 219 of the same Rules of Procedure provides that the General Court is to decide on the costs relating not only to the proceedings instituted before it but also to the proceedings on the appeal before the Court of Justice.
- 73 Furthermore, in accordance with the second paragraph of Article 61 of the Statute of the Court of Justice of the European Union, where the Court of Justice quashes a decision of the General Court and refers the case back to it, the General Court is to be bound by the decision of the Court of Justice on points of law.
- 74 It is therefore for the General Court, when re-examining the action at first instance following the referral of the case back to it, to determine the consequences, for the outcome of the proceedings between the parties, of the judgment of the Court of Justice ruling on the appeal.
- 75 The lodging, in such a context, of observations by the parties, authorised by Article 217 of the Rules of Procedure of the General Court, is specifically intended to enable them to set out their position regarding those consequences for the outcome of the proceedings and to supplement the General Court's information in that regard.
- 76 That provision thus aims to ensure – like Article 172 of the Rules of Procedure of the Court of Justice, which authorises any party to the case before the General Court having an interest in the appeal being allowed or dismissed to submit a response to the Court of Justice – the continuity of debate when dealing with the same case before the EU Courts.
- 77 In the first place, the grant by the Court of Justice of the status of intervener to a person presupposes, pursuant to the second paragraph of Article 40 of the Statute of the Court of Justice of the European Union, that that person has been able to establish an interest in the result of the case submitted to the Court.

- 78 Therefore, the consequence of denying an intervener in the appeal the status of intervener before the General Court when the case has been referred back to it by the Court is that, in so far as that person is no longer in a position to submit an application to intervene before the General Court on the ground set out in paragraph 40 of this order, that person is deprived of any possibility of lodging observations before the General Court on the consequences to be drawn from a decision of the Court of Justice which has, however, affected that person's interests.
- 79 The second paragraph of Article 40 of the Statute of the Court of Justice of the European Union provides, moreover, that persons who can establish an interest may intervene in 'cases'. It is apparent from Articles 55 and 56 of that statute, however, at least in the French-language version, that the concept of '*litige*', in so far as it refers to the dispute between the parties, is distinct from that of '*instance*', which concerns proceedings pending before the court seized of the dispute.
- 80 Admittedly, it cannot be entirely ruled out that, in certain cases, in particular where the Court has given final judgment on certain aspects of a case before referring it back to the General Court, an intervener in the appeal no longer has an interest in the result of the case before the General Court. However, that circumstance cannot, in itself, justify an intervener in the appeal not being granted the status of intervener in a case which has been referred back to the General Court by the Court of Justice, since it is for the EU Courts to verify, in the course of the proceedings, that the interest that justified intervention persists (see, to that effect, judgment of 8 July 1999, *Hüls v Commission*, C-199/92 P, EU:C:1999:358, paragraphs 52 to 55).
- 81 In the present case, as the appellants point out, their application to intervene before the Court of Justice was granted on the ground that they had an interest in the annulment *ex tunc* and *erga omnes* of the Commission decision by the General Court becoming final (see, to that effect, order of the President of the Court of 15 October 2019, *Commission v Belgium and Magnetrol International*, C-337/19 P, not published, EU:C:2019:909, paragraph 17), an annulment which is precisely the subject matter of the proceedings in Case T-263/16 RENV in which the appellants claim to be able to intervene.
- 82 In the second place, it should be noted that the solution adopted by the General Court in the contested decision makes the continuity of debate in a case and the scope of the effects of admitting a party to intervene before the Court of Justice dependent on the decision of the latter, taken pursuant to the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, to give final judgment in the matter itself or, on the contrary, to refer the case back to the General Court.
- 83 As the Advocate General observed in point 87 of his Opinion, where the Court of Justice gives final judgment in the dispute rather than referring the case back to the General Court, the intervener in the appeal may put forward its arguments before the EU Court called upon to rule on the action at first instance, whereas it will not have that possibility if the case is referred back to the General Court.
- 84 In the third place, the solution adopted by the General Court appears all the more likely to affect the continuity of debate before the EU Courts since an intervener in the appeal should be able to participate again, in compliance with the conditions set out by Article 40 of the Statute of the Court of Justice of the European Union and by the relevant provisions of the Rules of Procedure of the Court of Justice, in the proceedings before the Court of Justice in the event of an appeal

against a new decision of the General Court taken following the referral of the case back to it by the Court and would, as a consequence, lead to participation on an intermittent basis in the proceedings before the EU Courts in the context of one and the same dispute.

85 In the fourth place, it must be noted that Article 184(2) of the Rules of Procedure of the Court of Justice states that, where the appeal is unfounded or where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to the costs.

86 It follows, *a contrario*, from that provision that, where the appeal is well founded but the Court refers the case back to the General Court, the Court is not to make a decision as to the costs.

87 In such a case, it is necessarily for the General Court to decide on the costs relating to the proceedings on the appeal, as indeed Article 219 of its Rules of Procedure expressly provides.

88 Accordingly, denying an intervener in the appeal the status of intervener in a case which has been referred back to the General Court by the Court would mean, where forms of order have been submitted to the Court of Justice with a view to holding another party liable to pay the costs of that intervener or holding the latter liable to pay the costs of another party, either that those forms of order will not be examined by an EU Court or that the General Court must rule on forms of order relating to a person who is not a party to the proceedings before it and who has therefore not been able to defend their claims in the course of those proceedings.

89 That is precisely the situation in the present case.

90 In the present case, after all, the appellants and the Commission each applied for costs relating to the appeal proceedings in Case C-337/19 P to be awarded against the other.

91 As the Court, in the judgment of 16 September 2021, *Commission v Belgium and Magnetrol International* (C-337/19 P, EU:C:2021:741), reserved the costs, the General Court is called upon, as the appellants argue, to rule, during the examination of Case T-263/16 RENV, on the apportionment of the costs relating to the appeal proceedings in Case C-337/19 P between the appellants and other parties to those appeal proceedings.

92 In the fifth place, the Commission's arguments against granting an intervener in the appeal the status of intervener in a case which has been referred back to the General Court by the Court cannot succeed.

93 Thus, first of all, although the grant of the status of intervener before the General Court to an intervener in the appeal before the Court of Justice is not governed by the rules provided for in Article 143 of the Rules of Procedure of the General Court, such intervention before the General Court cannot, however, be considered as being authorised without any substantive or formal requirement. After all, the person concerned must first have been admitted by the Court of Justice to intervene before it, under the conditions defined by Article 40 of the Statute of the Court of Justice of the European Union and by the relevant provisions of the Rules of Procedure of the Court of Justice.

94 Next, the fact that that solution allows a party to lodge observations to which the other parties to the proceedings before the General Court could not respond is irrelevant, since, on the one hand, the Rules of Procedure of the General Court do not confer a general right to respond to

observations lodged pursuant to Article 217 of those Rules of Procedure and, on the other hand, Article 217(3) of those Rules of Procedure nevertheless provides that supplementary statements of written observations may be lodged if the circumstances so justify.

- 95 Last, with regard to the Commission's argument that granting the status of intervener before the General Court to an intervener in the appeal, which is also the applicant in a case stayed by that court in the context of the designation of a 'pilot' case, would lead to the circumvention of that decision to stay, it should be noted that such a decision to stay cannot have the effect of preventing that applicant from being admitted to intervene before an EU Court, where that intervention must be authorised under Article 40 of the Statute of the Court of Justice of the European Union (see, to that effect, order of the President of the Court of 15 October 2019, *Commission v Belgium and Magnetrol International*, C-337/19 P, not published, EU:C:2019:909, paragraphs 14 and 18 and the case-law cited).
- 96 In the light of the foregoing factors, it must be held that Article 40 of the Statute of the Court of Justice of the European Union, respect for the procedural rights guaranteed to interveners by the Rules of Procedure of the General Court and the principle of the proper administration of justice require, in the context of a coherent articulation of the procedures before the Court and the General Court, that an intervener in the appeal automatically enjoy the status of intervener before the General Court, where a case is referred back to that court following the annulment by the Court of Justice of a decision of the General Court.
- 97 In the present case, it is common ground, first, that, by the order of the President of the Court of 15 October 2019, *Commission v Belgium and Magnetrol International* (C-337/19 P, not published, EU:C:2019:909), Atlas Copco Airpower and Atlas Copco were admitted to intervene before the Court in Case C-337/19 P and that, second, by the judgment of 16 September 2021, *Commission v Belgium and Magnetrol International* (C-337/19 P, EU:C:2021:741), the Court set aside the judgment of the General Court of 14 February 2019, *Belgium and Magnetrol International v Commission* (T-131/16 and T-263/16, EU:T:2019:91), and referred back to the General Court Cases T-136/16 and T-263/16 for it to decide on certain of the pleas in law put forward in those cases.
- 98 It follows that the General Court erred in law in denying the appellants the status of intervener before it in Case T-263/16 RENV.
- 99 Accordingly, the single plea in law put forward by the appellants must be upheld and the contested decision annulled.

The dispute before the General Court

- 100 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, the Court of Justice may, where it has quashed the decision of the General Court, either itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.
- 101 In the present case, it follows from paragraphs 96 to 98 of the present order that Atlas Copco Airpower and Atlas Copco automatically have the status of interveners before the General Court in this case and accordingly enjoy all the rights inherent in that status, in particular the right to lodge observations under Article 217(1) of the Rules of Procedure of the General Court.

102 Therefore, it is for the General Court to adopt the procedural measures which flow from that status.

Costs

103 In accordance with Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is well founded and the Court itself gives final judgment in the case, the Court is to make a decision as to the costs.

104 Under Article 138(1) of those rules, which applies to the procedure on appeal by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

105 Although the Commission has been unsuccessful, Atlas Copco Airpower, Atlas Copco and Magnetrol International have not applied for costs. Accordingly, each of the parties shall bear its own costs relating to the present appeal proceedings.

On those grounds, the Court (Grand Chamber) hereby orders:

- 1. The decision of the General Court of the European Union of 6 December 2021 to refuse to grant Atlas Copco Airpower NV and Atlas Copco AB the status of interveners in Case T-263/16 RENV and to place on the file in that case the written observations lodged by the latter on the conclusions to be drawn from the judgment of the Court of Justice of 16 September 2021, *Commission v Belgium and Magnetrol International* (C-337/19 P, EU:C:2021:741), for the outcome of the proceedings in that case is annulled.**
- 2. Atlas Copco Airpower NV, Atlas Copco AB, Magnetrol International NV and the European Commission shall bear their own costs.**

Luxembourg, 1 August 2022.

A. Calot Escobar
Registrar

K. Lenaerts
President