Reports of Cases

JUDGMENT OF THE GENERAL COURT (Eighth Chamber)

27 November 2018 *

(Institutional law — European Parliament — Decision declaring certain expenditure by a political party ineligible for a grant in respect of financial year 2015 — Right to good administration — Legal certainty — Regulation (EC) No 2004/2003 — Prohibition on indirect funding of a national political party)

In Case T-829/16,

Mouvement pour une Europe des nations et des libertés, established in Paris (France), represented by A. Varaut, lawyer,

applicant,

v

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

defendant,

APPLICATION under Article 263 TFEU for annulment of the decision of the European Parliament of 12 September 2016 declaring certain expenditure ineligible for a grant in respect of financial year 2015,

THE GENERAL COURT (Eighth Chamber),

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

Registrar: M. Marescaux, Administrator,

having regard to the written part of the procedure and further to the hearing on 26 June 2018,

gives the following

* Language of the case: French.

Judgment

Background to the dispute

1 On 10 June 2015, the Mouvement pour une Europe des nations et des libertés, the applicant, launched a campaign concerning immigration in the context of the Schengen Agreement ('the campaign'). The French version of a poster for that campaign contained the applicant's logo and the logo of a flame, together with the name 'Front national'. The Dutch language version of that poster, moreover, contained the applicant's logo and that of the Vlaams Belang.

2 In its annual audit report on the accounts of European political parties for 2015, adopted on 25 April 2016, a firm of independent auditors stated that it had been unable to obtain sufficient objective evidence to conclude that the expenditure on the campaign was eligible, and that might lead to a reduction in the amount of the grant awarded by the European Parliament.

3 Following a request from the Parliament, on 10 June 2016 the applicant provided the Parliament with copies of the posters at issue.

4 By letter of 22 July 2016, the Parliament informed the applicant that the expenditure in question might be ineligible since it constituted indirect funding of two national political parties, in so far as the latter had not contributed to the funding of the campaign. In its view, such funding might be contrary to Article 7(1) of Regulation (EC) No 2004/2003 of the European Parliament and of the Council of 4 November 2003 on the regulations governing political parties at European level and the rules regarding their funding (OJ 2003 L 297, p. 1). It therefore requested the applicant to submit its observations on that alleged irregularity by 22 August 2016.

5 On 27 July 2016, the applicant requested certain additional information from the Parliament, in particular concerning the precedents for that type of irregularity.

6 On 10 August 2016, the Parliament replied to the applicant, informing it also that the time limit for submitting its observations was extended until 2 September 2016.

7 The applicant sent its observations on 2 September 2016.

8 On 5 September 2016, the Secretary-General sent a note to the Bureau of the Parliament, inviting it to adopt the final decision concerning closure of the accounts of a number of political parties at European level, including the applicant, for financial year 2015. That note stated that the final reports and any other document relating to the closure of the accounts for that financial year would be made available to members of the Bureau of the Parliament on request.

9 On 7 September 2016, the Parliament's services forwarded the applicant's observations to the President of the Parliament, making clear that they did not affect the Parliament's position.

10 At its meeting on 12 September 2016, the Bureau of the Parliament examined the final report submitted by the applicant following the closure of its accounts for financial year 2015. It declared ineligible the sum of EUR 63 853 connected with the campaign and set the amount of the final grant awarded to the applicant at EUR 400 777.83 ('the contested decision').

11 On 26 September 2016, the Parliament notified the contested decision to the applicant.

Procedure and forms of order sought

12 The applicant brought this action by application lodged at the Court Registry on 25 November 2016.

13 By separate document lodged at the Court Registry on 7 February 2017, the Parliament raised a plea of inadmissibility under Article 130(1) of the Rules of Procedure of the General Court.

14 The applicant lodged its observations on that plea on 17 and 27 March 2017.

15 By order of 2 May 2017, the Court decided to reserve a decision on the plea of inadmissibility for the final judgment.

16 The applicant claims, in essence, that the Court should:

– reject the plea that the action was inadmissible;

– annul the contested decision;

– order the Parliament to pay the costs.

17 The Parliament contends that the Court should:

– reject the action as inadmissible;

– in the alternative, reject the action as unfounded;

– order the applicant to pay the costs.

18 On the proposal of the Judge-Rapporteur, the General Court (Eighth Chamber) decided to open the oral part of the procedure and, by way of measures of organisation of procedure pursuant to Article 89 of the Rules of Procedure, invited the parties to lodge certain documents and to reply to certain written questions before the hearing, which they did within the prescribed time limit.

19 The parties presented oral argument and answered the questions put by the Court at the hearing on 26 June 2018.

Law

Admissibility

20 The Parliament puts forward a plea of inadmissibility, alleging infringement of Article 263 TFEU and of Article 76(d) of the Rules of Procedure.

21 First, the Parliament complains that the applicant brought the action against the Bureau of the Parliament, which is not an institution or a body, office or agency of the Union within the meaning of Article 263 TFEU. The Court therefore lacks jurisdiction to hear the action.

22 Secondly, the Parliament contends that the application does not meet the requirements of Article 76(d) of the Rules of Procedure, as interpreted by case-law, since it does not identify the pleas in law relied on and does not contain a summary of those pleas in law, enabling it to prepare its defence. In particular, it states that, even though the application contains a section entitled ‘Breach of the

principle of good administration', which relates to alleged infringement of Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter'), it also contains a section entitled 'Substance' — the longest section of the application — in which no plea is identified.

23 The applicant takes issue with the complaints put forward by the Parliament.

24 With regard to the Parliament's first complaint, it should be borne in mind that the Court has jurisdiction to hear actions brought under Article 263 TFEU only against acts of institutions, bodies, offices or agencies of the European Union.

25 In that regard it should be noted, first, that the present action is brought against the contested decision, which was adopted on 12 September 2016 by the body that is competent under the Parliament's internal rules, namely the Bureau, and notified to the applicant on 26 September 2016. It follows that an application for annulment of that decision must necessarily be brought against the Parliament, which adopted the measure (see, to that effect, order of 5 September 2012, *Farage* v *Parliament and Buzek*, T-564/11, not published, EU:T:2012:403, paragraph 18).

26 Second, when the Parliament notified the contested decision to the applicant it expressly stated that the latter could bring an action before the General Court for annulment of 'the decision of the Bureau of the Parliament'.

27 Third, according to case-law, it should be pointed out that, in its observations on the plea of inadmissibility, the applicant stated that the action should be regarded as having been brought against Parliament, without further designating the Bureau of the European Parliament as the defendant (see, to that effect, order of 16 October 2006, *Aisne and Nature* v *Commission*, T-173/06, not published, EU:T:2006:320, paragraphs 17 and 20).

28 Fourth, the identification in the application of the contested decision, adopted on 12 September 2016 and notified on 26 September 2016, leaves no doubt that the applicant's intention was to bring the action against the Parliament. The detail mentioned in paragraph 27 above must be regarded as a clarification to that effect, not as an amendment or putting in order of the application relating to an element mentioned in Article 76 of the Rules of Procedure (see, to that effect, judgment of 9 September 2004, *Spain and Finland* v *Parliament and Council*, C-184/02 and C-223/02, EU:C:2004:497, paragraph 17).

29 Fifth, at the hearing, the applicant confirmed that its action related to the contested decision, which was adopted on 12 September 2016, namely an act of the Parliament.

30 These elements make it possible to establish without any ambiguity that the action is brought against the Parliament, for the purposes of Article 263 TFEU.

31 Lastly, it should be borne in mind that the present case differs from those that gave rise to the orders of 18 September 2015, *Petrov and Others* v *Parliament and President of the Parliament* (T-452/15, not published, EU:T:2015:709), and of 4 February 2016, *Voigt* v *Parliament* (T-618/15, not published, EU:T:2016:72), cited by the Parliament, in which the actions had been brought against the President of the Parliament and against the Parliament. In those cases, the Court merely dismissed the actions as being in part inadmissible in so far as they were brought against the President of the Parliament, and went on to conduct its examination of the substance in so far as they were also brought against the Parliament, and without examining to which party the action actually related, unlike the present case.

32 In the light of the foregoing, the first complaint of inadmissibility put forward by the Parliament must be rejected.

33 With regard to the Parliament's second complaint, it should be borne in mind that, under Article 76(d) of the Rules of Procedure, the application must contain the pleas in law and arguments relied on and a summary of those pleas in law.

34 According to settled case-law, irrespective of any question of terminology, that summary must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the application, even without further information. It is necessary, for an action to be admissible, that the basic legal and factual particulars relied on be indicated, at least in summary form, coherently and intelligibly in the application itself, so as to guarantee legal certainty and sound administration of justice (see judgment of 6 October 2015, *Corporación Empresarial de Materiales de Construcción* v *Commission*, T-250/12, EU:T:2015:749, paragraph 101 and the case-law cited).

35 In the present case, as the Parliament itself accepts, the application contains a section entitled 'Breach of the principle of good administration'. Furthermore, the text of that section refers in particular to Article 41 of the Charter. In paragraphs 22 to 42 of the application the applicant complains inter alia that the Parliament did not provide its decision-making body, namely the Bureau, with the applicant's observations prior to the adoption of the contested decision. That is the first plea put forward by the applicant.

36 The section entitled 'Substance' is divided into three sub-sections. The first sub-section is entitled 'Funding of a national political party: a vague notion giving rise to legal uncertainty'. It is also clear from paragraphs 44 to 57 of the application, which relate to it, that the applicant considers that the prohibition on the indirect funding of a national political party, deriving from Article 7 of Regulation No 2004/2003, conflicts with the principle of legal certainty. That is therefore the second plea put forward by the applicant.

37 At the hearing, the Parliament argued in particular that the application did not expressly claim a breach of the principle of legal certainty and that therefore a plea alleging breach of that principle should be rejected as being inadmissible. It should be borne in mind in that regard that a breach of that principle is expressly mentioned in the title of the first sub-section, as stated in paragraph 36 above, and in paragraphs 43 and 52 of the application. Moreover, the Parliament replied, in paragraphs 32 to 39 of the defence, to the arguments put forward by the applicant. The arguments put forward at the hearing must therefore be rejected.

38 Lastly, the second and third subsections of the section of the application entitled 'Substance' are entitled, respectively, 'Conveying a European campaign to the Member States' and 'A logo of a legal size'. It is also apparent from paragraphs 58 to 81 of the application, which relate to those sub-sections, that in essence the applicant contends that, in the contested decision, the Parliament wrongly assessed the expenditure concerned when it declared it ineligible since it constituted indirect funding of a national political party within the meaning of Article 7 of Regulation No 2004/2003. That is therefore the third plea raised by the applicant.

39 The application therefore meets the minimum requirements laid down by case-law in the light of Article 76(d) of the Rules of Procedure. Moreover, it is clear that the Parliament was able to identify the pleas in law and arguments relied on by the applicant in order to challenge them in its own pleadings. The second complaint of inadmissibility must therefore be rejected.

40 In the light of the foregoing, the plea of inadmissibility raised by the Parliament must be rejected.

Substance

41 In support of the application for annulment of the contested decision, the applicant puts forward, in essence, three pleas in law, the first alleging breach of the principle of good administration, the second alleging breach of the principle of legal certainty and the third alleging infringement of Article 7 of Regulation No 2004/2003.

Breach of the principle of good administration

42 In the first plea, the applicant pleads a breach of the principle of good administration, in particular of the right of every person to have his or her affairs handled impartially and fairly and of the right to be heard, rights guaranteed by Article 41 of the Charter. In that regard, it argues that the decision-making body, the Bureau of the Parliament, did not examine the poster at issue and did not take into account the applicant's observations, which were not communicated to it, basing its decision merely on a note from the Secretary-General that was biased. It contends that it should have had the opportunity to defend itself before the Bureau, at least in writing. Furthermore, it disputes whether the work of the Parliament's services can be regarded as being purely preparatory, since it is they who analyse the relevant documents and submit proposals to the Bureau, which, not being familiar with those documents or with the applicant's arguments, can only endorse the proposal that is submitted to it.

43 The applicant adds that that also constitutes an infringement of Article 16 of the European Code of Good Administrative Behaviour, approved by resolution of the Parliament of 6 September 2001 (OJ 2002 C 72 E, p. 331, 'the European Code of Good Administrative Behaviour'), guaranteeing the right to be heard and to make statements.

44 Lastly, the applicant considers that the Parliament infringed Article 8 of the decision of the Bureau of the Parliament of 29 March 2004 laying down the procedures for implementing Regulation No 2004/2003, as amended (OJ 2014 C 63, p. 1, 'the decision of the Bureau of the Parliament of 29 March 2004'), which provides that, before taking a decision, the Bureau is to give the beneficiary the chance to comment on the irregularities established. In the reply, it states that the Parliament's letter of 22 July 2016 made express reference to that provision.

45 The Parliament takes issue with the applicant's arguments.

46 Under Article 41(1) of the Charter, entitled 'Right to good administration', every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

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

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

49 The requirement of impartiality encompasses, on the one hand, subjective impartiality, in so far as no member of the institution concerned who is responsible for the matter may show bias or personal prejudice, and, on the other hand, objective impartiality, in so far as there must be sufficient guarantees to exclude any legitimate doubt as to bias on the part of the institution concerned (judgment of 11 July 2013, *Ziegler* v *Commission*, C-439/11 P, EU:C:2013:513, paragraph 155). It is clear from case-law that subjective impartiality is presumed in the absence of evidence to the contrary

(see, by analogy, judgments of 1 July 2008, *Chronopost and La Poste* v *UFEX and Others*, C-341/06 P and C-342/06 P, EU:C:2008:375, paragraph 54, and of 19 February 2009, *Gorostiaga Atxalandabaso* v *Parliament*, C-308/07 P, EU:C:2009:103, paragraph 46).

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

51 It is in the light of those principles that the first plea should be examined.

52 As regards the complaint alleging breach of the obligation to examine impartially and fairly all the relevant particulars of the case concerned, it should be noted that on 10 June 2016 the Parliament obtained copies of the posters for the campaign. Moreover, it invited the applicant to submit its observations on the ineligibility of the expenditure at issue before 22 August 2016, a time limit that was subsequently extended until 2 September 2016. On 5 September 2016, the Secretary-General of the Parliament sent a note to the Bureau of the Parliament requesting it to declare the expenditure at issue ineligible and adding that the final report and any other document concerning the closure of the accounts for financial year 2015 were available on request. Furthermore, the applicant's observations of 2 September 2016 were taken into account, as is clear from the email from the Parliament's services sent to the President on 7 September 2016, and as the applicant itself acknowledged at the hearing, even though it contends that they were not examined by the correct body.

53 It should be made clear that, with that email of 7 September 2016, the Parliament's services transmitted the applicant's observations to the President of the Parliament, who is a member of the Bureau of the Parliament under Rule 24 of the Rules of Procedure of the Parliament in force at the time, adding that they did not affect the proposal concerning the possible declaration that the expenditure at issue was ineligible. In that context, on 12 September 2016 the Bureau of the Parliament adopted the contested decision.

54 In the light of the foregoing, the Court finds that the Parliament did obtain the evidence needed in order to take its decision fairly and impartially.

55 Moreover, the body competent to adopt the contested decision, namely the Bureau of the Parliament, cannot be criticised for relying on the preparatory work of the institution's services. In that regard, the applicant accepted, at the hearing, that it is permissible for the Parliament to rely on the preparatory work of its services. Nor can the Parliament be criticised for acting on a proposal from its Secretary-General, which is moreover provided for in Rule 224 of the Rules of Procedure of the Parliament in force at the time. It should be pointed out, moreover, that the Secretary-General's note of 5 September 2016 informed the members of the Bureau that all the relevant documents, including therefore the applicant's observations, were available on request.

56 It is also necessary to reject the argument put forward by the applicant at the hearing that the email of 7 September 2016 shows that the contested decision was adopted de facto by the Parliament's services, and not by the competent body, namely the Bureau of the Parliament. That email, sent by those services to the President of the Parliament, expressly confirms that the applicant's observations were examined by those services, that they did not affect the proposal sent to the Bureau by the Secretary-General of the Parliament and that they were actually sent to the President, a member of the Bureau.

57 It should be added that the applicant does not put forward any argument that might call in question the objective or subjective impartiality of the Parliament, within the meaning of the case-law cited in paragraph 49 above.

58 The complaint alleging infringement of Article 41(1) of the Charter must therefore be rejected.

59 With regard to the complaint alleging a breach of the right to be heard, it is clear that the applicant was able to submit its observations on the possible ineligibility of the expenditure at issue, as shown in paragraph 52 above. Moreover, as stated in paragraph 55 above, contrary to what the applicant contends, there is nothing to preclude the Bureau of the Parliament relying on the preparatory work of the services of that institution or acting on a proposal from the Secretary-General of that institution. Lastly, it should be noted again that the applicant's observations were sent by those services to the President of the Parliament and were available to the members of the Bureau on request.

60 The complaint alleging infringement of Article 41(2)(a) of the Charter must therefore be rejected.

61 As regards infringement of Article 16 of the European Code of Good Administrative Behaviour, that provision guarantees the right to be heard and to make statements. Therefore, irrespective of the binding legal nature of that text for the Parliament — which adopted it by resolution of 6 September 2001 — that complaint must be rejected for the reasons stated in paragraph 59 above.

62 Lastly, as regards infringement of the decision of the Bureau of the Parliament of 29 March 2004, irrespective of whether it is Article 7 or Article 8 which is applicable, suffice it to say that the applicant claims in essence a breach of the right to be heard, which is covered in those provisions. Therefore, that complaint must be rejected also for the reasons stated in paragraph 59 above.

63 In the light of the foregoing, the first plea must be rejected as unfounded.

Breach of the principle of legal certainty

64 In the second plea, the applicant claims, in essence, that the prohibition on indirect funding of national political parties, laid down in Article 7 of Regulation No 2004/2003, conflicts with the principle of legal certainty. In particular, it considers that any campaign conducted with funds from a political party at European level is likely to support indirectly the action of a national political party. Therefore, it criticises the fact that the contested decision used that vague notion as a basis for declaring the expenditure at issue ineligible.

65 The Parliament takes issue with the applicant's arguments.

66 As a preliminary point, although the applicant does not formally raise a plea of illegality under Article 277 TFEU, it should be noted that it does contend in essence that Article 7 of Regulation No 2004/2003, which provided the basis on which the contested decision was adopted, conflicts with the general principle of legal certainty. In that regard, it should be pointed out that there is no requirement under EU law for a plea of illegality to be raised formally (see, to that effect, judgments of 15 September 2016, *Yanukovych* v *Council*, T-346/14, EU:T:2016:497, paragraph 56, and of 15 September 2016, *Yanukovych* v *Council*, T-348/14, EU:T:2016:508, paragraph 57). Case-law gives grounds for considering that a plea of illegality has been raised implicitly where it is relatively clear from the application that the applicant is in fact making such a plea (judgment of 6 June 1996, *Baiwir* v *Commission*, T-262/94, EU:T:1996:75, paragraph 37). In the present case, it is clear from the analysis of paragraph 44 et seq. of the application that the applicant implicitly raises a plea of illegality.

Moreover, it is clear from paragraph 33 of the defence that the Parliament was able to understand fully the scope of the complaint raised by the applicant. It is therefore necessary to examine the substance of the second plea.

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

68 According to case-law, the principle of legal certainty — which is one of the general principles of EU law — requires that rules of law be clear, precise and predictable in their effects, so that interested parties can ascertain their position in situations and legal relationships governed by EU law (see, to that effect, judgments of 15 February 1996, *Duff and Others*, C-63/93, EU:C:1996:51, paragraph 20; of 7 June 2007, *Britannia Alloys & Chemicals* v *Commission*, C-76/06 P, EU:C:2007:326, paragraph 79; and of 18 November 2008, *Förster*, C-158/07, EU:C:2008:630, paragraph 67).

69 In that regard, it should be noted that the scope of the notion of foreseeability depends to a considerable degree on the content of the text in issue, the field it covers and the number and status of those to whom it is addressed. A law may still satisfy the requirement of foreseeability even if the person concerned has to take appropriate legal advice to assess, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (judgment of 21 September 2017, *Eurofast* v *Commission*, T-87/16, not published, EU:T:2017:641, paragraph 98).

70 In addition, as the Parliament contends, the principle of legal certainty does not preclude EU law from conferring discretion on the competent authority or using undetermined legal concepts which must be interpreted and applied to the case concerned by that authority, without prejudice to review by the EU courts (see, to that effect and by analogy, judgments of 22 May 2008, *Evonik Degussa* v *Commission*, C-266/06 P, not published, EU:C:2008:295, paragraph 45, and of 8 July 2008, *AC-Treuhand* v *Commission*, T-99/04, EU:T:2008:256, paragraph 163).

71 Moreover, the requirements of the principle of legal certainty cannot be regarded as requiring a rule that uses an undefined legal concept to refer to the various specific hypotheses in which it applies, given that all those hypotheses could not be determined in advance by the legislature (see, to that effect, judgment of 20 July 2017, *Marco Tronchetti Provera and Others*, C-206/16, EU:C:2017:572, paragraph 42).

72 In the present case, the prohibition on direct or indirect funding of national political parties, contained in Article 7 of Regulation No 2004/2003, is clear. Moreover, the prohibition on indirect funding is in fact the corollary of the prohibition on direct funding, since otherwise that prohibition could easily been circumvented. As regards the scope of the prohibition on indirect funding, it must be concluded that it is an undetermined legal concept and that the provision in question does not contain an exhaustive definition of the concept or a list of behaviours likely to be covered by the prohibition. However, it must be considered that a prudent operator should, as the Parliament argues, be able to foresee that indirect funding exists where a national political party derives a financial advantage, inter alia by avoiding expenditure which it would have had to incur, even where no funds are directly transferred. In other words, it cannot be accepted that a prudent political party at European level would not be able to foresee that granting an advantage of any kind to a national political party, without that party bearing the cost, constitutes indirect funding of the latter's activities.

73 In the light of the foregoing, the second plea must be rejected as unfounded.

Infringement of Article 7 of Regulation No 2004/2003

74 In the third plea, the applicant claims that the contested decision was wrong to express the view that the expenditure relating to the poster at issue constituted indirect funding of national political parties, under Article 7 of Regulation No 2004/2003, mainly for two reasons.

75 First, according to the applicant, the poster at issue was for a Europe-wide campaign, launched at the Parliament's headquarters in Strasbourg (France) on 10 June 2015, to make EU citizens aware of the negative effects of the Schengen Agreement on migration flows. It contends that, as part of the campaign, which covered all of the EU Member States, it had decided to publish on its website and on social media sites a series of posters with the EU flag, whilst France and Belgium, concerned by particularly significant migration flows, were the subject of special poster campaigns. It stresses that the Front national was not associated with the campaign in France and did not hold any press conferences on the subject. Furthermore, the regional elections in France were still a long way off at the time and focused on issues having no direct connection with migration flows.

76 According to the applicant, if the Parliament's view was accepted, it would be required to run poster campaigns only on themes that had no connection with the political concerns of the Front national, which would be impossible, since a national political party embraces all themes that are likely to be of interest to the public. It adds that the theme of migration flows and the Schengen Treaty is a European theme.

77 Secondly, the applicant argues that the alleged logos of the national political parties in question, namely those of the Front national and the Vlaams Belang, were five times smaller in size than the applicant's logo. Therefore, that situation is different from the precedents mentioned by the Parliament in its letters of 22 July and 10 August 2016, in which the logos in question were of a similar size. Moreover, it states that, according to section 6.7 of the Guide on Operating Grants awarded by the Parliament to Political Parties and Foundations at European level, concerning the funding of campaigns in the context of elections to the Parliament, the names and logos of the political party at European level must feature no less prominently than those of national parties or candidates on publications, in order for the support not to be regarded as indirect financial support.

78 The applicant contends that the presence of the alleged logo of the Front national on the posters was not intended to promote that national political party indirectly, but to make the campaign intelligible for the French public. The same applies in respect of the alleged logo of the Vlaams Belang so far as the posters intended for Belgium are concerned.

79 In its pleadings, the applicant also contends that the logo featured on the posters intended for France was not that of the Front national, since that party's logo is a three-coloured flame (blue, white and red) while the logo at issue had only two colours. Therefore, it is the logo of the Front national delegation within the applicant and not the logo of the Front national as such. Furthermore, it adds that the Parliament provides no evidence that the French public would perceive the poster as originating from the Front national. In reality, the poster expressly states that the applicant 'is solely responsible for the content'.

80 At the hearing, the applicant accepted that it was likely that the public would associate the poster with the Front national because of the logo in question, since it would probably be unable to perceive the difference. However, it submits that in reality it would be necessary for the public to be able to associate that logo with a national political party, in this case the Front national, in order for it to be able to identify the origin of the message, due to lack of awareness of the political parties at European level.

81 The Parliament takes issue with the applicant's arguments.

82 It should be noted that, under Article 7 of Regulation No 2004/2003, the funding of political parties at European level from the general budget of the European Union or from any other source may not be used for the direct or indirect funding of other political parties, and in particular national parties or candidates. In addition, as stated in paragraph 72 above, it is permissible to consider that indirect funding exists where a national political party derives a financial advantage, inter alia by avoiding expenditure which it would have incurred, even where no funds are directly transferred.

83 Therefore, as part of the assessment of the third plea, it is necessary to determine whether the contested decision was wrong in finding that the two national political parties, namely the Front national and the Vlaams Belang, derived an indirect financial advantage as a result of conducting the campaign. For the purposes of that examination it is appropriate to take into account a range of elements concerning the content of that campaign, the public's perception of it, as well as geographic and time elements.

84 First, so far as the content of the campaign is concerned, it should be pointed out that it is not the theme of that campaign, namely the purported effects of the Schengen Agreement on migration flows, that is regarded as problematical by the Parliament. In reality, it is clear from the Parliament's letter of 22 July 2016, from the note from the Secretary-General of the Parliament to the Bureau of that institution of 5 September 2016 and from the Parliament's letter of 26 September 2016 notifying the contested decision that the decisive factor underlying that decision is the view that the public may perceive that campaign as originating, at least in part, from the Front national and from the Vlaams Belang. Therefore, contrary to what the applicant suggests, the Parliament's interpretation does not mean that it is obliged to campaign on themes that have no connection with the concerns of any national political party in order to comply with Article 7 of Regulation No 2004/2003.

85 Secondly, as stated in paragraph 84 above, the key element in the contested decision is the perception on the part of the public that the campaign originates, at least in part, from the Front national and the Vlaams Belang, in the absence of adequate joint funding. In that regard, it must be concluded that the conduct of a campaign that is perceived by the public as having at least been organised jointly with a national political party, although the latter is not contributing adequately to its funding, is likely to confer an indirect financial advantage on the national political party. In that situation, the national political party achieves increased visibility among the public and the dissemination of a message which it supports, whilst it has not had to bear any of the costs connected with conducting the campaign.

86 In the present case, even though the applicant has tried to argue in its pleadings that the logo featured on the posters intended for France was not really the logo of the Front national and that the Parliament has not demonstrated that the French public perceived the poster as originating from the Front national, it should be noted that the applicant abandoned that line of argument at the hearing, acknowledging that the public would probably associate the poster with the Front national because of that logo.

87 In addition, the applicant did not put forward in its pleadings any argument designed to call in question the finding that the logo featured on the Dutch version of the poster was that of the Vlaams Belang. In answer to the Court's questions at the hearing, it did moreover admit that it was the logo of the Vlaams Belang.

88 Accordingly, the contested decision was not wrong when it stated that, in the present case, the public would perceive the campaign, at least in part, as originating from the Front national and the Vlaams Belang.

89 Furthermore, the applicant's argument set out in paragraph 68 of the application, and repeated at the hearing, that the presence of the logo of the Front national in one case and the logo of the Vlaams Belang in the other was necessary in order to enable the public to identify the promoter of the

campaign, must be rejected. Although it is permissible for a political party at European level to organise a campaign jointly with a national political party, the fact remains that it is for the national political party in such cases to contribute adequately to the funding of that campaign, in order to avoid a breach of the prohibition on indirect funding, laid down in Article 7 of Regulation No 2004/2003. In that regard, it should be noted that the applicant does not contend that the national political parties in question, namely the Front national and the Vlaams Belang, jointly funded the campaign in any way.

90 It is also necessary to reject the applicant's argument concerning the sizes of the logos. The fact that, on the posters, the applicant's logo is larger than that of the Front national and of the Vlaams Belang, which cannot be denied, is not enough to preclude the campaign being associated, at least in part, with the national political parties in question. Contrary to what the applicant suggests, it is not only where the logos of the political party at European level and of the national political party in question are similar in size that it must be considered that an indirect advantage is derived by the national political party. Where the logo of the national political party is smaller in size than that of the political party at European level, as in the present case, it is not unreasonable for the Parliament to conclude that the public will perceive the campaign in question as originating at least in part from the national political party where the logo of the national political party remains identifiable.

91 It is also necessary to reject the argument put forward by the applicant on the basis of section 6.7 of the Guide on Operating Grants awarded by the Parliament to Political Parties and Foundations at European level. As the Parliament rightly argues, that provision concerns campaigns for elections to the European Parliament, in which national political parties must necessarily be involved, since it is they and not the political parties at European level which take part in the elections to the Parliament. However, the campaign did not concern elections to the Parliament. Therefore, that argument cannot be accepted.

92 Lastly, as regards the notice at the bottom of the poster stating that the applicant 'is solely responsible for the content', it should be pointed out that that notice is hard to see due to the small print size. Moreover, the notice is illegible, at least on the version of the poster put out on the Internet via social media.

93 In the light of the foregoing, it should be noted that the evidence concerning public perception, given the presence of the logos of the national political parties, confirms that they derived an indirect advantage as a result of the campaign, which was funded entirely by the applicant.

94 Third, so far as the geographical element is concerned, the Parliament was right to accept as relevant evidence the fact that the campaign concerned two EU countries in particular, namely France and Belgium, as a result inter alia of the use of the French flag and the flag of the Flemish Region, and of the logos of the Front national and the Vlaams Belang. It should be added that, even though the applicant claims that the campaign was conducted on an EU scale, it does not provide any evidence of this. Moreover, the mere publication of a version of the poster featuring the EU flag on the applicant's website and on its social media pages, assuming that to be the case, is not comparable in extent to the poster campaign conducted in France and Belgium.

95 As regards the applicant's argument concerning the launch of the campaign at the Parliament's headquarters in Strasbourg, suffice it to say that that factor alone is not enough to demonstrate the absence of indirect funding of national political parties, in view not only of the other indications but also of considerations concerning the geographical element set out in paragraph 94 above.

96 Fourth, with regard to the time element, the applicant's argument that regional elections were still a long time off in France must be rejected. In the first place — irrespective of whether any use of the French version of the poster was actually made by the Front national, by its members or by its sympathisers during those elections — contrary to what the applicant claims, a period of 5 months

between the launch of the campaign and the holding of those elections does not seem sufficient to make the use of that campaign for the purposes of those elections unlikely. In the second place, in any event, as is made clear in paragraph 83 above, the time element is one piece of evidence that could be taken into account. However, it is not an essential precondition or even the most decisive piece of evidence. In the present case, having regard to the letter from the Parliament of 22 July 2016, the note from the Secretary-General of the Parliament to the Bureau of that institution of 5 September 2016 and the letter from the Parliament of 26 September 2016 notifying the contested decision, the fact remains that possible nearness in time to the elections in question is not one of the pieces of evidence which the Parliament took into account in order to conclude that there had been indirect funding of national political parties. That cannot be criticised, since an advantage for a national political party with regard to its image and visibility should not necessarily be confined to a particular electoral period.

97 In the light of all the above considerations, the third plea must be rejected as unfounded.

98 The action must therefore be dismissed in its entirety.

Costs

99 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. Since the Parliament has applied for costs and the applicant has been unsuccessful, the latter must be ordered to bear its own costs and to pay those incurred by the Parliament.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby:

1. Dismisses the action;

2. Orders the Mouvement pour une Europe des nations et des libertés to bear its own costs and to pay those incurred by the European Parliament.

Collins Barents Passer

Delivered in open court in Luxembourg on 27 November 2018.

[Signatures]