Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

25 October 2017*

(Appeal — Own resources of the European Union — Decision 2007/436/EC — Financial liability of the Member States — Loss of certain import duties — Obligation to pay the European Commission the amount corresponding to the loss — Actions for annulment — Admissibility — Letter from the European Commission — Concept of 'actionable measure')

In Case C-599/15 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 16 November 2015,

Romania, represented by R.-H. Radu, M. Chicu and A. Wellman, acting as Agents,

appellant,

supported by:

Czech Republic, represented by M. Smolek, J. Vláčil and T. Müller, acting as Agents,

Federal Republic of Germany, represented by T. Henze and K. Stranz, acting as Agents,

Slovak Republic, represented by B. Ricziová, acting as Agent,

interveners in the appeal,

the other party to the proceedings being:

European Commission, represented by G.-D. Balan, A. Caeiros and A. Tokár and by Z. Malůšková, acting as Agents,

defendant at first instance,

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Chamber, C. Vajda, E. Juhász, K. Jürimäe (Rapporteur) and C. Lycourgos, Judges,

Advocate General: J. Kokott,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 23 March 2017,

* Language of the case: Romanian.

after hearing the Opinion of the Advocate General at the sitting on 8 June 2017,

gives the following

Judgment

1 By its appeal, Romania seeks to have set aside the order of the General Court of the European Union of 14 September 2015, *Romania* v *Commission* (T-784/14, not published, 'the order under appeal', EU:T:2015:659), by which it dismissed as inadmissible its actions for annulment of the decision of the European Commission Directorate-General for Budget allegedly contained in the letter BUDG/B/03MV D(2014) 3079038 of 19 September 2014 ('the letter at issue').

Legal context

Legislation concerning own resources

2 Council Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the European Communities' own resources (OJ 2007 L 163, p. 17) repeals, with effect from 1 January 2007, Council Decision 2000/597/EC, Euratom of 29 September 2000 on the system of the European Communities' own resources (OJ 2000 L 253, p. 42).

3 Under Article 2(1)(b) of Decision 2000/597 and Article 2(1)(a) of Decision 2007/436, revenue deriving from, inter alia, 'Common Customs Tariff duties and other duties established or to be established by the institutions of the [Union] in respect of trade with non-member countries' ('own resources') are to constitute own resources entered in the general budget of the European Union.

4 Under Article 2(1) of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000, implementing Decision 2007/436 (OJ 2000 L 130, p. 1), as amended by Council Regulation (EC, Euratom) No 105/2009 of 26 January 2009 (OJ 2009 L 36, p. 1, 'Regulation No 1150/2000'), the Union's entitlement to own resources is to be established as soon as the conditions provided for by the customs regulations have been met concerning the entry of the entitlement in the accounts and the notification of the debtor.

5 The first subparagraph of Article 9(1) of Regulation No 1150/2000 provides:

'In accordance with the procedure laid down in Article 10, each Member State shall credit own resources to the account opened in the name of the Commission with its Treasury or the body it has appointed.'

6 In accordance with Article 10(1) of that regulation, entry of own resources is to be made at the latest on the first working day following the nineteenth day of the second month following the month during which the entitlement was established in accordance with Article 2 of that regulation.

7 Under Article 11(1) of Regulation No 1150/2000, any delay in making the entry in the account referred to in Article 9(1) of that regulation is to give rise to the payment of default interest by the Member State concerned.

Rules of Procedure of the General Court

8 According to Article 130 of the Rules of Procedure of the General Court:

‘1. A defendant applying to the General Court for a decision on inadmissibility or lack of competence without going to the substance of the case shall submit the application by a separate document within the time limit referred to in Article 81.

…

7. The General Court shall decide on the application as soon as possible or, where special circumstances so justify, reserve its decision until it rules on the substance of the case. …

8. If the General Court refuses the application or reserves its decision, the President shall prescribe new time limits for further steps in the proceedings.’

Background

9 By the letter at issue, the director of the Directorate for Financial Resources and Financial Programming of the Directorate-General for Budget of the European Commission (‘the director’) pointed out that, in April 2010 the German authorities had asked the Commission to decide, pursuant to Article 239 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), whether a remission of import duties was justified in respect of a German company which had, as the main debtor, filed several declarations on behalf of its customers for the transport, during the years 2006 and 2007, of goods subject to the external transit procedure to another Member State in which an investigation had revealed that goods had not been presented at the office of destination.

10 The director pointed out that, by Decision C(2011) 9750 final of 5 January 2012 (file REM 03/2010), the Commission had found that the remission of the import duties applied for was well founded. In that regard, the Commission pointed out that the irregular closure of transit operations constituted fraudulent manoeuvres that could only be reasonably explained by the active complicity of a customs official of the destination office of the Member State concerned or by a failure of organisation on the part of that office which allowed a third party to access the New Computerised Transit System (NCTS).

11 The director also stated, in essence, that the German authorities had, for the same reasons, granted a remission of customs duties in another case.

12 In the letter at issue, the director explained that, in the view of the Commission services, Romania was considered to be financially liable insofar as the confirmation of the clearance of the transit documents returned to the German office of departure had prevented the German authorities from collecting or recovering customs duties, which are traditional own resources. He pointed out that, although Romania was not responsible for levying customs duties incurred for imports into the Union, a Member State remained financially liable for losses of own resources if its authorities or their representatives made mistakes or acted fraudulently.

13 The director then pointed out that the Romanian authorities had been unable to guarantee that the customs provisions of the Union had been correctly applied. The result of that incorrect application of EU law was, it is claimed, a loss of traditional own resources in so far as the German authorities had not been able to collect customs duties and make them available to the Commission. The

director concluded from this that Romania had to compensate the Union budget for the loss thus caused. In that regard, he referred, by analogy, to paragraph 44 of the judgment of 8 July 2010, *Commission* v *Italy* (C-334/08, EU:C:2010:414).

14 The director explained, in essence, that any refusal by Romania to make such traditional own resources available would be contrary to the principle of loyal cooperation between Member States and within the Union and would hamper the proper functioning of the system of own resources.

15 Consequently, he requested the Romanian authorities to make available to the Commission a gross own resources amount of EUR 14883.79, from which it is necessary to deduct 25% by way of collection costs, by the first working day following the nineteenth day of the second month following the dispatch of the letter at issue. He added that any delay would give rise to the payment of interest under Article 11 of Regulation No 1150/2000.

The proceedings before the General Court and the order under appeal

16 By application lodged at the Registry of the General Court on 28 November 2014, Romania brought an action seeking annulment of the decision allegedly contained in the letter at issue.

17 By separate document lodged at the Registry of the General Court on 13 March 2015, the Commission raised a plea of inadmissibility under Article 114(1) of the Rules of Procedure of the General Court of 2 May 1991. That plea was based on the absence of a measure against which an action for annulment may be brought.

18 Romania lodged its observations on that plea of inadmissibility.

19 By documents lodged at the Registry of the General Court on 23 March and 10 April 2015 respectively, the Slovak Republic and the Federal Republic of Germany sought leave to intervene in support of the form of order sought by Romania.

20 By the order under appeal, the General Court ruled on the Commission's plea of inadmissibility pursuant to Article 130 of its Rules of Procedure.

21 In order to assess whether the letter at issue is actionable, the General Court examined, in paragraphs 23 to 33 and 35 of the order under appeal, the division of powers between the Commission and the Member States regarding the determination of own resources under the provisions of Decision 2007/436 and Regulation No 1150/2000. It concluded, in paragraph 37 of that order that, since the Commission had no power to adopt a measure requiring a Member State to make own resources available, the letter at issue was for information purposes only and could constitute no more than a simple request addressed to Romania.

22 In that regard, the General Court pointed out, in paragraphs 38 to 40 of the order under appeal, that an opinion issued by the Commission, such as that contained in the letter at issue, does not bind the national authorities and, in paragraphs 41 to 43 of that order, that it cannot, any more than a reasoned opinion in the pre-litigation stage of an infringement procedure, constitute an actionable measure.

23 Finally, the General Court rejected the arguments raised by Romania. In particular, in paragraphs 50 and 51 of the order under appeal, the General Court rejected as ineffective the arguments alleging that the letter at issue had no legal basis, on the ground that those arguments concerned the merits of the content of that letter. In paragraphs 52 to 56 of that order, the General Court also responded to

arguments based on the uncertain legal situation in which that Member State would find itself regarding its obligations and the financial risk, effective judicial protection and the risk of having to pay considerable default interest.

24 In the light of the above, the General Court accepted that plea of inadmissibility raised by the Commission and dismissed the action of Romania as inadmissible, in so far as it was directed against a measure which could not be the subject of an action, without ruling on the applications for leave to intervene by the Federal Republic of Germany and the Slovak Republic.

Forms of order sought by the parties to the appeal

25 By its appeal, Romania claims that the Court should:

– declare the appeal admissible, set aside the order under appeal in its entirety and rule on the action for annulment by declaring it admissible and annulling the letter at issue;

– in the alternative, declare the appeal admissible, set aside the order under appeal in its entirety and refer the case back to the General Court in order that the latter may declare the action admissible and annul the letter at issue;

– order the Commission to pay the costs.

26 In its response, the Commission asks the Court to:

– dismiss the appeal and

– order Romania to pay the costs of the proceedings.

27 In their statements in intervention, the Czech Republic, the Federal Republic of Germany and the Slovak Republic essentially request the Court to allow the appeal.

The appeal

Arguments of the parties

28 In support of its appeal, Romania relies on two grounds of appeal.

29 By its first ground of appeal, Romania complains that the General Court infringed the provisions of Article 130(7) and (8) of its Rules of Procedure, in that it ruled on the Commission's plea of inadmissibility without going to the substance of the case.

30 On the one hand, Romania states that, in its observations on the plea of inadmissibility, it had requested that the examination of the merits of that plea be reserved for the final judgment. The General Court, which, it claims, is required under the abovementioned provisions to examine whether there are special circumstances justifying such reservation of the examination for the final judgment and, if justified, to proceed accordingly, failed in the present case to justify its decision not to reserve that examination of the merits for the final judgment.

31 On the other hand, Romania considers that, although it refused to reserve the examination of the plea of inadmissibility for the final judgment, the General Court in fact made a substantive assessment in paragraphs 29 to 51 of the order under appeal. The General Court ruled on the nature and basis of the pecuniary obligation referred to in the letter at issue, based on the erroneous assumption that the

rules relating to traditional own resources were applicable. However, before the General Court, Romania argued that the letter at issue produced legal effects precisely because EU law did not attribute financial liability to a Member State for the loss of traditional own resources incurred in another Member State. The General Court wrongly refused to take those arguments into account by rejecting them, in paragraph 51 of the order under appeal, as being ineffective in so far as they concerned the merits of the content of that letter.

32 Romania adds that this procedural irregularity prejudiced its interests in that its right to a fair trial was disregarded in the absence of an adversarial hearing and that the General Court's assessment is based on several errors of law which could have been avoided by organising a discussion going to the substance of the case.

33 By its second ground of appeal, Romania argues, in essence, that the analysis of the nature of the amount claimed and of the obligations forming the subject matter of the letter at issue is vitiated by an error of law, in that the General Court wrongly described that amount as 'traditional own resources' and applied the corresponding rules and case-law. Those rules, it claims, apply exclusively to the direct financial liability of the customs authorities of a Member State. Conversely, the rules do not concern the situation, at issue in the present case, of a possible financial liability of another Member State, which has never had the responsibility of assessing and collecting the customs duties at issue. That letter, it claims, therefore imposes on Romania a new obligation that does not arise under EU law. Referring exclusively to the rules concerning traditional own resources and the corresponding case-law, the General Court erred in law, ignored the specific circumstances of the case and failed to respond to the arguments based on the fact that that obligation was new.

34 That error of law, it claims, affected the analysis both of the competence of the Commission and the nature of the letter at issue, which the General Court carried out having regard to the rules on traditional own resources. Furthermore, the General Court failed to have regard to the settled case-law on actions for annulment in so far as it failed to rule on the content and context of the adoption of the letter at issue and relied exclusively on an analysis of the competence of the Commission. It thus infringed the principle of effective judicial protection.

35 In the alternative, on the one hand, Romania relies on a contradiction in the grounds of the order under appeal in so far as, in paragraph 29 of that order, the General Court granted Member States a margin of discretion to determine whether there was a loss of traditional own resources and an obligation to pay such resources, whereas it is apparent, inter alia, from paragraphs 24 and 25 of that order that Member States are required to establish such resources as soon as the conditions provided for in Decision 2007/436 and Regulation No 1150/2000 are fulfilled.

36 On the other hand, Romania argues that the conditional payment mechanism is not applicable in the present case. That mechanism was, in fact, developed in relation to traditional own resources. In any event, it assumes the existence of an obligation which the authorities of a Member State can be exempted from and relates only to situations where there is a dispute concerning the justification of the debt relied on. In that context, Romania insists on the risk that a Member State may have to pay default interest in the event of non-payment and stresses the risk that a conditional payment may become final if the substance of the dispute is not decided in an action for annulment or where the Commission does not bring an action for failure to fulfil obligations.

37 The Commission disputes the merits of all those arguments.

38 In response to Romania's first ground of appeal, the Commission contends that, having regard to the content of the letter at issue, in which Romania was considered to be financially liable for the loss of traditional own resources, the General Court rightly examined the competences of the Commission in the light of the rules on traditional own resources. It examined the content of that letter and the context of the relevant legislative framework having regard only to the admissibility of the action,

without examining the substance of the case. Neither the content of that letter, by which the Commission, it is claimed, merely mentioned certain facts and set out its opinion on their consequences for own resources by requesting the Romanian authorities to make available a certain amount, nor the powers conferred on the Commission would justify the conclusion that that letter produced binding legal effects. Finally, contrary to what Romania argues, the General Court did not 'classify the nature of the obligations attributed to Romania by the letter [at issue]' since it clearly held that that letter constituted merely a request addressed to that Member State and was not intended to produce legal effects.

39 In response to the second ground of appeal, the Commission observes, in essence, that having regard to its lack of competence in respect of traditional own resources, and after an analysis of both the content and context of the letter at issue, the General Court was right to find that that letter did not fall within the category of actionable measures. The General Court did not classify the amount due as traditional own resources and the obligations which had allegedly been imposed on Romania by the letter at issue; nor did it examine whether that Member State was required to make available the amount at issue and it did not, as a consequence, assess the substance of the case.

40 The lack of competence to adopt binding decisions regarding own resources is also confirmed, it is contended, by the Council's rejection of a proposal to amend Article 17 of Regulation No 1150/2000, which would have conferred on the Commission the power to examine the case and to adopt a duly reasoned decision if the amount of duty determined was greater than EUR 50 000.

41 Moreover, even if it were assumed — quod non — that the letter at issue did not relate to the provision of own resources, it would not produce binding legal effects due to the lack of a legal basis to that effect.

42 With regard to paragraph 29 of the order under appeal, the Commission is of the opinion that this paragraph must be understood, in the light of the settled case-law referred to by the General Court in paragraphs 24 to 28 of that order, to mean that, pursuant to Article 17(2) of Regulation No 1150/2000, Member States have the right to declare certain amounts of established entitlements irrecoverable. Article 17 of that regulation provides for a mechanism for the exchange of information between Member States and the Commission where it is impossible to recover own resources. Whereas the Commission can submit observations to a Member State, it has no power to adopt binding measures establishing the amounts of own resources due, it being specified that, in the event of a divergence of views between the Commission and a Member State, it is for the Court to decide the question in the context of an action for failure to fulfil obligations.

43 As regards effective judicial protection, the risk that the State concerned will have to pay default interest and the conditional payment, the Commission considers, in essence, that paragraphs 54 to 56 of the order under appeal are not vitiated by any error of law. In particular, the Commission notes that the option of making a conditional payment enables a Member State to eliminate the risk of paying default interest, that Member States can recover the funds made available under the conditional payment, having regard to Article 2(4) and Article 8 of Regulation No 1150/2000 and that conditional payment is not intended to guarantee the right to effective judicial protection. Furthermore, the risk of incurring default interest is, it is contended, associated with the failure to make own resources available to it and not to the letter at issue containing a request to that effect. The obligation to pay default interest, it is contended, follows directly from Article 11 of Regulation No 1150/2000.

44 The Czech Republic, the Federal Republic of Germany and the Slovak Republic are of the opinion that the second ground of appeal should be upheld. These Member States have not submitted any arguments concerning the first ground of appeal raised by Romania.

Findings of the Court

45 By its two grounds of appeal, which it is appropriate to examine together, Romania criticises the General Court, in essence, for having made an assessment of whether the letter at issue was actionable having regard solely to the powers of the Commission under Decision 2007/436 and Regulation No 1150/2000, even though that decision and that regulation were inapplicable, and without reserving the examination of the merits of the Commission's plea of inadmissibility for the final judgment.

46 In the first place, it must be recalled that, according to the case-law, it is for the General Court to assess whether the proper administration of justice justifies ruling immediately on a plea of inadmissibility or reserving it for examination in the final judgment (see, to that effect, order of 27 February 1991, *Bocos Viciano* v *Commission*, C-126/90 P, EU:C:1991:83, paragraph 6). Reserving a plea for the final judgment is not required where the assessment of that plea does not depend on the assessment of the substantive pleas made by the applicant (judgment of 12 September 2006, *Reynolds Tobacco and Others* v *Commission*, C-131/03 P, EU:C:2006:541, paragraph 95).

47 In the second place, according to consistent case-law, any provisions adopted by the institutions of the European Union, whatever their form, which are intended to have binding legal effects, are regarded as 'actionable measures', within the meaning of Article 263 TFEU (judgment of 13 February 2014, *Hungary* v *Commission*, C-31/13 P, EU:C:2014:70, paragraph 54 and the case-law cited).

48 To ascertain whether or not a contested measure produces such effects, it is necessary to look to its substance (judgment of 22 June 2000, *Netherlands* v *Commission*, C-147/96, EU:C:2000:335, paragraph 27 and the case-law cited). Those effects must be assessed in accordance with objective criteria, such as the contents of that measure, taking into account, as appropriate, the context in which it was adopted and the powers of the institution which adopted the measure (judgment of 13 February 2014, *Hungary* v *Commission*, C-31/13 P, EU:C:2014:70, paragraph 55 and the case-law cited).

49 In the order under appeal, the General Court ruled on the Commission's plea of inadmissibility without going to the substance of the case. As explained in paragraphs 21 and 22 of the present judgment, following an examination of the division of powers between the Commission and the Member States regarding the determination of own resources under the provisions of Decision 2007/436 and Regulation No 1150/2000, the General Court concluded, in paragraph 37 of that order that, in the absence of a provision empowering the Commission to adopt a measure requiring a Member State to make own resources available, the letter at issue should be regarded as being for information purposes only and as a simple invitation addressed to Romania.

50 In that regard, the General Court pointed out that an opinion issued by the Commission, such as that contained in that letter, does not bind the national authorities and that it cannot, any more than a reasoned opinion in the pre-litigation stage of an infringement procedure, constitute an actionable measure.

51 First, it is indeed the case that the General Court based its assessment of the actionable nature of the letter at issue, essentially, on an examination of the powers of the Commission on the basis of the provisions of Decision 2007/436 and of Regulation No 1150/2000. In so doing, contrary to the allegations of Romania, it did not, however, assess the nature of the funds claimed or treat those funds as 'own resources'.

52 The General Court limited itself, in the order under appeal, to an abstract explanation of the obligations and powers of the Member States and the Commission respectively in the area of the Union's own resources. Since, as is apparent from paragraphs 1 to 7 of the order under appeal, the Commission had sent the letter at issue in the context of that area, the General Court could, without

committing errors of law, assess those obligations and powers in the light of the regulations concerning own resources, for the sole purpose of examining the actionable nature of that letter and without prejudice to the substantive question of its applicability to the circumstances of the case and the classification of the amount in question.

53 Secondly, it must be held that, in those circumstances, the General Court was also right, in paragraph 51 of the order under appeal, to reject as ineffective the arguments raised by Romania and based on the merits of the content of the letter at issue, without reserving examination of the plea of inadmissibility to the final judgment.

54 Having regard to the considerations set out in paragraphs 59 to 66 of the present judgment and, in particular, to the context in which the letter at issue was sent, those arguments of Romania which tended to show that the letter at issue imposed a new obligation on that Member State, and which was not provided for in the rules regarding own resources, must be rejected as ineffective.

55 Finally, however, it should be pointed out that, as Romania rightly points out, the General Court merely examined the powers of the institution which adopted the measure, without carrying out an analysis of the content of the letter at issue, contrary to the requirements of the case-law referred to in paragraph 48 of the present judgment.

56 Consequently, the General Court erred in law.

57 However, if the grounds of a decision of the General Court disclose an infringement of EU law, but its operative part is shown to be well founded on other legal grounds, such an infringement is not capable of bringing about the annulment of that decision, and a substitution of grounds must be made (see, to that effect, judgments of 18 July 2013, *Commission and Others* v *Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 150, and of 5 March 2015, *Commission and Others* v *Versalis and Others*, C-93/13 P and C-123/13 P, EU:C:2015:150, paragraph 102 and the case-law cited).

58 Such is the position in the present case.

59 Having regard to the case-law referred to in paragraphs 47 and 48 of the present judgment, it is apparent from an analysis of the content of the letter at issue, taking into account the context of its dispatch and the powers of the Commission, that that letter cannot be regarded as an ‘actionable measure’.

60 First, as regards the content of that letter, it should be pointed out that, after recalling the facts at issue, the director expressed the view of that Directorate that Romania was considered liable for the loss of own resources incurred in Germany. It took the view that Romania had to compensate for these losses and that, in the event of refusal to make available the amount in question, the latter would infringe the principle of sincere cooperation and jeopardise the proper functioning of the own resources system. In the light of those factors, the Commission requested Romania to make available to it the amount corresponding to the losses in question and specified that failure to pay within the period laid down in that letter would give rise to the payment of default interest pursuant to Article 11 of Regulation No 1150/2000.

61 It is apparent from that recollection of the facts that, by the letter at issue, the Commission, in essence, explained to Romania its opinion as to the legal consequences of the losses of own resources incurred in Germany and the obligations which, according to the Commission, would result for Romania. In the light of that opinion, it requested that Member State to make available the amount in question.

62 It must be held that neither the statement of a simple legal opinion, nor a simple request to make available the amount in question can be capable of producing legal effects.

63 It cannot be inferred from the mere fact that the letter at issue lays down a time limit for making that amount available, whilst indicating that a delay may give rise to default interest, in view of the overall content of that letter, that the Commission intended, rather than expressing its opinion, to adopt a measure which has binding legal effects or, therefore, conferring on that letter the nature of an actionable measure.

64 Secondly, as regards the context, it should be pointed out that, at the hearing, the Commission, without being contradicted on this point either by Romania or by the intervening Member States, observed that the dispatch of letters such as the letter at issue was a common practice of that institution intended to initiate informal discussions on a Member State's compliance with EU law, which could be followed by the initiation of the pre-litigation phase of an infringement procedure. That context is reflected in the letter at issue, which clearly sets out the reasons why the Commission considers that Romania could be in breach of EU law. Furthermore, it is clear from the application lodged by Romania before the General Court that that context was known to Romania and that the intention of the Commission to enter into informal contacts was well understood.

65 It is clear from the case-law that, in view of the Commission's discretion to initiate infringement proceedings, a reasoned opinion is not capable of producing binding legal effects (see, to that effect, judgment of 29 September 1998, *Commission* v *Germany*, C-191/95, EU:C:1998:441, paragraph 46 and the case-law cited). The same applies a fortiori to letters which, like the letter at issue, can be regarded as simple informal contacts prior to the opening of the pre-litigation phase of an action for failure to fulfil obligations.

66 Thirdly, as regards the powers of the Commission, it is common ground between the parties that, in any event, that institution has no power to adopt binding acts requiring a Member State to make available an amount such as that at issue in the present case. On the one hand, even assuming that, as Romania points out, that amount cannot be treated as 'own resources', the Commission stated before the Court that no legal basis for adopting a binding measure could be determined. On the other hand, even assuming that that amount must be regarded as 'own resources', it must be noted that the Commission's argument that no decision-making power has been conferred on it either by Decision 2007/436 or by Regulation No 1150/2000 was not contradicted by Romania.

67 In the light of all the foregoing considerations, it must be concluded that the letter at issue does not constitute an 'actionable measure' within the meaning of Article 263 TFEU, without it being necessary to rule on the substantive question concerning the applicability of Decision 2007/436 and Regulation No 1150/2000 and the legal classification of the amount claimed.

68 That conclusion is not called into question by the arguments of Romania based on the right to effective judicial protection, the situation of legal uncertainty and the financial risk borne by that Member State. Although the requirement as to mandatory legal effects must be interpreted in the light of the right to effective judicial protection as guaranteed in the first paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, it is sufficient to note that that right is not intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to the admissibility of direct actions brought before the Courts of the European Union, as is apparent also from the Explanation relating to that Article 47, which must, in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, be taken into consideration when interpreting that Charter (judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 97 and the case-law cited). Therefore, the interpretation of the concept of 'actionable measure' in the light of the abovementioned Article 47 cannot have the effect of setting aside that condition without going beyond the jurisdiction conferred by the Treaty on the EU courts (see, by analogy, judgment of 12 September 2006, *Reynolds Tobacco and Others* v *Commission*, C-131/03 P, EU:C:2006:541, paragraph 81, and order of 14 May 2012, *Sepracor Pharmaceuticals (Ireland)* v *Commission*, C-477/11 P, not published, EU:C:2012:292, paragraph 54).

69 Accordingly, the operative part of the order under appeal, in so far as it dismisses the action brought by Romania as inadmissible, is well founded, with the result that the first and second grounds of appeal must be rejected, without there being any need to assess the arguments relating to an alleged contradiction in the grounds set out in paragraphs 24 and 25 and paragraph 29 of the order under appeal and the applicability of the conditional payment mechanism. Accordingly, the appeal must be dismissed in its entirety.

Costs

70 Under Article 138(1) of the Rules of Procedure of the Court of Justice, which applies to appeal proceedings pursuant to Article 184(1) of those rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

71 Since the Commission has applied for costs to be awarded against Romania and Romania has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the Commission.

72 Under Article 140(1) of the Rules of Procedure, which is also applicable to appeal proceedings by virtue of Article 184(1) thereof, Member States and institutions which intervene in the proceedings are to bear their own costs.

73 Accordingly, the Czech Republic, the Federal Republic of Germany and the Slovak Republic are to bear their own costs.

On those grounds, the Court (Fourth Chamber) hereby:

1. **Dismisses the appeal;**

2. **Orders Romania to bear its own costs and pay those incurred by the European Commission;**

3. **Orders the Czech Republic, the Federal Republic of Germany and the Slovak Republic to bear their own costs.**

[Signatures]