



Reports of Cases

ORDER OF THE VICE-PRESIDENT OF THE COURT

17 August 2022 *

(Appeal – Intervention – State aid – Aid scheme implemented by the Kingdom of Belgium – Application to intervene submitted after the expiry of the six-week time limit provided for in Article 143(1) of the Rules of Procedure of the General Court – Admissibility – Articles 40 and 45 of the Statute of the Court of Justice of the European Union – Article 47 of the Charter of Fundamental Rights of the European Union)

In Case C-4/22 P(I),

APPEAL under the first paragraph of Article 57 of the Statute of the Court of Justice of the European Union, brought on 3 January 2022,

St. Jude Medical Coordination Center BV, established in Zaventem (Belgium), represented by É. Bruc and F. Louis, avocats,

appellant,

the other parties to the proceedings being:

Magnetrol International NV, established in Zele (Belgium),

applicant at first instance,

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

defendant at first instance,

THE VICE-PRESIDENT OF THE COURT

after hearing the Advocate General, M. Szpunar,

makes the following

Order

- 1 By its appeal, St. Jude Medical Coordination Center BV seeks to have set aside the order of the President of the Second Chamber of the General Court of the European Union of 21 December 2021, *Magnetrol International v Commission* (T-263/16 RENV, not published, ‘the

* Language of the case: English.

order under appeal', EU:T:2021:947), by which she dismissed its application to intervene in support of the form of order sought by Magnetrol International NV, applicant at first instance in Case T-263/16 RENV.

Facts

- 2 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 order under appeal

- 3 By applications lodged at the Registry of the General Court on 22 March and 25 May 2016, the Kingdom of Belgium and Magnetrol International brought actions for the annulment of the Commission decision, registered as Cases T-131/16 and T-263/16, respectively.
- 4 By application lodged at the Registry of the General Court on 29 July 2016, St. Jude Medical Coordination Center brought an action for the annulment of that decision, registered as Case T-420/16.
- 5 By letter of 20 February 2018, the Registrar of the General Court informed it that the President of the Chamber of the General Court seised of the case had decided to stay the proceedings in Case T-420/16 until the outcome of the proceedings in Cases T-131/16 and T-263/16.
- 6 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.
- 7 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.
- 8 On 24 April 2019, the Commission lodged an appeal against that judgment. That appeal was registered as Case C-337/19 P.
- 9 By judgment of 16 September 2021, *Commission v Belgium and Magnetrol International* (C-337/19 P, EU:C:2021:741), the Court of Justice:
 - 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.
- 10 By document lodged at the Registry of the General Court on 8 October 2021, St. Jude Medical Coordination Center applied to intervene in Case T-263/16 RENV in support of the form of order sought by Magnetrol International.
- 11 By the order under appeal, the President of the Second Chamber of the General Court dismissed that application to intervene.
- 12 In that regard, she recalled, in paragraph 2 of that order, that, in accordance with Article 143(1) of the Rules of Procedure of the General Court, an application to intervene must be submitted within six weeks of the publication of the notice referred to in Article 79 of those rules.
- 13 She noted, in paragraph 3 of that order, that the notice indicating the date of filing of the application initiating proceedings having been published in the *Official Journal of the European Union* on 1 August 2016, the application to intervene had been made after the expiry of that time limit, as extended on the account of distance. Accordingly, in paragraph 4 of that order, she dismissed that application.

Forms of order sought by the parties

- 14 By its appeal, St. Jude Medical Coordination Center claims that the Court should:
- set aside the order under appeal;
 - grant its application to intervene in Case T-263/16 RENV in support of the form of order sought by Magnetrol International and
 - order the General Court to provide it with a copy of every procedural document served on the parties and reopen the written procedure or invite it to submit written observations by way of a measure of organisation of procedure.
- 15 The Commission contends that the Court should:
- dismiss the appeal;
 - in the alternative, should the Court set aside the order under appeal, dismiss St. Jude Medical Coordination Center’s application to intervene in Case T-263/16 RENV, and
 - order St. Jude Medical Coordination Center to pay the costs.

The appeal

Arguments

- 16 In support of its appeal, the appellant puts forward two grounds, the first alleging failure to adjudicate by the General Court and failure to state reasons in the order under appeal, the second alleging violation of its right to intervene in the proceedings at first instance.
- 17 By the second part of its first ground, which it is appropriate to examine first, it submits that the order under appeal does not contain any reasoning that replies to the pleas and arguments put forward in its application to intervene. In particular, the President of the Second Chamber of the General Court did not rule on the appellant's arguments based on Articles 40 and 45 of the Statute of the Court of Justice of the European Union, on Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') and on the principle of the sound administration of justice.
- 18 The Commission contends that the order under appeal is sufficiently reasoned, the President of the Second Chamber of the General Court having clearly explained that the appellant's application to intervene in Case T-263/16 RENV had been submitted out of time.

Assessment

- 19 It should be recalled, first, that, in the context of the appeal, the purpose of review by the Court of Justice is, inter alia, to consider whether the General Court addressed, to the requisite legal standard, all the arguments raised by the appellant and, second, that the ground of appeal alleging that the General Court failed to respond to arguments relied on at first instance amounts, essentially, to pleading a breach of the obligation to state reasons which derives from Article 36 of the Statute of the Court of Justice of the European Union, applicable to the General Court by virtue of the first paragraph of Article 53 of that statute, and from Article 117 of the Rules of Procedure of the General Court (order of the Vice-President of the Court of 17 May 2022, *Shanghai Panati v EUIPO*, C-103/22 P(I), not published, EU:C:2022:399, paragraph 27 and the case-law cited).
- 20 That obligation to state reasons does not require the General Court to provide an account which follows exhaustively and one by one all the arguments put forward by the parties to the case and the reasoning may therefore be implicit, on condition that it enables the persons concerned to know why the General Court has not upheld their arguments and provides the Court of Justice with sufficient material for it to exercise its power of review (order of the Vice-President of the Court of 17 May 2022, *Shanghai Panati v EUIPO*, C-103/22 P(I), not published, EU:C:2022:399, paragraph 28 and the case-law cited).
- 21 In the present case, the President of the Second Chamber of the General Court merely found, in the order under appeal, that the application to intervene had been submitted after the expiry of the time limit provided for in Article 143(1) of the Rules of Procedure of the General Court.
- 22 Thus, that order does not contain any reasoning to justify rejecting the arguments put forward by the appellant at first instance according to which, first, that time limit had to be disapplied in the present case by virtue of Article 40 of the Statute of the Court of Justice of the European Union

and Article 47 of the Charter and, second, the submission of the application to intervene after the expiry of that time limit was due to unforeseeable circumstances or *force majeure* or to an excusable error.

- 23 Accordingly, the order under appeal is vitiated by a failure to state reasons and must, by way of consequence, be set aside.

The application to intervene submitted before the General Court

- 24 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, after quashing a decision of the General Court, refer the case back to the General Court for judgment or, where the state of the proceedings so permits, itself give final judgment in the matter.
- 25 In this case, it is appropriate for the Court to give final judgment on the appellant's application to intervene.
- 26 It is common ground that that application was submitted after the expiry of the six-week time limit provided for in Article 143(1) of the Rules of Procedure of the General Court.
- 27 The appellant nevertheless claims that that application had to be deemed admissible on the basis of three grounds, the first based on Article 40 of the Statute of the Court of Justice of the European Union and Article 47 of the Charter, the second on Article 45 of that statute, and the third on the right to an effective remedy, the rights of the defence and the principles of equality of arms and the sound administration of justice.

First ground: Article 40 of the Statute of the Court of Justice of the European Union and Article 47 of the Charter

Arguments

- 28 St. Jude Medical Coordination Center is of the view that the Rules of Procedure of the General Court do not stipulate any rule governing the possible intervention, in a 'pilot' case, of the applicant in a case stayed pending the outcome of that 'pilot' case, where that 'pilot' case is referred back to the General Court by the Court of Justice.
- 29 In that context, the submission by such a party of an application to intervene in the same 'pilot' case when it has been referred back by the Court of Justice to the General Court should be allowed. Otherwise, that party would be faced with a denial of justice, in breach of Article 40 of the Statute of the Court of Justice of the European Union, which does not prescribe any time limit, and Article 47 of the Charter.
- 30 The proposed solution is, moreover, also consistent with Article 71(4) of the Rules of Procedure of the General Court, which provides that, from the date of the resumption of proceedings following a stay, any suspended procedural time limits are to be replaced by new time limits and time begins to run from the date of that resumption.

- 31 In addition, an analogy should be made with Article 129(4) of the Rules of Procedure of the Court of Justice, which permits the admission of an application to intervene which is made after the expiry of the time limit prescribed in Article 130 of those Rules of Procedure but before the decision to open the oral part of the procedure.
- 32 Consequently, the General Court should have reopened the written procedure or, pursuant to Article 89(3)(b) of the Rules of Procedure of the General Court, invited the appellant to make written submissions by way of a measure of organisation of procedure.

Assessment

- 33 It should be noted at the outset that, contrary to what the appellant claims, the Rules of Procedure of the General Court do contain rules applicable to the intervention in a ‘pilot’ case of the applicant in a case stayed pending the outcome of that ‘pilot’ case, where that ‘pilot’ case is referred back to the General Court by the Court of Justice.
- 34 First, although Articles 142 to 145 of the Rules of Procedure of the General Court 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, they do, however, set out the rules for submitting applications to intervene before the General Court and for examining them (see, to that effect, order of 1 August 2022, *Atlas Copco Airpower and Atlas Copco v Commission*, C-31/22 P(I), EU:C:2022:620, paragraph 69).
- 35 In that context, it is important to note that the rule laid down in Article 143(1) of those Rules of Procedure, according to which 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 filing of the application initiating proceedings in the case concerned, applies when a case is referred back to the General Court by the Court of Justice (see, to that effect, order of 1 August 2022, *Atlas Copco Airpower and Atlas Copco v Commission*, C-31/22 P(I), EU:C:2022:620, paragraph 40).
- 36 Second, Article 71 of those Rules of Procedure defines the length and effects of a stay of proceedings, without conferring on the applicant in a stayed case any specific procedural rights in other cases.
- 37 It follows that such a party is subject, when it submits an application to intervene in another case, to the rules laid down in Articles 142 to 145 of the same Rules of Procedure, including the rule set out in Article 143(1) thereof.
- 38 The fact, relied on by the appellant, that Article 40 of the Statute of the Court of Justice of the European Union does not prescribe a time limit within which an application to intervene must be made cannot lead to the disapplication of Article 143(1) of the Rules of Procedure of the General Court, since it is apparent from the second paragraph of Article 53 of that statute that the procedure before the General Court is to be supplemented, as may be necessary, by its Rules of Procedure.

- 39 The strict application of the time limit provided for in that Article 143(1) also serves the requirements of legal certainty and the need to avoid discrimination or arbitrary treatment in the administration of justice (see, to that effect, order of the Vice-President of the Court of 5 July 2018, *Müller and Others v QH*, C-187/18 P(I), not published, EU:C:2018:543, paragraph 20 and the case-law cited).
- 40 Therefore, since the appellant submits, in essence, that the dismissal of its application to intervene violates Article 47 of the Charter, it should be noted that, in accordance with the settled case-law of the Court, the right to be heard and the right to effective judicial protection are in no way undermined by the strict application of EU rules concerning procedural time limits (order of the Vice-President of the Court of 17 May 2022, *Shanghai Panati v EUIPO*, C-103/22 P(I), not published, EU:C:2022:399, paragraph 56 and the case-law cited).
- 41 Moreover, the rule established in Article 71(4) of the Rules of Procedure of the General Court, according to which, from the date of the resumption of proceedings following a stay, any suspended procedural time limits are to be replaced by new time limits and time begins to run from the date of that resumption, is irrelevant in the present case, since that rule applies to the procedural time limits relating to stayed cases and not to the procedural time limits relating to ‘pilot’ cases.
- 42 The appellant’s argument that Article 129(4) of the Rules of Procedure of the Court of Justice should be applied by analogy, which provides for the possibility of admitting an application to intervene submitted after the expiry of the six-week time limit provided for in Article 130(1) of those rules but before the decision to open the oral part of the procedure provided for in Article 60(4) thereof, must also be rejected.
- 43 Such a possibility was provided for in Article 115(1), read in conjunction with Article 116(6), of the Rules of Procedure of the General Court of 2 May 1991, as amended on 19 June 2013. However, Article 143 of the new Rules of Procedure of the General Court, which is worded in clear and unconditional terms, specifically did not take up that possibility, so that it cannot be applied by analogy (see, to that effect, order of the Vice-President of the Court of 5 July 2018, *Müller and Others v QH*, C-187/18 P(I), not published, EU:C:2018:543, paragraph 27).
- 44 In the light of those factors, there is no need to reopen the written procedure or to order a measure of organisation of procedure under Article 89(3)(b) of the Rules of Procedure of the General Court, since that provision in any event allows the parties to the proceedings to be invited to make submissions, not third parties.
- 45 Consequently, the first ground relied on by the appellant is not such as to establish that its application to intervene must be admitted.

Second ground: Article 45 of the Statute of the Court of Justice of the European Union

Arguments

- 46 St. Jude Medical Coordination Center submits that, should the Court of Justice find that Article 143(1) of the Rules of Procedure of the General Court is applicable in the present case, its application to intervene must nevertheless be regarded as admissible under Article 45 of the Statute of the Court of Justice of the European Union.

- 47 On the one hand, it was virtually impossible for it to submit that application within the time limit laid down by the Rules of Procedure of the General Court, since it was unforeseeable that Case T-420/16 would be stayed and that the decision to stay proceedings would be notified to it after the expiry of that time limit.
- 48 On the other hand, if St. Jude Medical Coordination Center were to be regarded as having erred in not submitting an application to intervene before the expiry of that period, it would be an excusable error given the circumstances surrounding the stay of Case T-420/16 and the absence of procedural rules governing the specific situation in which it found itself.

Assessment

- 49 In the first place, it is settled case-law of the Court that no derogation from the application of the European Union's rules on procedural time limits may be made save where the circumstances are quite exceptional, in the sense of being unforeseeable or amounting to *force majeure*, in accordance with the second paragraph of Article 45 of the Statute of the Court of Justice of the European Union (see, to that effect, judgment of 14 December 2016, *SV Capital v EBA*, C-577/15 P, EU:C:2016:947, paragraph 56, and order of the Vice-President of the Court of 5 July 2018, *Müller and Others v QH*, C-187/18 P(I), not published, EU:C:2018:543, paragraph 21).
- 50 The concept of *force majeure* or unforeseeable circumstances, which corresponds to exceptional circumstances, contains both an objective element relating to abnormal circumstances extraneous to the person concerned, and a subjective element involving the obligation of that person concerned to guard against the consequences of the abnormal event by taking appropriate steps without making unreasonable sacrifices (order of the Vice-President of the Court of 5 July 2018, *Müller and Others v QH*, C-187/18 P(I), not published, EU:C:2018:543, paragraph 39 and the case-law cited).
- 51 In the present case, it is important to recall that Article 69(d) of the Rules of Procedure of the General Court provides that proceedings may be stayed in other particular cases where the proper administration of justice so requires.
- 52 Since the designation of a 'pilot' case stems precisely from the desire to ensure the proper administration of justice, the decision to stay proceedings in Case T-420/16 must be held to constitute an application of that Article 69(d).
- 53 Consequently, that decision, although beyond the control of the appellant, cannot be regarded as an abnormal circumstance (see, by analogy, order of the Vice-President of the Court of 5 July 2018, *Müller and Others v QH*, C-187/18 P(I), not published, EU:C:2018:543, paragraph 41).
- 54 Therefore, it would appear, without it being necessary to determine whether the appellant was in a position to guard against the consequences of the said decision, that it has not established the existence of *force majeure* or unforeseeable circumstances.
- 55 In the second place, while derogation from the application of the European Union's rules on procedural time limits may also be made in the event of an excusable error on the part of a party, that concept, which must be strictly construed, can concern only exceptional circumstances in which, in particular, the conduct of the institution concerned has been, either alone or to a decisive extent, such as to give rise to a pardonable confusion in the mind of a party acting in good faith and exercising all the diligence required of a normally experienced person (see, to that

effect, judgment of 14 December 2016, *SV Capital v EBA*, C-577/15 P, EU:C:2016:947, paragraph 59, and order of the Vice-President of the Court of 5 July 2018, *Müller and Others v QH*, C-187/18 P(I), not published, EU:C:2018:543, paragraph 42).

- 56 In the present case, although the appellant maintains that the Rules of Procedure of the General Court do not contain rules directly applicable to its situation, it is apparent from the examination of the first ground that that situation is governed by Article 143(1) of those Rules of Procedure.
- 57 However, that provision is worded in clear and unconditional terms, which leave no room for difficulty of interpretation.
- 58 Furthermore, the appellant has in no way established the existence of conduct on the part of the General Court such as to give rise to any confusion concerning the assessment of the time limit provided for in that provision.
- 59 In those circumstances, the appellant has not demonstrated that it committed an excusable error.
- 60 Consequently, the second ground relied on by the appellant is not such as to establish that its application to intervene must be admitted.

Third ground: the right to an effective remedy, the rights of the defence and the principles of equality of arms and the sound administration of justice

Arguments

- 61 St. Jude Medical Coordination Center submits that it is clear from the case-law of the Court that a judgment rendered in a ‘pilot’ case is liable to have an inordinate impact on parallel cases seeking the annulment of the same act. The parties in such parallel cases therefore have an interest in intervening in the ‘pilot’ case, in accordance with Article 40 of the Statute of the Court of Justice of the European Union.
- 62 Such an approach would also be required by virtue of the principle of equality of arms, which is an integral part of the principle of effective judicial protection.
- 63 That solution should be applied to St. Jude Medical Coordination Center, particularly as the latter would be able to present crucial facts and legal arguments in support of the form of order sought by Magnetrol International. Indeed, one of the main pleas put forward in Case T-420/16 was not relied on in Cases T-131/16 and T-263/16. The appellant would thus be deprived of any genuine possibility of asserting those pleas if it were not permitted to become party to the proceedings in Case T-263/16 RENV.

Assessment

- 64 All the arguments relating to the third ground relied on by St. Jude Medical Coordination Center are aimed, in essence, at demonstrating that it had a clear interest in intervening in Case T-263/16 RENV and that it would not have been possible to deny it that interest without breaching its right to an effective remedy, its rights of defence and the principles of equality of arms and the sound administration of justice.

- 65 However, it is apparent from paragraphs 44, 49 and 55 above that an application to intervene before the General Court must be submitted within the time limit provided for in Article 143(1) of its Rules of Procedure, except where the application of the rule laid down in that provision must be disregarded because of unforeseeable circumstances or *force majeure* or the commission of an excusable error.
- 66 Since it is common ground that the application to intervene was not submitted within that time limit and since it follows from the examination of St. Jude Medical Coordination Center's arguments relating to the second ground on which it relies that it has not established the existence of unforeseeable circumstances or *force majeure* or of an excusable error, the fact that an application to intervene submitted in due time by the appellant ought, in view of the latter's interest in intervening, to have been granted – assuming it were established – would not be such as to establish the admissibility of the application to intervene submitted by the appellant before the General Court.
- 67 Consequently, the third ground relied on by the appellant is not such as to establish that its application to intervene must be admitted.
- 68 Since none of the arguments put forward by St. Jude Medical Coordination Center justifies granting its application to intervene after the expiry of the six-week time limit provided for in Article 143(1) of the Rules of Procedure of the General Court, that application must be dismissed as inadmissible.

Costs

- 69 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.
- 70 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.
- 71 So far as concerns the costs relating to the appeal proceedings, although the Commission has been unsuccessful, St. Jude Medical Coordination Center has not applied for costs. Accordingly, each of the parties shall bear its own costs relating to the present appeal proceedings.
- 72 With regard to the costs relating to the proceedings at first instance, it should be noted that the order under appeal was adopted without the application to intervene having been notified to the parties in Case T-263/16 RENV, which therefore did not bear any costs relating to those proceedings. Accordingly, the appellant, whose application to intervene has been dismissed, must be ordered to bear its own costs relating to those proceedings.

On those grounds, the Vice-President of the Court hereby orders:

1. **The order of the President of the Second Chamber of the General Court of the European Union of 21 December 2021, *Magnetrol International v Commission* (T-263/16 RENV, not published, EU:T:2021:947), is set aside.**

- 2. The application to intervene in Case T-263/16 RENV submitted by St. Jude Medical Coordination Center BV is dismissed.**
- 3. St. Jude Medical Coordination Center BV and the European Commission shall bear their own costs relating to the appeal proceedings.**
- 4. St. Jude Medical Coordination Center BV shall bear its own costs relating to the proceedings at first instance.**

Luxembourg, 17 August 2022.

A. Calot Escobar
Registrar

L. Bay Larsen
Vice-President