



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

7 November 2018*

(Appeal — State aid — Action for annulment — Admissibility — Aid granted by the Portuguese authorities for the resolution of the financial institution Banco Espírito Santo SA — Creation and capitalisation of a Bridge Bank — Decision of the European Commission declaring the aid compatible with the internal market — Interest in bringing proceedings — Action before the national courts seeking annulment of the decision to put Banco Espírito Santo into resolution)

In Case C-544/17 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 18 September 2017,

BPC Lux 2 Sàrl, established in Senningerberg (Luxembourg), and the other appellants whose names are set out in the annex to the appeal, represented by J. Webber and M. Steenson, Solicitors, and by B. Woolgar, Barrister, and K. Bacon QC,

appellants,

the other parties to the proceedings being:

European Commission, represented by L. Flynn and P.-J. Loewenthal, acting as Agents,

defendant at first instance,

Portuguese Republic,

intervener at first instance,

THE COURT (First Chamber),

composed of R. Silva de Lapuerta, Vice-President, acting as President of the First Chamber, J.-C. Bonichot, E. Regan (Rapporteur), C.G. Fernlund and S. Rodin, Judges,

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: English.

Judgment

- 1 By their appeal, the appellants seek to have set aside the order of the General Court of the European Union of 19 July 2017, *BPC Lux 2 and Others v Commission* (T-812/14, not published, ‘the order under appeal’, EU:T:2017:560), by which the General Court dismissed as inadmissible their action seeking the annulment of Commission Decision C(2014) 5682 final of 3 August 2014 on State Aid SA.39250 (2014/N) — Portugal — Resolution of Banco Espírito Santo (‘the contested decision’).

Background to the dispute and the contested decision

- 2 The appellants are subordinated creditors of Banco Espírito Santo SA (‘BES’), holding Lower Tier 2 Bonds.
- 3 In May 2014, an audit carried out by the Banco de Portugal (Bank of Portugal) of the Espírito Santo International SA Group had concluded that the latter was in a serious financial condition, and that this was likely to impact negatively on the solvency of BES, of which that group was the largest shareholder.
- 4 On 30 July 2014, BES published its results for the first half of 2014, which revealed heavy losses. This resulted in a significant fall in deposits during July 2014.
- 5 Against that background, the Portuguese authorities decided to put BES into resolution, which entailed the creation of a temporary credit institution, the ‘Bridge Bank’, to which the sound business activities of BES were transferred. After those assets and liabilities had been transferred to the Bridge Bank, the other residual assets and liabilities remained within BES, which became known as the ‘Bad Bank’.
- 6 On 3 August 2014, the Portuguese authorities notified the European Commission of a proposal to grant EUR 4 899 million of State aid via the Fundo de Resolução (Resolution Fund, Portugal), which was intended to provide the Bridge Bank with initial share capital. Alongside that notification, the Portuguese authorities forwarded to the Commission two reports by the Bank of Portugal, namely, first, an assessment of the options envisaged for the resolution of BES, which concluded that the creation of a Bridge Bank was the only means of maintaining financial stability in the Portuguese Republic, and, second, a description of the procedure to be followed for the resolution of BES. Following that latter report, the Portuguese authorities gave the Commission commitments in respect of both the Bridge Bank and the Bad Bank concerning the orderly winding-down of those banks. The commitments common to both those establishments related to the management of existing assets, the imposition of a salary cap and a prohibition on the use of State aid resources for the acquisition of holdings, the payment of coupons or dividends and advertising.
- 7 On the same day, at the end of the preliminary examination stage, pursuant to Article 108(3) TFEU, the Commission adopted the contested decision, by which it concluded that the notified measure, namely the injection of EUR 4 899 million capital by the Portuguese authorities into the Bridge Bank, together with commitments given by those authorities, constituted State aid that was compatible with the internal market under Article 107(3)(b) TFEU (‘the State aid at issue’).
- 8 Under the commitments given by the Portuguese authorities, it was stated, inter alia, that no claim of shareholders and holders of subordinated debt or any hybrid instruments could be transferred to the Bridge Bank. It was also stated that the liquidation of BES should take place no later than 31 December 2016.

The proceedings before the General Court and the order under appeal

- 9 By application lodged at the Registry of the General Court on 12 December 2014, the appellants brought an action seeking annulment of the contested decision.
- 10 On 7 December 2016, the General Court put a question to the appellants as to whether they had a legal interest in bringing proceedings for annulment of the contested decision.
- 11 On 23 January 2017, the appellants replied to the question put by the General Court.
- 12 By the order under appeal, the General Court dismissed the action as being inadmissible after finding, of its own motion, that the appellants did not have an interest in bringing proceedings for annulment of the contested decision. The General Court took the view that it was not necessary to rule on the plea of inadmissibility raised by the Commission alleging that the appellants did not have standing to bring proceedings for annulment of that decision.

Forms of order sought by the parties

- 13 By their appeal, the appellants claim that the Court should:
- set aside the order under appeal;
 - refer the case back to the General Court for a further hearing on the merits; and
 - order the Commission to pay the costs.
- 14 The Commission contends that the Court should:
- dismiss the appeal; and
 - order the appellants to pay the costs.

The appeal

Arguments of the parties

- 15 The appellants raise a single ground of appeal, alleging that the General Court erred in law in holding that they do not have an interest in the annulment of the contested decision.
- 16 As is apparent from paragraphs 27 and 33 of the order under appeal, the appellants submitted before the General Court that the annulment of the contested decision would very significantly increase the likelihood of success in the action for annulment which they had brought before the national courts against the decision to put BES into resolution and that the consequence of such success would be either the annulment of the resolution of BES or a right to bring an action for damages. In particular, the appellants claim that they submitted a statement by a Portuguese lawyer which set out in detail the reasons why the annulment of the contested decision would have an effect on the national proceedings, even though the subject matter of those national proceedings differs from that of the action before the General Court. Moreover, that evidence was not, they argue, disputed at first instance.
- 17 Furthermore, as the Court of Justice held in paragraphs 68, 69 and 79 of the judgment of 17 September 2015, *Mory and Others v Commission* (C-33/14 P, EU:C:2015:609), the fact that the annulment of a decision by the EU Courts is capable of procuring a benefit in the context of an action brought before

national courts, including an action for damages, is in principle sufficient to establish such an interest in bringing proceedings before the EU Courts. The order under appeal, they submit, does not contradict that principle.

- 18 Nonetheless, in paragraphs 34 and 35 of the order under appeal, the General Court concluded that, because the proceedings brought before it and those brought before the Portuguese courts did not have the same subject matter, the annulment of the contested decision would have no effect on the Portuguese courts' interpretation of Portuguese constitutional rules. According to the appellants, it was for the national courts alone, on the basis of Portuguese law, to draw such a conclusion, and it was not for the EU Courts to do so on the basis of EU law. Thus, they argue, the General Court wrongly substituted itself for the national courts for the purposes of assessing whether the national proceedings were well founded.
- 19 In the alternative, the appellants submit that, even if the General Court were entitled to assess whether the legal arguments of Portuguese law set out in the statement of their Portuguese lawyer were well founded, the General Court's assessment manifestly distorted the evidence which had been submitted to it.
- 20 In its defence, the Commission submits, first, that, in so far as the appellants contest the General Court's interpretation of Portuguese law, such an interpretation constitutes a question of fact which is not, in principle, amenable to review by the Court of Justice. The Court of Justice has jurisdiction only to determine whether there has been a distortion of the national law by the General Court. That distortion must be obvious from the documents in the Court's file, without it being necessary to undertake a fresh assessment of the facts and evidence.
- 21 However, in the present case, it submits, the appellants fail to indicate which facts or evidence may have been distorted by the General Court, nor do they demonstrate the existence of errors on the part of the General Court which may have led it to distort the facts or evidence. Contrary to what the appellants claim, the General Court did not conclude of its own motion that the arguments set out by their Portuguese lawyer in his statement were not well founded. It took the view that, since the subject matter of the proceedings brought before it differed from that of the proceedings brought before the Portuguese courts, a fact which is not contested by the appellants, the annulment of the contested decision could not affect the national court's interpretation of Portuguese law. Consequently, it submits, the appellants' appeal is manifestly inadmissible since it concerns a matter of fact.
- 22 Next, the Commission points out that it is the applicant which bears the burden of proving that it has an interest in bringing proceedings. It is not for the General Court to seek and identify in the annexes the pleas and arguments on which it may consider the action to be based, since annexes have a purely evidential and instrumental function.
- 23 In the present case, although the appellants argue that the annulment of the contested decision would support their argument that the resolution of BES was disproportionate under Portuguese law, no explanation has, according to the Commission, been given in support of that statement in their response relating to their interest in bringing proceedings. In particular, the explanations which the appellants had put forward in that regard before the General Court were not in the actual text of that response, but were only in a statement drafted by a Portuguese lawyer, set out in the annex to that response.
- 24 In the appellants' response relating to their interest in bringing proceedings, they further submitted that the annulment of the contested decision would also enable them to argue that the measure relating to the resolution of BES, in the absence of capitalisation of the Bridge Bank by the granting of the State aid at issue, was not capable of preventing the insolvency of BES. However, according to the

Commission, no explanation was given in that response as to how the annulment of the contested decision could lead to the annulment of the decision to put BES into resolution or form the basis of a subsequent action for damages against the Portuguese State or the Bank of Portugal.

- 25 Finally, and in any event, in order for there to be an interest in bringing proceedings against a Commission decision, the success of the action for damages brought in national court proceedings must depend on the success of the action for annulment of that decision, as was the situation in the case giving rise to the judgment of 17 September 2015, *Mory and Others v Commission* (C-33/14 P, EU:C:2015:609). The appellants, however, have not established any comparable link between the annulment proceedings which they brought before the General Court for annulment of the contested decision and the hypothetical action for damages which they claim they are entitled to bring against the Portuguese State and the Bank of Portugal if their action in the national court proceedings against the resolution decision should be upheld.
- 26 In particular, as the General Court explained in paragraphs 28 to 31 of the order under appeal, it is the decision to put BES into resolution, and not the contested decision, which may have had a concrete effect on the value of the appellants' claims, with the result that, if the contested decision were to be annulled, that would not have the effect of obliging the Portuguese State to reverse that resolution decision. Consequently, the appellants would not necessarily be entitled to bring an action for damages against the Portuguese State or the Bank of Portugal before the national courts.
- 27 Furthermore, even if the annulment of the contested decision could result in the annulment of the decision to put BES into resolution, and if the annulment of that latter decision could form the basis of an action for damages against the Portuguese State and the Bank of Portugal, such a future action cannot form the basis on which the appellants could invoke an interest in the annulment of the contested decision. As is apparent from paragraphs 56, 69 and 79 of the judgment of 17 September 2015, *Mory and Others v Commission* (C-33/14 P, EU:C:2015:609), such an action for damages is purely hypothetical because it depends on the success of the national proceedings.

Findings of the Court

- 28 The Court has held on numerous occasions that an action for annulment brought by a natural or legal person is admissible only in so far as that person has an interest in the annulment of the contested measure. Such an interest requires that the annulment of that measure must be capable, in itself, of having legal consequences and that the action, if successful, may procure an advantage for the party which has brought that action (judgment of 4 June 2015, *Andechser Molkerei Scheitz v Commission*, C-682/13 P, not published, EU:C:2015:356, paragraph 25 and the case-law cited).
- 29 Furthermore, an interest in an action for annulment must be vested and present and is to be assessed as at the date on which the action is brought (see, to that effect, judgments of 17 September 2009, *Commission v Koninklijke FrieslandCampina*, C-519/07 P, EU:C:2009:556, paragraph 65, and of 4 June 2015, *Andechser Molkerei Scheitz v Commission*, C-682/13 P, not published, EU:C:2015:356, paragraph 26).
- 30 In the present case, first, the Court of Justice must reject the argument put forward by the Commission that the appeal is inadmissible in that it disputes the factual assessment carried out by the General Court relating to the possible effect of the action brought before it on the action for annulment brought by the appellants before the national courts.
- 31 It is true that the General Court has exclusive jurisdiction to find and appraise the facts and, in principle, to examine the evidence that it accepts in support of those facts. However, it is for the Court of Justice to carry out a review, once the General Court has defined their legal nature and determined the legal consequences. Consequently, the question whether, in the light of such facts and

evidence, the annulment of the decision at issue by the EU Courts is capable of conferring on the appellants a benefit in the context of an action brought before the national courts, which may establish their interest in bringing proceedings before the EU Courts, is a question of law which comes within the scope of the Court's review in the context of an appeal (see, by analogy, judgment of 17 September 2015, *Mory and Others v Commission*, C-33/14 P, EU:C:2015:609, paragraph 68).

- 32 Next, it is also necessary to reject the Commission's line of argument that the appellants had not adequately substantiated their interest in bringing proceedings, as the explanations which they had put forward in that regard before the General Court were not in the actual text of their response relating to their interest in bringing proceedings, but only in an annex to that response.
- 33 It is true, as the Court has already held, that it is for an applicant to prove its interest in bringing proceedings, which is an essential and fundamental prerequisite for any legal proceedings (judgment of 4 June 2015, *Andechser Molkerei Scheitz v Commission*, C-682/13 P, not published, EU:C:2015:356, paragraph 27 and the case-law cited).
- 34 In particular, in order for an action seeking annulment of an act, submitted by a natural or legal person, to be admissible, the applicant must justify in a relevant manner its interest in the annulment of that act (judgments of 4 June 2015, *Andechser Molkerei Scheitz v Commission*, C-682/13 P, not published, EU:C:2015:356, paragraph 28, and of 20 December 2017, *Binca Seafoods v Commission*, C-268/16 P, EU:C:2017:1001, paragraph 45).
- 35 As is apparent from paragraphs 27 and 33 of the order under appeal, the appellants, in reply to a question put by the General Court in that regard, submitted that the annulment of the contested decision would very significantly increase the likelihood of success of the judicial review proceedings which they had brought before the Portuguese courts against the decision to put BES into resolution. In particular, they stated that such success would result either in the annulment of that decision to put BES into resolution or in their having the right to claim damages for losses incurred due to the unlawful resolution of BES.
- 36 Furthermore, it is apparent from that same reply of the appellants relating to their interest in bringing proceedings that, over several pages, they developed their arguments in that regard. In particular, they relied on relevant judgments of the Court of Justice and of the General Court and explained, briefly but sufficiently, the reasons why, according to the statement of a Portuguese lawyer annexed to that response, the annulment of the contested decision would significantly increase their prospects of success in the national proceedings for annulment of the decision to put BES into resolution. In particular, according to the appellants, the annulment of the contested decision by the General Court would, first, support the arguments which they had already put forward in the national proceedings, according to which the resolution of BES was disproportionate in Portuguese law, and, second, make it possible to put forward, again in the context of those proceedings, the argument that, in the absence of the State aid at issue, the resolution of BES could not have achieved the objective of preventing its insolvency.
- 37 Although it is true that, first, the details of the appellants' arguments relating to their interest in bringing proceedings were not in the actual text of the response which they had sent to the General Court, but were in the annex to that response, and, second, the appellants added, in their appeal, information which was not contained in that response, the fact nonetheless remains that the appellants' main lines of arguments in that regard were set out in that response itself.
- 38 Furthermore, in the light of both the length and the probative value of the statement of the Portuguese lawyer annexed to the appellants' response concerning their interest in bringing proceedings and other related evidence, the appellants cannot be criticised for having annexed them to that response since the latter is also intended to expand on their arguments relating to their interest in bringing proceedings, also in response to the General Court's request in that respect.

- 39 As to the remainder, in so far as, by its arguments, the Commission seeks to establish the insufficient nature of the evidence put forward by the appellants at first instance for the purposes of establishing their interest in bringing proceedings for annulment of the contested decision, those arguments concern the conclusion reached by the General Court in the order under appeal that the appellants lacked any interest in bringing proceedings in that regard. Those arguments must therefore be addressed in the context of the assessment of the merits of the single ground raised in the present appeal.
- 40 It is thus appropriate to examine whether the General Court erred in law in paragraphs 34 to 36 of the order under appeal by holding that, since the proceedings before it and the proceedings before the national courts did not have the same subject matter, any annulment of the contested decision would have no effect on those national proceedings and would therefore procure no advantage for the appellants.
- 41 It is clear from those paragraphs of the order under appeal that the General Court found that the national proceedings concerned the sole question of whether the recourse to a resolution procedure was compliant with national law, whereas the action before it concerned only whether the financing of that resolution procedure was compatible with EU law. From this the General Court concluded that any assessment, by itself, of the Commission's compliance with EU law would have no effect on the Portuguese courts' interpretation of their national law, in particular on the question whether the principle of proportionality, as protected by Portuguese constitutional law, had been infringed.
- 42 In that regard, the Court has held that, in principle, a party retains its interest in continuing an action for annulment where that action may constitute the basis of an action for damages (judgment of 20 June 2013, *Cañas v Commission*, C-269/12 P, not published, EU:C:2013:415, paragraph 17).
- 43 The possibility of an action for damages suffices to justify such an interest in bringing proceedings, in so far as that interest is not hypothetical (see judgment of 17 September 2015, *Mory and Others v Commission*, C-33/14 P, EU:C:2015:609, paragraph 79).
- 44 The Court has also held that an interest in bringing proceedings could arise from any action before the national courts in the context of which the possible annulment of the contested act before the EU Courts is capable of benefiting the applicant (judgment of 17 September 2015, *Mory and Others v Commission*, C-33/14 P, EU:C:2015:609, paragraph 81).
- 45 Finally, continuation of an interest in bringing proceedings must be assessed in the light of the specific circumstances, taking account, in particular, of the consequences of the alleged unlawfulness and of the nature of the damage claimed to have been sustained (judgment of 17 September 2015, *Mory and Others v Commission*, C-33/14 P, EU:C:2015:609, paragraph 70 and the case-law cited).
- 46 In the present case, the appellants, in their appeal, submit that the damage which they have sustained lies in the fact that, because their bonds remained in the Bad Bank, the resolution procedure had the result that they changed from holding bonds in BES to holding bonds in a bank which had no valuable assets, which had no ability to conduct new business and whose banking licence was to be withdrawn after a short winding-up period. They therefore suffered substantial losses and their legal position was changed. Furthermore, as is apparent from their reply to the General Court relating to their interest in bringing proceedings and from the annexes to that reply, the appellants submit that, in view of the size of their financial losses, their situation is not comparable to the situation when the normal insolvency rules under Portuguese law apply, since those rules provide for the repayment of all creditors of a company, including the subordinated bondholders, on the basis of the company's assets and in accordance with the order of repayment. In that reply, the appellants concluded that they had lost their right to claim against all the assets of BES, including the good assets, under the relevant normal Portuguese insolvency rules.

- 47 With regard to the consequences of the alleged unlawfulness, as is clear from paragraph 35 of the present judgment, the appellants submitted before the General Court, as they also submit before the Court of Justice, that success of the action for annulment which they had brought before the Portuguese courts against the decision to put BES into resolution would result either in the annulment of that decision or in their having the right to claim damages for losses incurred due to the unlawful resolution of BES.
- 48 For its part, the Commission submits, in essence, that the future national proceedings for damages invoked by the appellants in order to establish their interest in bringing proceedings for annulment of the contested decision is hypothetical, because it is not certain that those national proceedings will actually be brought and because the appellants have not established a sufficient link between those national proceedings and the action at first instance before the General Court.
- 49 However, even if the possibility of the appellants bringing an action for damages in the future cannot give them a vested and present interest in seeking annulment of the contested decision, it should be recalled that such an interest may nevertheless arise, as is clear from paragraph 44 of the present judgment, from any proceedings before the national courts in which the possible annulment of the contested act could benefit the appellants.
- 50 It is common ground that the appellants have already brought an action before the Portuguese courts for annulment of the decision to put BES into resolution. Furthermore, it is apparent from the information available to the Court that that action may, of itself, benefit the appellants.
- 51 It is therefore necessary to examine whether, as the appellants submit, the annulment by the General Court of the contested decision could have an effect on the action for annulment which they have brought before the national courts against the decision to put BES into resolution.
- 52 It is true, and indeed is also not disputed in the present appeal, that, as the General Court noted in paragraph 34 of the order under appeal, the action brought before the General Court did not have the same subject matter as that brought before the Portuguese courts, since the first action sought a declaration that the State aid at issue was incompatible with EU law, whereas the second seeks a declaration that the decision to put BES into resolution is incompatible with Portuguese law.
- 53 It is apparent, however, both from the order under appeal and from the file submitted to the Court that the contested decision and the BES resolution decision are inextricably linked. In particular, it follows from paragraphs 4 to 7 of that order that the resolution procedure ‘entailed’ the creation of a temporary credit institution, to which the sound business activities of BES were transferred. It is also apparent from those paragraphs that, according to a report forwarded to the Commission by the Portuguese authorities relating to the options envisaged for the resolution, the creation of a Bridge Bank was seen as the ‘only means’ of maintaining financial stability in the Portuguese Republic, and that the Commission concluded that the State aid at issue was compatible with the internal market, taking into account the commitments given by the Portuguese authorities, which concerned both the Bridge Bank and the Bad Bank and related to their orderly winding-down. Amongst those commitments was, in particular, the prohibition on transferring to the Bridge Bank claims of shareholders and claims of holders of subordinated debt.
- 54 Admittedly, it is common ground, as the General Court noted in paragraph 28 of the order under appeal, that the fall in the value of the bonds held by the appellants is attributable to the decision to put BES into resolution. Similarly, as the General Court stated in paragraph 31 of the order under appeal, and not disputed by the appellants, if the contested decision were to be annulled, that would not have the effect of obliging the Portuguese Republic to reverse its decision to create a Bridge Bank and not to include in the assets of that bank bonds of the kind held by the appellants.

- 55 However, given the inextricable links between the contested decision and the decision to put BES into resolution, as indicated in paragraph 53 of the present judgment, which demonstrate, in particular, that the State aid at issue was granted in the context of the resolution of BES, it must be held that, as the appellants submit, the General Court was not permitted to conclude, without substituting itself for the Portuguese courts for the purposes of the assessment of the merits of the action that the appellants had brought for annulment of the decision to put BES into resolution, that, because the subject matter of the latter action was not the same as that of the action brought before the General Court, a possible annulment of the contested decision could not in any way affect the Portuguese courts' assessment of the action brought before them, in particular in the manner outlined by the appellants both in their written pleadings before the General Court and in their appeal before the Court of Justice.
- 56 It is not for the EU Courts, for the purposes of determining an interest in bringing proceedings before them, to assess the likelihood that an action brought before national courts under national law is well founded and, therefore, to substitute themselves for those courts in making such an assessment. It is, by contrast, necessary, but sufficient, that, by its outcome, the action for annulment brought before the EU Courts would be capable of benefiting the party which brought it (judgment of 17 September 2015, *Mory and Others v Commission*, C-33/14 P, EU:C:2015:609, paragraph 76). That is so in this case, as follows from paragraphs 42 to 55 of the present judgment.
- 57 Having regard to all of the foregoing, it must be held that the General Court erred in law in holding, in paragraphs 34 to 36 of the order under appeal, that, given that the proceedings before it and the national proceedings did not have the same subject matter, the possible annulment of the contested decision would have no effect on those latter proceedings and would therefore not benefit the appellants, within the meaning of the relevant case-law.
- 58 Consequently, the General Court was also wrong to conclude, in paragraph 37 of that order, that the appellants' action had to be dismissed as being inadmissible by reason of the absence of a legal interest in bringing proceedings for annulment of the contested decision.
- 59 In those circumstances, the appeal must be upheld and, consequently, the order under appeal must be set aside.

Referral of the case back to the General Court

- 60 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, the latter may, where the decision of the General Court has been set aside, either itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.
- 61 In the present case, the Court of Justice does not have the necessary information to give final judgment on the plea of inadmissibility raised by the Commission in the context of the proceedings at first instance, alleging that the appellants were not entitled to bring proceedings for annulment of the contested decision. The same is true as regards the substance of the action, since that aspect of the dispute also involves the examination of matters which have neither been assessed by the General Court in the order under appeal nor debated before the Court of Justice.
- 62 Consequently, the case must be referred back to the General Court so that it may rule on the Commission's plea of inadmissibility alleging that the appellants do not satisfy the requirements of the fourth paragraph of Article 263 TFEU.

Costs

⁶³ Since the case is referred back to the General Court, the costs relating to the present appeal proceedings must be reserved.

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

- 1. Sets aside the order of the General Court of the European Union of 19 July 2017, *BPC Lux 2 and Others v Commission* (T-812/14, not published, EU:T:2017:560);**
- 2. Refers the case back to the General Court of the European Union;**
- 3. Reserves the costs.**

Silva de Lapuerta

Bonichot

Regan

Fernlund

Rodin

Delivered in open court in Luxembourg on 7 November 2018.

A. Calot Escobar
Registrar

K. Lenaerts
President