



Reports of Cases

ORDER OF THE GENERAL COURT (Eighth Chamber)

3 September 2015*

(Action for annulment — Article 8(3) of Regulation (EU) No 1173/2011 — Effective enforcement of budgetary surveillance in the euro area — Manipulation of statistics — Commission decision to initiate an investigation — Act not amenable to review — Preparatory act — Inadmissibility))

In Case T-676/14,

Kingdom of Spain, represented by A. Rubio González, Abogado del Estado,

applicant,

v

European Commission, represented by J.-P. Keppenne, J. Baquero Cruz and M. Clausen, acting as Agents,

defendant,

ACTION for annulment of Commission Decision C(2014) 4856 final of 11 July 2014 on launching of an investigation related to the manipulation of statistics in Spain as referred to in Regulation (EU) No 1173/2011 of the European Parliament and of the Council on the effective enforcement of budgetary surveillance in the euro area,

THE GENERAL COURT (Eighth Chamber),

composed of D. Gratsias, President, M. Kancheva and C. Wetter (Rapporteur), Judges,

Registrar: E. Coulon,

makes the following

Order

Background to the dispute

- 1 As a result of the crisis linked to the debts of public entities within the euro zone, known as ‘the sovereign debt crisis’, the Kingdom of Spain put in place an exceptional scheme intended to ensure the sustainability of economic relations between the Spanish autonomous communities and their suppliers starting in the first quarter of 2012. That scheme consisted of debt waivers and payment guarantees.

* Language of the case: Spanish.

- 2 When this special scheme was being introduced, it became clear that certain spending by some Spanish autonomous communities at the end of 2011 had not been accounted for in the data reported to the European Commission as part of the excessive deficit procedure.
- 3 The Kingdom of Spain states that, as soon as the Spanish bodies in charge of the production and dissemination of statistics became aware of the new data, in May 2012, they officially informed the Statistical Office of the European Union (Eurostat). That correction was taken into account in the excessive deficit procedure in October 2012.
- 4 Following the notification to Eurostat in May 2012, that body conducted a series of visits in Spain that were spread between 24 May 2012 and 26 and 27 September 2013.
- 5 On 5 December 2013, Eurostat sent the Instituto Nacional de Estadística (Spanish National Institute of Statistics) a draft report and asked it to submit its comments.
- 6 On 10 December 2013, the Instituto Nacional de Estadística sent Eurostat a series of observations, particularly relating to the determination of the reference period adopted.
- 7 On 11 July 2014, the Commission adopted Decision C(2014) 4856 final on launching of an investigation related to the manipulation of statistics in Spain as referred to in Regulation (EU) No 1173/2011 of the European Parliament and of the Council on the effective enforcement of budgetary surveillance in the euro area ('the contested decision').

Procedure and forms of order sought

- 8 On 22 September 2014, Spain brought an action against the contested decision. It claims that the Court should:
 - annul the contested decision;
 - order the Commission to pay the costs.
- 9 On 11 November 2014, the Commission lodged a plea of inadmissibility under Article 114(1) of the Rules of Procedure of the General Court of 2 May 1991. It contends that the Court should:
 - dismiss the action as inadmissible;
 - order the Kingdom of Spain to pay the costs.
- 10 On 7 January 2015, the Kingdom of Spain lodged its comments on the plea of inadmissibility with the Registry and submitted that its action is admissible.

Law

- 11 Under Article 130(1) of the Rules of Procedure of the General Court if, as in the present case, a party applies for a decision on admissibility, the Court is to make a decision without going to the substance of the case. According to Article 130(6), only if the Court so decides does the oral part of the procedure take place. In the present case, the Court considers that it has sufficient information in the documents and explanations provided by the parties during the written part of the procedure. The Court, having all the evidence required in order to give a ruling, therefore decides that the oral part of the procedure should not be opened.

- 12 It should be noted that, according to settled case-law, a natural or legal person may challenge, pursuant to the fourth paragraph of Article 263 TFEU, only measures the legal effects of which are binding on, and capable of affecting the interests of, that person by bringing about a distinct change in his legal position (see orders of 30 April 2003 in *Schmitz-Gotha Fahrzeugwerke v Commission*, T-167/01, ECR, EU:T:2003:121, paragraph 46, and 31 January 2006 in *Schneider Electric v Commission*, T-48/03, ECR, EU:2006:34, paragraph 44).
- 13 In the case of acts adopted by a procedure involving several stages of an internal procedure, in principle an act is open to review only if it is a measure which definitively lays down the position of the institution on the conclusion of that procedure, and not a provisional measure intended to pave the way for the final decision, and whose legal defects could reasonably be raised in an action against it (judgments of 11 November 1981 in *IBM v Commission*, 60/81, ECR, EU:C:1981:264, paragraphs 10 to 12, and 27 June 1995 in *Guérin automobiles v Commission*, T-186/94, ECR, EU:T:1995:114, paragraph 39; order in *Schneider Electric v Commission*, cited in paragraph 12 above, EU:T:2006:34, paragraph 45).
- 14 It would be otherwise only if acts or decisions adopted in the course of the preparatory proceedings were themselves the culmination of a special procedure distinct from that intended to permit the institution to take a decision on the substance of the case (judgment in *IBM v Commission*, cited in paragraph 13 above, EU:C:1981:264, paragraph 11, and order of 9 June 2004 in *Camós Grau v Commission*, T-96/03, ECR, EU:T:2004:172, paragraph 30).
- 15 As the Commission correctly observes, the measures by which it decides to initiate an investigation are merely preparatory acts and do not therefore produce legal effects capable of affecting the interests of the applicant, by bringing about a distinct change in its legal position as referred to in Article 263 TFEU. That is so particularly in the case of a reasoned opinion issued by the Commission and its decision to bring proceedings before the Court of Justice for failure to fulfil an obligation provided for by Article 258 TFEU (judgment of 29 September 1998 in *Commission v Germany*, C-191/95, ECR, EU:C:1998:441, paragraphs 44 to 47), of the decision to initiate a procedure under Article 102 TFEU (judgment in *IBM v Commission*, cited in paragraph 13 above, EU:C:1981:264, paragraph 21), or of the decision of the European Anti-Fraud Office (OLAF) to open an investigation (order in *Camós Grau v Commission*, cited in paragraph 14 above, EU:T:2004:172, paragraphs 33 and 36).
- 16 The system put in place by the EU legislature in Regulation (EU) No 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area (OJ 2011 L 306, p. 1) does not permit a different conclusion to be drawn than that in paragraph 15 of this order concerning investigations initiated by the Commission under Article 8(3) of that regulation. According to that provision, the Commission may conduct all investigations necessary to establish the existence of the misrepresentation of deficit and debt data relevant for the application of Articles 121 or 126 TFEU, or for the application of the Protocol on the excessive deficit procedure annexed to the EU Treaty and to the FEU Treaty. It may decide to initiate an investigation when it finds that there are serious indications of the existence of facts liable to constitute such a misrepresentation.
- 17 It is therefore only against a decision adversely affecting the applicant, that is to say, according to the very wording of Article 8(1) and (5) of Regulation No 1173/2011, the Council's decision to impose a fine on a Member State, that an action may be brought by the latter under Article 263 TFEU, it being noted that in implementation of Article 261 TFEU, Article 8(5) of the regulation confers unlimited jurisdiction on the EU judicature allowing it to 'annul, reduce or increase the fine so imposed'. Any legal defects vitiating the measures preceding the Council's adoption of such a decision, beginning with those relating to the initiation of an investigation by the Commission, may only be relied upon in that action (see, to that effect, judgment of 7 April 1965 in *Weighardt v Commission of the EAEC*, 11/64, ECR, EU:C:1965:38, and judgment in *IBM v Commission*, cited in paragraph 13 above, EU:C:1981:264, paragraph 12; order in *Schneider Electric v Commission*, cited in paragraph 12 above,

EU:2006:34, paragraph 45). Contrary to the Kingdom of Spain's submission, it is therefore only at such a stage that the issue of the legal basis permitting the Commission to investigate the events prior to 13 December 2011, the date of entry into force of Regulation No 1173/2011, may, if appropriate, be examined.

- 18 As regards the argument submitted by the Kingdom of Spain to the effect that the present case concerns the first decision of the Commission to initiate an investigation on the manipulation of statistics by a Member State, which was allegedly widely publicised, thus causing it substantial damage on the international financial markets, that argument must be rejected on the ground that such considerations simply do not have any bearing on the analysis of the legal nature of the contested decision, namely that the decision does not constitute an act that adversely affects the applicant, for the purposes of Article 263 TFEU. Since the Kingdom of Spain's claim is unconnected to the question of admissibility raised before the Court and is not capable of altering the nature of the present action, it must be dismissed as ineffective.
- 19 Therefore the Commission's plea of inadmissibility must be upheld and the action dismissed as inadmissible.

Costs

- 20 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.
- 21 As the Kingdom of Spain has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby orders:

- 1. The action is dismissed as inadmissible.**
- 2. The Kingdom of Spain shall pay the costs.**

Luxembourg, 3 September 2015.

E. Coulon
Registrar

D. Gratsias
President