Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

21 September 2017 *

(Appeal — Agreements, decisions and concerted practices — Italian producers of reinforcing bars — Fixing of prices and limiting and controlling output and sales — Infringement of Article 65 CS — Annulment of the initial decision by the General Court of the European Union — Decision re-adopted on the basis of Regulation (EC) No 1/2003 — Failure to issue a new statement of objections — Lack of a hearing following the annulment of the initial decision — Time taken in the proceedings before the General Court)

In Case C-89/15 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 24 February 2015,

Riva Fire SpA, in liquidation, established in Milan (Italy), represented by M. Merola, M. Pappalardo, T. Ubaldi and M. Toniolo, avvocati,

appellant,

the other party to the proceedings being:

European Commission, represented by L. Malferrari and P. Rossi, acting as Agents, assisted by P. Manzini, avvocato, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (Ninth Chamber),

composed of E. Juhász, President of the Chamber, C. Vajda (Rapporteur) and C. Lycourgos, Judges,

Advocate General: N. Wahl,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 20 October 2016,

after hearing the Opinion of the Advocate General at the sitting on 8 December 2016,

gives the following

* Language of the case: Italian.

Judgment

1 By its appeal, Riva Fire SpA ('Riva') asks the Court to set aside the judgment of the General Court of the European Union of 9 December 2014, *Riva Fire* v *Commission* (T-83/10, not published, EU:T:2014:1034, 'the judgment under appeal') by which the latter dismissed its action for annulment of Commission Decision C(2009) 7492 final of 30 September 2009 relating to a breach of Article 65 of the ECSC Treaty (COMP/37.956 — Reinforcing bars, re-adoption, 'the decision of 30 September 2009'), as amended by Commission Decision C(2009) 9912 final of 8 December 2009 ('the amending decision') (the decision of 30 September 2009, as amended by the amending decision, 'the decision at issue').

Background to the dispute and the decision at issue

2 The background to the dispute is set out in paragraphs 16 to 21 of the judgment under appeal:

'16 From October to December 2000, the Commission carried out a number of verifications pursuant to Article 47 CS at the premises of certain Italian undertakings engaged in the manufacture of reinforcing bars and at the premises of an association of certain Italian steel undertakings. It also sent to them a request to supply information pursuant to Article 47 CS …

17 On 26 March 2002, the Commission commenced the administrative procedure and adopted its objections under Article 36 CS ("the statement of objections") … [Riva] submitted written comments on the statement of objections. A hearing took place on 13 June 2002 …

18 On 12 August 2002, the Commission adopted additional objections ("the supplementary statement of objections") addressed to the same addressees as the statement of objections. In the supplementary statement of objections, based on Article 19(1) of Council Regulation No 17 of 6 February 1962, first regulation implementing Articles [81 and 82 EC] (OJ, English Special Edition 1959-1962, p. 87), the Commission explained its position concerning the further proceedings following the expiry of the ECSC Treaty. [Riva] replied to the supplementary statement of objections on 20 September 2002. A second hearing, in the presence of representatives of the Member States, took place on 30 September 2002 …

19 At the end of the procedure, the Commission adopted Decision C(2002) 5087 final of 17 December 2002 relating to a proceeding under Article 65 CS (Case COMP/37.956 — Reinforcing bars) ("the 2002 decision"), by which it found that, contrary to Article 65(1) CS, the undertakings to which it was addressed had implemented a single, complex and continuous restrictive practice on the Italian market for concrete reinforcing bars and coils which had as object or effect the fixing of prices, with a view to which the restriction or control of production and/or sales was also concerted … In that decision the Commission imposed … on [Riva] a fine in the amount of EUR 26.9 million.

20 On 6 February 2003, [Riva] brought an action before the General Court challenging the 2002 decision. By judgment of 25 October 2007, *Riva Acciaio* v *Commission* (T-45/03, not published, EU:T:2007:318), the General Court annulled the 2002 decision. The General Court held that, having regard, in particular, to the fact that the 2002 decision contained no reference to Article 3 or Article 15(2) of Regulation No 17, the decision was based on Article 65(4) and (5) CS alone … Since those provisions had expired on 23 July 2002, the Commission could no longer derive competence from those provisions, which were no longer in force when it adopted the 2002 decision, in order to establish an infringement of Article 65(1) CS and to impose fines on the undertakings which had allegedly participated in the infringement …

21 By letter of 30 June 2008, the Commission informed [Riva] and the other undertakings concerned of its intention to re-adopt the decision, changing the legal basis from that which it had chosen for the 2002 decision. It also explained that, given the limited scope of the judgment [of 25 October 2007,] *Riva Acciaio* v *Commission* [(T-45/03, not published, EU:T:2007:318)], the re-adopted decision would be based on the evidence presented in the statement of objections and in the supplementary statement of objections. The undertakings concerned were given a deadline to submit their observations …'

3 In the decision of 30 September 2009, the Commission considered, inter alia, that Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU] (OJ 2003 L 1, p. 1), was to be interpreted as empowering it to establish and sanction, after 23 July 2002, cartels in the sectors which fell within the scope of the ECSC Treaty *ratione materiae* and *ratione temporis*. It stated that the decision had been adopted in conformity with the procedural rules of the EC Treaty as well as the aforementioned regulation, and that the material provisions that were no longer in force at the date of adoption of an act could be applied under the principles governing the temporal succession of rules, subject to application of the principle *lex mitior*.

4 Article 1 of the decision of 30 September 2009 states, inter alia, that Riva had infringed Article 65(1) CS by taking part, from 6 December 1989 to 27 June 2000, in a continuous agreement and/or concerted practices in respect of concrete reinforcing bars and coils having as object and/or effect the fixing of prices and the restriction and/or control of production and sales in the common market. By Article 2 of that decision, the Commission imposed on Riva a fine of EUR 26.9 million.

5 By letters sent between 20 and 23 November 2009, eight of the eleven companies to which the decision of 30 September 2009 was addressed, including Riva, informed the Commission that the annex to that decision, as notified to its addressees, did not contain the tables illustrating the price variations.

6 On 8 December 2009, the Commission adopted the amending decision, which included in its annex the missing tables and corrected the numbered references to those tables in eight footnotes.

The procedure before the General Court and the judgment under appeal

7 By application lodged at the General Court Registry on 19 February 2010, Riva brought an action asking the General Court, principally, to annul the whole decision at issue or, as far as Riva is concerned and in the alternative, to reduce the fine imposed on it. It also asked the General Court to undertake measures of inquiry regarding the adoption procedure for that decision.

8 In support of its action, Riva raised eight pleas in law: first, lack of competence on the part of the Commission following expiry of the ECSC Treaty and infringement of Regulation No 1/2003; second, infringement of Article 10(3) and (5) of Regulation No 17 and of Article 14(1) and (3) of Regulation No 1/2003; third, breach of the first paragraph of Article 36 CS; fourth, infringement of Articles 10 and 11 of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to [Articles 101 and 102 TFEU] (OJ 2004 L 123, p. 18), as well as Riva's rights of defence; fifth, inadequate statement of reasons and contradictory reasoning regarding the definition of the relevant geographical market and application of the principle *lex mitior*; sixth, distortion of the facts and breach of Article 65 CS regarding the various aspects of the alleged infringement by Riva; seventh, lack of direction and failure to state reasons regarding the attribution of the infringement as a whole to Riva and Riva's specific position concerning the conduct in respect of which it is accused; and, eighth, breach of Article 23(2) of Regulation No 1/2003, infringement of the Commission Notice on the non-imposition or reduction of fines in cartel cases (OJ 1996 C 207, p. 4), breach of the guidelines on the method of setting fines imposed pursuant to

Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty (OJ 1998 C 9, p. 3) and a misuse of power and infringement of the principles of proportionality and equal treatment when setting the amount of the fine.

9 By the judgment under appeal, the General Court reduced the fine imposed on Riva to EUR 26 093 000 and dismissed the remainder of the action.

Forms of order sought by the parties before the Court

10 By its appeal, Riva claims that the Court should:

– set aside the judgment under appeal and, as a result, annul the decision at issue;

– in the alternative, set aside the judgment under appeal in so far as it set the reduction of the fine imposed at 3% and, as a result, reduce the fine by a greater amount or refer the case back to the General Court;

– incidentally, declare that the proceedings before the General Court infringed the principle that the duration of proceedings must be reasonable; and

– order the Commission to pay the costs at first instance and on appeal.

11 The Commission contends that the Court should:

– dismiss the appeal; and

– order Riva to pay the costs.

The request to have the oral procedure reopened

12 The oral procedure was closed on 8 December 2016 following delivery of the Advocate General's Opinion. By letter dated 27 January 2017, lodged at the Court Registry the same day, the Commission asked the Court to order the reopening of the oral part of the procedure and to include in the case file the facts presented in its request as well as the documents annexed to it.

13 In support of that request, the Commission stated, in essence, that the Court does not have sufficient information on the factual circumstances relating to the hearings of 13 June and 30 September 2002, on which the Advocate General based his Opinion, since those circumstances were not specifically debated between the parties.

14 Article 83 of the Rules of Procedure of the Court of Justice allows the Court to order the reopening of the oral part of the procedure at any time after hearing the Advocate General, in particular where the case is to be decided on the basis of an argument which has not been debated between the parties.

15 It should be noted, however, that the subject matter of the appeal is, in principle, defined in the grounds of appeal and the arguments raised by the parties. In the present case, the parties had the opportunity to sufficiently debate those grounds of appeal and arguments in their written pleadings and during the joint hearing of 20 October 2016 in cases C-85/15 P to C-89/15 P.

16 As a result, the Court, after hearing the Advocate General, considers that there is no need to order the reopening of the oral part of the procedure.

The appeal

17 In support of its appeal, Riva raises four grounds of appeal, the first being the principal ground and the others, alternative grounds. The grounds allege; first, an error of law as well as an inadequate statement of reasons and contradictory reasoning in the judgment under appeal regarding the assessment of whether there had been an infringement of Regulation No 773/2004 and the rights of defence; second, an error of law as well as an inadequate statement of reasons and contradictory reasoning regarding the determination of the final amount of the fine; third, a contradiction and an error in law in so far as the General Court classed Riva as a 'participant' in the agreement concluded in December 1998 on sales quotas and, as a result, took into account that part of the cartel to determine the amount of the fine; and, fourth, failure to provide a statement of reasons for the impact of the involvement of Riva's directors on the increase in the starting amount of the fine. Riva also asks the Court for an incidental ruling on the unlawfulness of the proceedings before the General Court on account of infringement of the right to legal process within a reasonable period.

The first ground of appeal

Arguments of the parties

18 By its first ground of appeal, Riva seeks, in essence, to contest the General Court's findings, in paragraph 124 of the judgment under appeal, dismissing Riva's argument that the Commission should have sent a new statement of objections and held a hearing in the presence of the representatives of the Member States following the annulment of the 2002 decision, before adopting the decision at issue.

19 Riva claims that the General Court cannot base its reasoning in paragraphs 115 and 120 of the judgment under appeal on the case-law cited in those paragraphs, since that case-law concerns the assumption that, first, the illegality vitiating the 2002 decision occurred only upon the adoption of that decision and, second, the charges on which that decision and the decision adopted later were based were the same, the two decisions being identical in every way. Yet, in the present case, it is not a matter of a simple procedural defect committed by the Commission. On the contrary, the errors committed by the institution were reflected in the overall approach taken by it and were not confined to the identification of the act's legal basis. They affected the substance of the infringement, including the definition of the relevant geographical market, the application of the principle *lex mitior* as well as the calculation of the amount of the fine. In addition, the General Court recognised that the 2002 decision and the decision at issue were not identical in their reasoning, in the legal classification of certain conduct or their enacting terms.

20 In this respect, Riva claims that the statement made in paragraph 122 of the judgment under appeal — that Riva's comparisons of the two decisions were irrelevant since the annulment of the 2002 decision caused it to be removed from the legal order of the European Union — was mistaken and contradictory. In paragraph 120 of the judgment under appeal, the General Court relied on a comparison between the contents of the two decisions and referred to the Commission's decision following the annulment of the 2002 decision to adopt an identical decision relating to the same objections on which the undertakings had already submitted observations.

21 In addition, Riva claims that, having regard to the principle that procedural rules apply immediately upon their entry into force, following the expiry of the ECSC Treaty, the procedural framework defined by Regulation No 773/2004 required that a new statement of objections be sent to the undertakings concerned and that a hearing then be organised in the presence of the representatives of the Member States, before whom those undertakings had never had the opportunity to express their views on the substance of the complaints brought against them.

22 The Commission contends that this ground of appeal should be rejected in so far as it is based on a misreading of the judgment under appeal.

23 According to the Commission, the claim regarding the failure to send a new statement of objections and to hold a hearing in the presence of representatives of the Member States after expiry of the ECSC Treaty is unfounded since the Commission had sent Riva the supplementary statement of objections, adopted under the procedural rules of the EC Treaty, to which Riva replied both in writing and during the hearing of 30 September 2002 in the presence of the Member States.

Findings of the Court

24 It must be noted that, in the context of the procedure leading to the adoption of the 2002 decision, the Commission did, on 26 March 2002, address the statement of objections to the undertakings concerned, including Riva, in accordance with Article 36 CS. The oral hearing relating to that statement of objections took place on 13 June 2002. It is common ground that the representatives of the Member States were not invited to participate in that hearing, since such participation was not provided for by the rules of the ECSC Treaty, which was in force at the time.

25 After expiry of that Treaty, on 12 August 2002 the Commission sent the undertakings the supplementary statement of objections based on Article 19(1) of Regulation No 17, in which it explained its position regarding the change in the legal framework and invited them to make known their own points of view on the supplementary statement of objections. A hearing took place on 30 September 2002 in the presence of representatives of the Member States, in application of Article 11(2) of Commission Regulation (EC) No 2842/98 of 22 December 1998 on the hearing of parties in certain proceedings under Articles [81] and [82] of the EC Treaty (OJ 1998 L 354, p. 18).

26 Following the annulment of the 2002 decision, the Commission, by letter dated 30 June 2008, informed Riva and the other undertakings concerned of its intention to re-adopt that decision on the legal basis of Regulation No 1/2003, in accordance with the procedural rules laid down in that regulation.

27 Having regard to the course of that procedure, it is necessary to consider whether, contrary to the General Court's conclusion, in particular, in paragraph 124 of the judgment under appeal, the Commission was obligated to reopen the proceedings and adopt a new statement of objections as well as to organise a new hearing, following the annulment of the 2002 decision.

28 It is established case-law that procedural rules are generally held to apply from the date on which they enter into force (judgments of 29 March 2011, *ArcelorMittal Luxembourg* v *Commission* and *Commission* v *ArcelorMittal Luxembourg and Others*, C-201/09 P and C-216/09 P, EU:C:2011:190, paragraph 75 and the case-law cited; of 29 March 2011, *ThyssenKrupp Nirosta* v *Commission*, C-352/09 P, EU:C:2011:191, paragraph 88; and of 11 December 2012, *Commission* v *Spain*, C-610/10, EU:C:2012:781, paragraph 45), even in a procedure that was initiated before that date, but is still pending after that date (see, to that effect, judgment of 11 December 2012, *Commission* v *Spain*, C-610/10, EU:C:2012:781, paragraph 47).

29 In this case, as the decision at issue was adopted on the basis of Article 7(1) and Article 23(2) of Regulation No 1/2003, the procedure leading to that decision had to be conducted in accordance with that regulation and Regulation No 773/2004, the legal basis of which is Regulation No 1/2003 (see, to that effect, judgment of 29 March 2011, *ThyssenKrupp Nirosta* v *Commission*, C-352/09 P, EU:C:2011:191, paragraph 90), despite the fact that the procedure had been initiated before Regulation No 1/2003 came into force.

30 Article 10(1) and (2) of Regulation No 773/2004, read in the light of Article 27(1) of Regulation No 1/2003, which it implements, provides that before adopting a decision under, inter alia, Article 7 of the latter regulation, the Commission is to notify a statement of objections to the parties concerned, giving them the opportunity to make their opinions on it known within a period determined by the Commission.

31 As the General Court stated, in essence, in paragraphs 117 and 118 of the judgment under appeal, in this case the Commission had already sent the undertakings concerned the statement of objections and the supplementary statement of objections and, in relation to those statements, the decision at issue did not take new facts into account against Riva or materially alter the evidence for the alleged offences.

32 Against that background, the allegation that the General Court made an error of law in paragraph 122 of the judgment under appeal and contradicted itself in relation to paragraph 120 of the same judgment must be rejected. As the Commission notes in its response, paragraph 120 concerns the complaints on which the 2002 decision and the decision at issue are based, whilst paragraph 122 concerns the comparison of those decisions made by Riva, which the General Court classed as irrelevant since it is the statement of objections and access to the file that allows the undertakings under investigation to acquaint themselves with the evidence the Commission has at its disposal and that render the rights of the defence fully effective. Contrary to Riva's claim, any difference between the texts of the two decisions, which in any case Riva has not demonstrated, does not necessarily imply, in itself, that the allegations against the undertakings concerned changed.

33 Moreover, as the Advocate General observed in point 53 of his Opinion, there is no major difference, in respect of content, between a statement of objections adopted under the ECSC rules and one adopted in accordance with Regulations No 17 and 1/2003. It was, therefore, not necessary to send a new statement of objections.

34 In this connection, the General Court was entitled to refer to paragraph 73 of the judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission* (C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582), in which it is noted that the annulment of an EU measure does not necessarily affect the preparatory acts, and the procedure for replacing such a measure may, in principle, be resumed at the very point at which the illegality occurred.

35 As the General Court noted in paragraph 115 of the judgment under appeal, the 2002 decision was annulled on the ground that the Commission did not have power to adopt it on the basis of the ECSC Treaty, which was no longer in force at the date of adoption of the decision, such that it was on that exact date that the illegality occurred. As a result, that annulment did not affect the statement of objections or the supplementary statement of objections.

36 Contrary to Riva's claim, the case-law cited in paragraph 34 of the present judgment is not rendered inapplicable on the ground that the errors made by the Commission in the 2002 decision affected the substance of the infringement, including the definition of the relevant geographical market, the application of the principle *lex mitior* as well as the calculation of the amount of the fine. Although the Commission based that decision on an incorrect legal basis, namely Article 65(4) and (5) CS, nevertheless, as the General Court held in paragraphs 18 and 119 of the judgment under appeal, the Commission informed Riva of the consequences of the expiry of the ECSC Treaty in the supplementary statement of objections, based on Article 19(1) of Regulation No 17, and Riva had the opportunity to express its views on the matter.

37 In addition, it is common ground that those consequences in no way changed on account of the repeal of Regulation No 17 and the entry into force of Regulation No 1/2003, certain provisions of which form the legal basis of the decision at issue. In any case, as the Advocate General noted in point 50 of

his Opinion, Article 34(2) of Regulation No 1/2003 and Article 19 of Regulation No 773/2004 provide, in the way of transitional provisions, that procedural steps and measures taken, respectively, under Regulations No 17 and 2842/98, are to continue to have effect for the purposes of applying the first regulations.

38 As a result, the General Court did not make an error of law in concluding, in paragraph 124 of the judgment under appeal, that the Commission was not obligated to adopt a new statement of objections.

39 However, as the Advocate General noted in point 55 of his Opinion, according to Article 12 of Regulation No 773/2004, the Commission must give the parties to whom it addressed a statement of objections the opportunity to develop their arguments at an oral hearing, if they so request in their written observations. Therefore, given that, as is clear from paragraph 35 of the present judgment, the statement of objections and the supplementary statement of objections were not affected by the annulment of the 2002 decision, it is necessary to assess whether the Commission gave the parties the opportunity to develop their arguments at an oral hearing conducted in accordance with the procedural requirements of Regulations No 1/2003 and 773/2004, as it was required to do.

40 In this respect, it is important to note that, under the procedural rules established by Regulation No 1/2003, as made explicit in Regulation No 773/2004, it is laid down in Article 14(3) of the latter regulation that the competition authorities of the Member States are to be invited to participate in the oral hearing which, upon the request of the addressees of the statement of objections, is to follow the issuing of that statement.

41 In respect of the oral hearings that took place during 2002, the representatives of the Member States did not participate in that of 13 June 2002, since such participation was not provided for in the ECSC Treaty, which was in force at the time. It is common ground that that hearing concerned the substance of the case, namely the conduct in respect of which the Commission accused the addressees of the statement of objections. This is apparent, in particular, from paragraphs 379 to 382 of the decision at issue and is confirmed in paragraph 148 of the judgments of 9 December 2014, *Alfa Acciai* v *Commission* (T-85/10, not published, EU:T:2014:1037) and *Ferriera Valsabbia and Valsabbia Investimenti* v *Commission* (T-92/10, not published, EU:T:2014:1032).

42 However, the hearing of 30 September 2002 — to which the representatives of the Member States were invited in accordance with the rules of the EC Treaty, which by that point were applicable, in particular in accordance with Article 11(2) of Regulation No 2842/98 — concerned the subject matter of the supplementary statement of objections, namely the legal consequences of the expiry of the ECSC Treaty for the continuation of the proceedings. This is clear, first, from that statement, which expressly invited its addressees to make their point of view on those supplementary objections known. Second, the Commission stated, in paragraph 382 of the decision at issue, that it did not consider it necessary to repeat the oral hearing of 13 June 2002, in application of the provisions of Regulations No 17 and 1/2003, since that hearing, in which the Member State representatives did not participate, had been conducted in conformity with the rules of the ECSC Treaty, which was applicable at the time. Furthermore, at the joint hearing in Cases C-85/15 P to C-89/15 P, the Commission confirmed, in its reply to a question from the Court, that the supplementary statement of objections re-examined neither the facts nor the evidence forming the subject matter of the proceedings.

43 It follows from this that, in the present case, the representatives of the Member States did not participate in a hearing concerning the substance of the case, but participated only in the hearing concerning the legal consequences resulting from the expiry of the ECSC Treaty.

44 Yet, according to the case-law noted in paragraphs 28 and 29 of the present judgment, when a decision is adopted on the basis of Regulation No 1/2003, the procedure resulting in that decision must conform to the procedural rules laid down by that regulation, even if the procedure began before that regulation came into force.

45 It follows that, before adopting the decision at issue, the Commission was required, in application of Articles 12 and 14 of Regulation No 773/2004, to give the parties the opportunity to develop their arguments during a hearing to which the competition authorities of the Member States were invited. Therefore, it cannot be held that the hearing of 13 June 2002, concerning the substance of the case, fulfilled the procedural requirements in relation to the adoption of a decision on the basis of Regulation No 1/2003.

46 As a result, the General Court made an error in law in holding, in paragraph 124 of the judgment under appeal, that the Commission was not obligated to organise a new hearing before adopting the decision at issue, on the ground that the undertakings concerned had already had the opportunity to be heard orally at the hearings of 13 June and 30 September 2002.

47 As the Advocate General pointed out in points 56 and 57 of his Opinion, having regard to the importance, in the context of a procedure provided for by Regulations No 1/2003 and 773/2004, of holding an oral hearing to which the competition authorities of the Member States are invited, in accordance with Article 14(3) of the latter regulation, failure to hold such a hearing constitutes infringement of an essential procedural requirement.

48 In so far as the right to such a hearing, provided for by Regulation No 773/2004, was not respected, it is not necessary for the undertaking, the rights of which have been infringed in this way, to demonstrate that such infringement might have influenced the course of the proceedings and the content of the decision at issue to its detriment.

49 Accordingly, the procedure is necessarily vitiated, regardless of any possible detrimental consequences for Riva that could result from that infringement (see, to that effect, judgments of 6 November 2012, *Commission* v *Éditions Odile Jacob*, C-553/10 P and C-554/10 P, EU:C:2012:682, paragraphs 46 to 52, and of 9 June 2016, *CEPSA* v *Commission*, C-608/13 P, EU:C:2016:414, paragraph 36).

50 It follows from the above that the first ground of appeal put forward by Riva must be upheld and, accordingly, the judgment under appeal must be set aside, without the Court needing to examine the other grounds of appeal.

The request for an incidental ruling

Arguments of the parties

51 By its request for an incidental ruling, Riva asks the Court to declare that the proceedings before the General Court breached the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union and Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, to the extent that they infringed the principle that the duration of proceedings must be reasonable, which is a sufficiently serious breach of a rule of law intended to confer rights on individuals.

52 In this respect, Riva claims that the proceedings before the General Court lasted nearly five years, including a period of three years and two months between the end of the written part of the procedure and the opening of the oral part. The circumstances of the case do not justify that duration. Indeed, the grounds of appeal raised by Riva did not present any particularly high degree of difficulty and would not have prevented the Judge-Rapporteur from carrying out his work in a shorter

period of time. The inactivity at the General Court is not explained by adoption of measures of organisation or instruction, or by the occurrence of procedural issues, and Riva's conduct did not contribute to delays in the handling of the case.

53 The Commission contends that Riva's request should be refused.

Findings of the Court

54 In respect of Riva's request to the Court to declare a breach of Article 47 of the Charter of Fundamental Rights, it should be recalled that a breach, by a Court of the European Union, of its obligation under that provision to adjudicate on the cases before it within a reasonable time must be sanctioned in an action for damages brought before the General Court, since such an action constitutes an effective remedy. Accordingly, a claim for compensation for the damage caused by the failure on the part of the General Court to adjudicate within a reasonable time may not be made directly to the Court of Justice in the context of an appeal, but must be brought before the General Court itself. The General Court, which has jurisdiction under Article 256(1) TFEU, hearing a claim for damages, is required to rule on such a claim sitting in a different composition from that which heard the dispute which gave rise to the procedure whose duration is criticised (judgment of 9 June 2016, *Repsol Lubricantes y Especialidades and Others* v *Commission*, C-617/13 P, EU:C:2016:416, paragraphs 98 and 99 and the case-law cited).

55 As a result, Riva's request for an incidental ruling must be refused.

The action before the General Court

56 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the appeal is well founded, the Court of Justice is to quash the decision of the General Court. It may then itself give final judgment in the matter, where the state of the proceedings so permits.

57 In the present case, the Court has the necessary information to give final judgment on the action for annulment of the decision at issue brought by Riva before the General Court.

58 In this respect, it is sufficient to note that, for the reasons set out in paragraphs 24 to 49 of the present judgment, the decision at issue must be annulled to the extent that it concerns Riva, for infringement of essential procedural requirements.

Costs

59 Under Article 184(2) of the Rules of Procedure, 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 costs.

60 Article 138(1) of those rules, which is applicable to appeal proceedings by virtue of Article 184(1) of the same rules, provides that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since Riva has been successful on appeal, and the action before the General Court was upheld, the Commission must be ordered to bear its own costs and to pay those incurred by Riva both at first instance and on appeal, in accordance with the form of order sought by Riva.

On those grounds, the Court (Ninth Chamber) hereby

1. **Sets aside the judgment of the General Court of the European Union of 9 December 2014, *Riva Fire* v *Commission* (T-83/10, not published, EU:T:2014:1034);**

2. **Annuls Commission Decision C(2009) 7492 final of 30 September 2009 relating to a proceeding under Article 65 CS (Case COMP/37.956 — Reinforcing bars, re-adoption), as amended by Commission Decision C(2009) 9912 final of 8 December 2009, in so far as it concerns Riva Fire SpA;**

3. **Orders the European Commission to bear its own costs and to pay those incurred by Riva Fire SpA both at first instance and in the present appeal.**

[Signatures]