Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

23 January 2025 *

(Appeal – Article 56 of the Statute of the Court of Justice of the European Union – More than one defendant in the proceedings at first instance – Judgment in default against one of those defendants which is the subject of an application before the General Court of the European Union to have it set aside – Admissibility of the appeal brought against that judgment – Conditions – Article 41 of the Statute of the Court of Justice of the European Union – Admissibility of the response to an appeal submitted by a party against which an order was made by default at first instance – Article 172 of the Rules of Procedure of the Court of Justice – Cross-appeal brought by a party against which an order was made by default and which has made an application to set aside to the General Court – Article 176(1) and Article 178 of the Rules of Procedure of the Court of Justice – Inadmissibility – Arbitration clause – Article 272 TFEU – Insurance contract concluded by the European Parliament – Exclusion clause in respect of damage relating directly or indirectly to flooding – Scope)

In Case C-766/21 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 8 December 2021,

European Parliament, represented initially by E. Paladini and B. Schäfer, and subsequently by A. Caiola and E. Paladini, acting as Agents,

appellant,

the other parties to the proceedings being:

Axa Assurances Luxembourg SA, established in Luxembourg (Luxembourg),

Bâloise Assurances Luxembourg SA, established in Bertrange (Luxembourg),

La Luxembourgeoise SA, established in Leudelange (Luxembourg),

Nationale-Nederlanden Schadeverzekering Maatschappij NV, established in The Hague (Netherlands),

represented by C. Collarini and S. Denu, avocats,

defendants at first instance,

* Language of the case: French.

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Second Chamber, acting as President of the Third Chamber, K. Lenaerts, President of the Court, acting as Judge of the Third Chamber, N. Jääskinen, M. Gavalec and N. Piçarra (Rapporteur), Judges,

Advocate General: N. Emiliou,

Registrar: C. Di Bella, Administrator,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 18 January 2024,

having regard to the order of 20 March 2024 to reopen the oral procedure, and further to the hearing on 17 April 2024,

after hearing the Opinion of the Advocate General at the sitting on 6 June 2024,

gives the following

Judgment

1 By its appeal, the European Parliament requests the setting aside of points 2 and 4 of the operative part of the judgment of the General Court of the European Union of 29 September 2021, *Parliament* v *Axa Assurances Luxembourg and Others* (T-384/19, 'the judgment under appeal', EU:T:2021:630), by which the General Court dismissed its action under Article 272 TFEU against Axa Assurances Luxembourg SA, Bâloise Assurances Luxembourg SA and La Luxembourgeoise SA (together, 'Axa and Others') seeking that they be ordered to pay the Parliament the expenses relating to damage caused to the Konrad Adenauer building ('the KAD building') in Luxembourg (Luxembourg) by rainwater from the construction site at that building, under the 'construction all-risk' insurance contract ('the CAR contract') concluded on 3 April 2012 between Axa and Others and Nationale-Nederlanden Schadeverzekering Maatschappij NV ('NN'), of the one part, and the European Union, represented by the Parliament, of the other.

2 By its cross-appeal, NN seeks to have set aside points 1 and 3 of the operative part of the judgment under appeal, by which the General Court ordered it, by default, to pay the Parliament, under the CAR contract, EUR 79 653.89 together with statutory interest for late payment.

Legal context

The Statute of the Court of Justice of the European Union

3 Article 41 of the Statute of the Court of Justice of the European Union provides:

'Where the defending party, after having been duly summoned, fails to file written submissions in defence, judgment shall be given against that party by default. An objection may be lodged against the judgment within one month of it being notified. …'

4 Under Article 56 of that Statute:

‘An appeal may be brought before the Court of Justice, within two months of the notification of the decision appealed against, against final decisions of the General Court and decisions of that Court disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility.

Such an appeal may be brought by any party which has been unsuccessful, in whole or in part, in its submissions. …

…’

The Rules of Procedure of the Court of Justice

5 Article 172 of the Rules of Procedure of the Court of Justice, headed ‘Parties authorised to lodge a response’, provides:

‘Any party to the relevant case before the General Court having an interest in the appeal being allowed or dismissed may submit a response within two months after service on him of the appeal. …’

6 Under Article 176 of those rules, headed ‘Cross-appeal’:

‘1. The parties referred to in Article 172 of these Rules may submit a cross-appeal within the same time limit as that prescribed for the submission of a response.

2. A cross-appeal must be introduced by a document separate from the response.’

7 Article 178 of those rules, headed ‘Form of order sought, pleas in law and arguments of the cross-appeal’, is worded as follows:

‘1. A cross-appeal shall seek to have set aside, in whole or in part, the decision of the General Court.

…

3. The pleas in law and legal arguments relied on shall identify precisely those points in the grounds of the decision of the General Court which are contested. The pleas in law and arguments must be separate from those relied on in the response.’

The Rules of Procedure of the General Court

8 Article 1 of the Rules of Procedure of the General Court, headed ‘Definitions’, provides as follows in paragraph 2:

‘In these Rules:

…

(c) “party” and “parties”, unless otherwise specified, means any party to the proceedings, including interveners;

…’

9 Article 123 of those rules, headed ‘Judgments by default’, provides:

‘1. Where the General Court finds that a defendant on whom an application initiating proceedings has been duly served has failed to respond to the application in the proper form or within the time limit prescribed in Article 81, without prejudice to the application of the provisions of the second paragraph of Article 45 of the Statute [of the Court of Justice of the European Union], the applicant may, within a time limit prescribed by the President, apply to the General Court for judgment by default.

2. A defendant in default shall not intervene in the default procedure and, with the exception of the decision which closes the proceedings, no procedural document shall be served on him.

3. The General Court shall give judgment in favour of the applicant in the judgment by default, unless it is clear that the General Court has no jurisdiction to hear and determine the action or that the action is manifestly inadmissible or manifestly lacking any foundation in law.

4. A judgment by default shall be enforceable. The General Court may, however, grant a stay of execution until it has given its decision on any application under Article 166 to set aside the judgment, or it may make execution subject to the provision of security of an amount and nature to be fixed in the light of the circumstances. This security shall be released if no such application is made or if the application fails.’

10 According to Article 163 of those rules, headed ‘Stay of proceedings’:

‘Where an appeal before the Court of Justice and one of the applications referred to in this Chapter, with the exception of the applications referred to in Articles 164 and 165, concern the same decision of the General Court, the President, after hearing the parties, may decide to stay the proceedings until the Court of Justice has delivered its ruling on the appeal.’

11 Article 166 of those rules, headed ‘Application to set aside a judgment by default’, provides as follows:

‘1. Application may be made pursuant to Article 41 of the Statute [of the Court of Justice of the European Union] to set aside a judgment given by default.

2. The application to set aside the judgment must be made by the defendant in default within one month from the date of service of the judgment given by default. …

3. After the application has been served, the President shall prescribe a time limit within which the other party may submit his written observations.

…

5. The General Court shall decide by way of a judgment which may not be set aside.

…’

The CAR contract

12 Under Article I.12.3.1.1 of the CAR contract, the cover provided for by that contract excludes, inter alia, loss and damage caused by failure to follow best practice, where that non-compliance is tolerated or must have been known to any insured or any person having a power of direction in respect of the insured works, including the site technical managers.

13 According to Articles I.13.2 and I.13.2.1 of that contract, the origins and extent of the loss and the related liability are to be analysed, and the amount of the loss is to be assessed, by an expert appointed and paid for by the insurer. In the event of disagreement on the expert's findings, the policyholder may have a supplementary expert assessment carried out.

14 Under Article I.15.1.1 of that contract, the contract does not insure, inter alia, damage relating directly or indirectly to flooding, a rise in the level of surface or underground watercourses, insufficient drainage of water or any natural disaster, unless agreed otherwise.

15 Under Article I.18.1 of the CAR contract, 'the law of the European Union, supplemented by Luxembourg law, shall apply to this contract'.

16 Article I.19 of that contract, headed 'Jurisdiction clause', provides:

'Any dispute between the European Parliament and the contractor relating to this contract which it has not been possible to settle amicably shall be put before the General Court of the Court of Justice of the European Union, pursuant to Article 256(1) [TFEU].'

17 Under Article II.1 of that contract, the expression 'natural disasters' refers to 'rises in water levels, floods, tidal waves, ground movement and, unless agreed otherwise, earthquakes'.

Background to the dispute

18 The background to the dispute is set out in paragraphs 1 to 23 of the judgment under appeal, and can be summarised as follows for the purposes of the present proceedings.

19 In the context of the building work undertaken to extend and renovate the KAD building, the Parliament issued a tender procedure, in 2011, with the aim of taking out a 'construction all- risk' insurance policy and an insurance policy covering third party liability.

20 On completion of that procedure, the bid selected was that drawn up on the basis of the bid submitted by Axa and Others and by Delta Lloyd Schadeverzekering NV, which was subsequently absorbed by NN, (together, 'the defendants at first instance').

21 On 3 April 2012, the European Union, represented by the Parliament, concluded the CAR contract with the defendants at first instance. That contract designates Axa Assurances Luxembourg as the lead insurer.

22 As a result of heavy rainfall on 27 and 30 May 2016, rainwater from the KAD building construction site flowed partly into the basement of the building undergoing construction work, causing an accumulation of water and creating humidity in areas in which technical equipment was already installed, resulting in damage to that equipment.

23 On 30 May 2016, the company overseeing the major works on that construction site submitted a claim to the insurance intermediary relating to the circumstances described in the preceding paragraph. Axa Assurances Luxembourg, as lead insurer, appointed an expert to be responsible for carrying out the customary investigations.

24 By letter of 15 July 2016, Axa Assurances Luxembourg informed the Parliament that, in the light of the information and the technical considerations apparent from the preliminary and supplementary expert reports drawn up following two inspections, it did not consider the damage in question to be covered by the CAR contract.

25 In the first place, Axa Assurances Luxembourg stated that Article I.15.1.1 of the CAR contract did not cover damage relating directly or indirectly to flooding or to insufficient drainage of water. In the second place, the damage was foreseeable and was the result of a flagrant failure to adhere to best practice, with the effect that the resulting loss and damage was also excluded from the insurance cover, in accordance with Article I.12.3.1.1 of that contract.

26 On 21 November 2017, following written exchanges and a meeting with representatives of Axa Assurances Luxembourg, the Parliament sent a letter of formal notice to the defendants at first instance, using a provisional assessment of the loss, to which that company replied on 20 December 2017, stating once again that there was no actionable claim.

27 Having received the final report of the technical expert from the Luxcontrol monitoring body, appointed to carry out an inspection of the technical equipment installed and stored in the areas affected by the damage, including a list of the equipment to be replaced, the Parliament renewed that formal notice, by letter of 28 November 2018, stating that the verifiable loss sustained was estimated at EUR 800 624.33 net of Value Added Tax.

The action before the General Court and the judgment under appeal

28 By application lodged at the Registry of the General Court on 20 June 2019, the Parliament brought an action under Article 272 TFEU, by which it requested the General Court:

– to find that the water damage caused at the KAD building construction site when heavy rainfall occurred on 27 and 30 May 2016 falls within the scope of the CAR contract;

– accordingly, to order the defendants at first instance to pay it the expenses claimed, that is to say, EUR 779 902.87, and in particular:

  – to order AXA Assurance Luxembourg to pay 50% of the aforementioned amount, that is to say, EUR 389 951.44;

  – to order Bâloise Assurances Luxembourg to pay 20% of the aforementioned amount, that is to say, EUR 155 980.57;

  – to order La Luxembourgeoise to pay 20% of the aforementioned amount, that is to say, EUR 155 980.57;

– to order NN to pay 10% of the aforementioned amount, that is to say, EUR 77 990.29;

– to order the defendants at first instance to pay it statutory interest for late payment on those amounts, from 22 December 2017, at a rate which is the sum of the interest rate applied by the European Central Bank (ECB) to its main refinancing operations and eight percentage points;

– in the alternative, should the first and second claims not be upheld, to order the defendants at first instance jointly and severally to pay for the loss caused by failure to fulfil the obligations under Article I.13.2 of the CAR contract, that is to say, EUR 779 902.87;

– to order the defendants at first instance to pay it the costs of the expert reports, that is to say, EUR 16 636, and specifically:

– to order AXA Assurance Luxembourg to pay 50% of the aforementioned amount, that is to say, EUR 8 318;

– to order Bâloise Assurances Luxembourg to pay 20% of the aforementioned amount, that is to say, EUR 3 327.20;

– to order La Luxembourgeoise to pay 20% of the aforementioned amount, that is to say, EUR 3 327.20;

– to order NN to pay 10% of the aforementioned amount, that is to say, EUR 1 663.60;

– to order the defendants at first instance to pay it statutory interest for late payment on those amounts, from 22 December 2017, at a rate which is the sum of the interest rate applied by the ECB to its main refinancing operations and eight percentage points; and

– to order the defendants at first instance to pay the costs.

29 Having been informed that Delta Lloyd Schadeverzekering had been absorbed by NN, the Registry of the General Court, by letter of 13 January 2020, served the Parliament's application on NN and set a time limit for it to submit its defence. NN did not submit a defence within the time limit given.

30 On 26 June 2020, the Parliament requested the General Court to find that an application initiating proceedings had been duly served on NN and to give judgment by default against that company, under Article 123(1) of the Rules of Procedure of the General Court. The Registry served that request on NN, stating that, in accordance with Article 123(2), NN would not intervene in the default procedure and that only the decision closing the proceedings would be served on it.

31 The General Court granted the Parliament's request and, in points 1 and 3 of the operative part of the judgment under appeal, ordered NN by default to pay the Parliament EUR 79 653.89 and statutory interest for late payment on that amount, from 22 December 2017, and to bear the costs relating to the default procedure concerning it.

32 By an application lodged at the Registry of the General Court on 16 November 2021, NN applied for points 1 and 3 of the judgment under appeal to be set aside. By decision of 10 January 2022, the General Court stayed that procedure to set aside, pending delivery of the decision of the Court of Justice closing the present appeal proceedings.

33 As regards, on the other hand, the Parliament's heads of claim against Axa and Others, in paragraph 94 of the judgment under appeal the General Court held that, in the light of Article I.15.1.1 of the CAR contract, read in the light of the other provisions of that contract and of the context in which it was concluded, the term 'flooding' should not be interpreted narrowly. The General Court accordingly found, in paragraph 111 of the judgment under appeal, that Axa and Others had been entitled to rely against the Parliament on the clause excluding cover for damage linked directly or indirectly to flooding, contained in Article I.15.1.1.

34 Consequently, in points 2 and 4 of the operative part of the judgment under appeal, the General Court dismissed the Parliament's action in so far as concerned Axa and Others and ordered the Parliament to bear its own costs and to pay two thirds of those incurred by Axa and Others.

Forms of order sought in the main appeal and in the cross-appeal

35 By its appeal, the Parliament claims that the Court of Justice should:

– set aside points 2 and 4 of the operative part of the judgment under appeal;

– refer the case back to the General Court;

– reserve the costs, with the exception of those referred to in point 3 of the operative part of the judgment under appeal;

– in the alternative,

  – set aside points 2 and 4 of the operative part of the judgment under appeal; and

  – grant the forms of order sought at first instance by the Parliament in respect of Axa and Others.

36 The respondents claim that the Court should:

– principally:

  – reject the Parliament's claim that points 2 and 4 of the operative part of the judgment under appeal should be set aside;

  – consequently, reject its claim that the costs referred to in point 4 of the operative part of the judgment under appeal should be reserved;

– in the alternative, in the event that the Court upholds the Parliament's claim by setting aside points 2 and 4 of the operative part of the judgment under appeal, refer the case back to the General Court; and

– in the further alternative, reject the Parliament's claims against Axa and Others, on the basis of the arguments submitted by those companies at first instance, and rule in accordance with the forms of order sought in the defence and the rejoinder submitted by them at first instance.

37 By its cross-appeal, NN claims that the Court should:

– hold the cross-appeal to be admissible and well founded and, therefore, set aside points 1 and 3 of the operative part of the judgment under appeal; and

– order the Parliament to pay the costs.

38 The Parliament claims that the Court should:

– hold the cross-appeal to be inadmissible;

– in the alternative, hold that cross-appeal to be unfounded; and

– order NN to pay the costs relating to the cross-appeal.

Reopening of the oral part of the procedure

39 The Advocate General's first Opinion was heard at the sitting on 18 January 2024. On the same day, the Court of Justice delivered its judgment in *Eulex Kosovo* v *SC* (C-785/22 P, EU:C:2024:52). In paragraph 31 of that judgment, the Court held that since the making of an application to set aside a judgment by default has the effect of reopening the proceedings before the General Court, a judgment by default which has been the subject of an application to set it aside cannot be regarded as a final decision within the meaning of Article 56 of the Statute of the Court of Justice of the European Union. It then inferred therefrom, in paragraph 32 of that judgment, that an appeal brought against a judgment given by default which is the subject of an application to set it aside is inadmissible.

40 By order of 20 March 2024, *Parliament* v *Axa Assurances Luxembourg and Others* (C-766/21 P, EU:C:2024:321), the Court ordered the reopening of the oral part of the procedure and the holding of a hearing, in accordance with Article 83 of its Rules of Procedure, so that the parties could express their views on the possible impact of the judgment of 18 January 2024, *Eulex Kosovo* v *SC* (C-785/22 P, EU:C:2024:52), on the admissibility of the appeal brought by the Parliament.

41 Following that hearing, which was held on 17 April 2024, and delivery of the Advocate General's Opinion at the hearing on 6 June 2024, the oral part of the procedure was closed.

The main appeal

Admissibility

Arguments of the parties

42 According to the Parliament, the judgment of 18 January 2024, *Eulex Kosovo* v *SC* (C-785/22 P, EU:C:2024:52), has no impact on the admissibility of the appeal by which that party is seeking the setting aside of points 2 and 4 of the operative part of the judgment under appeal. Whereas in the case that gave rise to the former judgment, the Court was hearing an application to set aside the judgment of the General Court of 19 October 2022, *SC* v *Eulex Kosovo* (T-242/17 RENV, EU:T:2022:637), by which the General Court had ruled by default in respect of a single defendant, the judgment under appeal was delivered by default in respect only of one of the four defendants, namely NN. Accordingly, the present appeal, which is directed against those points of the operative part that were delivered after an exchange of arguments, and which cannot be the subject of an application to set aside, is admissible.

43 In the Parliament's view, it is clear from paragraphs 31, 33 and 35 of the judgment of 18 January 2024, *Eulex Kosovo* v *SC* (C-785/22 P, EU:C:2024:52), that only those points of the operative part of a judgment that are the subject of an application to set aside lead to the inadmissibility of an appeal seeking to set aside those points, on the ground that, as a result of such an application, that appeal does not relate to a 'final' decision within the meaning of Article 56 of the Statute of the Court of Justice of the European Union. The foregoing interpretation is borne out by Article 163 of the Rules of Procedure of the General Court, pursuant to which, where an appeal before the Court of Justice and an application to set aside a judgment given by default concern the same decision of the General Court, the President of the General Court may stay the procedure to set aside until the Court of Justice delivers its ruling on the appeal.

44 The respondents, for their part, claim that the appeal brought by the Parliament is inadmissible, in accordance with the principles flowing from the judgment of 18 January 2024, *Eulex Kosovo* v *SC* (C-785/22 P, EU:C:2024:52), from which it is apparent that a judgment of the General Court that is the subject of an application to set it aside, and which is therefore not final, may only be the subject of an appeal once the procedure to set aside has been closed.

45 Those principles, which serve to preserve the unity of proceedings by avoiding parallel proceedings and the risk of conflicting decisions, must apply in the present case, in which there is only one set of proceedings and in which the dispute has arisen from a single contract.

Findings of the Court of Justice

46 In the first place, it is clear from the first paragraph of Article 56 of the Statute of the Court of Justice of the European Union that an appeal can only be brought before the Court of Justice against final decisions of the General Court and against those disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility. The appeal must be brought within two months of the notification of the decision appealed against.

47 It follows from that provision that an appeal is admissible only against a final decision, with respect to which no other legal remedies remain open (judgment of 18 January 2024, *Eulex Kosovo* v *SC* (C-785/22 P, EU:C:2024:52, paragraph 29).

48 In the second place, under Article 41 of the Statute of the Court of Justice of the European Union, where the defending party, after having been duly summoned, fails to file written submissions in defence, judgment shall be given 'against that party' by default and an objection may be lodged by that party against the judgment in question.

49 It is clear from that article that judgment is given by default only against the party or parties that have failed to file written submissions in defence in the proper form and within the time limit prescribed. The right to make an application to set aside that judgment therefore lies only with such party or parties in default, with the aim of enabling them to be heard in accordance with the adversarial principle.

50 Accordingly, where a judgment concerns proceedings that involve only one defendant, the Court of Justice has held that a procedure to set aside brought against that judgment means that the judgment cannot be regarded as a final decision within the meaning of the first paragraph of Article 56 of the Statute of the Court of Justice of the European Union and that, consequently, an appeal brought against that judgment is inadmissible (see, to that effect, judgment of 18 January 2024, *Eulex Kosovo* v *SC*, C-785/22 P, EU:C:2024:52, paragraphs 31 and 32).

51 Conversely, where the General Court's judgment has been given following an exchange of views between certain parties and by default against another, a defendant in default, an application to set aside is available only to the latter defendant, and only against those points of the operative part of the judgment which concern that party. The other points of the operative part of that judgment, relating to the defendants other than the defendant in default, constitute a 'final' decision within the meaning of the first paragraph of Article 56 of the Statute of the Court of Justice of the European Union, and may not be the subject of an application to set aside. They may, however, be the subject of an appeal before the Court of Justice.

52 In the present case, it is common ground that points 2 and 4 of the operative part of the judgment under appeal concern solely Axa and Others, which filed written submissions in defence before the General Court. It follows that no application to set aside can be made against those points and that the Parliament's appeal, in so far as it is directed against those points, is admissible.

Admissibility of NN's response

Arguments of the parties

53 The Parliament submits that the response to the main appeal is inadmissible, to the extent that it has been submitted by NN, the party in default at first instance. According to the Parliament, NN has no 'interest in the appeal being allowed or dismissed' within the meaning of Article 172 of the Rules of Procedure of the Court of Justice. Should the Court allow the main appeal, which relates only to points 2 and 4 of the operative part of the judgment under appeal, there would be a benefit only for Axa and Others, and not for NN, which is affected only by points 1 and 3 of that operative part.

54 NN claims that it should have benefited from the analysis by the General Court, which held that Axa and Others had been entitled to rely, against the Parliament, on the exclusion clause in Article I.15.1.1 of the CAR contract. NN should, as a result, in common with Axa and Others, be able to challenge the Parliament's appeal in so far as it disputes that assessment by the General Court.

Findings of the Court of Justice

55 Under the first sentence of Article 172 of the Rules of Procedure of the Court of Justice, 'any party to the relevant case before the General Court having an interest in the appeal being allowed or dismissed may submit a response within two months after service on him of the appeal'.

56 It is clear from that wording that the submission of a response to an appeal brought against a decision of the General Court must comply with two cumulative conditions, in addition to the two-month time limit laid down in that provision. First, the response must be submitted by a 'party to the relevant case before the General Court' and, second, that party must have an 'interest in the appeal being allowed or dismissed'.

57 Furthermore, although the concept of 'party to the relevant case before the General Court' is not defined by the Rules of Procedure of the Court of Justice, it is apparent from Article 1(2)(c) of the Rules of Procedure of the General Court that the terms 'party' and 'parties' mean any party to the proceedings, including interveners.

58 In the present case, it should be noted, in the first place, that the fact that judgment was delivered against NN by default cannot affect its status as a 'party to the relevant case before the General Court', since it was a 'party' to the proceedings before the General Court within the meaning of Article 1(2)(c) of the Rules of Procedure of the General Court. The present appeal was accordingly served on NN, as it was on the other parties to the proceedings before the General Court, by a decision of the President of the Court of Justice of 26 January 2022, under Article 171(1) of the Rules of Procedure of the Court of Justice.

59 In the second place, as regards the condition that NN must have an 'interest in the appeal being allowed or dismissed', it is common ground that the appeal brought by the Parliament is directed only against points 2 and 4 of the operative part of the judgment under appeal, which do not concern NN.

60 However, in the context of hearing that appeal, the Court of Justice is required to determine whether the General Court made any errors of law in order to reach the conclusion that the accumulation of large quantities of rainwater on levels -4 and -5 of the basement of the KAD building was covered by the concept of 'flooding' for the purposes of Article I.15.1.1 of the CAR contract and, therefore, that Axa and Others could properly rely on the exclusion of cover clause in that article against the claim made by the Parliament for compensation for the damage.

61 As the Advocate General noted in points 56 to 58 of his Opinion of 18 January 2024, the Court of Justice may therefore have reason to carry out assessments likely to have an effect on the outcome of the application to set aside made to the General Court by NN challenging points 1 and 3 of the operative part of the judgment under appeal, the procedure in respect of which is currently stayed pending delivery of the present judgment.

62 It follows that NN has an 'interest in the appeal being allowed or dismissed' within the meaning of Article 172 of the Rules of Procedure of the Court of Justice and, accordingly, that its response to the main appeal is admissible.

Substance

63 In support of its appeal, the European Parliament puts forward three grounds of appeal. The first ground of appeal alleges infringement of the principles of interpretation under EU law in respect of the term 'flooding' and, in the alternative, distortion of the clause in the CAR contract under which the scope of that contract excludes, inter alia, damage relating directly or indirectly to 'flooding'. The second ground of appeal alleges an error of law concerning the reasoning of the judgment under appeal. The third ground of appeal alleges distortion of the facts and evidence.

The first ground of appeal

– *Arguments of the parties*

64 By its first ground of appeal, the Parliament claims that, by taking as a basis the usual meaning of the term 'flooding' contained in Article I.15.1.1 of the CAR contract, without taking into account either the context in which that term is used or the objectives of that contract, the General Court disregarded the principles of interpretation under EU law, specifically the principle that the terms contained in a derogating provision must be interpreted strictly and the principle of systemic interpretation. In the alternative, the Parliament claims that the General Court distorted the exclusion of cover clause contained in that Article I.15.1.1, by interpreting it in an overly broad manner.

65 The respondents submit that, on the pretext of an alleged error of law, the first ground of appeal is in reality seeking to call into question the factual assessment of that clause by the General Court. Since the Court of Justice does not have jurisdiction to carry out such a review in the context of an appeal, that ground of appeal is inadmissible.

– *Findings of the Court of Justice*

66 As a preliminary point, it should be noted that the General Court has exclusive jurisdiction to establish the facts, except where the substantive inaccuracy of its findings is apparent from the documents submitted to it, and to assess the evidence accepted. The establishment of those facts and the assessment of that evidence therefore do not, save where the clear sense of the evidence has been distorted, constitute a point of law which is subject as such to review by the Court of Justice (judgment of 29 October 2015, *Commission* v *ANKO*, C-78/14 P, EU:C:2015:732, paragraph 22 and the case-law cited).

67 It is also important to note that the examination of a contractual clause by the General Court cannot be classified as an interpretation of law and cannot, therefore, be reviewed by the Court of Justice in the context of an appeal without encroaching upon the jurisdiction of the General Court to establish the facts. An alleged infringement of the EU law applicable to a contract is, by contrast, subject to such review (see, to that effect, judgment of 14 January 2021, *ERCEA* v *Aristoteleio Panepistimio Thessalonikis* (C-280/19 P, EU:C:2021:23, paragraphs 43 and 44 and the case-law cited).

68 Accordingly, irrespective of whether the General Court was required to apply the methods of interpretation specific to EU law in the context of proceedings relating not to the interpretation of that law but to the application of a contractual clause, it should be noted that the Parliament is alleging an infringement of those methods in reliance on the reference made to EU law in Article I.18.1 of the CAR contract. The first ground of appeal put forward by the Parliament in support of its appeal is, therefore, admissible.

69 In the present case, in accordance with those methods of interpretation, the General Court properly enquired as to the meaning and scope that the parties to the contract intended to give to the term 'flooding', having reference to the context and to the provisions of the CAR contract. It accordingly examined in detail, in paragraphs 77 to 111 of the judgment under appeal, whether, in the circumstances of the present case, the exclusion of cover clause in Article I.15.1.1 of the CAR contract applies to damage relating directly or indirectly to flooding.

70 In paragraphs 78 to 82 of the judgment under appeal, the General Court defined the term 'flooding' in accordance with its usual meaning, having not found any definition of that term in the CAR contract indicating that the contracting parties intended to give that term a meaning any stricter than its usual meaning. The General Court stated, first of all, in paragraph 78 of that judgment, that since the CAR contract contained no definition of the term 'flooding', it was appropriate to look to the usual meaning of that term, while also examining the context of the exclusion clause at issue, in order to determine the common intention of the parties to that contract. Next, the General Court added, in paragraph 81 of its judgment, that, had the intention of the parties to the contract been to restrict the scope and meaning of the term 'flooding', a clear definition of that term would have been included in that contract. Last, in paragraph 82 of that judgment, the General Court defined the term 'flooding' by reference to definitions of that term appearing in two different dictionaries.

71 The General Court did not thereby err in law. Contrary to the Parliament's arguments, the extent of the insurance cover under the CAR contract does not derive from a pre-established principle. It is determined by the concurrence of wills of the parties to that contract, which, in the present case, agreed to define the scope of the cover afforded by the contract by means of exclusion clauses. Those clauses cannot be categorised as 'derogations' that, it is claimed, should be subject as such to an assumption of strict interpretation, since no prima facie complete coverage of risks has been identified either from the CAR contract, despite its name, or from a provision of EU law, no such provision having, moreover, been invoked by the Parliament.

72 The General Court correctly sought, in paragraphs 83 to 93 of the judgment under appeal, to determine the meaning that the parties to the CAR contract had intended to give to the term 'flooding' that it contains, by examining all the relevant clauses and the context of that contract. The General Court pointed out, first, that in the context of its tender procedure the Parliament itself had proposed that the contract to be concluded should contain an exclusion clause in respect of damage relating directly or indirectly to flooding, after confirming that the area in which the KAD building construction site was located was 'not liable to flooding'. Second, the General Court noted, in paragraph 90 of the judgment under appeal, that the fact that the term 'flooding' also appears in Article II.1 of the CAR contract, which defines natural disasters, does not mean that the two terms are synonymous and that the concept of 'flood', for its part, encompasses only natural disasters.

73 The General Court therefore did not disregard the methods of interpretation under EU law invoked by the Parliament in the first ground of its appeal when it held, in paragraph 92 of that judgment, that a heavy rainfall event that led to an accumulation of rainwater such as that which submerged levels -4 and -5 of the KAD building is covered by the term 'flooding' used in Article I.15.1.1 of the CAR contract.

74 Consequently, the Parliament's principal argument invoked in its first ground of appeal must be rejected as unfounded.

75 Furthermore, as regards the argument put forward in the alternative by the Parliament, alleging distortion of Article I.15.1.1 of the CAR contract, it should be recalled that such a distortion must be obvious from the documents in the case file without there being any need to carry out a new assessment of the facts and the evidence (judgment of 6 November 2018, *Scuola Elementare Maria Montessori* v *Commission*, *Commission* v *Scuola Elementare Maria Montessori* and *Commission* v *Ferracci*, C-622/16 P to C-624/16 P, EU:C:2018:873, paragraph 86).

76 It is sufficient to note that the Parliament has not put forward any evidence capable of demonstrating the existence of such a distortion, and merely questions what it describes as the 'overly broad' interpretation adopted by the General Court. Consequently, in accordance with the settled case-law referred to in paragraphs 66 and 67 of the present judgment, that argument must be rejected as inadmissible.

77 It follows from the foregoing that the first ground of appeal must be rejected as being in part unfounded and in part inadmissible.

The second ground of appeal

– *Arguments of the parties*

78 By its second ground of appeal, the Parliament submits that the judgment under appeal is vitiated by a contradiction in its reasoning, in so far as the General Court found, in paragraphs 78 to 89 of that judgment, that the origin of a flood is not a valid criterion for defining the term 'flooding' in the context of the CAR contract. The General Court, in paragraphs 91 to 96 of that judgment, incorrectly agreed with the position of Axa and Others according to which a flood originates in a natural event external to the insured property, by contrast to water damage which is generally covered by insurance policies.

79 The respondents dispute the validity of that line of argument.

– *Findings of the Court of Justice*

80 In accordance with settled case-law, the statement of the reasons on which a judgment of the General Court is based must clearly and unequivocally disclose the General Court's reasoning, so that the persons concerned can be apprised of the justification for the decision taken and the Court of Justice can exercise its power of review (judgment of 1 December 2016, *Klement* v *EUIPO*, C-642/15 P, EU:C:2016:918, paragraph 24 and the case-law cited). Where the reasoning of the General Court is contradictory or inadequate, that raises a question of law which is amenable to judicial review on appeal (judgment of 4 March 2020, *EUIPO* v *Equivalenza Manufactory*, C-328/18 P, EU:C:2020:156, paragraph 25 and the case-law cited).

81 As stated in paragraph 70 of the present judgment, the General Court, in paragraphs 78 to 82 of the judgment under appeal, defined the term 'flooding' as having the usual meaning of that term, having not found any definition in the CAR contract indicating that the contracting parties had intended to give that term a meaning any stricter than its usual meaning.

82 In paragraphs 83 to 89 of the judgment under appeal, the General Court examined the context surrounding the inclusion of the term 'flooding' in Article I.15.1.1 of the CAR contract. In that context, it stated, in paragraph 85 of its judgment, that a 'flood may have different causes' and, in paragraph 86 thereof, that a 'flood may … have different causes, such as the overflowing of a watercourse, heavy rainfall, the overflowing of a pool of surface or ground water following a rise in the water tables, or a burst civil engineering structure such as a dam or dike'. The General Court concluded therefrom, in paragraph 87 of that judgment, that 'there was no good reason to believe that [Article] I.15.1.1 of the CAR contract would relate only to certain of the various possible causes of a flood, without indicating which ones'. According to the General Court, in the absence of any definition of the concept of 'flooding' in that contract, it was appropriate to find that that concept had not been restricted in any way.

83 In paragraphs 91 to 96 of the same judgment, the General Court held, in essence, that the interpretation of the concept of 'flooding' that it adopted allows a distinction to be drawn between a 'flood' and 'water damage', since a 'flood' originates in a natural event external to the insured property, whether or not that event is categorised as a natural disaster, whereas in the case of 'water damage', such as a burst pipe, for example, that external element is not present.

84 Contrary to the Parliament's arguments, that reasoning cannot be held to be contradictory. Whereas, in paragraphs 78 to 89 of the judgment under appeal, the General Court merely noted that a flood may have different causes, without limiting them to those proposed by the Parliament, in paragraphs 91 to 96 of that judgment, it distinguished between the concept of 'flooding' and that of 'water damage', on the basis of the criterion of whether the event giving rise to the damage is external to the property insured, rather than of whether or not that event is 'natural' in origin.

85 It follows that the Parliament's line of argument that the reasoning of the judgment under appeal is contradictory must be rejected as being the result of a misreading of that judgment.

86 It is clear from the foregoing that the second ground of appeal must be rejected as unfounded.

The third ground of appeal

– *Arguments of the parties*

87 By its third ground of appeal, the Parliament claims that the General Court distorted significant facts and evidence, contained in the expert report, in the reasoning behind its finding that the damage caused to the KAD building was the result of a flood and not of a risk inherent in the construction site.

88 First, in paragraphs 86, 89 and 94 of the judgment under appeal, the General Court distorted the Parliament's position on the interpretation of the term 'flooding'. The Parliament maintains that, contrary to the findings made by the General Court, it did not argue in the slightest that that term referred only to floods resulting from the overflowing of a watercourse and, accordingly, excluded floods caused by heavy rainfall.

89 Second, the General Court distorted the facts when it stated, in paragraph 95 of the judgment under appeal, that, according to the findings in the expert report, the accumulation of rainwater in the basement of the building undergoing construction work was 'associated the inability of the underground sewer system to drain that heavy flow of water'. The Parliament states, in that regard, that the expert report established that the water was held back in one area of the construction site and could not even be directed towards the underground sewer system, due to technical problems inherent in the construction site, including a fault in the programming of the lift pumps.

90 Third, in paragraph 109 of the judgment under appeal, the General Court distorted the finding in the expert report that the damage occurred when 'the major works were in a state that could be described as almost complete (supporting structure and roof)', doing so in order to reject the Parliament's argument that the KAD building sustained damage as a result of a risk inherent in the construction site, because it was a building undergoing construction work that was not completely weather-tight and protected from rain. According to the Parliament, the expert report relied upon by the General Court does not anywhere state that the construction of the building was so advanced that it was no longer subject to construction site risks, such as water damage as the result of heavy rain.

91 The respondents dispute the validity of those arguments.

– *Findings of the Court of Justice*

92 As recalled in paragraph 75 of the present judgment, a distortion must be obvious from the documents in the case file without there being any need to carry out a new assessment of the facts and the evidence.

93 As regards, first, the alleged distortion of the Parliament's position on the scope of the term 'flooding', suffice it to note that, even assuming that such distortion were established, it would not be such as to call into question the interpretation of that term adopted by the General Court in paragraphs 86, 89 and 94 of the judgment under appeal. That argument must therefore be rejected as ineffective.

94 Second, as regards the distortion allegedly vitiating paragraph 95 of the judgment under appeal, suffice it to note that the fact that the expert report does not refer to the inability of the underground sewer system to drain the rainwater, assuming that it is established, is not sufficient to call into question the finding reached by the General Court in paragraph 96 of that judgment, that a phenomenon such as an accumulation of heavy rainfall constitutes 'flooding' for the purposes of Article I.15.1.1 of the CAR contract.

95 It is clear from paragraphs 85 to 87 of that judgment, in particular, that the reasons why the accumulated water could not be drained do not affect the interpretation of the term 'flooding' adopted by the General Court.

96 The argument alleging distortion of the findings contained in the expert report must, therefore, also be rejected as ineffective.

97 Third, in so far as the Parliament claims that the General Court, in paragraph 109 of the judgment under appeal, distorted the findings contained in that report to the effect that the damage occurred when 'the major works were in a state that could be described as almost complete (supporting structure and roof)', suffice it to note that the Parliament confines itself to calling into question the factual conclusions reached and the factual assessments made by the General Court on the basis of those findings. That part of the third ground of appeal must therefore be rejected as inadmissible.

98 It follows from the foregoing that the third ground of appeal must be rejected as being in part inadmissible and in part unfounded.

99 For all the foregoing reasons, the main appeal must be dismissed in its entirety.

The cross-appeal

Admissibility

Arguments of the parties

100 The Parliament claims that the cross-appeal is inadmissible on the ground that NN does not satisfy the condition under the second paragraph of Article 56 of the Statute of the Court of Justice of the European Union, according to which an appeal may be brought 'by any party which has been unsuccessful, in whole or in part, in its submissions'.

101 Furthermore, the Parliament submits that, in the light of the system of remedies established by the Treaties, the submission of a cross-appeal before the Court of Justice is incompatible with the parallel making of an application to the General Court to set aside a judgment.

102 For the sake of completeness, the Parliament claims that since NN did not have the status of a party entitled to file a response within the meaning of Article 172 of the Rules of Procedure of the Court of Justice, nor does it have the status required to bring a cross-appeal, which, under Article 176 of those rules, is reserved to the 'parties referred to in Article 172 of [those] Rules'.

103 NN, for its part, disputes that the second paragraph of Article 56 of the Statute of the Court of Justice of the European Union applies to cross-appeals, since that remedy is laid down only by the Rules of Procedure of the Court of Justice. Article 176 of those Rules confers the right to submit a cross-appeal on the 'parties referred to in Article 172 of [those] Rules', that is to say, 'any party to the relevant case before the General Court having an interest in the appeal being allowed or dismissed'.

104 In the present case, NN has an interest in being relieved of the order by default made against it by the General Court. The fact that its cross-appeal relates to points 1 and 3 of the operative part of the judgment under appeal, whereas the Parliament's main appeal refers to points 2 and 4 of that operative part, does not affect the admissibility of the cross-appeal, since a cross-appeal may concern a decision of the General Court other than that which is the subject of the main appeal.

105 NN states, furthermore, that the pleas in law of its application to set aside are different from the grounds of its cross-appeal, in so far as the former are the same as the pleas in law submitted by Axa and Others in the proceedings at first instance and the latter allege an infringement of Article 45(1)(a) and of Article 123(3) of the Rules of Procedure of the General Court.

Findings of the Court

106 Under the combined provisions of Article 172 and Article 176(1) of the Rules of Procedure of the Court of Justice, the submission of a cross-appeal is subject to the dual condition that the cross-appellant must have been a 'party to the relevant case before the General Court' and must have 'an interest in the appeal being allowed or dismissed'.

107 In accordance with Article 176(2) and Article 178(1) and (3) of those rules, a cross-appeal must be introduced by a document separate from the response, which seeks to have set aside, in whole or in part, the decision of the General Court by relying on grounds of appeal and legal arguments that are separate from those relied on in the response (see, to that effect, judgment of 14 September 2023, *Land Rheinland-Pfalz* v *Deutsche Lufthansa*, C-466/21 P, EU:C:2023:666, paragraph 50 and the case-law cited).

108 In the present case, it should be noted that the conditions set out in paragraphs 106 and 107 of the present judgment are satisfied. First, as is apparent from paragraphs 58 and 59 of the present judgment, NN is a party entitled to file a response, within the meaning of Article 172 of the Rules of Procedure of the Court of Justice. Second, NN submitted its cross-appeal by a separate document, within the time limits laid down in Article 176(1) of those rules. That cross-appeal, which seeks annulment of points 1 and 3 of the operative part of the judgment under appeal, relies, in accordance with Article 178(3) of those rules, on grounds of appeal and arguments that are separate from those relied on in NN's response to the main appeal lodged by the Parliament, which concerns paragraphs 2 and 4 of that operative part.

109 However, it is common ground that, in parallel, NN made an application to set aside to the General Court under Article 166 of the Rules of Procedure of the General Court, also seeking annulment of points 1 and 3 of the operative part of the judgment under appeal, given against it by default.

110 As noted in paragraph 39 of the present judgment, the Court of Justice has held that where a party in default makes an application to set aside to the General Court, that circumstance, because it has the effect of reopening the proceedings before that Court, means that a judgment delivered by default which has been the subject of such an application cannot be regarded as a final decision within the meaning of Article 56 of the Statute of the Court of Justice of the European Union, and that, consequently, an appeal brought against that judgment is inadmissible (see, to that effect, judgment of 18 January 2024, *Eulex Kosovo* v *SC*, C-785/22 P, EU:C:2024:52, paragraphs 31 and 32).

111 For the same reasons, that case-law must also cover a situation in which there is more than one defendant before the General Court and one of those defendants, which failed to file written submissions in defence, has made an application to set aside the judgment given. In such a situation, the procedure to set aside has the effect of reopening the proceedings on the points of the operative part of the General Court's decision to which that procedure relates and, therefore,

as the Advocate General noted in point 116 of his Opinion of 18 January 2024, that decision cannot be considered to be a final decision on those points, within the meaning of the first paragraph of Article 56 of the Statute of the Court of Justice of the European Union.

112 Consequently, the cross-appeal brought by NN must be dismissed as inadmissible.

Costs

113 Under Article 138(1) of the Rules of Procedure of the Court of Justice, which applies to appeal proceedings 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.

114 Since NN has been unsuccessful in its cross-appeal and the Parliament applied for it to be ordered to pay the costs, NN must be ordered to pay the costs relating to the cross-appeal. By contrast, since Axa and Others and NN have not applied for the Parliament to be ordered to pay the costs and since the latter has been unsuccessful in its main appeal, each party must be ordered to pay its own costs.

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

1. **Dismisses the main appeal and the cross-appeal;**

2. **Orders the European Parliament, Axa Assurances Luxembourg SA, Bâloise Assurances Luxembourg SA, La Luxembourgeoise SA. and Nationale–Nederlanden Schadeverzekering Maatschappij NV to pay their own costs relating to the main appeal;**

3. **Orders Nationale–Nederlanden Schadeverzekering Maatschappij NV to pay the costs relating to the cross-appeal.**

[Signatures]