Reports of Cases

OPINION OF ADVOCATE GENERAL
ĆAPETA
delivered on 21 March 2024[1]

Case C-224/23 P

Penya Barça Lyon: Plus que des supporters (PBL),
Issam Abdelmouine
v

European Commission

(Appeal – State aid – Alleged aid in favour of Paris Saint-Germain FC – Regulation (EU) 2015/1589 – Article 1(h) – Article 24(2) – Concept of 'interested party' – Scope of the meaning of 'interest' of a person, undertaking or association of undertakings – Need for a causal link between the interests of those parties and the granting of the aid)

I. Introduction

1. Mr Issam Abdelmouine is a proud fan of FC Barcelona and a '*socio*' (member) of that football club. Together with Penya Barça Lyon: Plus que des supporters ('PBL'), a French association of football fans of FC Barcelona, he filed a complaint with the European Commission to allege unlawful State aid from France in the form of the non-enforcement of certain financial fair play rules of the Union of European Football Associations ('UEFA'). He argued that that lack of enforcement enabled Paris Saint-Germain FC to sign the football player Mr Lionel Messi from FC Barcelona.

2. The Commission responded to that complaint by a letter in which it explained that that correspondence could not be treated as a 'formal complaint',[2] since Mr Abdelmouine lacked the status of an 'interested party', within the meaning of the Procedural Regulation.[3]

3. In the judgment of 8 February 2023, *PBL and WA* v *Commission* (T-538/21, not published, EU:T:2023:53) ('the judgment under appeal'), resulting from the annulment procedure initiated against that letter, the General Court upheld the Commission's position that Mr Abdelmouine could not be recognised as an 'interested party', within the meaning of the Procedural Regulation.

4. In the present appeal, the Court of Justice is tasked with clarifying the requirements underlying the concept of an 'interested party' for the purposes of the State aid complaints procedure.

1 Original language: English.

2 A concept which, I should highlight at the outset, does not exist within the Procedural Regulation.

3 Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9) ('the Procedural Regulation'), Article 1(h).

II. Background to the case

A. Complaint to the Commission and the letter at issue

5. The facts and legal background relevant for the present appeal can be summarised as follows.

6. On 8 August 2021, FC Barcelona announced the departure of Mr Lionel Messi to Paris Saint-Germain FC.

7. On the same day, Mr Abdelmouine complained to the Commission about the existence of allegedly unlawful State aid to Paris Saint-Germain FC by the Ligue de Football Professionnel (French Professional Football League) and its supervisory administrative authority in the form of a temporary suspension of enforcement by the Fédération Française de Football (French Football Federation) of the UEFA Club Licensing and Financial Fair Play Regulations. [4]

8. According to Mr Abdelmouine, that decision of non-enforcement resulted in a distortion of the rules applied by the professional football bodies in Spain and France, which affected competition and enabled Paris Saint-Germain FC to recruit Mr Lionel Messi.

9. By letter of 1 September 2021, the Commission replied to Mr Abdelmouine's complaint ('the contested decision'). [5]

10. In the relevant part, the contested decision reads as follows:

'According to Article 24(2) of [the Procedural Regulation], formal complaints can only be submitted by interested parties. Interested parties are any Member State and any person, undertaking or association of undertakings whose interests might be affected by the granting of aid, in particular the beneficiary of the aid, competing undertakings and trade associations …

You have filed the complaint in the name of a member (socio) of [FC Barcelona]. A member is neither a competitor of Paris Saint-Germain FC or a trade association. While the definition of an 'interested party' is not limited solely to competitors of the beneficiary of the aid, purely general or indirect interests of a person in a measure does not qualify that person as an interested party, as such elements do not disclose any real affectation of its situation. For example, the status of a shareholder of the company competing with an aid beneficiary does not confer on that person an interest of its own and distinct from that of the company concerned. The shareholder can defend his interests in relation to that measure only be exercising his rights as a member of that undertaking, which itself may have the right to lodge a complaint. The status of an interested party is not extended to all persons who may be affected by a reduction in an undertaking's annual net profit or loss. The situation of the members ('socios') of [FC Barcelona], which is organised as a not-for-profit association, is similar in this regard to that of shareholders of a company, as they could argue only an indirect interest in the measure at stake, through [FC Barcelona].

Since you therefore do not qualify as an interested party, your submission cannot be treated as a formal complaint within the meaning of Article 24(2) of [the Procedural Regulation].'

[4] The UEFA Club Licensing and Financial Fair Play Regulations are available at: https://documents.uefa.com/v/u/MFxeqLNKelkYyh5JSafuhg.

[5] That document is registered as COMP.C.4/AH/mdr 2021(092342).

B. Proceedings before the General Court and the judgment under appeal

11. By application of 2 September 2021, PBL and Mr Abdelmouine (together, 'the appellants') brought an action under Article 263 TFEU before the General Court.

12. By that action, those parties sought the annulment of the contested decision and an order to enjoin the Commission, inter alia, to initiate an investigation against France for unlawful State aid to Paris Saint-Germain FC in the context of its national and European competitions. [6]

13. The single plea in law put forward at first instance alleged the breach of Article 1(h) of the Procedural Regulation. Therein, the appellants also argued that the Commission had wrongly equated the status of shareholder and '*socio*' and thereby arrived at an incorrect interpretation of the concept of an 'interested party'. [7]

14. In the judgment under appeal, the General Court, first, declared the action for annulment to be inadmissible in so far as it was brought by PBL, given that there was no evidence that the complaint had been filed also on behalf of that party. [8]

15. Second, the General Court examined the four types of interest claimed by Mr Abdelmouine, namely: (i) the direct patrimonial interest in relation to FC Barcelona's financial situation; (ii) the interest based on the values of football and the defence of sport; (iii) the consequence of distorted competition for the way FC Barcelona is organised; and (iv) the interest in preserving the rights of the '*socios*' in the event of a change in the status or structure of FC Barcelona.

16. The General Court concluded that none of the interests relied on by Mr Abdelmouine in support of his status as an 'interested party', within the meaning of Article 1(h) of the Procedural Regulation, may lead to the annulment of the contested decision. [9]

17. Third, the General Court declared Mr Abdelmouine's argument that his status as a '*socio*' could not be equated with that of a shareholder of a company as inoperative. It explained that the analogy drawn in the contested decision by the Commission was ancillary to the latter's declaration that Mr Abdelmouine did not constitute an 'interested party'. [10]

18. In the light of the above conclusions, the General Court dismissed the action for annulment and ordered the appellants to pay the costs.

III. Procedure before the Court of Justice

19. By an appeal lodged on 11 April 2023, the appellants request that the Court set aside the judgment under appeal in its entirety and grant the form of order sought at first instance, in its final version.

20. In its response, lodged on 14 July 2023, the Commission requests that the Court dismiss the appeal and order the appellants to pay the costs of the proceedings.

6 Judgment under appeal, paragraph 7.

7 Judgment under appeal, paragraph 19.

8 Judgment under appeal, paragraphs 17 and 18.

9 Judgment under appeal, paragraphs 28 to 47.

10 Judgment under appeal, paragraphs 51 to 53.

IV. Analysis

21. By the contested decision, the Commission informed Mr Abdelmouine that his complaint could not be treated as a 'formal' complaint within the meaning of Article 24(2) of the Procedural Regulation. According to the Commission, that is because Mr Abdelmouine lacked the quality of an 'interested party', as it appears in Article 1(h) of that regulation. However, the contested decision also explains that the information provided by Mr Abdelmouine would be registered as 'general market information'. [11]

22. The Commission did not explain what consequences would follow from the refusal to treat his correspondence as a 'formal' complaint, but instead as 'general market information'. Nor does the contested decision contain any statement about the question of whether the Commission considers that (unlawful) State aid is present, or whether it intends to open the formal investigation procedure.

23. By their action for annulment, the appellants thus essentially challenge the refusal of the Commission to characterise Mr Abdelmouine as an 'interested party'.

24. To my mind, that challenge opens two questions. First, what consequences does that refusal entail for Mr Abdelmouine? Second, was Mr Abdelmouine wrongly refused the status of an 'interested party'?

25. I will deal with those questions in turn. For that purpose, I will first briefly explain the procedural rights attributed to 'interested parties' and those granted to persons holding no such status (A). I will then examine the conditions for obtaining the status of an 'interested party', as it appears in Article 1(h) of the Procedural Regulation (B). Lastly, I will consider whether the General Court erred in denying Mr Abdelmouine 'interested party' status (C).

A. Procedural rights of 'interested parties' and other persons

26. The obligation of the Commission to investigate aid which has the potential of undermining effective and undistorted competition between undertakings (and Member States) on the internal market follows directly from the Treaties.

27. Therefore, whenever the Commission receives information alleging a potential breach of Article 107 TFEU, it should, under Article 108(3) TFEU, examine that information and decide whether it requires any further action, including the opening of the procedure laid down in Article 108(2) TFEU. [12]

[11] That term is not defined in the Procedural Regulation. It is, however, referred to in recital 32 of that regulation to explain the consequences arising from a submission not meeting the conditions laid down in the complaint form: that is to say that said information 'should not necessarily lead to *ex officio* investigations'.

[12] See, to that effect, judgment of 2 April 1998, *Commission* v *Sytraval and Brink's France* (C-367/95 P, EU:C:1998:154, paragraph 62) ('*Commission* v *Sytraval and Brink's France*') (explaining that, while the Commission is under no obligation to engage in an exchange with a complainant, 'this finding does not mean that the Commission is not obliged, where necessary, to extend its investigation of a complaint beyond a mere examination of the facts and points of law brought to its notice by the complainant. The Commission is required, in the interests of sound administration of the fundamental rules of the Treaty relating to State aid, to conduct a diligent and impartial examination of the complaint, which may make it necessary for it to examine matters not expressly raised by the complainant'). Along the same lines, see also Opinion of Advocate General Bot in *Austria* v *Scheucher – Fleisch and Others* (C-47/10 P, EU:C:2011:373, point 120).

28. That obligation arises irrespective of whether it is the victim of distorted competition on the internal market that brings certain information to the Commission's attention, or a person that may be regarded as having more 'common' or 'general' concerns with regard to the granting of allegedly unlawful aid.

29. At the same time, Article 108 TFEU grants the Commission the exclusive competence to oversee the proper implementation of the rules on State aid and provides that it performs that role 'in cooperation with the Member States'.

30. That has led the Court to conclude that the procedure for reviewing State aid involves, principally, only the Commission and the Member States: an investigation into the grant of aid is initiated against the State and addressed to it, and not against the beneficiary of that aid or other parties affected by it. [13]

31. Thus, in principle, third parties are excluded from the State aid procedure, especially from its preliminary stage, before a decision is adopted as to whether an investigation under Article 108(2) TFEU must be opened.

32. That exclusion entails that neither the beneficiary of an aid measure nor any other entity affected by it could be deemed to have any particular role in the preliminary stage of the procedure for reviewing aid under Article 108(3) TFEU. [14]

33. Third parties were deemed to hold certain procedural rights only at the level of the formal investigation procedure, initiated on the basis of Article 108(2) TFEU. As this stage of the procedure is 'designed to enable the Commission to be fully informed of all the facts of the case', that institution is obliged to give any party 'concerned' the possibility to submit comments to it. [15]

34. However, despite the Treaty-based obligation of the Commission to investigate any possible case of unlawful aid, no procedural rights of interested parties existed at the preliminary stage.

35. It was only in 1998, after the judgment in *Commission* v *Sytraval and Brink's France*, that third parties were first accorded certain procedural rights outside the framework of the formal investigation procedure. [16]

[13] See, to that effect, *Commission* v *Sytraval and Brink's France*, paragraph 59, and of 24 September 2002, *Falck and Acciaierie di Bolzano* v *Commission* (C-74/00 P and C-75/00 P, EU:C:2002:524, paragraphs 81 and 83).

[14] See, for example, judgments of 24 September 2002, *Falck and Acciaierie di Bolzano* v *Commission* (C-74/00 P and C-75/00 P, EU:C:2002:524, paragraph 83), and of 6 October 2005, *Scott* v *Commission* (C-276/03 P, EU:C:2005:590, paragraph 33). That is, despite the fact that, as Advocate General Lenz explains in his Opinion in *Commission* v *Sytraval and Brink's France* (C-367/95 P, EU:C:1997:249, point 86), 'the Treaty does not prohibit the Commission from hearing the views of an interested party at the stage of the preliminary examination procedure provided for in Article 93(3)'.

[15] See judgment of 15 June 1993, *Matra* v *Commission* (C-225/91, EU:C:1993:239, paragraph 16). Along the same lines, see also judgment of 20 March 1984, *Germany* v *Commission* (84/82, EU:C:1984:117, paragraphs 11 and 13).

[16] See *Commission* v *Sytraval and Brink's France*, paragraphs 45 to 48.

36. That judgment also acted as the initiative, during the legislative procedure underlying Regulation No 659/1999[17] (the predecessor of the Procedural Regulation),[18] to officially attribute to those parties the specific right to file a complaint with the Commission 'to inform [the latter] of any alleged unlawful aid.'[19]

37. That right of complaint is accompanied by certain procedural rights granted by the Procedural Regulation at the preliminary stage of the procedure.

38. For example, when filing a complaint, Article 24(2) of the Procedural Regulation requires that the Commission communicate with the complainant. That requirement entails that, if it considers, on the basis of the information provided in the complaint, that there are prima facie insufficient grounds for opening the formal investigation procedure, the Commission is under an obligation to inform the interested party of that decision. After conveying that position, the Commission must, further, grant the interested party time to respond and potentially contribute additional information. Finally, the Commission is obliged to send, to the 'interested party', a copy of the decision on a case concerning the subject matter of the complaint.

39. Those rights were further strengthened in the case-law.

40. Thus, especially where the Commission decides not to initiate the formal investigation procedure under Article 108(2) TFEU because it considers that the measure which prompted the complaint does not constitute aid incompatible with the internal market, or because that aid is deemed to be justified, the complainant has been recognised as having standing to challenge the resulting decision on the basis of the fourth paragraph of Article 263 TFEU. The Court considered that possibility of bringing proceedings to be justified by reason of the procedural rights which a third party would have enjoyed had the formal procedure been initiated.[20]

41. The Procedural Regulation thus opens a procedural avenue for third parties to engage, at least to some extent, with the Commission before the initiation of the formal procedure under Article 108(2) TFEU.[21]

[17] Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1) ('Regulation No 659/1999').

[18] As the preparatory documents to Regulation No 659/1999 evidence, that right was not initially proposed by the Commission (see Proposal for a Council Regulation (EC) laying down detailed rules for the application of Article 93 of the EC Treaty (COM/98/0073 final) (OJ 1998 C 116, p. 13)). It was in fact the European Economic and Social Committee that proposed, by reference to the judgment in *Commission* v *Sytraval and Brink's France*, that it would appear desirable that a right to file a complaint be accorded to certain parties. See Opinion of the Economic and Social Committee on the Proposal for a Council Regulation (EC) laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1998 C 284, p. 10), point 4.3.1.

[19] See Article 20(2) of Regulation No 659/1999, which empowered any 'interested party [to] inform the Commission of any alleged unlawful aid and any alleged misuse of aid'.

[20] See, notably, judgments of 17 July 2008, *Athinaïki Techniki* v *Commission* (C-521/06 P, EU:C:2008:422, paragraph 36 and the case-law cited), and of 31 January 2023, *Commission* v *Braesch and Others* (C-284/21 P, EU:C:2023:58, paragraph 53 and the case-law cited).

[21] That being said, the procedural status of third parties in the State aid procedure still differs from the more liberal status accorded to those parties in the antitrust and trade domains; see, by comparison, Article 5 of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles 81 and 82 of the EC Treaty (OJ 2004 L 123, p. 18) and Article 5 of Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21). Along the same lines, as regards the difference with antitrust investigations, see Niejahr, M. and Scharf, T., 'Some Thoughts on the Jurisprudence of European Courts concerning the Admissibility of Actions against State Aid Decisions', *EC State Aid Law – Le droit des aides d'État dans la CE: Liber amicorum Francisco Santaolalla Gadea*, Kluwer, 2008, pp. 353 and 354.

42. However, the Procedural Regulation does not afford procedural rights to any third party that submits information to the Commission regarding alleged State aid. Rather, the Procedural Regulation inherently distinguishes between 'interested parties' and (what I shall call) 'other informants'.

43. According to the first subparagraph of Article 12(1) of the Procedural Regulation, the Commission *may* on its own initiative examine information regarding alleged unlawful aid *from whatever source*. Conversely, the second subparagraph of that provision provides that the Commission *shall* examine without undue delay any complaint submitted by '*any interested party*', if that complaint is submitted in accordance with Article 24(2) of the Procedural Regulation. [22]

44. Article 24(2) of the Procedural Regulation reserves the right of complaint to 'interested parties'.

45. Specifically, that article provides that 'any interested party may submit a complaint to inform the Commission of any alleged unlawful aid or any alleged misuse of aid. To that effect, the interested party shall duly complete a form that has been set out in an implementing provision … and shall provide the mandatory information requested therein'. [23]

46. Article 24(2) of the Procedural Regulation accordingly lays down two practical requirements for the filing of a complaint with the Commission: (i) the need to qualify as an 'interested party'; and (ii) the need to complete a standard form alongside the provision of certain information to show the 'prima facie' existence of unlawful aid or the misuse of aid. [24]

47. Thus, the concept of an 'interested party' grants to that type of informant certain procedural rights which 'other informants' do not enjoy.

48. The result is the following: by denying Mr Abdelmouine the status of an 'interested party' within the meaning of the Procedural Regulation, the Commission also deprived that party of the procedural rights provided for in that regulation, even though this does not relieve the Commission of its obligation to investigate the information provided about the alleged State aid.

B. What is an 'interested party'?

49. The definition of an 'interested party' is laid down in Article 1(h) of the Procedural Regulation.

50. That provision, which maintains the wording of Regulation No 659/1999, codifies the Court's case-law on the concept of a 'party concerned', within the meaning of Article 108(2) TFEU. [25]

[22] Interestingly, the corresponding provision of Regulation No 659/1999, Article 10(1), did not draw such a distinction. It provided that 'where the Commission has in its possession information from whatever source regarding alleged unlawful aid, it *shall* examine that information without delay'. Emphasis added.

[23] Article 24(2) of the Procedural Regulation.

[24] The latter element being further expanded on in the second subparagraph of Article 24(2) of the Procedural Regulation.

[25] See judgment of 31 January 2023, *Commission* v *Braesch and Others* (C-284/21 P, EU:C:2023:58, paragraph 58 and the case-law cited) (explaining that 'the definition of the concept of "party concerned", as set out in the case-law of the Court of Justice, was codified by the EU legislature in Article 1(h)' of the Procedural Regulation).

51. It states that an 'interested party' is 'any Member State and any person, undertaking or association of undertakings whose interests might be affected by the granting of aid, in particular the beneficiary of the aid, competing undertakings and trade associations'.

52. The Court has recognised that while that definition certainly encompasses competing undertakings of the beneficiary of the aid,[26] its wording is such that it may cover 'an indeterminate group of persons'.[27]

53. The qualifying criteria circumscribing that theoretically open list of persons is the question of whether the person's '*interests* might be *affected* by the granting of aid.'[28]

54. Since the present case concerns a party which is not an undertaking competing with the undertaking to which aid was allegedly granted, it is the meaning of the concepts of '*interest*' and of being '*affected*' in Article 1(h) of the Procedural Regulation that are relevant for answering the question of whether Mr Abdelmouine holds the status of an 'interested party'.

1. A matter of interest

55. What interests may render a natural or legal person an 'interested party'? The Procedural Regulation is silent on that issue.

56. In one line of case-law, the General Court has taken the position that a person having a 'purely general or indirect interest' with regard to a particular aid measure *cannot* qualify for the status of an 'interested party'.[29] That line of case-law does not explain what is understood by 'purely general' interests. However, it seems to draw inspiration from the case-law relating to individual concern under the fourth paragraph of Article 263 TFEU.[30] That, to my mind, is incorrect.

57. The concept of 'interest', in so far as it is linked to the status of an 'interested party' in the State aid procedure, is detached from that party's capacity to challenge a decision of the Commission, which it acquires under the formal investigation procedure laid down in Article 108(2) TFEU. In order to have standing to challenge such a decision, the 'interested party' needs to demonstrate direct and individual concern – that capacity does not follow directly from its treatment as an 'interested party' under the Procedural Regulation.[31]

[26] See, to that effect, judgments of 14 November 1984, *Intermills* v *Commission* (323/82, EU:C:1984:345, paragraph 16), and of 24 May 2011, *Commission* v *Kronoply and Kronotex* (C-83/09 P, EU:C:2011:341, paragraph 63).

[27] See judgment of 31 January 2023, *Commission* v *Braesch and Others* (C-284/21 P, EU:C:2023:58, paragraph 59 and the case-law cited). See also, to that effect, judgment of 14 November 1984, *Intermills* v *Commission* (323/82, EU:C:1984:345, paragraph 16).

[28] Article 1(h) of the Procedural Regulation. Emphasis added.

[29] See judgment under appeal, paragraph 33; judgments of 19 December 2019, *BPC Lux 2 and Others* v *Commission* (T-812/14 RENV, not published, EU:T:2019:885, paragraph 60); and of 7 June 2023, *UNSA Énergie* v *Commission* (T-322/22, not published, EU:T:2023:307, paragraph 20); and order of 25 June 2003, *Pérez Escolar* v *Commission* (T-41/01, EU:T:2003:175, paragraph 36).

[30] That line of case-law accordingly rests on the interpretation of an entirely different (legal) standard. See, most notably in that regard, judgment of 19 December 2019, *BPC Lux 2 and Others* v *Commission* (T-812/14 RENV, not published, EU:T:2019:885, paragraph 60) – relying on order of 25 June 2003, *Pérez Escolar* v *Commission* (T-41/01, EU:T:2003:175, paragraph 36 – which, in turn, relies on judgment of 16 September 1998, *Waterleiding Maatschappij* v *Commission* (T-188/95, EU:T:1998:217, paragraph 37), which explains that 'the applicant cannot be individually concerned by reason of the legislative character of the contested decision, which merely approved the application of tax provisions having a general scope [since] such a measure applies to situations which are determined objectively, and entails legal effects for a class of persons envisaged in a general and abstract manner'.

[31] See, to that effect, judgment of 31 January 2023, *Commission* v *Braesch and Others* (C-284/21 P, EU:C:2023:58, paragraph 54 and the case-law cited).

58. Direct and individual concern is only presumed if the interested party seeks to challenge a decision not to initiate the formal procedure (see point 40 of the present Opinion).

59. In a different line of case-law, however, the General Court does not make the status of an 'interested party' conditional on the existence of a *personal*, as opposed to a *general*, nature of a particular interest. [32]

60. I consider that approach to be more consistent with the purpose of the status of an 'interested party' in the State aid procedure.

61. The complaint procedure is, as the Procedural Regulation itself provides, 'an essential source of information for detecting infringements of the Union rules on State aid'. [33]

62. In that respect, it should not matter what kind of subjective interest prompted a complainant to address the Commission alleging the presence of unlawful aid. [34]

63. The information which the Commission receives from interested parties enables it to potentially uncover and investigate whether an aid measure creates harmful effects on the internal market. Therefore, even where a complainant's interests are not aligned with the interests of, for example, that of the aid beneficiary, or even if they are not economic interests at all, what matters is the public interest, shared by all EU law subjects, the oversight of which is entrusted to the Commission, to prohibit *any* aid that does not conform to the conditions of competition on the internal market.

64. That open approach to the scope of what 'interests' are covered by the Procedural Regulation is reflected, most prominently, in the Court's judgment in *Ja zum Nürburgring* v *Commission*. [35]

65. There, the Court explained that the interest of 'an association that defends the interests of German motor sport in relation specifically to the Nürburgring race track … [whose] central objective is to ensure the operation of that race track under economic conditions oriented towards the public interest to allow access to it for sporting and other events' [36] is sufficient to satisfy the 'interest' criterion.

66. There is therefore no reason to consider that the interest in maintaining a certain organisational and functional structure as regards sports organisations, or even the wider interest of ensuring fairness in a particular sport, could not be taken into consideration as an interest sufficient to qualify a party as an 'interested party', within the meaning of the Procedural Regulation.

[32] See judgment of 15 September 2021, *CAPA and Others* v *Commission* (T-777/19, EU:T:2021:588, paragraph 89) (explaining that 'it cannot be ruled out, in principle, that aid may specifically affect the interests of third parties as a result of the effects the subsidised development has on their environment and, in particular, on other activities carried on in the vicinity'), upheld on appeal in the order of 14 December 2023, *CAPA and Others* v *Commission* (C-742/21 P, not published, EU:C:2023:1000, paragraph 83).

[33] Procedural Regulation, recital 32.

[34] See, to that effect, judgment of 31 January 2023, *Commission* v *Braesch and Others* (C-284/21 P, EU:C:2023:58, paragraph 60), in which the Court highlighted that what was required was that the 'undertaking demonstrates that its interests could be adversely affected by the granting of the aid', without, however, mandating any assessment on the side of the Commission or the General Court as to the connectedness of that interest to the complaining party.

[35] Judgment of 2 September 2021, *Ja zum Nürburgring* v *Commission* (C-647/19 P, EU:C:2021:666) ('the judgment in *Ja zum Nürburgring* v *Commission*'). However, see also judgment of 9 July 2009, *3F* v *Commission* (C-319/07 P, EU:C:2009:435, paragraphs 65 and 104) (concerning the interests of the general trade union for workers in Denmark and its members as regards fiscal measures linked to the employment of seafarers from non-EU Member States).

[36] *Ja zum Nürburgring* v *Commission*, paragraph 66.

67. It follows that the question of which interests may be affected is quite simple: *any* interest may be protected by means of filing a complaint against the granting of aid that may have an effect on the conditions of competition on the internal market.

68. Nevertheless, given that the status of an 'interested party' bestows certain rights on a party, and taking into consideration that the Procedural Regulation did not intend to grant such rights to everyone, but instead sought to limit them to a certain category of persons, the circle of persons who can rely on that status must necessarily be limited.

69. As I will explain, the real filtering element is not the type of interest involved, but rather the requirement that that interest be affected. In other words, the question is whether a causal link between the effects on the natural or legal person's interest(s) and the aid measure at issue may be established.

2. A matter of affectation

70. Article 1(h) of the Procedural Regulation makes the status of an 'interested party' conditional on the possibility that that party's interests may be affected *by* the granting of the aid.

71. Traditionally, the case-law has understood that requirement as necessitating that the aid measure in question is likely to have a 'real' or 'specific' effect on the situation of the natural or legal person at issue or that of the persons it represents. [37]

72. To my mind, those expressions are mere synonyms for the requirement of a causal link between the aid measure at issue and the effects claimed.

73. The use of the word 'by' in Article 1(h) of the Procedural Regulation implies that the person seeking to claim the status of an 'interested party' must establish that the adverse effect on the interest involved *positively results* from the particular measure that it takes issue with. [38]

74. Moreover, given the use of the modal verb 'might' in the text of that provision, the status of the 'interested party' does not depend on whether the person's interests are actually affected, but extends also to a *potential* effect that may arise from the aid measure at issue. [39]

75. In practice, however, that kind of potential attribution may be difficult to establish with any degree of certainty. Multiple measures (some of which are regulatory) or effects (originating in upstream/downstream measures or acts) may turn out to create adverse consequences for the entity at issue.

[37] See, in particular, judgments of 9 July 2009, *3F* v *Commission* (C-319/07 P, EU:C:2009:435, paragraph 33); of 24 May 2011, *Commission* v *Kronoply and Kronotex* (C-83/09 P, EU:C:2011:341, paragraph 65); and of 27 October 2011, *Austria* v *Scheucher-Fleisch and Others* (C-47/10 P, EU:C:2011:698, paragraph 132).

[38] See, to that effect, judgment of 31 January 2023, *Commission* v *Braesch and Others* (C-284/21 P, EU:C:2023:58, paragraphs 60 and 80 and the case-law cited). As, in particular, the former of those paragraphs confirms, the positive attribution criterion is what the case-law surrounding the 'specific' or 'real' effects of the aid sought to imply (see point 71 of the present Opinion).

[39] See, to that effect, judgment of 7 April 2022, *Solar Ileias Bompaina* v *Commission* (C-429/20 P, EU:C:2022:282, paragraph 35) (explaining that 'although the adverse effect on the interests of that undertaking may be only potential, a risk of a specific effect on those interests must be capable of being demonstrated to the requisite legal standard'). See also orders of 10 May 2023, *MKB Multifunds* v *Commission* (C-665/21 P, not published, EU:C:2023:408, paragraph 48), and of 14 December 2023, *CAPA and Others* v *Commission* (C-742/21 P, not published, EU:C:2023:1000, paragraph 73).

76. In those circumstances, I suggest that the above positive attribution be supplemented by a *negative attribution* assessment.

77. That means that the Commission must assess whether the measure complained of remains the source of the alleged adverse effects, even where one eliminates any effects which, in reality, derive from other possible sources. [40]

78. To my mind, the case-law already (implicitly) recognises that type of approach. [41]

79. For example, in its judgment in *Solar Ileias Bompaina* v *Commission*, the Court found that a producer of electricity from renewable energy sources which was recognised to have been negatively affected by a measure designed to reduce feed-in tariffs for such producers, [42] could not sufficiently correlate those effects with alleged aid to suppliers of electricity, which were not impacted by that reduction and therefore allegedly benefited from a more favourable competitive position. [43]

80. Similarly, in its recent order in *CAPA and Others* v *Commission*, the Court was faced with claims by a cooperative of fishermen that (operating) aid to offshore windfarms had the effect of damaging the fishing activities of its members. Following the General Court's assessment, the Court of Justice held that the alleged effects on the appellant's fishing activities (if any) [44] were not attributable to the aid at issue but resulted from the decisions of the French authorities to regulate shipping and fishing activities in the vicinity of those windfarm sites. [45]

81. Accordingly, I consider that the right to file a complaint, as contained in Article 24(2) of the Procedural Regulation, along with the resulting procedural rights, is subject to the requirement that an aspiring complainant establish that the (adverse) effects claimed result from the aid measure at issue.

82. Where that cannot be established by the natural or legal person at issue, that party also cannot rely on the procedure and rights provided for by and linked to the status of an 'interested party', within the meaning of Article 1(h) of the Procedural Regulation.

[40] Needless to say, that consideration is without prejudice to the Commission's overarching obligation to scrutinise the information provided to it by an 'interested party' filing a complaint (see, by analogy and to that effect, judgment of 22 September 2020, *Austria* v *Commission* (C-594/18 P, EU:C:2020:742, paragraph 85 and the case-law cited)) to preclude Member State strategies which may be designed to artificially sever the causal link between the aid measure at issue and its effect on certain 'interested parties' (see, by analogy, judgments of 27 October 2016, *D'Oultremont and Others* (C-290/15, EU:C:2016:816, paragraph 48), and of 25 June 2020, *A and Others (Wind turbines at Aalter and Nevele)* (C-24/19, EU:C:2020:503, paragraph 70 and the case-law cited) (explaining that the principle of effectiveness requires that Member State actions are assessed for potential strategies designed to split measures into multiple parts to avoid obligations laid down by EU law).

[41] See, to that effect, judgment of 31 January 2023, *Commission* v *Braesch and Others* (C-284/21 P, EU:C:2023:58, paragraph 81) (deeming as irrelevant for the assessment of 'interested party' status measures which 'are indeed linked de facto, but which are legally distinct') and order of 14 December 2023, *CAPA and Others* v *Commission* (C-742/21 P, not published, EU:C:2023:1000, paragraph 97). See also, by analogy, judgment of 16 May 1991, *Extramet Industrie* v *Council* (C-358/89, EU:C:1991:214, paragraphs 16 to 19) (requiring, in a causal link analysis surrounding the determination of injury derived from dumped imports, that injury attributable to other factors be disregarded).

[42] See judgment of 7 April 2022, *Solar Ileias Bompaina* v *Commission* (C-429/20 P, EU:C:2022:282, paragraph 41).

[43] Judgment of 7 April 2022, *Solar Ileias Bompaina* v *Commission* (C-429/20 P, EU:C:2022:282, paragraph 43).

[44] See order of 14 December 2023, *CAPA and Others* v *Commission* (C-742/21 P, not published, EU:C:2023:1000, paragraphs 40 and 79).

[45] See order of 14 December 2023, *CAPA and Others* v *Commission* (C-742/21 P, not published, EU:C:2023:1000, paragraphs 79 and 94).

C. The appellant's status

83. The Court's jurisdiction on appeal is confined to findings of law made in respect of the pleas argued at first instance. [46]

84. In the present case, Mr Abdelmouine's grievance is limited to the Commission's conclusion that he does not constitute an 'interested party' within the meaning of Article 24(2) of the Procedural Regulation, and therefore cannot file a complaint under that regulation over the alleged State aid by France to Paris Saint-Germain FC. [47]

85. Did the Commission err in that assessment? The short answer to that question is 'no'. Accordingly, I do not consider that the judgment of the General Court should be overturned.

86. I do, however, consider that the argumentation underlying that judgment should be substituted, in part, at the level of the applicable legal standard to clarify the openness of the case-law for any type of interest, circumscribed only by the need for a causal link between the effects on the natural or legal person's interests and the aid measure at issue.

87. In the judgment under appeal, the General Court rejected the four elements on the basis of which Mr Abdelmouine had sought to establish whether his interests were affected by the alleged aid measure at issue. [48]

88. Those elements were claimed to be: (i) the direct patrimonial interest in relation to FC Barcelona's financial situation, which might result in his financial liability and that of other '*socios*' in the event of that club's bankruptcy; [49] (ii) the interest based on the values of football and the defence of sport as a common good; [50] (iii) the consequence of distorted competition for FC Barcelona's form of organisation, his moral right as a '*socio*' and the creation of legal and economic uncertainty for him and other '*socios*', reflected in a restriction of the freedom of association; [51] and (iv) the interest in preserving the rights of the '*socios*', which would be threatened in the event of a change in the status or structure of FC Barcelona to a company with share capital. [52]

89. Separately, the General Court rejected the argument that Mr Abdelmouine's interests could not be equated to those of a shareholder on the basis that the relevant part of the contested decision constituted ancillary reasoning not capable of overturning the main finding that he did not satisfy the conditions to obtain 'interested party' status. [53]

[46] See, *ex multis*, judgment of 4 March 2021, *Commission* v *Fútbol Club Barcelona* (C-362/19 P, EU:C:2021:169, paragraph 47 and the case-law cited)

[47] Mr Abdelmouine does not raise the argument that his status as a complainant derives from Article 108(3) TFEU.

[48] Judgment under appeal, paragraph 28.

[49] Judgment under appeal, paragraph 29.

[50] Judgment under appeal, paragraph 32.

[51] Judgment under appeal, paragraph 35.

[52] Judgment under appeal, paragraph 39.

[53] Judgment under appeal, paragraphs 50 and 51.

90. While Mr Abdelmouine does not specifically refer to the relevant paragraphs of the judgment under appeal, [54] it is my understanding that he takes issue with the General Court's conclusion on all of the above points.

91. However, contrary to what Mr Abdelmouine in effect argues, in the judgment under appeal, the General Court did not rule out the possibility that, in his capacity as a '*socio*', Mr Abdelmouine could rely on the interests accorded to him by the Statutes of FC Barcelona, or of any other interests subjectively assumed by him. [55]

92. As I have explained, any interest – personal or general – may be covered by the scope of the concept of an 'interested party', if those interests might be affected by the granting of the aid. That includes Mr Abdelmouine's assumed interest, as a '*socio*', in FC Barcelona's transfer policies as much as his more general interest in the equal conditions of competition in football in general.

93. The question is whether Mr Abdelmouine was able to establish, on the basis of the evidence presented to the General Court, that those interests might be affected by the granting of the (alleged) aid at issue.

94. That, the General Court denied. In the judgment under appeal, it rejected Mr Abdelmouine's claims as either inadmissible or unfounded on the basis that: (i) he had not been able to establish that the relevant articles of the Statutes of FC Barcelona granted him the rights that he claimed would be affected by the granting of the aid; [56] (ii) he was not able to establish a link between the alleged affectation of his interest and the granting of the aid; [57] and (iii) that his explanations were insufficiently clear as to how his alleged interests were affected. [58]

95. Given that Mr Abdelmouine fails to claim a distortion of the evidence in relation to those points, that conclusion cannot be reviewed by the Court.

96. In the light of the above considerations, it is without object whether or not Mr Abdelmouine's position can or cannot be equated to that of a shareholder of a company with share capital: even if his criticism of the judgment under appeal were successful on that point, it is not capable of rendering him an 'interested party', within the meaning of the Procedural Regulation. [59]

97. Accordingly, the General Court did not err in its conclusion that Mr Abdelmouine is not an 'interested party', within the meaning of Article 24(2) of the Procedural Regulation.

98. I therefore propose to the Court that it reject Mr Abdelmouine's third and fourth grounds of appeal as unfounded, uphold the judgment under appeal and substitute the General Court's reasoning in part.

[54] Thereby arguably rendering the third and fourth grounds of appeal inadmissible for want of satisfaction of Article 169(2) of the Rules of Procedure of the Court of Justice, which requires an appeal to identify precisely the contested elements of the judgment which Mr Abdelmouine seeks to have set aside; see, *ex multis*, judgment of 4 July 2000, *Bergaderm and Goupil* v *Commission* (C-352/98 P, EU:C:2000:361, paragraph 34).

[55] See, for example, judgment under appeal, paragraph 43.

[56] See, to that effect, judgment under appeal, paragraphs 29 to 31.

[57] See, to that effect, judgment under appeal, paragraphs 32 to 34 and 39 to 46.

[58] See, to that effect, judgment under appeal, paragraphs 35 and 37.

[59] See, to that effect, *ex multis*, judgment of 24 June 1986, *AKZO Chemie and AKZO Chemie UK* v *Commission* (53/85, EU:C:1986:256, paragraph 21).

V. Conclusion

99. In the light of the foregoing, I propose that the Court dismiss the third and fourth grounds of appeal as unfounded.