Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

12 November 2015*

(Action for annulment — Regulation (EU) No 1316/2013 establishing the Connecting Europe Facility — Projects of common interest which relate to the territory of a Member State — Approval of that State — Extension of a rail freight corridor — Legal basis — Article 171 TFEU and second paragraph of Article 172 TFEU)

In Case C-121/14,

ACTION for annulment under Article 263 TFEU, brought on 12 March 2014,

United Kingdom of Great Britain and Northern Ireland, represented by M. Holt and L. Christie, acting as Agents, and by D.J. Rhee, Barrister,

applicant,

v

European Parliament, represented by A. Troupiotis and M. Sammut, acting as Agents,

Council of the European Union, represented by Z. Kupčová and E. Chatziioakeimidou, acting as Agents,

defendants,

supported by:

European Commission, represented by J. Samnadda and J. Hottiaux, acting as Agents,

intervener,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the First Chamber, acting as President of the Second Chamber, J.L. da Cruz Vilaça, A. Arabadjiev, C. Lycourgos and J.-C. Bonichot, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: English.

after hearing the Opinion of the Advocate General at the sitting on 3 September 2015,

gives the following

Judgment

1 By its application, the United Kingdom of Great Britain and Northern Ireland seeks annulment of Article 29 of, and Annex II to Regulation (EU) No 1316/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Connecting Europe Facility, amending Regulation (EU) No 913/2010 and repealing Regulations (EC) No 680/2007 and (EC) No 67/2010 (OJ 2013 L 348, p. 129; 'the contested provisions').

Legal context

European Union law

Regulation (EU) No 913/2010

2 Based on Article 91 TFEU, Regulation (EU) No 913/2010 of the European Parliament and of the Council of 22 September 2010 concerning a European rail network for competitive freight (OJ 2010 L 276, p. 22) lays down rules for the establishment and organisation of international rail corridors for competitive rail freight. It also sets out rules for the selection, organisation, management and the indicative investment planning of freight corridors.

3 Under Article 2(2)(a) of Regulation No 913/2010, a 'freight corridor' is defined as 'all designated railway lines, including railway ferry lines, on the territory of or between Member States, and, where appropriate, European third countries, linking two or more terminals, along a principal route and, where appropriate, diversionary routes and sections connecting them, including the railway infrastructure and its equipment and relevant rail services …'.

4 Chapter II of Regulation No 913/2010 contains rules on the designation and governance of two series of international rail freight corridors: initial corridors and further corridors. Under Article 3 of that regulation, the Member States referred to in the annex are to make operational by the dates set out therein the initial freight corridors set out in that annex, and inform the European Commission about their establishment.

5 The annex to that regulation, prior to its amendment by Regulation No 1316/2013, presented corridor No 2 in the list of initial rail freight corridors as follows:

2.	NL, BE, LU, FR	Rotterdam-Antwerp-Luxembourg-Metz-Dijon-Lyon/[Basel]	By 10 November 2013

Regulation (EU) No 1315/2013, as amended by Delegated Regulation (EU) No 473/2014

6 Based on Article 172 TFEU, Regulation (EU) No 1315/2013 of the European Parliament and of the Council of 11 December 2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No 661/2010/EU (OJ 2013 L 348, p. 1), as amended by Commission Delegated Regulation (EU) No 473/2014 of 17 January 2014 (OJ 2014 L 136, p. 10; 'Regulation No 1315/2013'), establishes guidelines for the development of a trans-European transport network comprising a dual-layer structure consisting of the comprehensive network and of the core

network, the latter being established on the basis of the comprehensive network. The regulation identifies projects of common interest and specifies the requirements to be complied with for the management of the trans-European transport network.

7 Article 2 of Regulation No 1315/2013 provides:

‘1. This Regulation applies to the trans-European transport network as shown on the maps contained in Annex I. The trans-European transport network comprises transport infrastructure and telematic applications as well as measures promoting the efficient management and use of such infrastructure and permitting the establishment and operation of sustainable and efficient transport services.

2. The infrastructure of the trans-European transport network consists of the infrastructure for railway transport, inland waterway transport, road transport, maritime transport, air transport and multimodal transport, as determined in the relevant sections of Chapter II.’

8 In accordance with Article 3(a) of that regulation, a ‘project of common interest’ means ‘any project carried out pursuant to the requirements and in compliance with the provisions of this Regulation’. Article 3(d) defines ‘European added value’ as the value of a project which, in addition to the potential value for the respective Member State alone, leads to a significant improvement of either transport connections or transport flows between the Member States which can be demonstrated by reference to improvements in efficiency, sustainability, competitiveness or cohesion.

9 Article 7 of that regulation is worded as follows:

‘1. Projects of common interest shall contribute to the development of the trans-European transport network through the creation of new transport infrastructure, through the rehabilitation and upgrading of the existing transport infrastructure and through measures promoting the resource-efficient use of the network.

2. A project of common interest shall:

(a) contribute to the objectives falling within at least two of the four categories set out in Article 4;

(b) comply with Chapter II, and if it concerns the core network, comply in addition with Chapter III;

(c) be economically viable on the basis of a socio-economic cost-benefit analysis;

(d) demonstrate European added value.

3. A project of common interest may encompass its entire cycle, including feasibility studies and permission procedures, implementation and evaluation.

...’

10 According to Article 32(a) of Regulation No 1315/2013, which is in Chapter II, Member States are to pay particular attention to projects of common interest which both provide efficient freight transport services that use the infrastructure of the comprehensive network and contribute to reducing carbon dioxide emissions and other negative environmental impacts, and which aim to improve sustainable use of transport infrastructure, including its efficient management.

Regulation No 1316/2013

11 Based on Article 172 TFEU, Regulation No 1316/2013 determines the conditions, methods and procedures for providing EU financial assistance to trans-European networks in order to support projects of common interest in the sectors of transport, telecommunications and energy infrastructures.

12 Under Article 2(1) of that regulation, a 'project of common interest' is defined, inter alia, as a project identified in Regulation No 1315/2013.

13 Article 29 of Regulation No 1316/2013 provides:

'Regulation (EU) No 913/2010 is hereby amended as follows:

The Annex to Regulation (EU) No 913/2010 is replaced by the text of Annex II to this Regulation. Consequently, the rail freight corridors revised shall remain subject to the provisions of Regulation (EU) No 913/2010.'

14 In Annex II, under the heading 'List of initial freight corridors', the 'North Sea — Mediterranean' rail freight corridor is described as follows:

	Member States	Principal routes	Establishment of freight corridors:
'North Sea — Mediterranean'	NL, BE, LU, FR, UK(+)	Glasgow (*)/Edinburgh (*)/ Southampton(*)/Felixstowe (*)-London (+)/Dunkerque (+)/Lille (+)/Liège (+) /Paris (+)/Amsterdam (+)-Rotterdam-Zeebrugge (+)/Antwerpen-Luxembourg-Metz-Dijon-Lyon/[Basel]-Marseille (+)	By 10 November 2013

Forms of order sought and procedure before the Court

15 The United Kingdom claims that the Court should:

— annul the contested provisions in so far as they extend beyond London what was Corridor No 2 in the Annex to Regulation No 913/2010, now referred to as the 'North Sea — Mediterranean' corridor in Regulation No 1316/2013; and

— order the European Parliament and the Council of the European Union to pay the costs.

16 The Parliament and the Council contend that the Court should:

— dismiss the action; and

— order the United Kingdom to pay the costs.

17 The Commission was granted leave to intervene in support of the form of order sought by the Parliament and the Council, by decision of the President of the Court of 24 July 2014.

The action

Admissibility

18 The United Kingdom regards the contested provisions as distinct and severable from the remainder of Regulation No 1316/2013.

19 The Parliament, the Council and the Commission are agreed that the United Kingdom's application for partial annulment is admissible.

20 It is apparent from the settled case-law of the Court that the partial annulment of an EU act is possible only if the elements whose annulment is sought may be severed from the remainder of the act (see judgments in *Commission* v *Council*, C-29/99, EU:C:2002:734, paragraph 45, and *Germany* v *Commission*, C-239/01, EU:C:2003:514, paragraph 33). The Court has repeatedly ruled that that requirement of severability is not satisfied where the partial annulment of an act would have the effect of altering its substance (see judgment in *Commission* v *Parliament and Council*, C-427/12, EU:C:2014:170, paragraph 16 and the case-law cited).

21 Review of whether elements of an EU act are severable requires consideration of the scope of those elements, in order to assess whether their annulment would alter the spirit and substance of the act (see judgment in *Commission* v *Estonia*, C-505/09 P, EU:C:2012:179, paragraph 112 and the case-law cited).

22 In the present case, it must be observed that the contested provisions have different objectives from that pursued by the other provisions of Regulation No 1316/2013 and the annex thereto.

23 Through Regulation No 1316/2013, the EU legislature wishes to facilitate and speed up the interconnection of networks in Europe in the sectors of transport, telecommunications and energy by means of the establishment of a connecting facility. The aim of the facility created is to promote investment in the field of trans-European networks. To that end, it determines inter alia the conditions, methods and procedures for providing EU financial assistance to such networks.

24 By contrast, the contested provisions are distinct in that they relate only to the delimitation of the initial rail freight corridors established by Regulation No 913/2010. Those provisions are therefore severable from the remainder of Regulation No 1316/2013, and their lawfulness may thus be considered separately.

25 In those circumstances, since annulment of those provisions would in no way alter the essential substance of Regulation No 1316/2013, the action brought by the United Kingdom for the partial annulment of that regulation is admissible.

Substance

Arguments of the parties

26 By the two pleas in law put forward, which it is appropriate to examine together, the United Kingdom submits that:

— the extensions to the initial freight corridors brought about by Article 29 of Regulation No 1316/2013 are intended to further the objectives of Article 170 TFEU in relation to the trans-European transport policy. Accordingly, given that Articles 170 TFEU to 172 TFEU constitute a *lex specialis* for such measures, the latter can only be adopted on the basis of those provisions;

— the extensions to the initial freight corridors brought about by Article 29 of Regulation No 1316/2013 are 'projects of common interest' within the meaning of Article 171(1) TFEU and relate to the territory of each Member State required to participate in their establishment. Those extensions, in so far as concerns the United Kingdom, have been adopted in breach of the requirement in the second paragraph of Article 172 TFEU for approval of the Member State concerned.

27 The United Kingdom observes, as a preliminary point, that the question arises in the present case whether the contested provisions viewed as a whole are predominantly 'network' measures, as opposed to a 'common transport policy/single market' measure. Regulation No 913/2010 seeks to assist in the development of a system of competitive rail freight and therefore pursues the objectives set out in Article 91 TFEU. By contrast, the rationale for amending the list of initial rail freight corridors in the annex to that regulation can only lie in the European Union's trans-European transport networks policy.

28 The United Kingdom notes that extensions to the initial rail freight corridors brought about by Article 29 of Regulation No 1316/2013 are a key component of the establishment of those networks. Those extensions thus seek to achieve the objectives referred to in Article 170 TFEU, the aim of which is to establish and develop trans-European networks, for example in the area of transport, in order to promote the interconnection and interoperability of national networks and access to them. The extensions to the rail freight corridors are thus part of those objectives. The contested provisions should therefore have been adopted on the basis of Articles 171 TFEU and 172 TFEU.

29 The United Kingdom submits that since those provisions designate the 'North Sea — Mediterranean' corridor as one of the initial freight corridors, its extension constitutes a 'project of common interest' within the meaning of Articles 171 TFEU and 172 TFEU. Such a project should be based on a socio-economic cost-benefit analysis, as provided for in Article 7(2)(c) of Regulation No 1315/2013.

30 The United Kingdom states that the procedure under Regulation No 913/2010 on the selection of further freight corridors takes into account the question whether the establishment of such corridors would impose a disproportionate burden on the Member State concerned, and recognises that a Member State is not obliged to participate if it has a rail network which has a track gauge that is different from that of the main rail network within the European Union.

31 The United Kingdom maintains that the fact that the core network corridors are an instrument to facilitate the coordinated implementation of the core network, in accordance with Article 42 of Regulation No 1315/2013, and do not require the creation of any new infrastructure does not preclude them from being 'projects of common interest'.

32 According to the United Kingdom, the extensions to the initial freight corridors brought about by the contested provisions are, on any view, 'projects of common interest' within the meaning of Article 171(1) TFEU and the second paragraph of Article 172 TFEU which relate to the territory of the Member State required to participate in their establishment. It follows from this that the extensions to those corridors, in so far as concerns the United Kingdom, were adopted in breach of the requirement in the second paragraph of Article 172 TFEU for approval of the Member State concerned.

33 The Parliament observes that the main and predominant aim and content of Regulation No 1316/2013 is to provide Union financial assistance to trans-European networks, as stated in Article 1 thereof. The contested provisions pursue a purpose that is only ancillary to that aim, namely the amendment of Regulation No 913/2010 in order to align the list of initial freight corridors with the core network corridors. Therefore, Regulation No 1316/2013 is rightly based on Article 172 TFEU alone, even though it provides for the amendment of Regulation No 913/2010, which, were it in a separate act, would be based on Article 91 TFEU.

34 The Parliament takes the view that not every measure which facilitates the use of the existing infrastructure can be defined as a 'project of common interest'. In the context of Article 172 TFEU, the term 'project' is not to be understood as comprising mere coordination tools ensuring swift replies to applicants who want to use a train path.

35 The Parliament concludes that since the present case does not concern a 'project of common interest' within the meaning of Articles 171 TFEU and 172 TFEU, the EU legislature was not obliged to obtain the United Kingdom's approval pursuant to the second paragraph of Article 172 TFEU.

36 The Council contends that the United Kingdom has failed to establish that the extensions to the initial rail freight corridors pursue the objectives of Regulation No 1315/2013. The extensions to the 'North Sea — Mediterranean' rail freight corridors beyond London do not constitute 'projects of common interest' within the meaning of Articles 171 TFEU and 172 TFEU. Accordingly, it would not have been necessary to seek the consent of the United Kingdom pursuant to the second paragraph of Article 172 TFEU.

37 The Council maintains that the EU legislature may modify the list of the initial rail freight corridors, using the same procedure as that used previously, if it considers it opportune, or even necessary, in order to ensure the consistency of the rail freight corridors with the core network corridors. As regards the modification of the list of the initial rail freight corridors, in footnotes (+) and (*) in Annex II to Regulation No 1316/2013, the EU legislature sought to apply to the establishment of the initial rail freight corridors the procedure used to establish further rail freight corridors, by subjecting the modifications of the initial rail freight corridors to market studies and providing for a transitional period for their establishment.

38 The Council notes that Regulation No 913/2010 does not contain any guidelines concerning the trans-European networks or any definition of projects of common interest. That regulation falls entirely under transport policy and defines rail freight corridors as a coordination and management tool on the existing railway lines.

39 The Commission takes the view that the contested provisions do not fall within the material scope of Regulation No 1316/2013. Those provisions constitute an amendment to Regulation No 913/2010, the legal basis of which is Article 91 TFEU. As such, the contested provisions continue to be governed by Regulation No 913/2010.

40 The Commission states that the initial freight corridors referred to in the contested provisions do not pursue the objectives in Article 170 TFEU, nor can they be considered to be 'projects of common interest' within the meaning of that article. The predominant aim and content of Regulation No 1316/2013 is to support projects of common interest identified in the provisions of Regulation No 1315/2013.

41 The Commission states that the principal objective of Regulation No 913/2010 is to implement transport policy. It lays down rules for the establishment and organisation of the rail freight corridors, as well as rules for their selection, management and indicative investment planning. The provisions relating to rail freight corridors are thus essentially coordination and management tools designed to ensure that rail freight services function efficiently and are more competitive.

Findings of the Court

42 By the arguments put forward in support of both of its pleas in law, the United Kingdom submits, in essence, that the relevant extension to the rail freight corridor provided for by the contested provisions constitutes a project of common interest within the meaning of the third indent of Article 171(1) TFEU and the second paragraph of Article 172 TFEU, read in conjunction with Article 170 TFEU. Since that extension relates to the territory of that Member State, it should have been adopted with that Member State's approval, in accordance with the second paragraph of Article 172 TFEU.

43 It must be pointed out that the concept of 'project of common interest' referred to in those provisions is not defined by the FEU Treaty.

44 It is apparent from the first and third indents of Article 171(1) TFEU that the European Union is to establish guidelines in order to achieve the objectives referred to in Article 170 TFEU and that those guidelines are to identify projects of common interest and that the European Union may support such projects. Moreover, under the first paragraph of Article 172 TFEU, those guidelines are to be adopted by the Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the European Economic and Social Committee and the Committee of the Regions of the European Union.

45 It follows that it is incumbent on those EU institutions to adopt the guidelines and consequently to identify projects of common interest relating to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures referred to in Article 170(1) TFEU.

46 In the present case, as regards transport infrastructure, it should be noted that the Parliament and the Council exercised the power conferred on them by those provisions, by having adopted Regulation No 1315/2013 which establishes guidelines for the development of a trans-European transport network comprising a dual-layer structure consisting of a comprehensive network and a core network. To that end, the regulation identifies projects of common interest as the principal instrument for the implementation of that trans-European network.

47 According to Article 3(a) of Regulation No 1315/2013, a 'project of common interest' means any project carried out pursuant to the requirements and in compliance with the provisions of that regulation. That concept is developed in more detail in Article 7 of that regulation and explained in recitals 9 and 19 to 33 in the preamble thereto.

48 It is evident from these that '[p]rojects of common interest shall contribute to the development of the trans-European transport network through the creation of new transport infrastructure, through the rehabilitation and upgrading of the existing transport infrastructure'. It is made clear that such projects must, in particular, be economically viable on the basis of a socio-economic cost-benefit analysis and 'European added value'.

49 That concept of 'European added value' is, moreover, defined in Article 3(d) of Regulation No 1315/2013 as the 'value of a project which, in addition to the potential value for the respective Member State alone, leads to a significant improvement of either transport connections or transport flows between the Member States which can be demonstrated by reference to improvements in efficiency, sustainability, competitiveness or cohesion'.

50 The innovation function and cross-cutting nature of projects of common interest are confirmed by Article 32(a) of Regulation No 1315/2013, which refers to the contribution of such projects to the reduction of carbon dioxide emissions and of other negative environmental impacts, and the aim of improving sustainable use of transport infrastructure.

51 In addition, in accordance with the objective of contributing to the establishment and development of trans-European networks in the area of transport infrastructure, referred to in Article 170(1) TFEU, it is apparent from recital 8 in the preamble to that regulation that the trans-European transport network must be developed through the creation of new transport infrastructure, through the rehabilitation and upgrading of existing infrastructure and through measures promoting its resource-efficient use.

52 While it is true that a measure does not have to create a new transport infrastructure in order to be recognised as a project of common interest, such a project must none the less involve investment which, at the very least, is intended to rehabilitate or upgrade an existing infrastructure with a view to making it more efficient and effective, as is apparent in particular from Article 7 of Regulation No 1315/2013.

53 Lastly, it is evident from Article 48(1) of Regulation No 1315/2013, which merely refers to '[a]dequate coordination ... between the core network corridors and the rail freight corridors', that, when exercising the power conferred on them by Article 171(1) TFEU and the first paragraph of Article 172 TFEU, the Parliament and the Council took the view that the rail freight corridors did not fall within the projects of common interest identified by that regulation.

54 In those circumstances, the United Kingdom cannot, therefore, claim that a project of common interest was established by the contested provisions.

55 In particular, Regulation No 913/2010 does not, even as regards existing rail freight corridors, provide for them to be developed as infrastructure projects. Economic operators have a number of management tools for these corridors so that they can use the railway lines concerned with greater efficiency and thus improve the operation of rail transport. The establishment of such corridors is thus intended to ensure better traffic coordination on the designated railway lines, in accordance with the management principles set out in Regulation No 913/2010.

56 In that regard, Article 8 of that regulation and the provisions of Chapter IV are designed to establish, through coordination between network managers, a simplified allocation of rail freight corridors through a one-stop shop which responds to economic operators' requests to use those corridors, while reducing the associated administrative burden.

57 That objective of rationalising the allocation of the transport capacity of those corridors is confirmed by the establishment of management bodies responsible for ensuring the coordination of rail traffic management along each freight corridor.

58 By contrast, the concept of 'project of common interest' within the meaning of Article 171(1) TFEU and the second paragraph of Article 172 TFEU covers projects which are more than a mere traffic coordination facility and which include a qualitative structural improvement of the initial rail freight corridor.

59 That is not the case as regards the contested provisions, which merely provide for an alignment of the rail freight corridor in question with the core network corridor, the establishment of which by Regulation No 913/2010 was, moreover, approved by the United Kingdom. They do not, therefore, cover the concept of 'project of common interest' within the meaning of Article 171(1) TFEU and the second paragraph of Article 172 TFEU.

60 It follows from all of the foregoing that the concept of 'project of common interest' within the meaning of those provisions of the FEU Treaty must be interpreted as not applying to a project which merely extends an existing rail freight corridor.

61 Consequently, the first condition, concerning the existence of a project of common interest, laid down in the second paragraph of Article 172 TFEU is not fulfilled.

62 Since the two conditions are cumulative, there is no need to examine the second condition laid down in the second paragraph of Article 172 TFEU, according to which a project of common interest which relates to the territory of a Member State requires the approval of the Member State concerned.

63 Accordingly, both pleas in law put forward by the United Kingdom must be rejected.

64 It follows from all of the foregoing that the action must be dismissed.

Costs

65 Under Article 138(1) of the Rules of Procedure of the Court of Justice, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Parliament and the Council have applied for the United Kingdom to be ordered to pay the costs and the latter has been unsuccessful, it must be ordered to pay the costs. In accordance with Article 140(1) of the Rules of Procedure, the Commission is to bear its own costs.

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

1. **Dismisses the action;**

2. **Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs and to pay those incurred by the European Parliament and the Council of the European Union;**

3. **Orders the European Commission to bear its own costs.**

[Signatures]