Reports of Cases

ORDER OF THE PRESIDENT OF THE GENERAL COURT

17 February 2016 *

(Legal aid — Application submitted before an action was brought — Action to be brought by a natural person — Manifest inadmissibility — Action to be brought by a legal person — Aid granted)

In Case T-376/15 AJ,

**KJ**, residing in Paris (France),

**KK**, established in Paris,

applicants,

v

**Executive Agency for Small and Medium-sized Enterprises (EASME)**, represented by P. Lambert, E. Fierro Sedano and I. Jimeno Hierro, acting as Agents, assisted by J. Stuyck, lawyer,

defendant,

APPLICATION for legal aid pursuant to Article 147 of the Rules of Procedure of the General Court,

THE PRESIDENT OF THE GENERAL COURT

makes the following

**Order** [1]

## Application and procedure

1 By application lodged at the Court Registry on 7 July 2015, the applicants, Mr KJ and KK, a company of which Mr KJ is the representative and sole shareholder, asked to be granted legal aid pursuant to Article 147 of the Rules of Procedure of the General Court with a view to bringing an action for annulment of decisions that, in the first place, rejected the proposal submitted by KK in response to the call for proposals and related activities under the 2014-2015 work programmes under Horizon 2020 — the Framework Programme for Research and Innovation (2014-20) and under the Research and Training Programme of the European Atomic Energy Community (2014-18) complementing Horizon 2020 (OJ 2013 C 361, p. 9; 'the H2020-SMEINST-1-2014 call for proposals'), and, in the second place, rejected the request for a review of the assessment which had resulted in the rejection of the proposal submitted by that company (together, 'the contested decisions').

* Language of the case: French.

1 — Only the paragraphs of the present order which the General Court considers it appropriate to publish are reproduced here.

2 In its observations lodged at the Court Registry on 4 September 2015, the Executive Agency for Small and Medium-sized Enterprises (EASME) submitted that the application should be dismissed.

3 By letter of 21 October 2015, the applicants produced an addendum to their application for legal aid setting out evidence of their financial situation, which the President of the Court decided to place on the case-file.

4 On 12 November 2015, pursuant to Article 10(6) and Article 89(3)(c) and (d) of the Rules of Procedure, the President of the General Court requested KK to provide its annual accounts for the last three complete financial years. The President also put questions to KK regarding its current financial situation, (a description of the precise business of the company and how it operates, the number of employees, a description of its assets and liabilities, its turnover and a summary explanation of the basis thereof, the company's outgoings and a summary explanation of the source of those outgoings and, in the event that the business is loss-making, an explanation of the company's sources of finance). KK lodged its documentation and answers to those questions on 30 November 2015.

**Law**

5 Under Article 146(1) and (2) of the Rules of Procedure, the grant of legal aid is subject to a dual requirement that, first, the applicant, because of his financial situation, is wholly or partly unable to meet the costs involved in legal assistance and representation before the General Court and, second, his action does not appear to be manifestly inadmissible or manifestly unfounded.

*The application made by Mr KJ [omissis]*

12 Since Mr KJ does not have an interest in bringing proceedings against the contested decisions, the action that he intends to bring appears to be manifestly inadmissible. Consequently, pursuant to Article 146(2) of the Rules of Procedure, his application for legal aid must be dismissed, without it being necessary to consider whether the other conditions laid down by that article are satisfied.

*The application made by the company KK*

13 In the first place, as regards its financial situation, KK produced its annual accounts (balance sheet and profit-and-loss account) for the last three complete financial years, as lodged with the tax authorities. Those accounts indicate that the company, the products of which are at the developmental stage, did not achieve any turnover in those three complete financial years. The company does not have any assets, other than the expertise of its sole shareholder and its staff, and had liabilities of [*confidential*] [2] at the end of the financial year to 31 December 2014. According to the information provided by that company, those liabilities relate to the payment of social security contributions and investments made by the company to make possible the development of its products. The company states that those liabilities are financed from contributions by its sole shareholder, by means of his savings and loans that he had obtained.

*[omissis]*

15 It is clear from that evidence that KK does not have at its disposal, in its own right, the resources necessary to meet the costs of the proceedings.

2 — Confidential data removed.

16 However, the assessment of its economic situation for the purposes of determining whether a legal person must be granted legal aid cannot be made having regard solely to its resources considered in isolation, independently of the situation of the direct or indirect holders of its capital.

17 According to the third paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, legal aid is made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice. It is in the light of that principle, which may be relied on by legal persons (judgment of 22 December 2010 in *DEB*, C-279/09, ECR, EU:C:2010:811, paragraph 59), that the conditions for granting legal aid, laid down in Articles 146 to 150 of the Rules of Procedure, must be interpreted.

18 A legal person cannot be regarded as being deprived of effective access to justice, within the meaning of Article 47 of the Charter of Fundamental Rights, solely because the direct or indirect holders of its capital refuse to use the resources at their disposal in order to enable that legal person to bring legal proceedings. In such circumstances, it is not for the European Union budget, through the funds made available to the General Court, to offset the inaction on the part of persons who control the legal person in question and who, ultimately, are principally interested in safeguarding its rights.

19 Consequently, in order to assess the financial situation of a legal person requesting the grant of legal aid, it is necessary to take into account not only its own financial resources but also the resources at the disposal of the group of companies as a whole to which it belongs, directly or indirectly, and the financial possibilities open to its shareholders and members, natural and legal persons (see, by analogy, orders of 7 May 1982 in *Hasselblad* v *Commission*, 86/82 R, ECR, EU:C:1982:151, paragraph 4, of 14 December 1999 in *HFB and Others* v *Commission*, C-335/99 P(R), ECR, EU:C:1999:608, paragraph 64, and of 7 December 2010 in *ArcelorMittal Wire France and Others* v *Commission*, T-385/10 R, EU:T:2010:502, paragraphs 39 to 60).

20 In the present case, it is common ground that KK, a one-person limited liability undertaking, is owned by a single shareholder, Mr KJ.

21 It is apparent from the documents annexed to the application for legal aid that Mr KJ declared to the tax authorities that he had no earnings in 2014. His income is derived from social assistance payments, which amounted to [*confidential*] monthly in September 2015. Finally, he stated that he does not have any movable or immovable assets.

22 On that basis, it must be held that Mr KJ is not in a position to be able, at least partially, to offset the impossibility for KK to meet the costs of the action in question.

23 KK thus satisfies the first condition for the grant of legal aid, laid down in Article 146(1) of the Rules of Procedure.

24 It should, however, be recalled that, under Article 150 of the Rules of Procedure, if the circumstances which led to the grant of legal aid alter during the proceedings, the President may, of his own motion or on request, withdraw that legal aid, after hearing the person concerned.

25 In the second place, with regard to the action envisaged by the applicant company, that is an action to be brought against the contested decisions.

*[omissis]*

29 In the present case, the elements provided by KK in its application, albeit summary in form, are sufficient for the purpose of assessing that application in regard to Article 146(2) of the Rules of Procedure.

*[omissis]*

31 In that regard, it must be emphasised that the review carried out by the Court when it examines whether the conditions under Article 146(2) of the Rules of Procedure are satisfied is intended to ensure that legal aid is not granted for an action that is manifestly incapable of succeeding.

32 In the light of the evidence provided, the action envisaged by KK does not appear, prima facie and taken as a whole, to be a priori either manifestly inadmissible or manifestly unfounded.

33 Consequently, it is necessary to grant KK the benefit of legal aid.

34 In accordance with Article 148(7) of the Rules of Procedure, the order granting legal aid may specify the amount to be paid to the lawyer instructed to represent the person concerned or fix a limit which the lawyer's disbursements and fees may not, in principle, exceed.

35 In the present case, the decision on the amount of disbursements and fees to be covered by the legal aid is reserved. However, it is appropriate to fix, from the outset, the limit that the lawyer's disbursements and fees may not, in principle, exceed.

36 Therefore, having regard to the subject-matter and nature of the proceedings, the foreseeable difficulties in the case, the foreseeable extent of the work that the litigation will entail for the lawyer and the financial interest that the litigation represents for the party, the disbursements and fees of the lawyer appointed to represent KK on the basis of legal aid may not, in principle, exceed EUR 3 000, excluding VAT.

On those grounds,

THE PRESIDENT OF THE GENERAL COURT

hereby orders:

**1. KK is granted legal aid.**

**2. An amount corresponding to the costs of assisting and representing KK shall be paid to the lawyer appointed to represent KK, on the basis of supporting evidence, up to a maximum of EUR 3 000.**

**3. Mr KJ's application for legal aid is dismissed.**

Luxembourg, 17 February 2016.

E. Coulon
Registrar

M. Jaeger
President