Reports of Cases

ORDER OF THE GENERAL COURT (Fourth Chamber, Extended Composition)

14 March 2022 *

(Measure of inquiry – Article 103(3) of the Rules of Procedure – Production of non-confidential versions of documents)

In Case T-136/19,

Bulgarian Energy Holding EAD, established in Sofia (Bulgaria),

Bulgartransgaz EAD, established in Sofia,

Bulgargaz EAD, established in Sofia,

represented by M. Powell and K. Struckmann, lawyers,

applicants,

supported by

Republic of Bulgaria, represented by E. Petranova, L. Zaharieva and T. Mitova, acting as Agents,

intervener,

v

European Commission, represented by H. van Vliet, G. Meessen, J. Szczodrowski and C. Georgieva, acting as Agents,

defendant,

supported by

Overgas Inc., established in Sofia, represented by S. Cappellari and S. Gröss, lawyers,

intervener,

APPLICATION under Articles 261 and 263 TFEU seeking, principally, annulment of Commission Decision C(2018) 8806 final of 17 December 2018 relating to a proceeding under Article 102 TFEU (Case AT.39849 – BEH Gas) and, in the alternative, a reduction of the fine imposed on the applicants by that decision,

* Language of the case: English.

THE GENERAL COURT (Fourth Chamber, Extended Composition),

composed of S. Gervasoni, President, L. Madise, P. Nihoul, R. Frendo (Rapporteur) and J. Martín y Pérez de Nanclares, Judges,

Registrar: E. Coulon,

makes the following

Order

1 By application lodged at the Registry of the General Court on 1 March 2019, the applicants, Bulgarian Energy Holding EAD, Bulgartransgaz EAD and Bulgargaz EAD, brought an action seeking that Commission Decision C(2018) 8806 final of 17 December 2018 relating to a proceeding under Article 102 TFEU (Case AT.39849 – BEH Gas), in which it was found that they had abused a dominant position on several markets and a fine was for that reason imposed on them ('the contested decision'), be, principally, annulled and, in the alternative, varied.

2 In support of their action, the applicants have raised seven pleas in law. By their first plea, the applicants submit that, in the administrative procedure leading to the adoption of the contested decision, the European Commission infringed in several respects the principle of good administration and their rights of defence. The applicants claim, in essence, that they did not have access, or that they did not have sufficient access, to documents which, in their view, contain exculpatory evidence.

3 By order of 26 May 2021, the General Court (Fourth Chamber), granting a request set out in the application, ordered the Commission, in accordance with Article 91(b) of its Rules of Procedure, and regard being had to the safeguards provided for in Article 103(1) thereof, to produce the detailed minutes of eight meetings held by the Commission with Overgas Inc. ('the detailed minutes'), Overgas' confidentiality claims relating to those minutes, the confidential versions of Overgas' submissions following those eight meetings ('the follow-up submissions') and the confidential version of the report drawn up by the applicants' representatives in the context of a data room procedure on 28 June 2018 ('the information report'). The Commission complied with that request on 17 June 2021 by placing on the file the annexes numbered X.1 to X.16.

4 In accordance with Article 103(1) and (2) of the Rules of Procedure, where it is necessary for the General Court to examine, on the basis of the matters of law and of fact relied on by a main party, the confidentiality, vis-à-vis the other main party, of certain information or material produced before it following a measure of inquiry referred to in Article 91(b) of the Rules of Procedure, it is for the Court to ascertain whether that information or material is relevant in order for it to rule in the case and whether it is confidential.

5 Next, in accordance with Article 103(2) of the Rules of Procedure, where the General Court concludes in the examination provided for in Article 103(1) of those rules that certain information or material produced before it is relevant in order for it to rule in the case and is confidential vis-à-vis the other main party, it is to weigh that confidentiality against the requirements linked to the right to effective judicial protection, particularly the adversarial principle.

6 In the present case, during the proceeding under Article 102 TFEU, information or material which Overgas had submitted to the Commission was claimed to be confidential vis-à-vis the applicants. It is on that basis that the applicants allege that their rights of defence were infringed, as is apparent from paragraph 2 above. The documents in question are known both to the Commission, a main party to the present proceedings, and to Overgas, an intervener in support of the Commission. By contrast, the applicants, who are adversely affected by the contested decision, have to defend their interests vis-à-vis the Commission and Overgas without having knowledge of that information in the administrative file, despite having the status of main parties before the Court.

7 In such circumstances, the adversarial principle and the principle of equality of arms, guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union, observance of which is ensured by the EU Courts, require that, where a contested act is subject to judicial review, the applicants are given the widest possible access to the file in order to enable them to put forward all available and relevant arguments in support of their action.

8 It also follows, in such circumstances, that, in the analysis provided for under Article 103(1) and (2) of the Rules of Procedure, it must first of all be examined whether the information or material produced before the General Court following a measure of inquiry is confidential and, if it is not, to communicate it to the applicants. By contrast, if that information or material is confidential, it is for the Court to then carry out a two-fold examination, also as regards the question whether the particulars at issue are relevant in order for it to rule in the case.

9 It should be borne in mind, in this regard, that the confidential treatment of an item of information in the file is not justified in the case, for example, of information which is already public or to which the general public or certain specialist circles have access, information featuring also in other passages or documents in the case file in respect of which the party seeking to preserve the confidential nature of the information in question neglected to make a request to that effect, information which is not sufficiently specific or precise to reveal confidential data, or information which is largely apparent or may be deduced from other information which is legitimately available to the interested parties (see order of 11 April 2019, *Google and Alphabet* v *Commission*, T-612/17, not published, EU:T:2019:250, paragraph 20 and the case-law cited).

10 Likewise, it must be recalled at this point that it is settled case-law that information which was confidential, but which is at least five years old, must for that reason be considered historical and be communicated to the other parties, unless, exceptionally, in spite of its age, that information still constitutes essential secrets, such as industrial or commercial secrets, disclosure of which would harm a party or a third party (see, to that effect, order of 11 April 2019, *Google and Alphabet* v *Commission*, T-612/17, not published, EU:T:2019:250, paragraph 19 and the case-law cited).

11 Lastly, it must be borne in mind that, in accordance with Article 103(3) of the Rules of Procedure, after having weighed up the matters referred to in Article 103(2) thereof, as set out in paragraph 5 above, the General Court may decide to bring the confidential information or material to the attention of the other main party, making its disclosure subject, if necessary, to specific undertakings, or it may decide not to communicate such information or material, specifying, by reasoned order, the procedures enabling the other main party, to the greatest extent possible, to make his or her views known, including ordering the production of a non-confidential version or summary of the information or material.

Overgas' claims for confidential treatment of the detailed minutes

12 On 18 January 2018, Overgas informed the Commission, by email, that it took the view that the detailed minutes should be treated as confidential. Overgas reiterated and expanded on that claim on 20 February 2018.

13 It is apparent from Overgas' letter of 20 February 2018 to the Commission that Overgas feared, in essence, that the disclosure of certain particulars in the detailed minutes could have significant negative economic, administrative or judicial consequences.

14 Accordingly, in the particular context of the case, Overgas' reasons given to justify the confidential treatment of the detailed minutes are themselves sensitive and must therefore be regarded as confidential.

15 Nevertheless, the reasons put forward by Overgas in support of its claim for confidential treatment to the Commission are relevant for the purpose of ruling in the case. In the part of their first plea relating to the fact that the Commission had not given them access to the detailed minutes, the applicants submit, in particular, that they were not aware of the reasons given by Overgas to justify the confidential treatment of those minutes, with the result that that complaint raises the question whether the Commission could legitimately grant Overgas' claims for confidential treatment without infringing the applicants' rights of defence.

16 Thus, the Court is required to weigh, as referred to in Article 103(2) of the Rules of Procedure, the confidentiality of the claims in question against the requirements of the right to effective judicial protection, particularly the adversarial principle.

17 In that regard, in the light of, first, what is at stake in the case, and second, the fact that it cannot be ruled out that disclosure of the reasons given to justify the confidential treatment of the detailed minutes combined with the disclosure of certain particulars contained therein could have significant economic, administrative or judicial consequences, it is appropriate, pursuant to Article 103(3) of the Rules of Procedure, which makes it possible to reconcile the conflicting interests of the parties, inter alia by producing a non-confidential version of the information or material containing the essential content thereof, to order the Commission to lodge the claim of 18 January 2018, numbered X.9(1), provided that it redacts the passage between the words 'additional repercussions' and the words 'in case the non-confidential content'.

The confidential version of the information report

18 As a preliminary point, it must be noted that, during the administrative procedure, the Commission organised, in total, eight meetings with Overgas. Those meetings took place on 13 October 2010, 13 January, 17 March and 15 December 2011, 17 June 2013, 13 October 2015, and 17 March and 20 October 2016.

19 Furthermore, it is apparent from the file that, for each of the meetings organised with Overgas, the Commission drew up, first, detailed minutes, and second, short notes.

20 It must also be observed that the applicants obtained the short notes of the eight meetings and that, on 28 June 2018, the applicants' external representatives had access to the detailed minutes in the context of a data room procedure. According to that procedure, provided for in

paragraph 98 of the Commission notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU (OJ 2011 C 308, p. 6), a party's external representatives may have access to confidential documents, under the supervision of a Commission official and in a room at the Commission's premises. The representatives may make use of the information made available to them in the room for the purpose of defending their client, but may not disclose any confidential information to that client.

21 In the context of the data room procedure, the applicants' external representatives drew up a confidential version of the information report in which they, inter alia, expressed their views on the information contained in the detailed minutes. That report constitutes the annex numbered X.16.

22 The applicants' external representatives also drew up a non-confidential version of that report with the Commission's approval and communicated it to the applicants.

23 However, the applicants submit that that non-confidential version was devoid of value for their defence, whereas the detailed minutes, examined in the data room, contained information that was not only non-confidential but also contained exculpatory evidence.

24 Consequently, in their first plea, the applicants submit that the Commission could not, by means of the data room procedure, prevent them from personally acquainting themselves with the detailed minutes and that their rights of defence have thereby been infringed.

25 In accordance with paragraph 8 above, it is necessary to examine whether the information report contains particulars which must in fact be treated as confidential.

26 It must be observed at the outset in that regard that the statements made by the applicants' external representatives, on pages 396 to 398 and 400 to 403 of the consecutive numbering, concerning the particulars they regarded as exculpatory, do not contain, as such, confidential information which would preclude their disclosure.

27 Next, the following particulars, in any event, are not confidential or, as the case may be, are no longer confidential, and there is therefore nothing precluding their disclosure:

– as regards the description of the document entitled 'Meeting between Overgas and DG [Competition] on 13 October 2010', the redacted items of information in the information report on pages 395 and 396 of the consecutive numbering is apparent, in particular, from paragraph 31(1), paragraphs 77, 80 et seq., 207, 208 and 215 et seq. of the Commission's statement of objections, from footnote 84, recital 45(a), and recitals 100 to 103 of the public version of the contested decision, from paragraphs 3 and 6 to 8 of Overgas' statement in intervention and paragraph 336 of the non-confidential version of the application vis-à-vis Overgas, and from paragraph 404 of the consolidated non-confidential version of the defence;

– as regards the description of the document entitled 'Meeting with Overgas Inc on 13/01/2011', it must be noted that the redacted items of information on page 397 of the consecutive numbering appear, in particular, in paragraphs 77, 90 and 215 of the statement of objections, in recital 101(c) and recital 296 of the public version of the contested decision, and in paragraphs 6, 7 and 11 of Overgas' statement in intervention; furthermore, the redacted item of information relating to the Bulgarian transmission network cannot be unknown to the applicants and refers, moreover, to a publicly available source;

– as regards the description of the document entitled ‘Meeting with Overgas Inc on 17/03/2011’ and the particulars on pages 397 and 398 of the consecutive numbering, the following must be noted:

  – first, the steps that Overgas took vis-à-vis the Bulgarian regulator are apparent, in particular, from paragraphs 111, 112 and 118 of Bulgartransgaz’s response of 17 July 2015 to the statement of objections, from paragraph 2(a) of Bulgargaz’s response to that statement, and from recitals 104, 121 and 129 of the public version of the contested decision;

  – second, the other redacted items of information are disclosed and detailed in particular in paragraphs 77, 90 and 215 et seq. of the statement of objections and in recital 99 of the public version of the contested decision; furthermore, the name of the undertaking referred to in the second and fifth paragraphs on page 398 of the consecutive numbering is necessarily known to the applicants, since it was Bulgartransgaz which gave it access to its gas transmission network;

  – third, Overgas’ desire to compete with Bulgargaz is naturally at the centre of its complaint to the Commission;

  – fourth, Overgas’ intention to transform the market environment in Bulgaria is clearly apparent from paragraph 11 of its statement in intervention;

– as regards the description of the document entitled ‘COMP/B1/39.849 – BEH Gas, Meeting with Overgas Inc on 15/12/2011, Minutes from the meeting (recorded on the Commission file on 21/12/2011)’ and the particulars on pages 399 and 400 of the consecutive numbering, the following must be noted:

  – first, the content of the first two paragraphs on page 399 of the consecutive numbering is known to the applicants, as evidenced by paragraph 35 of the non-confidential version of the application vis-à-vis Overgas, and is also addressed in paragraphs 23, 24 and 29 of Overgas’ statement in intervention; one of the particulars in question appears, moreover, in recital 14 of the public version of the contested decision;

  – second, the other information redacted on pages 399 and 400 of the consecutive numbering is apparent in particular from paragraphs 37, 38, 176 and 177 of the statement of objections, from paragraphs 88 to 90 of Bulgartransgaz’s response to that statement, and from recital 59, recital 101(e) and (g), and recitals 104, 121, 129 and 648 to 652 of the public version of the contested decision;

  – third, the information concerning the Bulgarian domestic network, its entry and exit points, and the figures referred to in those pages are necessarily known to the applicants;

– as regards the description of the document entitled ‘Minutes of the meeting with Overgas’ of 17 June 2013, set out on pages 400 and 401 of the consecutive numbering, it must be noted that the redacted particulars cannot be unknown to the applicants, since they relate to Overgas’ discussions with them and to the contract concluded between Overgas and

Bulgargaz on 31 January 2013; furthermore, those items of information appear in particular in paragraphs 135 and 139 and in footnote 21 of Bulgargaz's response to the statement of objections, and in recitals 101, 110, 214 et seq., and 312 and 313 of the public version of the contested decision;

– as regards the description of the document entitled 'Minutes of the meeting with Overgas' of 13 October 2015, set out on pages 401 and 402 of the consecutive numbering, it should be noted that the redacted particulars, which relate to Overgas' suggestions to resolve the case with commitments, do not appear to be confidential, inasmuch as the Court does not see how they are connected to the serious consequences that could result from the disclosure of the detailed minutes (see paragraph 13 above) whose content the information report describes; in addition, in so far as the particulars in question should, a priori, be classified as commercially sensitive, the view must be taken that they are only of historical significance for the purposes of the case-law cited in paragraph 10 above;

– as regards the description of the document entitled 'Minutes of the meeting with Overgas' of 17 March 2016, set out on page 402 of the consecutive numbering, it must be noted that, for the reasons given in the preceding indent, it does not appear necessary for Overgas' new suggestions to resolve the case with commitments to remain confidential either;

– as regards the description of the document entitled 'Minutes of the meeting with Overgas' of 20 October 2016, set out on page 403 of the consecutive numbering, it must be noted that the fact that Overgas submitted a complaint to the Commission against Bulgarian Energy Holding in 2009 is known to the applicants; furthermore, that fact is referred to in particular in paragraph 3 of Overgas' statement in intervention.

28 By contrast, the following particulars are confidential and it is therefore necessary, as is apparent from paragraph 8 above, to conduct an analysis also as to whether they are relevant for the purpose of ruling in the case:

– as regards the description of the document entitled 'Meeting between Overgas and DG [Competition] on 13 October 2010', on page 396 of the consecutive numbering, the sentence following the words 'trying to get gas for Bulgargaz' contains a confidential item, inasmuch as it is capable of revealing Overgas' fears as regards the serious consequences that could result from the disclosure of the detailed minutes (see paragraph 13 above); however, that item is irrelevant for the purpose of ruling in the case, inasmuch as the redacted sentence merely indicates from where Overgas had derived some of its information;

– as regards the description of the document entitled 'Minutes of the meeting with Overgas' of 17 March 2016, set out on page 402 of the consecutive numbering, it must be noted that the particulars redacted in the second paragraph and in the first sentence of the third paragraph concern Overgas' business relations with a third-party undertaking and another case subsequently investigated by the Commission; accordingly, those particulars are confidential on that basis, but are nevertheless irrelevant for the purpose of ruling in the case, since the applicants' external representatives have not referred to them as being exculpatory in the information report.

29 In the light of all of the foregoing, in order to enable the applicants themselves, to the greatest extent possible, to make their views known, it is necessary to order the Commission to lodge a new version of the information report, annex numbered X.16, subject to the redaction of:

– on page 396 of the consecutive numbering, the sentence that follows the words 'trying to get gas for Bulgargaz';

– on page 402 of the consecutive numbering, the end of the sentence following the words 'case AT.40368 and', and the first sentence in the following paragraph.

The detailed minutes

30 As has already been stated in paragraphs 23 and 24 above, the applicants submit, in their first plea in law, that the detailed minutes contain information that was not only non-confidential but also contained exculpatory evidence.

31 However, it follows from paragraphs 13 to 17 above that Overgas was entitled to claim that disclosure of certain particulars in the detailed minutes could have serious consequences. Consequently, those minutes, taken as a whole, must, in principle, be regarded as confidential.

32 Furthermore, it has been concluded in paragraph 29 above that it is appropriate to grant the applicants access to the information report, subject to the redaction of two short items of information which are irrelevant for the purpose of ruling in the case. It must therefore be borne in mind that, in that report, the applicants' external representatives described the content of the detailed minutes and identified the particulars therein which, according to them, are exculpatory.

33 Consequently, in view of the fact that Article 103(3) of the Rules of Procedure expressly envisages the lodging of a non-confidential summary of the documents at issue and the fact that the information report can be likened to such a summary, including with the redactions listed in paragraph 29 above, an appropriate balancing of the interests in question will be achieved by taking the view that there is no need to disclose to the applicants the detailed minutes themselves, corresponding to Annexes X.1 to X.8.

The follow-up submissions

34 Overgas drew up and lodged follow-up submissions, in which it expanded on the arguments which it had raised during its meetings with the Commission.

35 The applicants had access only to non-confidential versions of most of the follow-up submissions.

36 Therefore, in accordance with paragraph 8 above, it is necessary to examine whether the follow-up submissions did in fact contain particulars that are confidential, next, to ascertain, as the case may, whether they are relevant for the purpose of ruling in the case, and lastly, to weigh their confidentiality against the requirements linked to the right to effective judicial protection, particularly the adversarial principle, in accordance with paragraph 11 above.

The follow-up submissions on the meeting of 13 October 2010

37 As regards the follow-up submissions on the meeting of 13 October 2010, constituting the annex numbered X.10, it should be noted that the following particulars are not confidential or, in any event, are no longer confidential:

– on page 74 of the consecutive numbering, the redacted passage is a clarification concerning the participation in Overgas' management bodies; however, it now constitutes historical information within the meaning of the case-law cited in paragraph 10 above and there are no exceptional circumstances that might continue to justify its confidential treatment;

– on page 76 of the consecutive numbering, the redacted particulars relate to the breakdown of gas imports into Bulgaria and are therefore necessarily known to the applicants;

– on pages 77 and 89 of the consecutive numbering, with the exception of footnote 18 (see paragraph 38 below), the redacted information is commercial information relating to Overgas' relations with third parties; it also appears now to constitute historical information which is not confidential;

– the redacted passage in footnote 41, on page 99 of the consecutive numbering, relates to the lodging of a complaint by one of the applicants with a Bulgarian public prosecutor and thus concerns a fact that is known to them;

– on page 102 of the consecutive numbering, the redacted information that concerned Overgas' relations with third parties is also historical information which is no longer confidential;

– on page 104 of the consecutive numbering, the paragraph beginning with the words 'in late September 2010' contains information which is apparent in particular from paragraph 2(a) of Bulgargaz's response to the statement of objections, from recital 296 of the public version of the contested decision, and from paragraph 58 of Overgas' statement in intervention;

– on page 109 of the consecutive numbering, under the heading 'V. Monopolization of Natural Gas from Domestic Production', the first paragraph is echoed in particular in paragraphs 33 and 264 of the statement of objections.

38 By contrast, following the examination referred to in paragraph 8 above, it is apparent that, while the following particulars in the annex numbered X.10 are still confidential, they are irrelevant for the purpose of ruling in the case:

– on page 89 of the consecutive numbering, footnote 18 lists the names of industrial gas consumers which wished to conclude agreements with Overgas in 2010 and 2011; notwithstanding the time which has elapsed, that list might still be sensitive and reveal business secrets, but it is irrelevant for the purpose of ruling in the case;

– on page 103 of the consecutive numbering, footnote 42 provides details on the editorial independence of the press entity in which the member of the Commission responsible for competition made the statement quoted in the follow-up submissions; that information, supposing that it could be regarded as confidential, is, however, irrelevant for the purpose of ruling in the case, in so far as it concerns an undertaking that is not active in the gas sector;

– as regards the explanations set out on pages 104 and 105 of the consecutive numbering under the heading 'Political Statements and Image Campaign Starting in 2009', it cannot be ruled out that they come within the scope of the fears on account of which Overgas requested confidential treatment of the detailed minutes on which the follow-up submissions at issue elaborate; however, they do not relate to the applicants' conduct, but to the situation, and in particular the political situation, in Bulgaria, and are therefore irrelevant for the purpose of ruling in the case;

– as regards pages 105 to 108 of the consecutive numbering, Overgas' explanation under the heading 'III. Monopolization of Gas Imports from Russia' can be regarded as confidential, inasmuch as its content also appears to be linked to the fears expressed by Overgas concerning the serious consequences that could result from disclosure of the detailed minutes of the meetings between itself and the Commission on which, as has been stated above, the follow-up submissions at issue elaborate; however, that explanation is irrelevant for the purpose of ruling in the case, in so far as it concerns Bulgargaz's relations with third parties as a result of political choices, which do not form the basis of the contested decision; furthermore, despite the heading of that part, Overgas' arguments in that regard relate, essentially, to Article 101 TFEU, which does not constitute the basis of the contested decision;

– as regards the last two paragraphs on page 109 of the consecutive numbering and at the beginning of page 110 of that numbering, the information in question concerns a third-party undertaking and Overgas' relations with it, which could reveal fears expressed by Overgas concerning the serious consequences that could result from disclosure of the detailed minutes of its meetings with the Commission; that confidential information is also irrelevant for the purpose of ruling in the case, precisely because it relates to a third-party undertaking and Overgas' relations with it; moreover, that information concerns only domestic gas production, which is not at issue in the present case.

39 In the light of all of the foregoing, in order to enable the applicants themselves, to the greatest extent possible, to make their views known, it is therefore necessary to order the Commission to lodge a new version of the follow-up submissions on the meeting of 13 October 2010, constituting the annex numbered X.10, subject to preserving the redactions:

– in footnote 18 on page 89 of the consecutive numbering;

– in footnote 42 on page 103 of the consecutive numbering;

– in the explanations given under the heading 'Political Statements and Image Campaign Starting in 2009', on pages 104 and 105 of the consecutive numbering;

– in the explanations given under the heading 'III. Monopolization of Gas Imports from Russia' from page 105 to page 108 of the consecutive numbering;

– in the last two paragraphs on page 109 of the consecutive numbering and at the beginning of page 110 of that numbering.

The follow-up submissions on the meeting of 13 January 2011

40 As regards the follow-up submissions on the meeting of 13 January 2011, constituting the annex numbered X.11, the following particulars are not confidential or, in any event, are no longer confidential:

– the redacted passage on page 112 of the consecutive numbering contains particulars known to the applicants, inasmuch as it constitutes, first, a brief summary of the correspondence between Transgaz Romania and Overgas to which the applicants had access during the administrative procedure, and second, information which is contained, in particular, in paragraphs 196 and 210 of the Commission's statement of objections;

– the redacted pages 119 to 155 of the consecutive numbering are particulars that are known to the applicants, constituting either the correspondence between Transgaz Romania and Overgas referred to above which the applicants received during the administrative procedure or letters from or to Bulgartransgaz;

– the redacted pages 157 and 158 of the consecutive numbering are a letter from Overgas to the Bulgarian regulator of 11 October 2010; its content is elaborated on in that company's complaint to that body of 20 January 2011, of which the applicants were aware, as is apparent from the file (see the final indent of the present paragraph below); it is, moreover, historical information within the meaning of the case-law cited in paragraph 10 above;

– on pages 170 and 171 of the consecutive numbering, the passage redacted in the bullet point that begins with the words 'in our submission of January 20, 2011' contains information which appears in particular in recitals 109, 131, 260, 275 and 276 of the public version of the contested decision;

– on page 171 of the consecutive numbering, the content of the passage redacted in the bullet point that begins with the words 'on January 20, 2011' appears in recitals 104, 121, 129, 221 and 233 of the public version of the contested decision;

– on page 172 of the consecutive numbering, the particulars redacted in the paragraph that begins with the words 'a good example' constitute speculations, which are, moreover, not sufficiently specific or precise (see paragraph 9 above), on the development of the situation and the direction of potential negotiations in 2011 concerning the gas supply in Bulgaria at that time;

– the redacted pages 178 to 184 of the consecutive numbering correspond to Overgas' complaint to the Bulgarian regulator of 20 January 2011; it can be inferred from recitals 105, 121, 221 and 508 of the public version of the contested decision that the applicants were aware of it.

41 By contrast, in the light of the examination referred to in paragraph 8 above, it appears that the passages redacted on page 171 of the consecutive numbering in the bullet point that begins with the words 'Overgas recently also sent a letter' and the passage redacted in the paragraph on page 172 of that numbering that begins with the words 'already during our meeting on January 13, 2011' are confidential, inasmuch as they can be linked to the serious consequences which Overgas fears in the event that the detailed minutes, on which the follow-up submissions expand, should be disclosed. Nevertheless, the content of those passages is irrelevant for the purpose of ruling in the case, inasmuch as it does not contain any assessment of the applicants' conduct.

42 In the light of the foregoing, it is therefore appropriate to order the Commission to lodge a new version of the follow-up submissions on the meeting of 13 January 2011, numbered X.11, subject to preserving the confidentiality, on page 171 of the consecutive numbering, of the redacted passages in the bullet point that begins with the words 'Overgas recently also sent a letter' and, on page 172 of that numbering, of the passage redacted in the paragraph that begins with the words 'already during our meeting on January 13, 2011'.

The follow-up submissions on the meeting of 17 March 2011

43 As regards the follow-up submissions on the meeting of 17 March 2011, constituting the annex numbered X.12, it must be noted that the following particulars are not confidential:

– the redacted passages on pages 192 to 197 of the consecutive numbering relate, first, to the benefits which, according to Overgas, would accrue to end customers if it obtained access to the gas infrastructure, and second, to the reasons why Overgas' penetration of the market would not result in a monopoly undertaking being replaced by another such undertaking; in other words, in the passages in question, Overgas predicted, in general terms, a number of benefits that would follow from the Commission's intervention, in order to convince it to take action; accordingly, those passages do not constitute actual information and are, in any event, not sufficiently specific or precise to reveal confidential data (see paragraph 9 above);

– the passage redacted on page 198 of the consecutive numbering relates to a step Overgas took vis-à-vis the Commission's Directorate-General (DG) for Energy, in parallel with its meetings with DG Competition; Overgas' contacts with that directorate-general are apparent from footnotes 42, 44 and 77 of the public version of the contested decision and the reference to them does not contain any business secrets or other confidential information.

44 By contrast, the following must be considered to be confidential:

– the names of the third-party companies cited on page 193 of the consecutive numbering; those names are, however, irrelevant for the purpose of ruling in the case, inasmuch as they are names of potential financial partners of Overgas that would have been liable to participate in mechanisms for the stabilisation of its prices as regards its own customers and inasmuch as those companies are not cited anywhere at all in the contested decision;

– the tables on pages 201 and 202 of the consecutive numbering entitled 'List of Potential Overgas Customers' in 2011 and 2012; those tables refer to those customers by name and to the quantity of gas that they envisaged purchasing from Overgas; notwithstanding the time which has elapsed, those tables may still be sensitive and reveal business secrets, but they are irrelevant for the purpose of ruling in the case; in so far as it cites those customers, the statement of reasons for the contested decision does not in any way mention the fact that they were planning to order from Overgas.

45 In the light of the foregoing, it is therefore appropriate to order the Commission to lodge a new version of the follow-up submissions on the meeting of 17 March 2011, numbered X.12, subject to preserving the redaction of the names of the third-party companies cited on page 193 of the consecutive numbering and of the tables on pages 201 and 202 of that numbering.

The follow-up submissions on the meeting of 15 December 2011

46 As regards the follow-up submissions on the meeting of 15 December 2011, constituting the annex numbered X.13, it should be noted that the following particulars are not confidential:

– the passages relating to the commercial background to Overgas' request for access to the gas infrastructure that are redacted on pages 205 and 206 of the consecutive numbering relate to Overgas' commercial relations with a third-party supplier, the prospects of concluding contracts with end users and an arrangement with another partner; subject to what will be set out in paragraph 47 below, these constitute, however, historical information within the meaning of the case-law cited in paragraph 10 above;

– the first item of information redacted on page 209 of the consecutive numbering concerns Overgas' request for access to the storage facility in Chiren (Bulgaria) and is known to the applicants; the second sets out one of the reasons for that request, which concerns that company's relations with a third party, but, in any event, now has only historical significance;

– the passages redacted on page 211 of the consecutive numbering relate to contacts between Overgas and the Bulgarian regulator, namely a letter of 11 October 2010 and the complaint of 20 January 2011, the content of which is known to the applicants, as has already been set out in paragraph 40 above; moreover, those passages now have only historical significance.

47 By contrast, the following must be considered to be confidential:

– the names of the third-party companies cited on pages 205 and 206 of the consecutive numbering;

– in the second bullet point on page 205 of the consecutive numbering, the words in the first sentence which indicate the name of the company concerned and then describe it in a way which makes it possible to identify it.

However, that information is irrelevant for the purpose of ruling in the case, in so far as it is sufficient for the applicants to know that it concerns undertakings active in the gas sector or an end user, as is apparent from the context.

48 Accordingly, it is appropriate to order the Commission to lodge a new version of the follow-up submissions on the meeting of 15 December 2011, numbered X.13, subject to preserving the redaction of the names of the third-party companies cited on pages 205 and 206 of the consecutive numbering and of the passage which describes one of them in the second bullet point on page 205 of that numbering.

The follow-up submissions on the meeting of 17 June 2013

49 As regards the follow-up submissions on the meeting of 17 June 2013, constituting the annex numbered X.14, it must be stated that the allegedly non-confidential version which was communicated to the applicants during the administrative procedure did not contain any redactions.

50 Accordingly, since the applicants have already had access to that annex as such, their request seeking disclosure of the follow-up submissions is devoid of purpose as regards that annex and there is no need to order that it be disclosed again.

The follow-up submissions on the meeting of 20 October 2016

51 As regards the follow-up submissions on the meeting of 20 October 2016, constituting the annex numbered X.15, it must be noted that nothing has been communicated to the applicants, even in a non-confidential version.

52 However, it is sufficient to note that those submissions concern the development of the gas market in Bulgaria and the alleged attitude of Bulgargaz and Bulgartransgaz at the time when the submissions were drawn up, on 16 November 2016, that is to say, after the end of the infringement period on 1 January 2015. More specifically, those submissions by Overgas concerned practices connected, in particular, with prices and the lack of development of the infrastructure which Overgas considered to be necessary for the development of competition in Bulgaria.

53 In view of the commercial relations between Overgas and the applicants, the follow-up submissions on the meeting of 20 October 2016, which refer to developments of the Bulgarian market that were alleged to still be necessary and which date back only to 2016, can be considered to be still commercially sensitive and therefore confidential.

54 That being so, the Commission rightly states, in its response to the measure of inquiry of 17 June 2021, that the complaints set out by Overgas in the follow-up submissions of 16 November 2016 were not taken into account in the contested decision.

55 It is true that the Commission referred to events which occurred in 2016, noting, in the contested decision, that the Romanian pipeline 1 was the only viable route for bringing gas to Bulgaria, at least until April 2016, and that the 2005 commercial agreement granting Bulgargaz exclusive use of that pipeline had been terminated on 30 September 2016. However, it must be pointed out that those two items of information merely refer to the state of the market before the meeting of 20 October 2016, to which the follow-up submissions of 16 November 2016 relate, and not to developments that would still be necessary. In addition, the Commission found that Overgas had already obtained access to that infrastructure on 1 January 2015, the date which it set as the end of the infringement, including for practices relating to the Bulgarian transmission network.

56 As regards the Chiren storage facility, the Commission established 23 September 2014 as the date on which all unlawful conduct ended as a result of access being granted to a third-party operator.

57 On those grounds, Annex X.15 is irrelevant for the purpose of ruling in the case.

Conclusions on the action to be taken following the measure of inquiry of 26 May 2021

58 In the light of the conclusions set out in paragraphs 17, 29, 33, 39, 42, 45, 48, 50 and 57 above, it is necessary to:

– order the Commission to lodge:

– the annex numbered X.9(1), redacted in accordance with paragraph 17 above;

– the annex numbered X.10, redacted in accordance with paragraph 39 above;

– the annex numbered X.11, redacted in accordance with paragraph 42 above;

– the annex numbered X.12, redacted in accordance with paragraph 45 above;

– the annex numbered X.13, redacted in accordance with paragraph 48 above;

– the annex numbered X.16, redacted in accordance with paragraph 29 above;

– invite the Commission to state, at the same time as that lodging, whether those annexes contain information that is confidential vis-à-vis the Republic of Bulgaria;

– next, invite the Registry of the General Court to serve on the applicants the annexes numbered X.9(1), X.10 to X.13 and X.16, redacted by the Commission in accordance with paragraphs 17, 29, 39, 42, 45 and 48 above;

– invite the applicants to make their views on those annexes known and to state at the same time whether those annexes contain information that is confidential vis-à-vis the Republic of Bulgaria;

– invite the Registry of the General Court to:

– next, serve on the interveners the annexes numbered X.9(1), X.10 to X.13 and X.16, redacted by the Commission in accordance with paragraphs 17, 29, 39, 42, 45 and 48 above, with the exception, as the case may be, as regards the Republic of Bulgaria, of the particulars in those annexes that are confidential vis-à-vis the latter;

– remove from the file the annexes numbered X.1 to X.16 in their versions communicated by the Commission on 17 June 2021, in so far as, as such, they cannot be taken into consideration by the Court, in accordance with Article 64 of the Rules of Procedure.

On those grounds,

THE GENERAL COURT (Fourth Chamber, Extended Composition)

hereby orders:

1. **The European Commission shall produce, within a period to be determined by the Registry of the General Court, a non-confidential version vis-à-vis Bulgarian Energy Holding EAD, Bulgartransgaz EAD and Bulgargaz EAD of the following documents:**

   – **the annex numbered X.9(1), redacted in accordance with paragraph 17 above;**

   – **the annex numbered X.10, redacted in accordance with paragraph 39 above;**

– **the annex numbered X.11, redacted in accordance with paragraph 42 above;**

– **the annex numbered X.12, redacted in accordance with paragraph 45 above;**

– **the annex numbered X.13, redacted in accordance with paragraph 48 above;**

– **the annex numbered X.16, redacted in accordance with paragraph 29 above.**

2. **The Commission shall state, at the same time as it lodges the non-confidential versions vis-à-vis Bulgarian Energy Holding, Bulgartransgaz and Bulgargaz of the annexes numbered X.9(1), X.10 to X.13 and X.16, whether they are confidential vis-à-vis the Republic of Bulgaria.**

3. **The non-confidential versions vis-à-vis Bulgarian Energy Holding, Bulgartransgaz and Bulgargaz of the annexes numbered X.9(1), X.10 to X.13 and X.16, which shall be produced by the Commission in accordance with point 1 of this operative part, shall be communicated to those parties so that they can make their views known, within a period to be determined by the Registry of the General Court.**

4. **At the same time as the lodging of their observations on the annexes numbered X.9(1), X.10 to X.13 and X.16, produced by the Commission in accordance with point 1 of this operative part, Bulgarian Energy Holding, Bulgartransgaz and Bulgargaz shall state whether those annexes contain information that is confidential vis-à-vis the Republic of Bulgaria.**

5. **In the event that the Commission, Bulgarian Energy Holding, Bulgartransgaz and Bulgargaz state that the annexes numbered X.9(1), X.10 to X.13 and X.16, produced in accordance with point 1 of this operative part, are confidential vis-à-vis the Republic of Bulgaria, they shall lodge, within a period to be determined by the Registry of the General Court, a consolidated non-confidential version vis-à-vis the Republic of Bulgaria of each of the annexes concerned.**

6. **The annexes numbered X.9(1), X.10 to X.13 and X.16, redacted by the Commission in accordance with point 1 of this operative part, shall be communicated to the interveners, with the exception, as the case may be, as regards the Republic of Bulgaria, of the particulars in those annexes that are confidential vis-à-vis the latter.**

7. **The annexes numbered X.1 to X.16, communicated by the Commission on 17 June 2021, shall be removed from the file.**

8. **The costs are reserved.**

Luxembourg, 14 March 2022.

E. Coulon
Registrar

S. Gervasoni
President