JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

6 June 2019 (*)

(Arbitration clause — Water Supply Deir Ez Zor Region Loan Agreement No 80310 — Non-performance of the agreement — Repayment of the sums advanced — Default interest — Procedure by default)

In Case T-591/17,

European Investment Bank (EIB), represented initially by P. Chamberlain, T. Gilliams, F. Oxangoiti Briones and J. Shirran, and subsequently by F. Oxangoiti Briones, J. Klein and J. Shirran, acting as Agents, and D. Arts, lawyer, and T. Cusworth, Solicitor,

applicant,

v

Syrian Arab Republic,

defendant,

ACTION pursuant to Article 272 TFEU, seeking an order that the Syrian Arab Republic repay sums due under Water Supply Deir Ez Zor Region Loan Agreement No 80310, plus default interest,

THE GENERAL COURT (Sixth Chamber),

composed of G. Berardis, President, D. Spielmann and Z. Csehi (Rapporteur), Judges,

Registrar: E. Coulon,

gives the following

Judgment

Background to the dispute

Relevant contractual provisions

1 Subsequent to the Cooperation Agreement between the European Economic Community and the Syrian Arab Republic of 18 January 1977 (OJ 1978 L 269, p. 2) and its protocols, on 26 July 1990, the European Economic Community, represented by the Commission of the European Communities, concluded with the Syrian Arab Republic Water Supply Deir Ez Zor Region Loan Agreement No 80310 (‘the loan agreement’) regarding a water supply project in the Deir Ez Zor region. Article 11.01 of the special conditions of the loan agreement provides that it is to be governed by French law. Moreover, pursuant to Article 12.01 of the special conditions of that agreement, the Syrian Arab Republic designated the ambassador of the Syrian Arab Republic to the European Union in Brussels (Belgium) for any notification or communication involving a dispute.

2 By virtue of Article 1.01 of the general conditions of the loan agreement, read in conjunction with Article 1.01 of the special conditions, and of Article 1.02 of the general conditions of that agreement, the Community granted the Syrian Arab Republic a loan of 2 000 000 European Currency Units to be disbursed on request. By virtue of Article 4.01 of the general conditions of that agreement, the Syrian Arab Republic was to repay the loan in half-yearly instalments.

3 In accordance with Article 3.01 of the general conditions of the loan agreement, interest is payable on the outstanding balance of the loan half-yearly in arrears at the nominal annual rate of 1%.

4 According to Article 3.02 of those conditions, interest is accrued on any sum that has fallen overdue at an annual rate of 3.5%.

5 According to Articles 9.01 and 9.02 of the general conditions of the loan agreement, the Syrian Arab Republic is to pay all taxes, fees, duties or professional costs incurred in the execution or implementation of that agreement.

Failure of the Syrian Arab Republic to fulfil its obligations

6 Between June 2012 and June 2017, 11 instalments under the loan agreement fell due, as shown below:

Instalments	Due dates
EUR 33 602.16	1 June 2012
EUR 33 636.00	3 December 2012
EUR 33 495.40	3 June 2013
EUR 33 528.38	2 December 2013
EUR 33 560.50	2 June 2014
EUR 33 591.74	1 December 2014
EUR 33 622.12	1 June 2015
EUR 33 478.05	1 December 2015
EUR 33 507.56	1 June 2016
EUR 33 536.21	1 December 2016
EUR 33 563.96	1 June 2017

7 By means of the payment reminders of 11 June and 13 December 2012, 13 June and 12 December 2013, 12 June and 11 December 2014, 12 June and 11 December 2015, 13 June and 12 December 2016 and 23 August 2017, relating, respectively, to the due dates referred to in paragraph 5 above, the European Investment Bank (EIB) sent notifications to the Syrian Arab Republic calling for payment of the amounts due.

Procedure and forms of order sought

8 By application lodged at the Court Registry on 30 August 2017, the EIB brought the present action.

9 The application was served on the Syrian Arab Republic, in the person of the ambassador of the Syrian Arab Republic to the European Union in Brussels on 6 April 2018 by registered post with acknowledgement of receipt.

10 Since the Syrian Arab Republic had not lodged a defence within the prescribed period, by document lodged at the Court Registry on 4 July 2018, the EIB applied to the Court for judgment by default, in accordance with Article 123(1) of the Rules of Procedure of the General Court.

11 By way of measures of organisation of procedure, as provided for in Article 89 of the Rules of Procedure, the Court put questions in writing to the EIB, to which the latter replied on 5 December 2018.

12 The EIB claims, in essence, that the Court should:

– declare the application admissible;

– declare that the Syrian Arab Republic failed to fulfil its contractual obligation under the loan agreement in so far as concerns payment of the sums and default interest on each of the due and unpaid instalments and, consequently, order the Syrian Arab Republic to pay, in essence, the European Union, represented by the EIB, first, the sum of EUR 404 425.58 due to the European Union on 25 August 2017 by way of the principal amount,

interest and default interest accrued between the due date and 25 August 2017 and, secondly, the default interest accrued up to the time that payment is made;

– declare that the Syrian Arab Republic failed to fulfil its contractual obligation under the loan agreement as regards the payment of costs and, consequently, order the Syrian Arab Republic to pay the EIB the taxes and duties, fees and professional costs accruing from the due date up to the time that payment is made;

– order the Syrian Arab Republic to pay the sums due to the European Union for all instalments which fall due after the date of the application and for which the Syrian Arab Republic remains in default of payment, by way of the principal amount, interest and contractual default interest from the due date of each instalment up to the time that payment is made;

– order the Syrian Arab Republic to pay the costs.

Law

13 In accordance with Article 123(3) of the Rules of Procedure, the General Court is to give judgment in favour of the applicant in the judgment by default, unless it is clear that the General Court has no jurisdiction to hear and determine the action or that the action is manifestly inadmissible or manifestly lacking any foundation in law.

The jurisdiction of the General Court

14 In accordance with Article 272 TFEU, the Court of Justice of the European Union is to have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the European Union, whether that contract be governed by public or private law. In accordance with Article 256(1) TFEU, the General Court is to have jurisdiction to hear and determine at first instance actions referred to in Article 272 TFEU.

15 In the present case, it must be noted that Article 11.03 of the general conditions of the loan agreement contains an arbitration clause under which any disputes concerning that agreement are to be submitted to the Court of Justice of the European Union.

16 The General Court therefore has jurisdiction to hear the present action.

Admissibility of the action

The second head of claim

17 By the second head of claim, the EIB seeks, first, a declaration that the Syrian Arab Republic failed to fulfil its contractual obligations on unpaid loan instalments and default interest and, secondly, that the Syrian Arab Republic be ordered to pay, in essence, the European Union, represented by the EIB, the sums of the unpaid instalments, interest and default interest from the due date up to 25 August 2017 and the additional default interest up to the time that payment is made.

18 In that regard, it must be pointed out that, in accordance with Article 1.01(c) of the Convention between the Commission and the EIB of 17 December 1992 and with the management agreement between the European Union and the EIB of 20 December 2012 in the framework of the Support to the Facility for Euro-Mediterranean Investment and Partnership (FEMIP), the Commission, on behalf of the Union, instructed the EIB to initiate recovery procedures on behalf and in the name of the Union with regard to the amounts due under the loan agreement.

19 Moreover, it must be recalled that the EIB is an EU body established and endowed with legal personality by the TFEU (see, to that effect, judgment of 20 September 2011, *Evropaïki Dynamiki* v *EIB*, T-461/08, EU:T:2011:494, paragraph 46 and the case-law cited), and that, in accordance with Article 309 TFEU, the task of the EIB is to contribute, by having recourse to the capital market and utilising its own resources, to the balanced

and steady development of the common market in the interest of the European Union and, in accordance with Article 209(3) TFEU, to contribute to the implementation of the measures necessary for the implementation of EU development cooperation policy, which may relate to multiannual cooperation programmes with developing countries. In addition, it should be noted that, in the present case, it acted within the framework of the Cooperation Agreement between the European Economic Community and the Syrian Arab Republic of 18 January 1977 (see paragraph 1 above).

20 In those circumstances, it must be held that the second head of claim is admissible.

The third and fourth heads of claim

21 By the third head of claim, the EIB asks that the Syrian Arab Republic be ordered to pay the taxes and duties, fees and professional costs accruing from the due date up to the time that payment is made.

22 In that regard, it must be recalled that, under Article 76(d) and (f) of the Rules of Procedure, it is for the applicant to set out a summary of the pleas in law and, where appropriate, to submit or offer any evidence when the application is lodged.

23 However, the EIB has not provided any evidence to enable the Court to assess the existence and extent of the charges in question. The third head of claim is therefore inadmissible.

24 By the fourth head of claim, the EIB seeks to have the Syrian Arab Republic ordered to pay the sums due to the European Union for all instalments which fall due after the date of the application and for which the Syrian Arab Republic remains in default of payment, by way of the principal amount, interest and contractual default interest from the due date of each instalment up to the time that payment is made.

25 In that regard, it must be recalled that, under Article 76(d) of the Rules of Procedure, an applicant is required to state the subject matter of the proceedings in the application initiating proceedings. The EU Courts cannot therefore carry out a speculative review of hypothetical circumstances which have yet to be confirmed (see, to that effect and by analogy, judgment of 26 February 2015, *Sabbagh* v *Council*, T-652/11, not published, EU:T:2015:112, paragraph 27).

26 In the present case, it must be held that the head of claim in question, since it relates only to hypothetical circumstances, is manifestly inadmissible.

Substance of the action

27 It must be held that the action, in so far as it seeks that the Syrian Arab Republic be ordered to pay the European Union, represented by the EIB, the sums of the unpaid instalments, contractual interest and default interest, is not manifestly lacking any foundation in law.

28 First, it is apparent from the case file that, on the basis of the loan agreement, the EIB granted the Syrian Arab Republic a loan in several tranches and, secondly, it is not apparent from those documents that the latter has made payments relating to the principal amount, contractual interest and default interest as regards the 11 instalments at issue, despite notices being sent by the EIB.

29 Consequently, it is necessary to uphold the form of order sought by the EIB and order the Syrian Arab Republic to pay the European Union, represented by the EIB, the sum of EUR 404 425.58 which fell due on 25 August 2017 by way of the principal amounts, contractual interest and default interest.

30 Under Article 3(2) of the general conditions of the loan agreement, those sums are to bear default interest, at the annual rate of 3.5%, on the principal amounts and on the contractual interest, from 25 August 2017 up to the date of payment.

Costs

31 Under Article 134(1) of the Rules of Procedure, 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 Syrian Arab Republic has been largely unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the EIB.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

1. **Orders the Syrian Arab Republic to repay the European Union, represented by the European Investment Bank (EIB), the sum of EUR 404 425.58;**

2. **Declares that that sum is to bear default interest, on the principle amounts and on the contractual interest, at the annual rate of 3.5%, from 25 August 2017 until the date that payment is made;**

3. **Dismisses the action as to the remainder;**

4. **Orders the Syrian Arab Republic to pay the costs.**

Berardis Spielmann Csehi

Delivered in open court in Luxembourg on 6 June 2019.

E. Coulon G. Berardis

Registrar President

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* Language of the case: English.