JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

6 June 2019 (*)

(Arbitration clause — Port of Tartous Loan Agreement No 22057 — Non-performance of the agreement — Repayment of the sums advanced — Default interest — Procedure by default)

In Case T-542/17,

**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 Port of Tartous Loan Agreement No 22057, 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 framework convention on the management of projects carried out in Syria financed by the European Community and European Investment Bank (EIB) of 17 May 1999 and the Framework agreement establishing the arrangements under which the EIB is to participate in the financing of investment projects in Syria or requested by the Syrian Government of 17 May 1999 and Council Regulation (EC) No 1488/96 of 23 July 1996 on financial and technical measures to accompany (MEDA) the reform of economic and social structures in the framework of the Euro-Mediterranean partnership (OJ 1996 L 189, p. 1), on 22 May 2003, the EIB and the Syrian Arab Republic entered into Port of Tartous Loan Agreement No 22057, as amended on 17 May 2006, 21 May 2007 and 10 July 2008 (‘the loan agreement’), concerning the design, construction or installation and commissioning of infrastructure and equipment in the multi-purpose port of Tartous (Syria). Article 10.01 of the loan agreement provides that it is to be governed by English law. In addition, under Article 10.03 of the loan agreement, the Syrian Arab Republic appointed the Ambassador of the Syrian Arab Republic to the European Union in Brussels (Belgium) to represent it for the purpose of accepting service on its behalf of any writ, notice, order, judgment or other legal process.

2 Under Articles 1.01, 1.02 and 1.04 of the loan agreement, the EIB granted the Syrian Arab Republic a loan of EUR 50 000 000 to be drawn down in several tranches on request. By virtue of Article 4.01 of that agreement, the Syrian Arab Republic was to repay the loan in several instalments in accordance with the amortisation table supplied by the EIB.

3 In accordance with Article 3.01 of the loan agreement, the outstanding balance of any tranche, on a semi-annual basis, is to bear interest at a rate to be determined as at the date of issue of the disbursement notice, on the basis of the standard interest rate applicable to comparable loans made by the EIB, denominated in euros and subject to the same conditions.

4 Under Article 3.02 of the loan agreement, interest is to accrue on any overdue sum at the Euribor rate of 2% or at the rate payable under Article 3.01 of that agreement, plus 0.25%, with the higher of the two rates being applied.

5 Under Articles 8.01 and 8.02 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 December 2011 and December 2017, 11 instalments under the loan agreement fell due, as shown below:

| Instalments | Due dates |
|---|---|
| EUR 1 653 165.42 | 21 May 2012 |
| EUR 1 653 165.42 | 20 November 2012 |
| EUR 1 653 165.41 | 20 May 2013 |
| EUR 1 653 165.42 | 20 November 2013 |
| EUR 1 653 165.42 | 20 May 2014 |
| EUR 1 653 165.42 | 20 November 2014 |
| EUR 1 653 165.42 | 20 May 2015 |
| EUR 1 653 165.42 | 20 November 2015 |
| EUR 1 653 165.42 | 20 May 2016 |
| EUR 1 653 165.42 | 21 November 2016 |
| EUR 1 653 165.42 | 22 May 2017 |

7 By means of the payment reminders of 31 May and 5 December 2012, 30 May and 2 December 2013, 30 May and 1 December 2014, 1 June and 30 November 2015, 26 October 2016 and 24 April 2017, relating, respectively, to the due dates referred to in paragraph 5 above, the EIB sent notifications to the Syrian Arab Republic calling for payment of the amounts due.

8 In accordance with the guarantee agreement concluded by the EIB and the European Community of 24 July 2000, under which the European Union guarantees loans granted by the EIB in the context of the European Union’s financial commitments towards certain third countries, including the Syrian Arab Republic, the EIB, by letters sent to the European Commission between 18 October 2012 and 23 May 2017, requested that that guarantee be activated.

9 The Commission, by letters of 22 November 2012, 25 June and 29 November 2013, 25 June and 19 November 2014, 9 June and 15 December 2015, 22 June, 9 November and 5 December 2016 and 31 May 2017, authorised the EIB to withdraw the amount of the instalments relating to the due dates referred to in paragraph 5 above, plus interest.

**Procedure and forms of order sought**

10 By application lodged at the Court Registry on 11 August 2017, the EIB brought the present action.

11 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 5 September 2017 by registered post with acknowledgement of receipt.

12 Since the Syrian Arab Republic had not lodged a defence within the prescribed period, by document lodged at the Court Registry on 12 January 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.

13 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 1 August 2018.

14 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 the European Union or, in the alternative, the EIB, first, the sums of the sum of EUR 20 609 429.45 due to the European Union on 9 August 2017 by way of the principal amount, interest and default interest accrued between the due date and 9 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 European Union or, in the alternative, the EIB the taxes and duties, fees and professional costs accruing from the due date up to the time that payment is made;

– declare that the Syrian Arab Republic will be in default for all the instalments that will fall due and remain unpaid after the date of the application and for the default interest payable from the due date of each instalment up to the date of actual payment and, consequently, order the Syrian Arab Republic to pay the sums due to the European Union or the EIB for those instalments by way of the principal amount, interest and 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**

15 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**

16 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.

17 In the present case, it must be noted that Article 10.02 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.

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

**Admissibility of the action**

*The second head of claim*

19 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 the European Union or, in the alternative, the EIB the sums of the unpaid instalments, interest and default interest from the due date up to 9 August 2017 and the additional default interest up to the time that payment is made.

20 In that regard, first of all, it must be pointed out that, as the EIB has stated, the European Union reimbursed it for all amounts of the instalments that remained unpaid by the Syrian Arab Republic, including default interest up to 9 August 2017.

21 In accordance with Article 4(1) of the guarantee agreement of 24 July 2000 the European Union was subrogated to the rights of the EIB in respect of the borrower.

22 It must be noted that the effects of that subrogation with regard to the Syrian Arab Republic are not governed by the loan agreement and that the guarantee agreement of 24 July 2000 does not contain any provisions regarding the applicable law. However, since the guarantee agreement was concluded by the European Union and the EIB, the effects of subrogation in respect of third parties are governed by general principles of law, as relied on by the EIB, by virtue of which subrogation may be effective against third parties provided that the party performing the obligation to repay a loan that is due, which has a legitimate interest in the performance, is subrogated to the rights of the creditor.

23 In any event, as submitted by the EIB, the same effects result from the application of the provisions on subrogation laid down in the civil codes of the Kingdom of Belgium and the Grand-Duchy of Luxembourg, the countries in which the guarantee agreements were signed, respectively, by the Commission, on behalf of the European Union, and the EIB. As a consequence of that subrogation, the right of the EIB to reimbursement of the sums due under the loan agreement is transferred to the European Union, which is accordingly entitled to make a contractual claim against the Syrian Arab Republic.

24 Next, it should be noted that, under Article 4(3) of the guarantee agreement of 24 July 2000, after subrogating the European Union to its rights and actions, the EIB, at the request of the European Union, must agree on the arrangements for administering and servicing the loan.

25 In that regard, in accordance with Article 3(1) of the recovery agreement between the EIB and the European Union of 25 July 2014, whenever the European Union has made a payment under the guarantee and is subrogated to the rights and remedies of the EIB under and pursuant to a credit agreement, such as the loan agreement, the EIB is to initiate recovery proceedings without undue delay on behalf and in the name of the European Union.

26 Finally, 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 for the management of projects in Syria financed by the European Community and the EIB of 17 May 1999 and the Framework Agreement laying down the detailed rules under which the EIB is to contribute to the financing of investment projects in Syria or requested by the Syrian Government of 17 May 1999 (see paragraph 1 above).

27 In those circumstances, it must be held that the second head of claim is admissible in so far as it was raised by the EIB on behalf of the European Union.

28 By contrast, the second head of claim is manifestly inadmissible in so far as the action was brought by the EIB in its own name.

29 It must be borne in mind that, in order to ensure the proper administration of justice, any person bringing legal proceedings must have a vested and current interest in doing so. That interest must, in the light of the purpose of the action, exist at the stage of lodging the action, failing which it will be inadmissible (see judgment of 26 February 2015, *Planet* v *Commission*, C-564/13 P, EU:C:2015:124, paragraph 31 and the case-law cited).

30 In the present case, the EU has fully reimbursed the EIB for the instalments that have not been paid by the Syrian Arab Republic and since it has thus been subrogated to the rights of the EIB, it must be held that the EIB has not demonstrated an interest in bringing proceedings in its own name for recovery of the sums claimed.

*The third and fourth heads of claim*

31 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.

32 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.

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

34 By the fourth head of claim, the EIB seeks a declaration that the Syrian Arab Republic is in default for all instalments which fall due and remain unpaid after the date of the application along with the corresponding default interest and, consequently, asks the Court to order the Syrian Arab Republic to pay the sums due to the European Union or the EIB in respect of those instalments, 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.

35 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).

36 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**

37 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.

38 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.

39 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 20 609 429.45 which fell due on 9 August 2017 by way of the principal amounts, contractual interest and default interest.

40 Under Article 3.02 of the loan agreement, those sums are to bear default interest on the principal amounts and contractual interest, from 9 August 2017 up to the date of payment. Default interest is calculated in accordance with the method laid down in Article 3.02 of the loan agreement.

**Costs**

41 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 20 609 429.45;**

2. **Declares that those sums are to bear default interest, in accordance with the method laid down in Article 3.02 of Port of Tartous loan agreement No 22057, entered into by the EIB and the Syrian Arab Republic on 22 May 2003 and amended on 17 May 2006, 21 May 2007 and 10 July 2008, on the principal amounts and on the contractual interest, from 9 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.