JUDGMENT OF THE GENERAL COURT (Ninth Chamber)

20 December 2023 (*)

(Arbitration clause – Loan agreement concerning the design, construction, equipping and commissioning of certain hospitals in a third country – Non-performance of the agreement – Repayment of the sums advanced – Default interest – Procedure by default)

In Case T-457/22,

European Investment Bank (EIB), represented by T. Gilliams, R. Stuart and F. Oxangoiti Briones, acting as Agents, and by D. Arts and E. Paredis, lawyers,

applicant,

v

Syrian Arab Republic,

defendant,

THE GENERAL COURT (Ninth Chamber),

composed of L. Truchot, President, R. Frendo (Rapporteur) and M. Sampol Pucurull, Judges,

Registrar: V. Di Bucci,

having regard to the written part of the procedure,

gives the following

Judgment

1 By its action based on Article 272 TFEU, the European Investment Bank (EIB) requests that the Syrian Arab Republic be ordered to pay the European Union, which it represents, the sums of EUR 50 880 189.61 and 2 897 002.31 United States dollars (USD), together with interest, under Loan Agreement No 21595 concerning the design, construction, equipping and commissioning of certain hospitals located in Syria ('the loan agreement'), and to pay it the sums of EUR 11 416.23 and USD 760.94, which have not been called, representing the default interest on the instalment due on 10 June 2022, accrued up to 29 June 2022, the date on which the European Union paid the related instalment of principal and contractual interest.

Background to the dispute

2 On 15 June 2002, the EIB concluded the loan agreement with the Syrian Arab Republic. That agreement, which was amended by letter of 11 April 2006 and modified on 17 October and 29 November 2007, followed three texts, namely:

– 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);

– the framework agreement between the Syrian Arab Republic and the EIB of 17 May 1999 governing EIB activities in Syria;

– the framework convention of 17 May 1999 on the implementation of financial and technical cooperation under the MEDA programme as well as other EIB financing agreements in Mediterranean countries.

3 Under Articles 1.01 to 1.04 of the loan agreement, the EIB granted the Syrian Arab Republic a loan of EUR 100 000 000 to be drawn down on request. The loan was drawn down in tranches, in dollars and in euros, between 16 January 2004 and 14 October 2009.

4 Under Article 4.01 of the loan agreement, the Syrian Arab Republic was to repay the loan in several instalments in accordance with the amortisation table supplied by the EIB.

5 In accordance with Article 3.01 of the loan agreement, the outstanding balance of any tranche, on a semi-annual basis, is to bear contractual 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 ('contractual interest').

6 Under Article 3.02 of the loan agreement, default interest is to accrue on any overdue sum in euros at the Euro Interbank Offered Rate (Euribor) and on any overdue sum in USD at the London Interbank Offered Rate (Libor), plus 2%, or at the fixed rate payable under Article 3.01 of the loan agreement, plus 0.25%, with the higher of the two rates being applied ('default interest').

7 Furthermore, in accordance with the guarantee agreement concluded on 24 July 2000 by the EIB and the European Community concerning the loans to be granted by the EIB for investment projects carried out in the countries of central and eastern Europe, the Mediterranean countries, the countries of Latin America and Asia and in the Republic of South Africa ('the guarantee agreement'), 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, and is subrogated to the EIB's rights immediately upon making each payment to the EIB under the guarantee (Article 1.01).

8 Under the recovery agreement between the European Union and the EIB, signed in Brussels on 3 October 2018, governing modalities and procedures for recovery of payments made by the European Union under the guarantees granted by it to the EIB against losses under financing operations supporting investment projects outside the European Union, as amended on 10 August 2021, whenever the European Union has made a payment under the guarantee agreement and is subrogated to the rights and remedies of the EIB under and pursuant to, inter alia, a loan agreement, the EIB is to initiate recovery proceedings without undue delay on behalf and in the name of the European Union (Article 3.1).

9 Since December 2011, the Syrian Arab Republic has failed to pay the instalments due under the loan agreement.

10 By judgment of 6 June 2019, *EIB* v *Syria* (T-543/17, not published, EU:T:2019:385), the Syrian Arab Republic was ordered to repay the European Union, represented by the EIB, first, the sums of EUR 62 646 209.04 and USD 3 582 381.15 in respect of the instalments that had not been paid by the Syrian Arab Republic on the due dates between 12 December 2011 and 12 June 2017 and the contractual and default interest for the period from 12 December 2011 to 9 August 2017, and, secondly, default interest calculated in accordance with the method laid down in Article 3.02 of the loan agreement from 9 August 2017 until the date that payment is made.

11 Between 9 August 2017 and 30 June 2022, 10 instalments under the loan agreement fell due and, since the Syrian Arab Republic failed to make the payments due, the EIB issued a payment reminder on each occasion as follows:

Due date	Principal amount	Contractual interest	Reminder
11 December 2017	EUR 3 682 306.14	EUR 908 265.31	12 December 2017
	USD 196 829.79	USD 59 713.64	
11 June 2018	EUR 3 764 333.49	EUR 826 237.96	19 June 2018
	USD 202 114.67	USD 54 428.76	

10 December 2018	EUR 3 848 200.87	EUR 742 370.59	11 December 2018
	USD 207 541.45	USD 49 001.98	
10 June 2019	EUR 3 933 949.84	EUR 656 621.61	12 June 2019
	USD 213 113.94	USD 43 429.49	
10 December 2019	EUR 4 021 622.89	EUR 568 948.56	11 December 2019
	USD 218 836.05	USD 37 707.38	
10 June 2020	EUR 4 111 263.48	EUR 479 307.97	11 June 2020
	USD 224 711.79	USD 31 831.64	
10 December 2020	EUR 4 202 916.07	EUR 387 655.38	11 December 2020
	USD 230 745.30	USD 25 798.13	
10 June 2021	EUR 4 296 626.16	EUR 293 945.29	11 June 2021
	USD 236 940.82	USD 19 602.61	
10 December 2021	EUR 4 392 440.19	EUR 198 131.26	13 December 2021
	USD 243 302.68	USD 13 240.75	
10 June 2022	EUR 4 490 405.73	EUR 100 165.71	16 June 2022
	USD 249 835.35	USD 6 708.08	

12 Nonetheless, the Syrian Arab Republic remained in default of payment.

13 In accordance with the guarantee agreement, by 10 letters sent to the Commission between 12 December 2017 and 16 June 2022, the EIB requested that the guarantee in question be activated in respect of the principal amounts and the contractual interest concerning the instalments relating to the due dates referred to in paragraph 11 above, plus default interest in respect of each instalment, with the exception of the instalment due on 10 June 2022. The Commission complied with those requests by making the payments of the amounts at issue (‘the amounts disbursed by the European Union’).

14 On the date on which the amounts claimed in the present application were calculated, the EIB had not yet called on the EU guarantee in respect of the default interest on the instalment due on 10 June 2022. Therefore, subrogation has not been implemented in respect of amounts of EUR 11 416.23 and USD 760.94 corresponding to the default interest due on 30 June 2022, which has not been called by the EIB (‘the uncalled amounts’).

Procedure and form of order sought by the EIB

15 By application lodged at the Court Registry on 22 July 2022, the EIB, acting on its own behalf and on behalf of the European Union, brought the present action.

16 Two attempts to serve the application on the Syrian Arab Republic, made by registered letters with acknowledgement of receipt of 1 August and 18 November 2022, were unsuccessful.

17 The Court Registry made a further attempt to serve the application on the defendant by express courier with acknowledgement of receipt of 15 June 2023. That letter was received on 6 July 2023. Thus, the application, which is addressed, in accordance with Article 10.03 of the loan agreement, to the ambassador of the Syrian Arab Republic to the European Union in Brussels (Belgium), was duly served on the Syrian Arab Republic.

18 Since the Syrian Arab Republic did not lodge a defence within the period prescribed in Article 81 of the Rules of Procedure of the General Court, the EIB, by document lodged on 2 October 2023, applied to the Court for judgment by default, in accordance with Article 123(1) of those rules.

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

– declare that the Syrian Arab Republic failed to fulfil its contractual obligations under the loan agreement in so far as concerns payment of the principal amounts, contractual interest and default interest on each of the instalments due and unpaid between 11 December 2017 and 10 June 2022, and, consequently, order the Syrian Arab Republic to pay the European Union, which it represents, first, the sums of EUR 50 880 189.61 and USD 2 897 002.31 by way of the amounts disbursed by the European Union and default interest for the period from 9 August 2017 to 30 June 2022, excluding the default interest on the instalment due on 10 June 2022, and, secondly, additional default interest at a rate equal to the Euribor rate in respect of the disbursements in euros and at a rate equal to the Libor rate in respect of the disbursements in USD, plus 2%, or at the fixed rate indicated in Article 3.01 of the loan agreement, plus 0.25%, per annum, with the higher of the two rates being applied (for any successive period of one month), from 30 June 2022 up to the time that payment is made;

– declare that default interest amounting to sums of EUR 11 416.23 and USD 760.94 in respect of the instalment due on 10 June 2022, accrued up to 29 June 2022, has not yet been called by the EIB under the guarantee, and, consequently, order the Syrian Arab Republic to pay it the uncalled amounts;

– order the Syrian Arab Republic to pay the costs.

Law

20 Under Article 123(1) of the Rules of Procedure, where the Court finds that a defendant on whom an application initiating proceedings has been duly served has failed to respond to the application within the prescribed time limit, the applicant may apply to the Court for judgment by default.

21 In the present case, it must be noted that the application, which, in accordance with Article 10.03 of the loan agreement, was to be addressed to the ambassador of the Syrian Arab Republic to the European Union in Brussels, was duly served at the address of the embassy, where the premises of the mission of that State are located.

22 However, as is apparent from paragraph 18 above, although the EIB’s application was duly served on the Syrian Arab Republic, the latter did not lodge a defence within the time limit prescribed in Article 81 of the Rules of Procedure.

23 Since the applicant has applied to the Court for judgment by default, it is appropriate to apply Article 123(3) of the Rules of Procedure, under which the Court is to give judgment in favour of the applicant, unless it is clear that the 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

24 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.

25 It should be noted that it is apparent from the preliminary provisions of the loan agreement that that agreement was concluded, inter alia, following Regulation No 1488/96, with the result that it must be regarded as having been concluded on behalf of the European Union.

26 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.

27 In accordance with Article 256(1) TFEU, the General Court is to have jurisdiction to hear and determine at first instance actions brought on the basis of an arbitration clause, as referred to in Article 272 TFEU.

28 In the light of the foregoing, it must be held that the General Court does not manifestly lack jurisdiction to hear and determine the present action.

Admissibility of the action

29 As regards the first head of claim, it is apparent from paragraph 13 above that, following the failure of the Syrian Arab Republic to fulfil its contractual obligations under the loan agreement, the EIB recovered the amounts paid by the European Union under the guarantee agreement.

30 It follows that, in accordance with Article 4.01 of the guarantee agreement, the European Union is subrogated to the rights that the EIB has against the borrower under the loan agreement as regards the sums referred to in the first head of claim.

31 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, under which subrogation took place, does not contain any provisions regarding the applicable law.

32 In that regard, first of all, it should be borne in mind that Article 13(1) of the Convention on the law applicable to contractual obligations opened for signature in Rome on 19 June 1980 (OJ 1980 L 266, p. 1) provides as follows:

‘Where a person (“the creditor”) has a contractual claim upon another (“the debtor”), and a third person has a duty to satisfy the creditor, or has in fact satisfied the creditor in discharge of that duty, the law which governs the third person’s duty to satisfy the creditor shall determine whether the third person is entitled to exercise against the debtor the rights which the creditor had against the debtor under the law governing their relationship and, if so, whether he may do so in full or only to a limited extent.’

33 In the present case, since the guarantee agreement was concluded by the European Union and the EIB, it is appropriate to refer to the national provisions governing subrogation as set out in the civil codes of the States in which the guarantee agreement was signed, respectively, by the Commission, on behalf of the European Union, and the EIB, namely the Belgian and Luxembourg Civil Codes.

34 Under those national laws, which do not require the debtor to have consented to subrogation, 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. As a consequence of subrogation, the contractual 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 (judgment of 6 June 2019, *EIB* v *Syria*, T-542/17, not published, EU:T:2019:394, paragraph 23).

35 Next, it should be noted that, under Article 4.03 of the guarantee agreement, 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.

36 In that regard, it is apparent from Article 3.1 of the recovery agreement referred to in paragraph 8 above that, whenever the European Union makes a payment under a guarantee agreement and is subrogated to the rights and remedies of the EIB under and pursuant to, inter alia, a loan agreement, the EIB is to initiate recovery proceedings without undue delay on behalf and in the name of the European Union.

37 In those circumstances, it should be held that the first head of claim, brought by the EIB on behalf of the European Union, is not manifestly inadmissible.

38 By its second head of claim, the EIB seeks a declaration that the sums of EUR 11 416.23 and USD 760.94 representing the default interest on the instalment due on 10 June 2022, accrued up to 29 June 2022, have not yet

been called under the guarantee agreement, and, consequently, an order that the Syrian Arab Republic pay it the uncalled amounts.

39 In that regard, it should 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 (judgment of 30 September 2009, *Lior* v *Commission* and *Commission* v *Lior*, T-192/01 and T-245/04, not published, EU:T:2009:365, paragraph 247). That interest is evaluated as at the date on which the action is brought (see judgment of 20 September 2007, *Salvat père & fils and Others* v *Commission*, T-136/05, EU:T:2007:295, paragraph 34 and the case-law cited) and must continue until the final decision, which presupposes that the action must be capable, having regard to its purpose and if it is successful, of procuring an advantage for the party bringing it (see judgment of 13 November 2014, *Jaber* v *Council*, T-653/11, EU:T:2014:948, paragraph 55 and the case-law cited).

40 In the present case, it is apparent from the information provided by the EIB that, on 30 June 2022, the date on which the amounts claimed in the present action were calculated, it had not yet called on the European Union to pay the default interest on the instalment due on 10 June 2022, and no such call is apparent from the documents before the Court.

41 Thus, the uncalled amounts remained, at the time the action was brought, a debt owed to the EIB and it is not apparent from the documents before the Court that the situation has changed in the meantime.

42 It follows that the second head of claim put forward by the EIB on its own behalf is also not manifestly inadmissible.

43 Furthermore, the present action does not raise any other difficulties which would be such as to give reason to consider it manifestly inadmissible.

44 Consequently, it must be held that the present action is not manifestly inadmissible.

Substance of the action

45 In the first place, it is apparent from the documents before the Court that, on the basis of the loan agreement, the EIB granted the Syrian Arab Republic a loan repayable on the due dates referred to in paragraph 11 above.

46 In addition, it is apparent from the information provided by the EIB that the Syrian Arab Republic failed to make repayments on those due dates, in breach of Article 4.01 of the loan agreement.

47 Consequently, the claims that the Syrian Arab Republic be ordered to repay, first, the European Union the sums of EUR 40 744 064.86 and USD 2 223 971.84 in respect of the principal amounts that were borrowed by the Syrian Arab Republic and that should have been repaid between 11 December 2017 and 10 June 2022, and, secondly, the EIB the sums of EUR 11 416.23 and USD 760.94 representing the uncalled amounts owed to it are not manifestly lacking any foundation in law.

48 In the second place, it is apparent from Article 3.02 of the loan agreement that default interest is to accrue on any overdue sum in euros at the Euribor rate and on any overdue sum in USD at the Libor rate, plus 2%, or at the fixed rate payable under Article 3.01 of that agreement, plus 0.25%, with the higher of the two rates being applied.

49 Consequently, the claims that the Syrian Arab Republic be ordered to pay, first, the sums of EUR 10 136 124.75 and USD 673 030.47 in respect of the contractual and default interest for the period from 9 August 2017 to 30 June 2022, and, secondly, the default interest due on the sums of EUR 40 744 064.86 and USD 2 223 971.84 from 30 June 2022 until the date that payment is made, are also not manifestly lacking any foundation in law. Default interest is to be calculated in accordance with the method laid down in Article 3.02 of the loan agreement.

50 Accordingly, it is necessary to uphold the form of order sought by the EIB, and to give a judgment by default against the Syrian Arab Republic, in accordance with Article 123 of the Rules of Procedure.

Costs

51 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 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 (Ninth Chamber)

hereby:

1. **Orders the Syrian Arab Republic to repay the European Union, represented by the European Investment Bank (EIB), the sums of EUR 50 880 189.61 and 2 897 002.31 United States dollars (USD) representing the principal amounts and the contractual and default interest due on 30 June 2022 and the EIB the sums of EUR 11 416.23 and USD 760.94 representing the default interest on the instalment due on 10 June 2022, accrued up to 29 June 2022, which has not been called by the EIB;**

2. **Declares that the sums of EUR 40 744 064.86 and USD 2 223 971.84 comprising the principal amounts are to bear default interest, in accordance with the method laid down in Article 3.02 of Loan Agreement No 21595 concerning the design, construction, equipping and commissioning of certain hospitals located in Syria, entered into by the EIB and the Syrian Arab Republic on 15 June 2002, as amended by letter of 11 April 2006 and as modified on 17 October and 29 November 2007, from 30 June 2022 until the date that payment is made;**

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

Truchot Frendo Sampol Pucurull

Delivered in open court in Luxembourg on 20 December 2023.

V. Di Bucci M. van der Woude

Registrar President

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* Language of the case: English.