JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

6 June 2019 (*)

(Arbitration clause — Aleppo-Tall Kojak Road Project Loan Agreement No 60136 — Non-performance of the agreement — Repayment of the sums advanced — Default interest — Procedure by default)

In Case T-589/17,

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 Aleppo-Tall Kojak Road Project Loan Agreement No 60136, 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 15 May 1979, the European Investment Bank (EIB) concluded with the Syrian Arab Republic Aleppo-Tall Kojak Road Project Loan Agreement No 60136 ('the loan agreement') regarding the construction of a high-quality road between Aleppo (Syria) and Tall Kochak (Iraq). Article 11.01 of the loan agreement provides that it is to be governed by Belgian law. Moreover, pursuant to Article 12.01 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 Under Articles 1.01 and 1.02 of the loan agreement, the EIB granted the Syrian Arab Republic a loan of 3 500 000 European Currency Units to be disbursed on demand. By virtue of Article 4.01 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 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 that agreement, interest is to accrue on any sum that has fallen due at an annual rate of 3.5% and, in the case of any delay in the repayment of any amount of principal, it will be payable

instead of and not in addition to the interest payable under Article 3.01 of that agreement.

5 Under Articles 9.01 and 9.02 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 April 2012 and March 2017, 11 instalments under the loan agreement fell due, as shown below:

Instalments	Due dates
EUR 67 565.86	2 April 2012
EUR 67 600.86	1 October 2012
EUR 67 634.11	2 April 2013
EUR 67 665.61	30 September 2013
EUR 67 695.36	31 March 2014
EUR 67 723.35	30 September 2014
EUR 67 749.60	31 March 2015
EUR 67 774.10	30 September 2015
EUR 67 796.85	31 March 2016
EUR 67 817.85	30 September 2016
EUR 67 837.10	31 March 2017

7 By means of the payment reminders of 12 April and 11 October 2012, 12 April and 10 October 2013, 10 April and 14 October 2014, 10 April and 12 October 2015, 11 April and 10 October 2016 and 10 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.

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 the EIB, first, the sum of EUR 820 451.25 due to the EIB 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;

– 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 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

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 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.

The third and fourth heads of claim

17 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.

18 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.

19 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.

20 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 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.

21 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).

22 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

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

24 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.

25 Consequently, it is necessary to uphold the form of order sought by the EIB and order the Syrian Arab Republic to pay the EIB, the sum of EUR 820 451.25 which fell due on 25 August 2017 by way of the principal amounts, contractual interest and default interest.

26 Under Article 3.02 of the of the loan agreement, those sums are to bear default interest, at the annual rate of 3.5%, on the principal amounts, from 25 August 2017 up to the date of payment.

Costs

27 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 Investment Bank (EIB) the sum of EUR 820 451.25;**

2. **Declares that that sum is to bear default interest, on the principle amounts, 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.