JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

6 June 2019 (*)

(Arbitration clause — Electricity Distribution Project Loan Agreement No 20948 — Non-performance of the agreement — Repayment of the sums advanced — Default interest — Procedure by default)

In Case T-540/17,

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 Electricity Distribution Project Loan Agreement No 20948, 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 the protocols thereto, on 5 February 2001, the European Investment Bank (EIB) concluded with the Syrian Arab Republic Electricity Distribution Project Loan Agreement No 20948, as amended by letters of 3 October 2003, 28 February 2006, 9 May and 8 October 2007 (‘the loan agreement’) concerning the reinforcement of the electricity distribution system in 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 115 000 000 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 semi-annual instalments.

3 In accordance with Article 3.01 of the loan agreement, as amended by the letter of 3 October 2013, interest on the balance of the advance is to be payable:

– on the outstanding balance of each fixed-rate tranche, at an interest rate to be determined as at the date of the disbursement notice, on the basis of the standard interest rate applicable to comparable loans granted by the EIB, which are denominated in euros and subject to the same conditions;

– on the outstanding balance of each floating-rate tranche, at a floating interest rate determined by the EIB.

4 According to Article 3.02 of the loan agreement, interest is to accrue on any sum that has fallen due at the relevant interbank rate of 2% or at the rate payable under Article 3.01 of that agreement, plus 0.25%, with the higher rate being applied for each relevant period.

5 According to 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, 12 instalments under the loan agreement fell due, as shown in the table below:

Instalments	Due dates
EUR 4 630 475.93	15 December 2011
EUR 4 467 449.00	15 June 2012
EUR 4 228 080.11	17 December 2012
EUR 4 147 899.37	17 June 2013
EUR 4 141 377.52	16 December 2013
EUR 4 145 512.17	16 June 2014
EUR 4 097 177.38	15 December 2014
EUR 4 056 128.03	15 June 2015
EUR 4 027 367.05	15 December 2015
EUR 3 986 943.97	15 June 2016
EUR 3 960 612.30	15 December 2016
EUR 3 948 618.97	15 June 2017

7 By means of the payment reminders of 2 January, 26 June and 17 December 2012, 17 June and 27 December 2013, 26 June and 29 December 2014, 25 June and 28 December 2015, 27 October 2016 and 3 May 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 agreements concluded by the EIB and the European Economic Community of 10 November 1978 and 25 April 1995, 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 10 May 2012 and 20 June 2017, requested that that guarantee be activated.

9 The Commission, by letters of 20 June 2012, 4 February, 19 July and 12 December 2013, 26 June 2014, 27 January and 22 June 2015, 18 January, 30 June, 9 November and 20 December 2016 and 27 June 2017, authorised the EIB to withdraw the amounts 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 6 April 2018 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 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.

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 5 December 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 sum of EUR 52 657 141.77 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 or proceedings 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 6(1) of the guarantee agreement of 10 November 1978 the European Union is 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 10 November 1978 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 6(3) of the guarantee agreement of 10 November 1978, 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 must be noted that, in the present case, it acted under the cooperation agreement between the European Economic Community and the Syrian Arab Republic of 18 January 1977 (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. The third 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 12 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 52 657 141.77 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 from 9 August 2017 up to the time that payment is made, at the relevant interbank rate of 2% or at the rate payable under Article 3.01 of

that agreement, plus 0.25%, with the higher rate being applied for each relevant period.

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 52 657 141.77;**

2. **Declares that that sum is to bear default interest, on the principal amounts and on the contractual interest, calculated in accordance with the method laid down in Article 3.02 of Electricity Distribution Project loan agreement No 20948, entered into by the EIB and the Syrian Arab Republic on 5 February 2001 and amended by the letters of 3 October 2003, 28 February 2006, 9 May and 8 October 2007, from 9 August 2017 up to 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
Registrar

G. Berardis
President

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* Language of the case: English.