Case C-114/24 P

Global Nanotechnologies AE schediasmou anaptyxis paraskevis kai emporias ylikon nanotechnologias (Glonatech)

v

European Research Executive Agency (REA)

Judgment of the Court (Fourth Chamber) of 3 July 2025

Appeal – Arbitration clause – Seventh Framework Programme for research, technological development and demonstration activities (2007-2013) – The SANAD project – Staff costs – Eligible costs – Request for recovery – Debit note – Article 41 of the Charter of Fundamental Rights of the European Union – Principle of good administration – Substitution of grounds – Article 47 of the Charter of Fundamental Rights – Right to effective judicial protection – Burden of proof – Proportionality)

1. *Judicial proceedings – General Court seised under an arbitration clause – Pleas in law – Infringement of the principle of good administration – Jurisdiction of the EU judicature to examine possible infringements of the Charter of Fundamental Rights and of general principles of EU law*

   (Art. 272 TFEU; Charter of Fundamental Rights of the European Union, Art. 41)

   (see paragraphs 45-47)

2. *EU budget – EU financial assistance – Obligation on the beneficiary to comply with the conditions for grant of the assistance – Seventh Framework Programme for research, technological development and demonstration activities (2007-2013) – Grant agreement – Flat-rate financing* – Ex-post *checks carried out in a financial audit – Whether permissible*

   (European Parliament and Council Regulation 2018/1046, Arts 181 and 183)

   (see paragraphs 74, 75, 77)

3. *Appeal – Pleas in law – Incorrect assessment of the facts – Inadmissibility – Review by the Court of Justice of the interpretation of a contract term – Precluded*

   (Art. 256(1) TFEU; Statute of the Court of Justice, Art. 58, first para.; Rules of Procedure of the General Court, Art. 169)

   (see paragraph 84)

4. *Appeal – Pleas in law – Review by the Court of the assessment of the rules of national law relied on by a party – Possible only where the facts or evidence have been distorted*

   (Art. 256(1), second para., TFEU; Statute of the Court of Justice, Art. 58, first para.)

   (see paragraphs 85, 86)

5. *EU budget – EU financial assistance – Obligation on the beneficiary to comply with the conditions for grant of the assistance – Financing covering only expenses actually incurred – Demonstration that the costs have actually been incurred – Lack – Ineligible costs – Proper technical implementation of projects forming the subject matter of EU financial assistance – Irrelevant*

   (Art. 317 TFEU; European Parliament and Council Regulation No 966/2012, Art. 121)

   (see paragraphs 97, 99)

6. *Appeal – Grounds – Incorrect assessment of the facts and evidence – Inadmissibility – Review by the Court of Justice of the assessment of the facts and evidence – Possible only where the facts or evidence have been distorted – Failure to observe the rules of evidence – Admissibility*

   (Art. 256(1) TFEU; Statute of the Court of Justice, Art. 58, first para.; Rules of Procedure of the General Court, Art. 168(1)(d))

   (see paragraphs 107-109)

Résumé

Dismissing this appeal relating to a grant agreement which contained an arbitration clause, the Court of Justice confirms its settled case-law according to which the European Commission remains subject, in the context of performing a contract, to the obligations imposed on it by the Charter of fundamental rights of the European Union ('the Charter') and by the general principles of EU law, with the result that the EU judicature may be called upon to ascertain whether there is an infringement of Article 41 of the Charter in proceedings which, as in the present case, concern the implementation of Article 272 TFEU.

The appellant is a company governed by Greek law and operating in the sector of nanotechnologies. On 20 December 2012, it concluded with the European Research Executive Agency (REA), a grant agreement for the execution of the SANAD project ('the grant agreement'). That agreement provided for a maximum financial contribution by the European Union to that project which was required to be completed within a period of 48 months, starting from 2013, divided into two reporting periods of 24 months. In January 2013, four other participants in the SANAD project acceded to the grant agreement as beneficiaries. The project was completed on 31 December 2016.

In the context of the final payment of the EU contribution to the project the REA raised, in an email of 8 October 2018 sent to the appellant, a number of discrepancies and gaps in supporting documents that it had provided. On 21 August 2019, the REA also informed the appellant that it was launching a financial audit covering the entire period of the grant agreement and set out a detailed list of data and documents to be made available for the purpose of that audit, which it carried out between 22 and 24 October 2019.

On 22 July 2020, the appellant received a draft audit report setting out the result of the financial audit which concluded that certain categories of the costs of the project should be regarded as ineligible under the provisions of the grant agreement. The appellant disputed those conclusions on 23 September 2020. On 30 March 2021, the REA informed the appellant that the conclusions of the draft audit report were maintained and referred to an amount that had been over-claimed by the appellant having regard to the requirements of the grant agreement. It also stated that the adjustments set out in the report would be put into effect, including the order for the recovery of the amounts overpaid and the calculation of liquidated damages pursuant to the general conditions of the grant agreement. On 22 April 2021, the REA adopted the assessment report on the performance of the second reporting period of the SANAD project. On 5 May 2021, the REA communicated to the appellant a pre-information letter stating that it approved the final audit report and that it would proceed with the recovery of the outcome of the financial audit, whilst also inviting the appellant to raise, within two months, any objections it may have. The appellant submitted objections on two occasions, to which the REA responded.

To its last response, of 22 December 2021, in which it explained that the appellant's arguments were not capable of changing the conclusions of the final audit report, the REA attached debit note No 3242113938, demanding payment of a sum for the SANAD project from all the participants. On 22 June 2022, the appellant informed the REA of an updated allocation of the total amount of the claim to be recovered from the various participants in the SANAD project. Lastly, on 29 September 2022, the REA communicated to the appellant, first, credit note No 3234220185 for the amount of EUR 681 364.81 cancelling, inter alia, debit note No 3242113938 and taking account of the allocation of its claim between the various participants in the SANAD project and, secondly, the new debit note specific to its claim against the appellant.

Findings of the Court

In the first place, the Court notes that the principle of good administration entails the duty of the competent institution to examine carefully and impartially all the relevant aspects of the individual case. Thus, when the institutions, bodies, offices or agencies of the European Union perform a contract, the terms of which they have stipulated, that situation falls within the scope of EU law and therefore the scope of the Charter, within the meaning of Article 51 thereof. In addition, the Court recalls its case-law according to which, when the institutions, bodies, offices or agencies of the European Union perform a contract, they remain subject to their obligations under the Charter and the general principles of EU law. Consequently, the fact that the law applicable to the contract concerned does not guarantee the same rights as those guaranteed by the Charter and the general principles of EU law does not exempt the institutions, bodies, offices or agencies of the European Union from ensuring that those rights are respected in relation to their contracting parties. ([1]) Furthermore, the Court recalls its settled case-law according to which, if the parties decide, in their contract, to confer on the EU judicature, by means of an arbitration clause, jurisdiction over disputes relating to that contract, that judicature will have jurisdiction, independently of the applicable law stipulated in that contract, to examine any infringement of the Charter or of the general principles of EU law.

In those circumstances, it holds that the General Court erred in law by excluding the possibility for the EU judicature to determine whether there had been an infringement of the principle of good administration enshrined in Article 41 of the Charter in a dispute which, as in the present case, is covered by Article 272 TFEU.

However, the Court observes that, in accordance with its settled case-law, if the grounds of a judgment of the General Court disclose an infringement of EU law but its operative part is shown to be well founded on other legal grounds, such an infringement cannot lead to the setting aside of that judgment, and a substitution of grounds must be made and the appeal dismissed. ([2]) It is therefore necessary to ascertain whether the rejection of the complaint alleging infringement of the right to good administration enshrined in Article 41 of the Charter is shown to be well founded on legal grounds other than those vitiated by the error identified in the judgment of the General Court.

In that regard, first, the authorising officer responsible is to check, inter alia, at the latest before the payment of the balance, the fulfilment of the conditions triggering the payment of lump sums, unit costs or flat-rates, including, where required, the achievement of outputs and/or results, in accordance with Article 183(1) of the Financial Regulation 2018. ([3]) That provision states that the fulfilment of those conditions may be subject to *ex post* checks and thus expressly recognises the right of the authorising officer responsible to check that the conditions triggering payment have been fulfilled and to reduce the grant where those conditions are not fulfilled or in the event of irregularity, fraud or a breach of other obligations. In that regard, the Court points out that, in accordance with the provisions of the grant agreement concluded between the parties, at any time during the implementation of the project and up to five years after the end of the project, the REA or the Commission may carry out financial audits relating to the proper implementation of the grant agreement.

Second, that agreement lays down the obligation for the beneficiary of the funding to retain, up until five years after the end of the project, the originals or, in exceptional cases, certified copies of the originals, including electronic copies, of all documents relating to the grant agreement.

The Court observes that it is apparent from the General Court's findings that the SANAD project was completed on 31 December 2016 and that the REA informed the appellant on 21 August 2019 that an audit procedure had been initiated, after sending an email on 8 October 2018, by which it had already raised, in the context of the final payment of the EU contribution to the SANAD project and therefore before payment of the balance, the existence of a number of discrepancies and gaps in the supporting documents produced by the appellant. In addition, the General Court noted that the grant agreement stipulated that the financial audits could be carried out by staff of the REA or of the Commission, and found that, although the appellant relied on a lack of impartiality on the part of those staff, it did not produce the slightest evidence in that regard.

In those circumstances, the Court holds that the audit in question was not carried out belatedly nor in a manner contrary to the principle of impartiality. Thus, it was apparent that, notwithstanding the error of law identified in the General Court's judgment, the appellant's argument alleging a breach of the right to good administration, provided for in Article 41 of the Charter, was unfounded and could therefore be rejected by the General Court

In the second place, the appellant submits that the General Court erred in law in its interpretation of several provisions of the grant agreement and of Articles 1161 and 1162 of the Belgian Civil Code. On that point, the Court recalls its settled case-law that the General Court's examination of a contractual provision, such as the provisions of the grant agreement, cannot be considered to be an interpretation of law and cannot therefore be reviewed in the context of an appeal without encroaching upon the jurisdiction of the General Court to establish the facts. That conclusion is also relevant to the appellant's argument that the General Court failed to interpret the grant agreement's lack of clarity in its favour, in accordance with Article 1162 of the Belgian Civil Code. That approach is, in fact, a challenge to the General Court's assessment that the wording of the contractual provisions was clear and unequivocal.

In addition, the Court also held that, as regards an interpretation by the General Court of the national law applicable to contracts concluded by the institutions, bodies, offices and agencies of the European Union, the Court of Justice has jurisdiction, on appeal, only to determine whether that law was distorted, and the distortion must be obvious from the documents in the file, without there being any need to carry out a new assessment of the facts and the evidence.

In the present case, the appellant does not claim that the General Court erred as a result of a distortion of the provisions of the Belgian Civil Code. The appellant also cannot validly submit, by referring to the general conditions of the grant agreement, that the General Court infringed the provisions of the Financial Regulation 2018, which take precedence over those of that agreement. It is apparent that the provisions of the grant agreement which lay down an obligation to retain the documents relating to that agreement and to make them available to the REA or the Commission in the event of an audit are consistent with the provisions of the Financial Regulation 2018, which authorises *ex post* checks in the context of a financial audit, including in the case of flat-rate financing.

Lastly, as regards the argument that the General Court failed to state reasons to the requisite legal standard for its interpretation of the grant agreement, the Court of Justice observes that the General Court's interpretation follows from the detailed analysis of the terms of that agreement carried out in the judgment under appeal. Consequently, the General Court provided reasons for its assessment in that regard.

In the last place, the Court emphasises that the General Court was fully entitled to find that the fact that it had been possible to successfully complete the SANAD project does not call into question a financial audit being carried out or the conditions under which that audit was conducted by the REA. It does not suffice that the project concerned has been technically and in compliance with the requirements of the grant agreement properly carried out for the appellant to be entitled to the financial aid provided for. It is also necessary for the appellant to have properly carried out its obligations under that agreement so as to enable the REA to verify, notably during a financial audit, that the costs declared are eligible costs and substantiated by evidence. ([4]) To that end, it is important in particular that the beneficiary is able to prove that the costs declared were actually incurred in order to carry out the project in question.

Consequently, according to the Court, in the event of a breach of the financial obligations laid down in the grant agreement, the beneficiary of the financial aid loses the right to payment of the grants and, hence, the co-contractor of the appellant is required to take all appropriate measures in that regard, ([5]) including the complete or partial recovery of the grant, irrespective of whether the SANAD project has technically been properly carried out.

It follows that the beneficiary of the grant therefore acquires a definitive right to payment of the EU financial contribution only if all the conditions to which the award of the grant is subject are satisfied. It is not sufficient for the beneficiary of the grant to show that a project has been carried out to justify the award of a particular grant. It is incumbent on the beneficiary to prove that the costs declared have been incurred in accordance with the conditions laid down in particular in the grant agreement for the award of the grants concerned.

([1]) Judgments of 16 July 2020, Inclusion Alliance for Europe v Commission (C-378/16 P, EU:C:2020:575, paragraph 82), and ADR Center v Commission (C-584/17 P, EU:C:2020:576, paragraph 86).

([2]) Judgment of 19 September 2024, Coppo Gavazzi and Others v Parliament (C-725/20 P, EU:C:2024:766, paragraph 114 and the case-law cited).

([3]) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU)

No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1; 'the Financial Regulation 2018').

([4]) In accordance with Article II.21 of the general conditions of that agreement.

([5]) Pursuant to Article II.21(6) of the general conditions of that agreement.