

ORDER OF THE GENERAL COURT (Eighth Chamber)

18 November 2014 (*)

(Action for annulment — Representation by a lawyer who is not a third party — Manifest inadmissibility)

In Case T 221/14,

Association/Vereniging Justice & Environment, established in Amsterdam (Netherlands), represented by C. Kiss, lawyer,

applicant,

v

European Commission,

defendant,

ACTION for annulment, first, of Commission Delegated Regulation (EU) No 1391/2013 of 14 October 2013, amending Regulation (EU) No 347/2013 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure, as regards the Union list of projects of general interest (OJ 2013 L 349, p. 28) and, second, the Commission's reply of 7 February 2014 to the applicant's request for internal review [ener.b.1/AR/1b(2014)s290675],

THE GENERAL COURT (Eighth Chamber),

composed of D. Gratsias, President, M. Kancheva (Rapporteur) and C. Wetter, Judges,

Registrar: E. Coulon,

makes the following

Order**Procedure and form of order sought by the applicant**

- 1 By application lodged at the Registry of the General Court on 4 April 2014, the applicant, Association/Vereniging Justice & Environment, a non-Governmental Organisation (NGO), which consists of a European network of NGOs operating in the area of environmental law, brought the present action. The originating application was signed by Mr Kiss, in his capacity as a lawyer.
- 2 By letter from the Court Registry of 25 June 2014, the Court asked the applicant, first of all, to indicate whether Mr Kiss, the lawyer who had signed the originating application on its behalf, was the same person as Mr C. Kiss, who, as was apparent from the file, performed the role of coordinator for the applicant. Next, the applicant was asked to describe the 'coordinator's' role stating, in particular, whether or not it was a paid position and whether it corresponded to a job or to a management position within the applicant's structure. Finally, the applicant was asked to indicate any connections it had with the association called Environmental Management and Law Association (EMLA) and between the latter and Mr Kiss. In the context of that measure of organisation of procedure, the applicant was also requested to produce all of the documents certifying the information requested regarding the role of 'coordinator' and, in particular, a copy of the act appointing Mr Kiss to that position and a copy of the association's statutes setting out the powers associated with that role.

3 On 9 July 2014, the applicant complied with the Court's request. First, it stated that Mr Kiss has practiced as a lawyer at the Budapest Bar (Hungary) since 1998 and that it had engaged him as coordinator in 2011. Next, it explained that that role was remunerated and that, as Mr Kiss could not be employed in accordance with the Hungarian legislation governing the legal profession, he acted as a provider of a contractual service invoiced as a management consultant. Finally, it stated, first, that the EMLA was an NGO and its Hungarian member and, second, that Mr Kiss was the director of the EMLA and one of its legal representatives in accordance with Hungarian law. The applicant also provided the following documents:

- a description of the coordinator's role;
- the contracts for the provision of services between it and Mr Kiss for 2011, 2012 and 2013;
- the votes by electronic mail of its members who appointed Mr Kiss as coordinator in 2011;
- extracts of the minutes of its ordinary general meetings for 2012 and 2013 which extended Mr Kiss' mandate until the following ordinary general meeting;
- its statutes, drafted in accordance with Netherlands law and revised in 2011.

4 In its application, the applicant claims that the Court should, first, annul Commission Delegated Regulation (EU) No 1391/2013 of 14 October 2013, amending Regulation (EU) No 347/2013 of the European Parliament and of the Council on guidelines for trans-European energy infrastructure, as regards the Union list of projects of general interest (OJ 2013 L 349, p. 28) and, second, the Commission's reply of 7 February 2014 to the applicant's request for internal review [ener.b.1/AR/1b(2014)s290675].

Law

5 Where the action is manifestly inadmissible, the General Court may under Article 111 of its Rules of Procedure, by reasoned order and without taking further steps in the proceedings, give a decision on the action.

6 In this instance, the General Court considers that it has sufficient information from the documents in the file and has decided, pursuant to that article, to give a decision without taking further steps in the proceedings.

7 It must be recalled that, pursuant to Article 19, third and fourth paragraphs, and Article 21, first paragraph, of the Statute of the Court of Justice of the European Union, applicable to the proceedings before the General Court by virtue of Article 53, first paragraph, thereof, and Article 43(1), first subparagraph, of the Rules of Procedure of the General Court, parties other than the Member States and the institutions of the European Union, the Surveillance Authority of the European Free Trade Association (EFTA) or States parties to the Agreement on the European Economic Area (EEA) must be represented by a lawyer authorised to practise before a court of a Member State or of another State which is a party to the EEA Agreement. In addition, the application must contain the applicant's name and permanent address and the description of the signatory. Finally, the original of every pleading must be signed by the party's agent or lawyer.

8 According to settled case-law, it is clear from the provisions cited above and, in particular, the use of the word 'represented' in Article 19, third paragraph, of the Statute of the Court of Justice, that, in order to bring proceedings before the Court, a 'party' within the meaning of that article, is required to have recourse to the services of a third party who must be authorised to practice before the courts of a Member State or a State party to the EEA Agreement (orders of 5 December 1996 in *Lopes v Court of Justice*, C 174/96 P, ECR, EU:C:1996:473, paragraph 11; of 19 November 2009 in *EREF v Commission*, T 40/08, T:2009:455, paragraph 25; and of 5 December 2013 in *Martinez Ferriz v Spain*, T 564/13, EU:T:2013:650, paragraph 7). It is a necessary but insufficient condition, in the sense that not every lawyer entitled to practise before a court of a Member State is automatically allowed to act before the Courts of the European Union (see to that effect judgment of 6 September 2012 in *Prezes Urzędu Komunikacji Elektronicznej and Poland v Commission*, C 422/11 P and C 423/11 P, ECR, EU:C:2012:553, paragraph 33).

9 The requirement to have recourse to a third party corresponds to the conception of the lawyer's role, which is that of collaborating in the administration of justice and of being required to provide, in full independence and

in the overriding interests of that cause, such legal assistance as the client needs (order of 29 September 2010 in *EREF v Commission*, C 74/10 P and C 75/10 P, EU:C:2010:557, paragraph 52 and judgment in *Prezes Urzędu Komunikacji Elektronicznej and Poland v Commission*, cited in paragraph 8 above, ECR, EU:C:2012:553, paragraph 23. That conception reflects the legal traditions common to the Member States and, as is demonstrated by the provisions of Article 19 of the Statute of the Court of Justice, is also to be found in the legal order of the European Union (see to that effect, judgments of 18 May 1982 in *AM&S Europe v Commission*, 155/79, ECR, EU:C:1982:157, paragraph 24, and of 14 September 2010 in *Akzo Nobel Chemicals and Akros Chemicals v Commission and Others*, C 550/07 P, ECR, EU:C:2010:512, paragraph 42; order in *Martinez Ferriz v Spain*, cited in paragraph 8 above, EU:T:2013:650, paragraph 8) in which it is implemented objectively and is necessarily independent from the national legal orders (see, to that effect, judgment in *Prezes Urzędu Komunikacji Elektronicznej and Poland v Commission*, cited in paragraph 8 above, EU:C:2012:553, paragraph 34).

- 10 In the present case, the documents provided by the applicant indicate, first, that the role of coordinator in the applicant association is a management post provided for in its statutes. Thus, Article 15 thereof provides essentially that the association is to have one or more coordinators, appointed in general meeting for a one-year period which is renewable, who are responsible for the day-to-day management of the association and its administrative tasks and the implementation of resolutions adopted in general meeting, which determines their remuneration. In addition the association's executive committee may, in accordance with Article 11(4) of the statutes, delegate to the coordinators part of its responsibilities and, in accordance with Article 13(2) thereof, grant him or them the power to represent the association before the courts within the limits of the mandate conferred.
- 11 Second, according to the minutes of the applicant's general meeting which was held in Opatija (Croatia) on 20 September 2013, it was decided to reappoint Mr Kiss as coordinator for a further year until the next general meeting in 2014, after his appointment by emails submitted by the members in 2011 and his reappointment by the general meeting in Budapest (Hungary) in 2012. Therefore, Mr Kiss was acting as the applicant's coordinator when the application on which the present action is based was lodged, that is to say, on 4 April 2014.
- 12 Third, following those decisions of the applicant's general meeting, successive contracts for the provision of services were concluded by the president of the executive committee with Mr Kiss in his capacity as coordinator for 2011, 2012 and 2013. Article 4 of each of those contracts provides for a monthly salary of EUR 1 400, payable against invoices issued by the coordinator to the applicant. A description of the coordinator's role is annexed to those contracts. The coordinator is responsible inter alia for monitoring the completion of annual work plans, ensuring that the applicant fulfils its duties and its internal procedures laid down in its statutes, preparing meetings of the executive committee, drawing up the agenda and the minutes of the general meetings and 'noticing the need' for a decision to be taken by the executive committee or the general meeting.
- 13 It is clear from all of those documents that Mr Kiss, in so far as he has continuously acted as coordinator since 2011, under the applicant's statutes, has extensive management and administrative powers, which place that role at a high executive level within the association (see, by analogy, order in *EREF v Commission*, cited in paragraph 9 above, EU:C:2010:557, paragraph 50). The continuity and importance of that function also justify, in accordance with the successive contracts for the provision of services, the payment of the monthly remuneration mentioned above.
- 14 In those circumstances, having regard to the scope of the management and administrative powers conferred on him by the applicant's statutes, as amplified in the description annexed to the successive contracts for the provision of services and to the contractual provision governing his remuneration which is, moreover, regular and fixed, it must be held that Mr Kiss cannot be regarded as a third party independent of the applicant. The existence of a connection established by the statutes between Mr Kiss and the general meeting of the applicant in relation to his appointment as the applicant's coordinator, and of a contractual connection between him and the president of the executive committee for as regards the amount of his monthly remuneration implies a clear absence of independence on his part.
- 15 That finding is not invalidated by the applicant's reference to the Hungarian legislation governing the legal profession which is not, in itself, capable of demonstrating that the requirement of independence of its lawyer

before the Court has been satisfied. According to the case-law, the provisions concerning the representation of non-privileged parties before the parties before the Courts of the European Union must be interpreted, as far as possible, independently and without reference to national law (judgment in *Prezes Urzędu Komunikacji Elektronicznej and Poland v Commission*, cited in paragraph 8 above, EU:C:2012:553, paragraph 35, and order in *EREF v Commission*, cited in paragraph 8 above, EU:T:2009:455, paragraph 27). Furthermore, the concept of the independence of a lawyer before the Court of the European Union is determined not only positively, that is by reference to professional ethical obligations, but also negatively, that is to say, by the absence of an employment relationship or any other relationship of dependence, whether imposed by law or by agreement, between the lawyer and his client (see, to that effect and by analogy, judgments in *Akzo Nobel Chemicals and Akros Chemicals v Commission and Others*, cited in paragraph 9 above, EU:C:2010:512, paragraph 45, and *Prezes Urzędu Komunikacji Elektronicznej and Poland v Commission*, cited in paragraph 8 above, EU:C:2012:553, paragraph 24).

16 It follows that the lawyer appointed by the applicant for the purposes of the present case, Mr Kiss, cannot act as the applicant's legal representative before the Courts of the European Union as an independent third party.

17 Accordingly, since the originating application was signed by Mr Kiss, the present action was not lodged in accordance with Article 19, third and fourth paragraphs, and Article 21, first paragraph, of the Statute of the Court of Justice and Article 43(1), first subparagraph, of the Rules of Procedure of the General Court.

18 It follows from all of the foregoing that the action must be dismissed as manifestly inadmissible, without it being necessary to serve the application on the Commission.

Costs

19 Since this order has been made before the European Commission was served with the application and before it could have incurred any costs, it is sufficient to order, pursuant to Article 87(1) of the Rules of Procedure, that the applicant must bear its own costs.

On those grounds,

THE GENERAL COURT (Eighth Chamber)

hereby orders:

- 1. The action is dismissed.**
- 2. Association/Vereniging Justice & Environment is to bear its own costs.**

Luxembourg, 18 November 2014.

E. Coulon

D. Gratsias

Registrar

President