



EUROPEAN COMMISSION

Brussels, 24 January 2019

[sj.n\(2019\)382205](#) LF/

*Court procedural documents*

**TO THE PRESIDENT AND MEMBERS  
OF THE COURT OF JUSTICE OF THE EUROPEAN UNION  
OBSERVATIONS ON AN APPLICATION TO INTERVENE**

submitted pursuant to Articles 190 and 131(1) of the Rules of Procedure of the Court of Justice by the

**European Commission,**

Defendant at first instance and now Respondent,

represented by Jean-Paul Keppenne, Principal Legal Adviser, Leo Flynn, Legal Adviser, and Tim Maxian Rusche, Member of its Legal Service, as Agents, with an address for service at the Legal Service, Greffe contentieux, BERL 1/169, 1049 Brussels, and consenting to service by e Curia, in

**Case C-597/18 P**

concerning an Appeal lodged against the Judgment of the General Court (Fourth Chamber, Extended Composition) of 13 July 2018 in Case T-680/13 *Chrysostomides, K. & Co. and others v Council and others*, by

**Council of the European Union,**

Appellant,

the other parties being

**Dr. K. Chrysostomides & Co. LLC and others,**

Applicants at first instance, and now Respondents,

**European Central Bank,**

Defendant at first instance, and now Respondent,

**Euro Group, represented by the Council of the European Union,**

Defendant at first instance, and now Respondent,

**European Union, represented by the European Commission,**

Defendant at first instance, and now Respondent.

1. The Commission has the honour to present the following observations on the application to intervene lodged by Berry Investments, Inc. ('the applicant intervener') on 27 December 2018 and served on the Commission on 8 January 2019.
2. The notice referred to in Article 21(4) of the Rules of Procedure of the Court ('RPC') concerning the present case was published in the Official Journal of the European Union on 26 November 2018. Pursuant to Article 190(1) RPC, Article 130 RPC (which governs interventions) applies to appeals against decisions of the General Court. However, Article 190(2) RPC lays down that, by derogation from Article 130(1) RPC, an application to intervene must be made within one month of the publication of the notice referred to in Article 21(4) RPC. When the ten-day extension on account of distance is added, pursuant to Article 51 RPC, to that one-month period, any application to intervene in the present case should have been made by 7 January 2019 (since the final day of the extended period fell on a Saturday).
3. The applicant intervener seeks leave to intervene in support of the applicants at first instance. The applicant intervener has brought an action for damages before the General Court that the latter suspended while it examined the case that gave rise to the judgement under appeal. That action for damages is currently suspended until the Court gives its judgment on the present appeal.
4. The applicant intervener contends that it has an interest in the result of the case, within the meaning of the second paragraph of Article 40 of the Statute of the Court of Justice of the European Union as interpreted by the case-law of the Union Courts. It contends that the outcome of the present appeal will alter its legal situation since in its own, currently suspended, case it relies on identical grounds to those put forward by the applicants at first instance. It lays great emphasis, in that regard, with the fact that the present appeal deals with a case that the General Court selected as a pilot case in relation to a series of actions for damages against the Union and its institutions.
5. The Commission doubts that the applicant intervener meets the requirements set down for a successful application to intervene. On the contrary, the situation of the latter seems indistinguishable from that examined by the Court in Joined Cases 116, 124 and 143/77 *Amylum v Council and Commission* EU:C:1978:81. Given the proximity

between the situations before the Court in the latter case and in this instance, the Commission presents below much of the Court's description of facts and its analysis.

6. In that case, by order of 12 April 1978, the Court rejected an application to intervene on the following grounds:

1. *By application lodged on 16 February 1978 the Syndicat National des Fabricants de Sucre de France, the Union Syndicale des Producteurs de Sucre et de Rhum de l'Ile de Réunion and the Syndicat Général des Producteurs de Sucre et de Rhum des Antilles Françaises applied to intervene in Joined Cases 116, 124 and 143/77 in support of the defendants' conclusions.*
2. *These cases concern applications for compensation put forward in pursuance of Article 178 and the second paragraph of Article 215 of the EEC Treaty for damage alleged to have been caused to the applicants in the main action as a result of Council Regulation No 1111/77 of 17 May 1977 laying down common provisions for isoglucose [...] and, as regards solely the applicants in Joined Cases 116 and 143/77, as a result of Commission Regulation No 1468/77 of 30 June 1977 laying down rules for applying the production Levy on isoglucose in respect of the period 1 July 1977 to 30 June 1978 [...].*

[...]

6. *Under Article 37 of the Statute on the Court of Justice of the EEC, the right to intervene in cases before the Court is vested in Member States and institutions of the Community and, in addition, to any other person establishing an interest in the result of any case submitted to the Court provided that the object of the intervention is to support the conclusions of one of the parties.*
  7. *Since the third paragraph of Article 37 of the above-mentioned Statute limits the conclusions contained in an application to intervene to support of the conclusions of one of the parties in the main action, it follows that the interest in question must exist in relation to the said conclusions and not in relation to the submissions or arguments put forward.*
  8. *This is not the case in the present proceedings.*
  9. *In fact, the applicants to intervene have not proved that they have a direct and present interest in the acceptance of the above-mentioned conclusions.*
  10. *The only interest which they claim is in the success of certain arguments put forward by the defendants.*
  11. *It follows from the above considerations that the application to intervene must be dismissed.*
7. As with Joined Cases 116, 124 and 143/77, the only interest put forward by the applicant intervener is in the success of certain arguments put forward by the party in

whose favour it applies to intervene. Such an interest does not meet the requirements laid down by Article 40 of the Statute of the Court of Justice.

8. On that basis, the Commission has the honour to request the Court to rule that:

- the application to intervene should be rejected; and
- the applicant intervener should be ordered to pay the costs of the intervention proceedings.

Leo FLYNN

Jean-Paul KEPPE

Tim MAXIAN RUSCHE

Agents for the Commission