



## *European Law Moot Court Competition Case 2023-2024*

*M-24/23, Yuriy and Oksana Baggins v Council of the European Union and*

*M-25/23, AirSafe vs. SuperWings*

1. The Republic of Utopia is a young state in Eastern Europe, recognized by the international community within its borders for nearly 25 years and a member of the UN. Utopia is not a member State of the European Union but aspires to become following the association agreement it signed with the EU in 2012.
2. Since 2014, the region of Gondor, a part of Utopia's territory, has been annexed by its powerful neighbour, the Federation of Mordor, which is not a member of the European Union. Far from being satisfied, under the presidency of Saurin, Mordor unleashed a military invasion in 2022, leading to the occupation of a large part of the eastern and southeastern territory of Utopia up to the great river Anduin.
3. The Applicants, Yuriy and Oksana Baggins, are two Utopian nationals, whose father and husband respectively – Andriy Baggins – was killed on August 15<sup>th</sup>, 2023 while serving in the Utopian Armed Forces, while defending Utopian territory against the Mordor invasion.
4. Specifically, the plane he was flying was shot down by an anti-aircraft system in the southeastern part of Utopia, occupied by Mordorian troops. According to the investigation carried out by the Utopian Ministry of Defence, the accident was caused by a defective anti-radar device of the plane he was piloting, making it easy to be detected by enemy radars and intercepted by anti-aircraft missiles. The same investigation concluded that, if the device in question had not been defective, Andriy would most likely still be alive. Indeed, the other planes that were sent out on mission that day were neither detected nor shot down and all the other pilots returned safe and sound having completed their mission.
5. The aircraft in question is part of a series of F-16 planes dating back to the 1980s, delivered by several EU Member States to Utopia as part of the European Peace Facility program, aimed at supporting Utopia in its war against Mordor, restoring its territorial integrity and bringing the conflict to an end.



6. During the “Foreign Affairs” Council meeting on June 1<sup>st</sup>, 2023, the State of Valhalla, an EU Member State known for its pacifist and non-interventionist tradition on the international stage, expressed strong reluctance to provide its F-16 aircrafts due to their age and the fact that they had not been able to undergo recent maintenance, on account of unavailability of spare parts. During the meeting it was nevertheless decided that despite these reservations, the delivery of these aircrafts was urgent and essential to support Utopia in its fight against the invader.
7. Having been unable to successfully assert their rights before the Utopian courts, the Applicants brought an action for damages before the Valhallian courts, invoking both the responsibility of the State of Valhalla and of the Council of the European Union for Andriy's death. They invoke in particular, as successors in title (heirs), a violation of Andriy's right to life, under Article 2 of the Charter of Fundamental Rights of the European Union and Article 2 of the ECHR. After the dismissal of their first instance action, they have decided to file an appeal.
8. The Court of Appeal of Asgard, capital of Valhalla, has no doubt that Article 2 of the Charter and article 2 of the ECHR have been infringed, that the damage suffered is attributable to the Union and not to the State of Valhalla, and that all the conditions for engaging the Union's liability are met. However, doubting whether it had jurisdiction to rule on the appeal insofar as it calls into question the responsibility of the Council of the EU, the Court of Appeal of Asgard decided to stay the proceedings and referred the following question to the Court of Justice of the European Union for a preliminary ruling, pursuant to Article 267 TFEU:
  - 1) Assuming that the referring Court finds that Andriy's right to life has been infringed and that the conditions for recognising the Union's liability are met, does this national court have jurisdiction to condemn the Council of the EU to compensate the damage suffered by the Applicants, to ensure effective legal protection for the Applicants, given that there is reason to doubt that the courts of the Union themselves have jurisdiction, pursuant to Articles 24 TEU and 275 TFEU?



9. The company "SuperWings SA" was responsible for the maintenance and upkeep of the F-16s of the Valhallian army. To fulfill this contract, SuperWings employed Orc Engineers, renowned for their skills in the repair of combat aircrafts.
10. Following an investigation carried out by the Valhallian Court of Auditors, it was found that SuperWings has been benefiting from financial contributions and other significant advantages over the last 20 years, from subsidiary companies of the "Krupnik" group, led by Mr. Krapkin. He is a close associate of the President of Mordor and is also known to lead a large paramilitary group fighting alongside the Mordor army in Utopia.
11. These advantages consist of an unlimited guarantee from the State of Mordor, tax exemptions and export aid granted specifically to facilitate participation in foreign tenders considered strategic for the national interests of Mordor. The amounts of these various benefits have been estimated at around 1,500,000 EUR per year.
12. However, it appears that all companies listed as strategic companies in Mordor, like SuperWings, enjoy such measures. Indeed, it is clear from the "Presidential Decree on Strategic Companies" that all companies considered "strategic" by the President of the Federation of Mordor can benefit from the unlimited guarantee of the State and export aid, provided these companies have at least one representative from the State of Mordor's administration on their board of directors with a veto right. The stated goal of this decree is to foster the competitiveness of Mordor's strategic companies on the international stage.
13. Concerning the tax exemptions specifically, it is clear from the law of December 1<sup>st</sup>, 2018, that any company established in Mordor, considered strategic under the aforementioned presidential decree on strategic companies, which acquires a shareholding in a foreign company, or which participates in a call for tender abroad, can defer the losses resulting from the debts contracted with a view to these operations over a period of 20 years. The carrying forward of losses is generally allowed in Mordorian law, without any limitation in time. However, it is provided that in the case of foreign investments, it normally only applies for a period of 5 years. The law of December 1<sup>st</sup>, 2018, was introduced in order to provide an exception to this latter rule.
14. Corporation tax in Mordor is a progressive bracket tax, under which corporations are taxed on their declared profits for each fiscal year. The tax rates are 20% for the first bracket



(between 0 and 999,999 euros), 30% for the second bracket (between 1 million and 9.99 million euros), and 40% for any amount exceeding 10 million euros. Due to significant investments made over the past 10 years and leveraging the law of December 1st, 2018, SuperWings has not declared any profits in the recent fiscal years, thus it has not had to pay any corporate tax. It appears, moreover, that only subsidiary companies of large foreign multinationals have been required to pay corporate taxes at the highest rate of 40% in the recent fiscal years.

15. Furthermore, it appears that SuperWings has entered into a highly attractive marketing contract, under which they committed to promote the beauty of Mordor's landscapes in their brochures and on their website, via a specific QR-code. For each click generated on the "visit Mordor" webpage from this QR-code, the company receives the equivalent of 10 euros from the Ministry of Tourism and Rural Development of the State of Mordor.
16. One of SuperWings' direct competitors, "AirSafe", whose main establishment is located in the Kingdom of the Elves – another EU Member State neighboring Valhalla – participated in the last tender procedure for the servicing and maintenance contract for Valhalla's F-16s. Despite the fact that its engineers could not compete with the Orc Engineers of SuperWings, AirSafe acquired a new technology, the robot 'Terminator' which revolutionizes combat aircraft maintenance.
17. However, Terminator was not enough to win the tender. AirSafe saw its offer rejected as it was economically less advantageous. The contract was subsequently awarded to SuperWings in January 2021 for a period of 3 years.
18. Following the entry into force of Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14<sup>th</sup> December 2022 on foreign subsidies distorting the internal market (OJ 2022 L 330, p. 1), AirSafe invited the Commission to review the advantages conferred on SuperWings and to adopt a decision under this regulation.
19. AirSafe drew attention, in particular, to the fact that a new tendering procedure was underway for this contract and that it was important to verify, in this context, that SuperWings complies with its obligations under the Article 29 of Regulation 2022/2560.
20. With respect to the marketing contract, AirSafe argues that, even assuming that the marketing contract in question is intended to meet a real need of the State of Mordor –



which AirSafe disputes – the compensation awarded to SuperWings under this contract significantly exceeds what a marketing services provider could obtain under normal market conditions.

21. SuperWings considers, however, that there can be no question of an unlawful subsidy insofar as the tax scheme benefits a multitude of businesses in Mordor, that the marketing contract is in line with market conditions and is intended to meet a genuine need on the part of the State of Mordor to promote tourism in certain parts of its territory which are unfortunately not well known by the general public. SuperWings also contends that the fact that there was no call for tenders for this marketing contract is not decisive in this regard.
22. To date, no decision has yet been adopted by the Commission and the investigation is still ongoing.
23. Dissatisfied with this turn of events, and as the new tender procedure for the 2024-2026 period is coming to an end, AirSafe has brought an action before the Elvish courts, with a view, on the one hand, to condemn SuperWings to reimburse the subsidies it has benefited from in the past and to commit to renouncing any other similar benefits which it may receive in the future and, on the other hand, to establish the violation by SuperWings, of its notification obligation arising from Article 29 of Regulation 2022/2560. In the absence of adequate redressive measures, it requests that SuperWings be barred from participating in any other tender procedure within the EU and be excluded from the ongoing new tender procedure.
24. Facing, for the first time, questions regarding the interpretation of Regulation 2022/2560, the District Court of the Kingdom of the Elves (Commercial Chamber), decided to stay the proceedings and to ask the following preliminary questions to the Court of Justice of the European Union, pursuant to Article 267 TFEU:
  - 2) Should measures adopted by a third country, such as those at issue in the main proceedings, be considered to constitute “foreign subsidies distorting the internal market”, within the meaning of Regulation 2022/2560?



3) Can the provisions of Regulation 2022/2560 and, specifically Articles 7, 29 and 31 thereof be invoked directly before the national courts and can the referring court adopt the measures requested by the applicant in order to safeguard the rights it derives from this regulation?

25. The requests for preliminary rulings were successively received by the Registry of the Court, which assigned them case numbers M-24/23 and M-25/23. To ensure procedural efficiency, the Court decided to join the cases for the purposes of the written and the oral phase. In accordance with Article 23 of the Statute of the Court of Justice, the Registrar notified the parties that their observations should be submitted to the Court by 25 November 2023 at 23:59 CET.

26. Considering that it is essential to be represented by the best lawyers in EU law and deeming it prudent to ensure the consistency of their representation, the Applicants in case M-24/23, Yuriy and Oksana, and in case M-25/23, AirSafe, decided to be represented by the renowned law firm “Law Above All”. Furthermore, the agents of the legal service of the Council of the EU and representatives of SuperWings SA were invited to coordinate their pleadings in order to ensure the defence of their clients in cases M-24/23 and M-25/23.