JUDGMENT OF THE COURT (Grand Chamber)

13 January 2015 (*)

(Appeals — Directive 2008/50/EC — Directive on ambient air quality and cleaner air for Europe — Decision regarding the notification by the Kingdom of the Netherlands of the postponement of the deadline for attaining the limit values for nitrogen dioxide and the exemption from the obligation to apply the limit values for particulate matter (PM10) — Request for internal review of that decision, submitted pursuant to Regulation (EC) No 1367/2006 — Commission decision declaring the request inadmissible — Measure of individual scope — Aarhus Convention — Validity of Regulation (EC) No 1367/2006 in the light of that convention)

In Joined Cases C-401/12 P to C-403/12 P,

THREE APPEALS under Article 56 of the Statute of the Court of Justice of the European Union, lodged on 24 August 2012 (C-401/12 P and C-402/12 P) and 27 August 2012 (C-403/12 P),

Council of the European Union, represented by M. Moore and K. Michoel, acting as Agents, with an address for service in Luxembourg,

European Parliament, represented by L. Visaggio and G. Corstens, acting as Agents, with an address for service in Luxembourg,

European Commission, represented by J.-P. Keppenne, P. Oliver, P. Van Nuffel, G. Valero Jordana and S. Boelaert, acting as Agents, with an address for service in Luxembourg,

appellants,

supported by:

Czech Republic, represented by D. Hadroušek, acting as Agent,

intervener in the appeal,

the other parties to the proceedings being:

Vereniging Milieudefensie, established in Amsterdam (Netherlands),

Stichting Stop Luchtverontreiniging Utrecht, established in Utrecht (Netherlands),

represented by A. van den Biesen, advocaat,

applicants at first instance,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, L. Bay Larsen, T. von

Danwitz, A. Ó Caoimh and J.-C. Bonichot (Rapporteur), Presidents of Chambers, E. Levits, C. Toader, M. Berger, A. Prechal, E. Jarašiūnas and C.G. Fernlund, Judges,

Advocate General: N. Jääskinen,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 10 December 2013,

after hearing the Opinion of the Advocate General at the sitting on 8 May 2014,

gives the following

Judgment

1 By their appeals, the Council of the European Union, the European Parliament and the European Commission ask the Court to set aside the judgment of the General Court of the European Union in *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht* v *Commission* (T-396/09, EU:T:2012:301; 'the judgment under appeal'), by which it upheld the application of Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht seeking the annulment of Commission Decision C(2009) 6121 of 28 July 2009 ('the decision at issue') rejecting as inadmissible the applicants' request for review by the Commission of Decision C(2009) 2560 final of 7 April 2009 granting the Kingdom of the Netherlands a temporary exemption from the obligations laid down by Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ 2008 L 152, p. 1).

Legal context

The Aarhus Convention

2 The Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed at Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1; 'the Aarhus Convention'), states in Article 1 thereof, which is entitled 'Subject matter':

'In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.'

3 Article 9 of that convention states:

'(1) Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under Article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law.

In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial

body other than a court of law.

Final decisions under this paragraph 1 shall be binding on the public authority holding the information. Reasons shall be stated in writing, at least where access to information is refused under this paragraph.

(2) Each Party shall, within the framework of its national legislation, ensure that members of the public concerned

(a) having a sufficient interest

or, alternatively,

(b) alleging the impairment of a right, where administrative procedural law of a Member State requires this as a precondition,

have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of Article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organisation meeting the requirements referred to in Article 2(5) shall be deemed sufficient for the purpose of subparagraph (a) above. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

(3) In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

(4) In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this Article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.

(5) In order to further the effectiveness of the provisions of this article, each Party shall ensure that information is provided to the public on access to administrative and judicial review procedures and shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice.’

Regulation (EC) No 1367/2006

4 Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September

2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13) states, in recital 18 thereof:

‘Article 9(3) of the Aarhus Convention provides for access to judicial or other review procedures for challenging acts and omissions by private persons and public authorities which contravene provisions of law relating to the environment. Provisions on access to justice should be consistent with the [EC] Treaty. It is appropriate in this context that this Regulation address only acts and omissions by public authorities.’

5 Article 1(1) of Regulation No 1367/2006 provides:

‘The objective of this Regulation is to contribute to the implementation of the obligations arising under the [Aarhus Convention] by laying down rules to apply the provisions of the Convention to Community institutions and bodies, in particular by:

…

(d) granting access to justice in environmental matters at Community level under the conditions laid down by this Regulation.’

6 Article 2(1)(g) of that regulation defines ‘administrative act’ as meaning:

‘any measure of individual scope under environmental law, taken by a Community institution or body, and having legally binding and external effects’.

7 Article 10 of that regulation, entitled ‘Request for internal review of administrative acts’, provides in paragraph 1 thereof:

‘Any non-governmental organisation which meets the criteria set out in Article 11 is entitled to make a request for internal review to the Community institution or body that has adopted an administrative act under environmental law or, in case of an alleged administrative omission, should have adopted such an act.’

Directive 2008/50

8 Article 22 of Directive 2008/50 provides:

‘1. Where, in a given zone or agglomeration, conformity with the limit values for nitrogen dioxide or benzene cannot be achieved by the deadlines specified in Annex XI, a Member State may postpone those deadlines by a maximum of five years for that particular zone or agglomeration, on condition that an air quality plan is established in accordance with Article 23 for the zone or agglomeration to which the postponement would apply; such air quality plan shall be supplemented by the information listed in Section B of Annex XV related to the pollutants concerned and shall demonstrate how conformity will be achieved with the limit values before the new deadline.

2. Where, in a given zone or agglomeration, conformity with the limit values for PM_{10} as specified in Annex XI cannot be achieved because of site-specific dispersion characteristics, adverse climatic conditions or transboundary contributions, a Member State shall be exempt from the obligation to apply those limit values until 11 June 2011 provided that the conditions laid down in paragraph 1 are fulfilled and that the Member State shows that all appropriate measures have been taken at national, regional and local level to meet the deadlines.

3. Where a Member State applies paragraphs 1 or 2, it shall ensure that the limit value for each

pollutant is not exceeded by more than the maximum margin of tolerance specified in Annex XI for each of the pollutants concerned.

4. Member States shall notify the Commission where, in their view, paragraphs 1 or 2 are applicable, and shall communicate the air quality plan referred to in paragraph 1 including all relevant information necessary for the Commission to assess whether or not the relevant conditions are satisfied. In its assessment, the Commission shall take into account estimated effects on ambient air quality in the Member States, at present and in the future, of measures that have been taken by the Member States as well as estimated effects on ambient air quality of current Community measures and planned Community measures to be proposed by the Commission.

Where the Commission has raised no objections within nine months of receipt of that notification, the relevant conditions for the application of paragraphs 1 or 2 shall be deemed to be satisfied.

If objections are raised, the Commission may require Member States to adjust or provide new air quality plans.'

Background to the dispute

9 On 15 July 2008 the Kingdom of the Netherlands, in accordance with Article 22 of Directive 2008/50, notified the Commission that it had postponed the deadline for attaining the annual limit values for nitrogen dioxide in nine zones and that it was availing itself of an exemption from the obligation to apply the daily and annual limit values for particulate matter which passes through an inlet with a 50% efficiency cut-off at 10 μm aerodynamic diameter.

10 On 7 April 2009 the Commission accepted that postponement by adopting Decision C(2009) 2560 final.

11 By letter of 18 May 2009, Vereniging Milieudefensie, an association governed by Netherlands law whose object is protection of the environment and improvement of air quality in the Netherlands, and Stichting Stop Luchtverontreiniging Utrecht, a foundation governed by Netherlands law which campaigns against air pollution in the Utrecht region (Netherlands), submitted a request to the Commission for internal review of that decision pursuant to Article 10(1) of Regulation No 1367/2006.

12 By the decision at issue, the Commission rejected that request as inadmissible on the grounds that Decision C(2009) 2560 final was not a measure of individual scope and that it could therefore not be considered an 'administrative act', within the meaning of Article 2(1)(g) of Regulation No 1367/2006, capable of forming the subject of the internal review procedure provided for under Article 10 thereof.

The proceedings before the General Court and the judgment under appeal

13 By application lodged at the Registry of the General Court on 6 October 2009, Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht sought the annulment of the decision at issue.

14 The Kingdom of the Netherlands, the Parliament and the Council intervened in support of the form of order sought by the Commission.

15 By the judgment under appeal, the General Court granted the application for annulment.

16 The General Court, first, rejected as inadmissible the applicants' claim that the General Court should order the Commission to examine the merits of the request for internal review and set a fixed period for that purpose.

17 In addition, the General Court rejected as unfounded the applicants' first plea at first instance, alleging that the Commission erred in law in categorising the decision at issue as an act of general scope that could not be regarded as an administrative act for the purposes of Article 2(1)(g) of Regulation No 1367/2006 and, accordingly, could not form the subject of a request for internal review under Article 10(1) of that regulation. However, the General Court upheld the second plea, put forward in the alternative, alleging the illegality of Article 10(1) by reason of its incompatibility with Article 9(3) of the Aarhus Convention.

18 After recalling, in paragraphs 51 and 52 of the judgment under appeal, that, like every other international agreement to which the European Union is a party, the Aarhus Convention prevails over acts of secondary EU legislation, the General Court stated, in paragraph 53 of the judgment, that the Courts of the European Union may examine the validity of a provision of a regulation in the light of an international treaty only where the nature and the broad logic of the latter do not preclude this and where, in addition, the provisions of the treaty appear, as regards their content, to be unconditional and sufficiently precise.

19 However, it stated, referring in particular to the judgments of the Court of Justice in *Fediol* v *Commission* (70/87, EU:C:1989:254) and *Nakajima* v *Council* (C-69/89, EU:C:1991:186), that that court has held that it had to exercise its review of the legality of the EU act in question in the light of rules laid down in an international agreement that are not capable of conferring on the individual concerned the right to invoke it before the courts in a situation where the European Union has sought to implement a particular obligation entered into within the framework of that agreement or where the secondary legislative act makes an explicit reference to particular provisions of that agreement. The General Court concluded, in paragraph 54 of the judgment under appeal, that the Courts of the EU must be able to review the legality of that regulation in the light of the international agreement where that regulation is intended to implement an obligation imposed on the EU institutions under that agreement.

20 In paragraphs 57 and 58 of the judgment under appeal, the General Court took the view that those conditions were met in the case at issue since, first, the applicants at first instance, which were not invoking the direct effect of the provisions of the agreement, were questioning indirectly, in accordance with Article 241 EC, the validity of a provision of Regulation No 1367/2006 in the light of the Aarhus Convention and that, secondly, that regulation had been adopted to meet the European Union's international obligations under Article 9(3) of that convention, as was clear from both Article 1(1) of Regulation No 1367/2006 and recital 18 thereof.

21 The General Court held, in paragraph 69 of the judgment under appeal, that Article 10(1) of Regulation No 1367/2006, in so far as it provides an internal review procedure only in respect of an 'administrative act', which is defined in Article 2(1)(g) as 'any measure of individual scope', is incompatible with Article 9(3) of the Aarhus Convention.

22 Consequently, the General Court annulled the decision at issue.

Forms of order sought by the parties and the proceedings before the Court

23 By its appeal, lodged on 24 August 2012 (Case C -401/12 P), the Council requests the Court to set aside the judgment under appeal, dismiss the action of the applicants at first instance in its entirety

and to order those applicants to pay the costs.

24 By its appeal, lodged on 24 August 2012 (Case C -402/12 P), the Parliament requests the Court to set aside the judgment under appeal, dismiss the applicants' action in its entirety and to order the applicants to pay the costs.

25 By its appeal, lodged on 27 August 2012 (Case C -403/12 P), the Commission requests the Court to set aside the judgment under appeal, dismiss the applicants' action in its entirety and to order the applicants to pay the costs incurred both at first instance and in the appeal.

26 By order of the President of the Court of 21 November 2012, Cases C -401/12 P to C -403/12 P were joined for the purposes of the written and oral procedure and the judgment.

27 On 28 February 2013, Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht lodged a response to the appeals in which they request the Court to dismiss the appeals and to order the Council, the Parliament and the Commission to pay the costs they incurred both at first instance and in the appeal.

28 They also brought a cross-appeal by which they request the Court to set aside the judgment under appeal and to order the defendants at first instance to pay the costs they incurred both at first instance and in the appeal.

The appeals

The cross-appeal

Arguments of the parties

29 Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht argue that the General Court vitiated the judgment under appeal by error of law in refusing to recognise the direct effect of Article 9(3) of the Aarhus Convention, at least in so far as it provides that 'acts' which infringe national environmental law must be subject to a right of appeal and, consequently, in refusing to assess the legality of Article 10(1) of Regulation No 1367/2006 in the light of Article 9(3) of the Convention.

30 The Council, the Parliament and the Commission submit that the cross-appeal must be dismissed as inadmissible because the ground of appeal relied on actually aims merely to challenge a part of the reasoning of the judgment under appeal, rather than its result, and does not therefore meet the requirements of Article 178 of the Rules of Procedure of the Court.

31 The Council, the Parliament and the Commission maintain in the alternative that the ground of appeal relied on is, in any event, unfounded.

Findings of the Court

32 It must be stated that, in accordance with Articles 169(1) and 178(1) of the Rules of Procedure, any appeal, whether it be a main appeal or a cross-appeal, must seek to have set aside, in whole or in part, the decision of the General Court.

33 In the present case, Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht obtained, before the General Court, the annulment of the decision at issue in accordance with the form of order sought in their action. Their cross-appeal, which in fact merely seeks to substitute the grounds relating to the analysis of whether Article 9(3) of the Aarhus Convention may be relied on,

cannot, therefore, be upheld (see, by analogy, in relation to a main appeal, judgment in *Al-Aqsa* v *Council* and *Netherlands* v *Al-Aqsa*, C‑539/10 P and C‑550/10 P, EU:C:2012:711, paragraphs 43 to 45).

34 It follows from the above considerations that the cross-appeal must be dismissed as inadmissible.

The main appeals

35 The Council, the Parliament and the Commission argue, primarily, that the General Court erred in holding that Article 9(3) of the Aarhus Convention may be relied on in order to assess the compliance of Article 10(1) of Regulation No 1367/2006 with that provision.

36 In the alternative, they argue that the General Court erred in considering that Article 9(3) of that convention precludes a provision such as Article 10(1) of Regulation No 1367/2006.

The first plea in the main appeals

Arguments of the parties

37 The Council maintains that the two situations in which the Court has acknowledged the possibility for an individual to rely on the provisions of an international agreement that does not meet the requirements of unconditionality and precision necessary for them to be relied on for the purposes of assessing the validity of the provisions of an EU act are exceptional and do not correspond, in any event, to the situation in the present case.

38 First, the approach adopted in the judgment in *Fediol* v *Commission* (EU:C:1989:254) is justified by the specific circumstances of that case, in which the regulation at issue entitled the economic agents concerned to rely on rules of the General Agreement on Tariffs and Trade ('the GATT'). Moreover, that approach is not to be applied outside of the specific scope of the GATT.

39 Secondly, with regard to the case-law stemming from the judgment in *Nakajima* v *Council* (EU:C:1991:186), the Council submits that it concerns only the situation where the European Union has sought to implement a particular obligation assumed under the GATT, which is not the situation in the present case either.

40 The Parliament and the Commission rely essentially on similar arguments.

41 With regard to the judgment in *Fediol* v *Commission* (EU:C:1989:254), the Commission adds that that judgment applies only to the situation where an EU act has made an explicit reference to particular provisions of the GATT.

42 As regards the judgment in *Nakajima* v *Council* (EU:C:1991:186), it submits that that judgment cannot be interpreted as permitting the review of any act of EU law in the light of an international agreement which that act may implement. For such a review to be carried out, the EU legislative act should constitute a direct and comprehensive implementation of the international agreement and relate to a sufficiently clear and precise obligation under that agreement, which is not the situation in the present case.

43 The Parliament argues that the judgment in *Fediol* v *Commission* (EU:C:1989:254) covers only the case of an explicit renvoi by a secondary legislative act to specific provisions of an international agreement, which is not a mere reference to those provisions, but an incorporation of them. Consequently, the General Court could not rely on recital 18 in the preamble to Regulation No 1367/2006, which merely describes Article 9(3) of the Aarhus Convention, in finding that

condition to be met in the present case. In addition, and in any event, it follows from that case-law of the Court that if an EU regulation incorporates provisions of an international agreement, those provisions may be relied on only for reviewing the validity of the acts adopted to implement that regulation and not the validity of the regulation itself.

44 With regard to the judgment in *Nakajima* v *Council* (EU:C:1991:186), the Parliament maintains that the approach adopted in that judgment concerns the situation in which a secondary legislative act implements a specific obligation imposed by an international agreement under which the European Union is obliged to act in a particular way and has no margin of discretion. However, the 'obligations' to which the General Court refers in paragraph 58 of the judgment under appeal are not 'specific' obligations within the meaning of the judgment in *Nakajima* v *Council* (EU:C:1991:186) since the Contracting Parties to the Aarhus Convention have a broad margin of discretion when defining the rules for implementing the 'administrative or judicial procedures' referred to in Article 9(3) of that convention, subject to observance of the requirements set out in Article 9(4) of the Convention.

45 The Parliament, relying on the judgment in *Commission* v *Ireland and Others* (C-89/08 P, EU:C:2009:742), also argues that the General Court did not observe the *audi alteram partem* principle in so far as it applied the principles stemming from the judgment in *Nakajima* v *Council* (EU:C:1991:186) without their relevance to the case first being discussed between the parties.

46 It adds that the circumstances of the case are also different to those of the case leading to the judgment in *Racke* (C-162/96, EU:C:1998:293), which concerned the breach of a rule of customary international law affecting the application of a provision of an international agreement the direct effect of which was not contested.

47 The Commission recalls also that the Court, in its judgments in *Intertanko and Others* (C-308/06, EU:C:2008:312) and *Air Transport Association of America and Others* (C-366/10, EU:C:2011:864), did not accept that it can review the validity of a directive in relation to an international agreement even though that agreement contained references to it.

48 Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht maintain, first of all, that there is no indication in the judgment in *Lesoochranárske zoskupenie* (C-240/09, EU:C:2011:125) as to the direct effect of Article 9(3) of the Aarhus Convention as regards challengeable acts within the meaning of that provision.

49 They submit, first, that, by its nature and purpose, that convention does not preclude review, at the request of environmental protection organisations, of the validity of an act of secondary EU legislation and, secondly, that the conditions of that review, set out in the judgment in *Fediol* v *Commission* (EU:C:1989:254), are fulfilled given that Regulation No 1367/2006 contains a number of references to the Convention and, in particular, to Article 9(3) thereof.

50 They maintain, next, that the mere possibility for the legality of a general act of EU law to be reviewed by the Court when the Court is requested by national courts for a preliminary ruling is not enough to ensure compliance with that provision.

51 Lastly, they argue that the General Court did observe the *audi alteram partem* principle since it gave the parties the opportunity to comment on the application, in the present case, of the case-law stemming from the judgments in *Fediol* v *Commission* (EU:C:1989:254) and *Nakajima* v *Council* (EU:C:1991:186) during the hearing. In any event, the circumstances of the present case are different to those leading to the judgment in *Commission* v *Ireland and Others* (EU:C:2009:742) relied on by the Parliament.

Findings of the Court

52 Pursuant to Article 300(7) EC (now Article 216(2) TFEU), international agreements concluded by the European Union bind its institutions and consequently prevail over the acts laid down by those institutions (see, to that effect, judgment in *Intertanko and Others* , EU:C:2008:312, paragraph 42 and the case-law cited).

53 However, the effects, within the EU legal order, of provisions of an agreement concluded by the European Union with non-member States may not be determined without taking account of the international origin of the provisions in question. In conformity with the principles of international law, EU institutions which have power to negotiate and conclude such an agreement are free to agree with the non-member States concerned what effects the provisions of the agreement are to have in the internal legal order of the contracting parties. If that question has not been expressly dealt with in the agreement, it is for the courts having jurisdiction in the matter and in particular the Court of Justice, within the framework of its jurisdiction under the FEU Treaty to decide it, in the same manner as any other question of interpretation relating to the application of the agreement in question in the European Union on the basis in particular of the agreement's spirit, general scheme or terms (see judgment in *FIAMM and Others* v *Council and Commission* , C-120/06 P and C-121/06 P, EU:C:2008:476, paragraph 108 and the case-law cited).

54 The Court has consistently held that the provisions of an international agreement to which the European Union is a party can be relied on in support of an action for annulment of an act of secondary EU legislation or an exception based on the illegality of such an act only where, first, the nature and the broad logic of that agreement do not preclude it and, secondly, those provisions appear, as regards their content, to be unconditional and sufficiently precise (see judgments in *Intertanko and Others* , EU:C:2008:312, paragraph 45; *FIAMM and Others* v *Council and Commission*, EU:C:2008:476, paragraphs 110 and 120; and *Air Transport Association of America and Others*, EU:C:2011:864, paragraph 54).

55 With regard to Article 9(3) of the Aarhus Convention, that article does not contain any unconditional and sufficiently precise obligation capable of directly regulating the legal position of individuals and therefore does not meet those conditions. Since only members of the public who 'meet the criteria, if any, laid down in … national law' are entitled to exercise the rights provided for in Article 9(3), that provision is subject, in its implementation or effects, to the adoption of a subsequent measure (see judgment in *Lesoochranárske zoskupenie*, EU:C:2011:125, paragraph 45).

56 It is true that the Court has also held that, where the European Union intends to implement a particular obligation assumed in the context of the agreements concluded in the context of the World Trade Organization ('the WTO agreements') or where the EU act at issue refers explicitly to specific provisions of those agreements, the Court should review the legality of the act at issue and the acts adopted for its implementation in the light of the rules of those agreements (see judgments in *Fediol* v *Commission*, EU:C:1989:254, paragraphs 19 to 23; *Nakajima* v *Council*, EU:C:1991:186, paragraphs 29 to 32; *Germany* v *Council*, C-280/93, EU:C:1994:367, paragraph 111; and *Italy* v *Council*, C-352/96, EU:C:1998:531, paragraph 19).

57 However, those two exceptions were justified solely by the particularities of the agreements that led to their application.

58 With regard, in the first place, to the judgment in *Fediol* v *Commission* (EU:C:1989:254), it should be recalled that Article 2(1) of Council Regulation (EEC) No 2641/84 of 17 September 1984 on the strengthening of the common commercial policy with regard in particular to protection against illicit commercial practices (OJ 1984 L 252, p. 1), at issue in the case that led to that judgment, referred

explicitly to rules of international law based, essentially, on the GATT, and conferred on interested parties the right to invoke provisions of the GATT in the context of a complaint lodged under that regulation (judgment in *Fediol* v *Commission*, EU:C:1989:254, paragraph 19), whereas, in the present case, Article 10(1) of Regulation No 1367/2006 neither makes direct reference to specific provisions of the Aarhus Convention nor confers a right on individuals. Consequently, in the absence of such an explicit reference to provisions of an international agreement, the judgment referred to cannot be deemed relevant in the present case.

59 As regards, in the second place, the judgment in *Nakajima* v *Council* (EU:C:1991:186), the acts of EU law at issue in that case were linked to the antidumping system, which is extremely dense in its design and application, in the sense that it provides for measures in respect of undertakings accused of dumping practices. More specifically, the basic regulation at issue in that case had been adopted in accordance with the existing international obligations of the Community, in particular those arising out of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, approved, on behalf of the Community, by Council Decision 80/271/EEC of 10 December 1979 concerning the conclusion of the Multilateral Agreements resulting from the 1973 to 1979 trade negotiations (OJ 1980 L 71, p. 1) (see judgment in *Nakajima* v *Council*, EU:C:1991:186, paragraph 30). However, in the present case, there is no question of implementation, by Article 10(1) of Regulation No 1367/2006, of specific obligations within the meaning of that judgment, in so far as, as is apparent from Article 9(3) of the Aarhus Convention, the Contracting Parties thereto have a broad margin of discretion when defining the rules for the implementation of the 'administrative or judicial procedures'.

60 In that regard, it cannot be considered that, by adopting the regulation referred to, which concerns only EU institutions and moreover concerns only one of the remedies available to individuals for ensuring compliance with EU environmental law, the European Union intended to implement the obligations, within the meaning of the case-law cited in paragraph 56 of this judgment, which derive from Article 9(3) of the Aarhus Convention with respect to national administrative or judicial procedures, which, as EU law now stands, fall primarily within the scope of Member State law (see, to that effect, judgment in *Lesoochranárske zoskupenie*, EU:C:2011:125, paragraphs 41 and 47).

61 It follows from all the foregoing that, in holding that Article 9(3) of the Aarhus Convention could be relied on in order to assess the legality of Article 10(1) of Regulation No 1367/2006, the General Court vitiated the judgment under appeal by an error of law.

62 Accordingly, the judgment under appeal must be set aside, and there is no need to examine the other grounds put forward by the Council, the Parliament and the Commission in support of their appeals.

The action before the General Court

63 Pursuant to Article 61 of the Statute of the Court of Justice of the European Union, if the appeal is well founded, the Court of Justice is to quash the decision of the General Court and may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.

64 The Court considers that the state of the proceedings permits final judgment and that it is appropriate to rule on the substance of the application for annulment of the decision at issue.

65 By the first plea of their action before the General Court, Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht submitted that the Commission had been wrong to consider their request for internal review of the decision of 7 April 2009 inadmissible on the ground that it was an

act of general scope.

66 That plea, on the same grounds as those adopted by the General Court, must be rejected as unfounded.

67 Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht also argued, by the second plea of their action, that Article 10(1) of Regulation No 1367/2006 is invalid, in that it confines the concept of 'acts' within the meaning of Article 9(3) of the Aarhus Convention to individual administrative acts.

68 It follows from paragraph 55 of this judgment that Article 9(3) of the Aarhus Convention lacks the clarity and precision required for that provision to be properly relied on before the EU judicature for the purposes of assessing the legality of Article 10(1) of Regulation No 1367/2006.

69 The second plea of the action must therefore also be rejected as unfounded.

70 Since neither of the pleas of the action lodged by Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht before the General Court is well founded, their action must be dismissed.

Costs

71 Under Article 138(1) and (2) of the Rules of Procedure of the Court, applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Where there are several unsuccessful parties, the Court is to decide how the costs are to be shared.

72 Since Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht have been unsuccessful and the Council, the Parliament and the Commission have applied for costs to be awarded against them, they must be ordered to pay jointly and severally the costs incurred both at first instance and in the present appeals by the Council, the Parliament and the Commission.

73 Under Article 140(1) of the Rules of Procedure, applicable to appeal proceedings by virtue of Article 184(1) thereof, the Member States which intervened in the proceedings are to bear their own costs. Consequently, it is appropriate to order the Czech Republic to bear its own costs.

On those grounds, the Court (Grand Chamber) hereby:

1. **Dismisses the cross-appeal;**

2. **Sets aside the judgment of the General Court of the European Union in *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht* v *Commission* (T-396/09, EU:T:2012:301);**

3. **Dismisses the application for annulment lodged by Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht before the General Court of the European Union;**

4. **Orders Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht to pay jointly and severally the costs incurred at first instance and in the appeals by the Council of the European Union, the European Parliament and the European Commission;**

5. Orders the Czech Republic to bear its own costs.

[Signatures]

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* Language of the case: Dutch.