



## Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

5 May 2015\*

(Action for annulment — Implementing enhanced cooperation — Creation of unitary patent protection — Regulation (EU) No 1257/2012 — First paragraph of Article 118 TFEU — Legal basis — Article 291 TFEU — Delegation of powers to bodies outside the European Union — Principles of autonomy and uniform application of EU law)

In Case C-146/13,

ACTION for annulment under Article 263 TFEU, brought on 22 March 2013,

**Kingdom of Spain**, represented by E. Chamizo Llatas and S. Centeno Huerta, acting as Agents,

applicant,

v

**European Parliament**, represented by M. Gómez-Leal, M. Dean and U. Rösslein, acting as Agents,

**Council of the European Union**, represented by T. Middleton, F. Florindo Gijón, M. Balta and L. Grønfeldt, acting as Agents,

defendants,

supported by:

**Kingdom of Belgium**, represented by C. Pochet, J.-C. Halleux and T. Materne, acting as Agents,

**Czech Republic**, represented by M. Smolek and J. Vlácil, acting as Agents,

**Kingdom of Denmark**, represented by C. Thorning and M. Wolff, acting as Agents,

**Federal Republic of Germany**, represented by T. Henze, M. Möller and J. Kemper, acting as Agents,

**French Republic**, represented by G. de Bergues, F.-X. Bréchet, D. Colas and N. Rouam, acting as Agents,

**Grand Duchy of Luxembourg**,

**Hungary**, represented by M. Fehér and K. Szíjjártó, acting as Agents,

**Kingdom of the Netherlands**, represented by M. Bulterman and J. Langer, acting as Agents,

\* Language of the case: Spanish.

**Kingdom of Sweden**, represented by A. Falk, C. Meyer-Seitz and U. Persson, acting as Agents,

**United Kingdom of Great Britain and Northern Ireland**, represented by M. Holt, acting as Agent, and by J. Stratford QC and T. Mitcheson, Barrister,

**European Commission**, represented by I. Martínez del Peral, T. van Rijn, B. Smulders and F. Bulst, acting as Agents,

interveners,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, R. Silva de Lapuerta, M. Ilešič (Rapporteur), A. Ó Caoimh, C. Vajda and S. Rodin, Presidents of Chambers, A. Borg Barthet, J. Malenovský, E. Levits, E. Jarašiūnas, C.G. Fernlund and J.L. da Cruz Vilaça, Judges,

Advocate General: Y. Bot,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 1 July 2014,

after hearing the Opinion of the Advocate General at the sitting on 18 November 2014,

gives the following

### **Judgment**

- 1 By its application, the Kingdom of Spain requests the annulment of Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection (OJ 2012 L 361, p. 1) ('the contested regulation').
- 2 That regulation was adopted by the European Parliament and the Council of the European Union following Council Decision 2011/167/EU of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection (OJ 2011 L 76, p. 53) ('the decision on enhanced cooperation').

### **Legal context**

#### *International law*

The Convention on the Grant of European Patents

- 3 Article 2 (headed 'European patent') of the Convention on the Grant of European Patents (the European Patent Convention: 'the EPC'), which was signed at Munich on 5 October 1973 and entered into force on 7 October 1977, in the version applicable to these proceedings, states:

'(1) Patents granted under this Convention shall be called European patents.'

(2) The European patent shall, in each of the Contracting States for which it is granted, have the effect of and be subject to the same conditions as a national patent granted by that State, unless this Convention provides otherwise.'

4 Article 142 of the EPC, headed 'Unitary patents', provides:

'(1) Any group of Contracting States which has provided by a special agreement that a European patent granted for those States has a unitary character throughout their territories may provide that a European patent may only be granted jointly in respect of all those States.

(2) Where any group of Contracting States has availed itself of the authorisation given in paragraph 1, the provisions of this Part shall apply.'

5 Article 143 of the EPC, headed 'Special departments of the European Patent Office' ('the EPO'), states:

'(1) The group of Contracting States may give additional tasks to [the EPO].

(2) Special departments common to the Contracting States in the group may be set up within [the EPO] in order to carry out the additional tasks. The President of [the EPO] shall direct such special departments; Article 10, paragraphs 2 and 3, shall apply *mutatis mutandis*.'

6 Article 145 of the EPC, headed 'Select committee of the Administrative Council', provides:

'(1) The group of Contracting States may set up a select committee of the Administrative Council for the purpose of supervising the activities of the special departments set up under Article 143, paragraph 2; [the EPO] shall place at its disposal such staff, premises and equipment as may be necessary for the performance of its duties. The President of [the EPO] shall be responsible for the activities of the special departments to the select committee of the Administrative Council.

(2) The composition, powers and functions of the select committee shall be determined by the group of Contracting States.'

7 Under Article 146 of the EPC:

'Where additional tasks have been given to [the EPO] under Article 143, the group of Contracting States shall bear the expenses incurred by the Organisation in carrying out these tasks. Where special departments have been set up in [the EPO] to carry out these additional tasks, the group shall bear the expenditure on staff, premises and equipment chargeable in respect of these departments. Article 39, paragraphs 3 and 4, Article 41 and Article 47 shall apply *mutatis mutandis*.'

8 Article 147 of the EPC, headed 'Payments in respect of renewal fees for unitary patents', states:

'If the group of Contracting States has fixed a common scale of renewal fees in respect of European patents, the proportion referred to in Article 39, paragraph 1, shall be calculated on the basis of the common scale; the minimum amount referred to in Article 39, paragraph 1, shall apply to the unitary patent. Article 39, paragraphs 3 and 4, shall apply *mutatis mutandis*.'

## The Agreement on a Unified Patent Court

- 9 Article 23 of the Agreement on a Unified Patent Court, signed at Brussels on 19 February 2013 (OJ 2013 C 175, p. 1) ('the UPC Agreement'), provides:

'Actions of the Court are directly attributable to each Contracting Member State individually, including for the purposes of Articles 258, 259 and 260 TFEU, and to all Contracting Member States collectively.'

- 10 Article 89(1) of the UPC Agreement states:

'This Agreement shall enter into force on 1 January 2014 or on the first day of the fourth month after the deposit of the thirteenth instrument of ratification or accession in accordance with Article 84, including the three Member States in which the highest number of European patents had effect in the year preceding the year in which the signature of the Agreement takes place or on the first day of the fourth month after the date of entry into force of the amendments to Regulation (EU) No 1215/2012 [of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2012 L 351, p. 1)] concerning its relationship with this Agreement, whichever is the latest.'

## *European Union ('EU') law*

- 11 Recitals 1, 4, 7, 9, 16, 20, 24 and 25 in the preamble to the contested regulation are worded as follows:

'(1) The creation of the legal conditions enabling undertakings to adapt their activities in manufacturing and distributing products across national borders and providing them with greater choice and more opportunities contributes to the attainment of the objectives of the Union set out in Article 3(3) [TEU]. Uniform patent protection within the internal market, or at least a significant part thereof, should feature amongst the legal instruments which undertakings have at their disposal.

...

(4) Unitary patent protection will foster scientific and technological advances and the functioning of the internal market by making access to the patent system easier, less costly and legally secure. It will also improve the level of patent protection by making it possible to obtain uniform patent protection in the participating Member States and eliminate costs and complexity for undertakings throughout the Union. It should be available to proprietors of a European patent from both the participating Member States and from other States, regardless of their nationality, residence or place of establishment.

...

(7) Unitary patent protection should be achieved by attributing unitary effect to European patents in the post-grant phase by virtue of this Regulation and in respect of all the participating Member States. The main feature of a European patent with unitary effect ["EPUE"] should be its unitary character, i.e. providing uniform protection and having equal effect in all the participating Member States. Consequently, [an EPUE] should only be limited, transferred or revoked, or lapse, in respect of all the participating Member States. It should be possible for [an EPUE] to be licensed in respect of the whole or part of the territories of the participating Member States. To ensure the uniform substantive scope of protection conferred by unitary patent protection, only European patents that have been granted for all the participating Member States with the same set of

claims should benefit from unitary effect. Finally, the unitary effect attributed to a European patent should have an accessory nature and should be deemed not to have arisen to the extent that the basic European patent has been revoked or limited.

...

- (9) The [EPUE] should confer on its proprietor the right to prevent any third party from committing acts against which the patent provides protection. This should be ensured through the establishment of a Unified Patent Court. In matters not covered by this Regulation or by Council Regulation (EU) No 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of unitary patent protection with regard to the applicable translation arrangements [(O) 2012 L 361, p. 89)], the provisions of the EPC, [the UPC Agreement], including its provisions defining the scope of that right and its limitations, and national law, including rules of private international law, should apply.

...

- (16) The group of Member States making use of the provisions of Part IX of the EPC may give tasks to the EPO and set up a select committee of the Administrative Council of the European Patent Organisation (hereinafter “Select Committee”).

...

- (20) The appropriate level and distribution of renewal fees should be determined in order to ensure that, in relation to the unitary patent protection, all costs of the tasks entrusted to the EPO are fully covered by the resources generated by [the EPUEs] and that, together with the fees to be paid to the European Patent Organisation during the pre-grant stage, the revenues from the renewal fees ensure a balanced budget of the European Patent Organisation.

...

- (24) Jurisdiction in respect of [EPUEs] should be established and governed by an instrument setting up a unified patent litigation system for European patents and [EPUEs].
- (25) Establishing a Unified Patent Court to hear cases concerning the [EPUE] is essential in order to ensure the proper functioning of that patent, consistency of case-law and hence legal certainty, and cost-effectiveness for patent proprietors. It is therefore of paramount importance that the participating Member States ratify [the UPC Agreement] in accordance with their national constitutional and parliamentary procedures and take the necessary steps for that Court to become operational as soon as possible.’

<sup>12</sup> Article 1 of the contested regulation provides:

‘1. This Regulation implements enhanced cooperation in the area of the creation of unitary patent protection, authorised by [the decision on enhanced cooperation].

2. This Regulation constitutes a special agreement within the meaning of Article 142 of [the EPC].’

13 Under Article 2(a) to (c) of the contested regulation:

‘For the purposes of this Regulation, the following definitions shall apply:

- (a) “Participating Member State” means a Member State which participates in enhanced cooperation in the area of the creation of unitary patent protection by virtue of [the decision on enhanced cooperation], or by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) [TFEU], at the time the request for unitary effect as referred to in Article 9 is made;
- (b) “European patent” means a patent granted by [the EPO] under the rules and procedures laid down in the EPC;
- (c) “[EPUE]” means a European patent which benefits from unitary effect in the participating Member States by virtue of this Regulation’.

14 Article 3 of that regulation states:

‘1. A European patent granted with the same set of claims in respect of all the participating Member States shall benefit from unitary effect in the participating Member States provided that its unitary effect has been registered in the Register for unitary patent protection.

A European patent granted with different sets of claims for different participating Member States shall not benefit from unitary effect.

2. [An EPUE] shall have a unitary character. It shall provide uniform protection and shall have equal effect in all the participating Member States.

It may only be limited, transferred or revoked, or lapse, in respect of all the participating Member States.

It may be licensed in respect of the whole or part of the territories of the participating Member States.

3. The unitary effect of a European patent shall be deemed not to have arisen to the extent that the European patent has been revoked or limited.’

15 Under Article 5(1) to (3) of the contested regulation:

‘1. The [EPUE] shall confer on its proprietor the right to prevent any third party from committing acts against which that patent provides protection throughout the territories of the participating Member States in which it has unitary effect, subject to applicable limitations.

2. The scope of that right and its limitations shall be uniform in all participating Member States in which the patent has unitary effect.

3. The acts against which the patent provides protection referred to in paragraph 1 and the applicable limitations shall be those defined by the law applied to [EPUEs] in the participating Member State whose national law is applicable to [the EPUE] as an object of property in accordance with Article 7.’



16 Article 7 of that regulation provides:

‘1. [An EPUE] as an object of property shall be treated in its entirety and in all the participating Member States as a national patent of the participating Member State in which that patent has unitary effect and in which, according to the European Patent Register:

- (a) the applicant had his residence or principal place of business on the date of filing of the application for the European patent; or
- (b) where point (a) does not apply, the applicant had a place of business on the date of filing of the application for the European patent.

2. Where two or more persons are entered in the European Patent Register as joint applicants, point (a) of paragraph 1 shall apply to the joint applicant indicated first. Where this is not possible, point (a) of paragraph 1 shall apply to the next joint applicant indicated in the order of entry. Where point (a) of paragraph 1 does not apply to any of the joint applicants, point (b) of paragraph 1 shall apply accordingly.

3. Where no applicant had his residence, principal place of business or place of business in a participating Member State in which that patent has unitary effect for the purposes of paragraphs 1 or 2, [the EPUE] as an object of property shall be treated in its entirety and in all the participating Member States as a national patent of the State where the European Patent Organisation has its headquarters in accordance with Article 6(1) of the EPC.

4. The acquisition of a right may not be dependent on any entry in a national patent register.’

17 Article 9 of the contested regulation, headed ‘Administrative tasks in the framework of the European Patent Organisation’, provides:

‘1. The participating Member States shall, within the meaning of Article 143 of the EPC, give the EPO the following tasks, to be carried out in accordance with the internal rules of the EPO:

- (a) to administer requests for unitary effect by proprietors of European patents;
- (b) to include the Register for unitary patent protection within the European Patent Register and to administer the Register for unitary patent protection;
- (c) to receive and register statements on licensing referred to in Article 8, their withdrawal and licensing commitments undertaken by the proprietor of [the EPUE] in international standardisation bodies;
- (d) to publish the translations referred to in Article 6 of Regulation (EU) No 1260/2012 during the transitional period referred to in that Article;
- (e) to collect and administer renewal fees for [EPUEs], in respect of the years following the year in which the mention of the grant is published in the European Patent Bulletin; to collect and administer additional fees for late payment of renewal fees where such late payment is made within six months of the due date, as well as to distribute part of the collected renewal fees to the participating Member States;
- (f) to administer the compensation scheme for the reimbursement of translation costs referred to in Article 5 of Regulation (EU) No 1260/2012;

- (g) to ensure that a request for unitary effect by a proprietor of a European patent is submitted in the language of the proceedings as defined in Article 14(3) of the EPC no later than one month after the mention of the grant is published in the European Patent Bulletin; and
- (h) to ensure that the unitary effect is indicated in the Register for unitary patent protection, where a request for unitary effect has been filed and, during the transitional period provided for in Article 6 of Regulation (EU) No 1260/2012, has been submitted together with the translations referred to in that Article, and that the EPO is informed of any limitations, licences, transfers or revocations of [EPUEs].

2. The participating Member States shall ensure compliance with this Regulation in fulfilling their international obligations undertaken in the EPC and shall cooperate to that end. In their capacity as Contracting States to the EPC, the participating Member States shall ensure the governance and supervision of the activities related to the tasks referred to in paragraph 1 of this Article and shall ensure the setting of the level of renewal fees in accordance with Article 12 of this Regulation and the setting of the share of distribution of the renewal fees in accordance with Article 13 of this Regulation.

To that end they shall set up a select committee of the Administrative Council of the European Patent Organisation (hereinafter “Select Committee”) within the meaning of Article 145 of the EPC.

The Select Committee shall consist of the representatives of the participating Member States and a representative of the Commission as an observer, as well as alternates who will represent them in their absence. The members of the Select Committee may be assisted by advisers or experts.

Decisions of the Select Committee shall be taken with due regard for the position of the Commission and in accordance with the rules laid down in Article 35(2) of the EPC.

3. The participating Member States shall ensure effective legal protection before a competent court of one or several participating Member States against the decisions of the EPO in carrying out the tasks referred to in paragraph 1.<sup>1</sup>

<sup>18</sup> Article 18 of the contested regulation states:

‘1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

2. It shall apply from 1 January 2014 or the date of entry into force of [the UPC Agreement], whichever is the later.

By way of derogation from Articles 3(1), 3(2) and 4(1), a European patent for which unitary effect is registered in the Register for unitary patent protection shall have unitary effect only in those participating Member States in which the Unified Patent Court has exclusive jurisdiction with regard to [EPUEs] at the date of registration.

3. Each participating Member State shall notify the Commission of its ratification of [the UPC Agreement] at the time of deposit of its ratification instrument. The Commission shall publish in the *Official Journal of the European Union* the date of entry into force of [the UPC Agreement] and a list of the Member States [which] have ratified [the UPC Agreement] at the date of entry into force. The Commission shall thereafter regularly update the list of the participating Member States which have ratified [the UPC Agreement] and shall publish such updated list in the *Official Journal of the European Union*.

4. The participating Member States shall ensure that the measures referred to in Article 9 are in place by the date of application of this Regulation.



5. Each participating Member State shall ensure that the measures referred to in Article 4(2) are in place by the date of application of this Regulation or, in the case of a participating Member State in which the Unified Patent Court does not have exclusive jurisdiction with regard to [EPUEs] on the date of application of this Regulation, by the date from which the Unified Patent Court has such exclusive jurisdiction in that participating Member State.

6. Unitary patent protection may be requested for any European patent granted on or after the date of application of this Regulation.'

### **Procedure before the Court and forms of order sought**

- 19 By application lodged at the Registry of the Court on 22 March 2013, the Kingdom of Spain brought the present action.
- 20 By decisions of the President of the Court of 12 September 2013, the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg, Hungary, the Kingdom of the Netherlands, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland and the European Commission were granted leave to intervene in support of the forms of order sought by the Parliament and the Council, in accordance with Article 131(2) of the Rules of Procedure of the Court.
- 21 The Kingdom of Spain claims that the Court should:
- declare the contested regulation legally non-existent or, alternatively, annul that regulation in its entirety;
  - in the alternative, annul:
    - the entirety of Article 9(1) and (2) of the contested regulation, as set out in the fifth plea of the present action, and
    - Article 18(2) of that regulation in its entirety, together with all references made in the contested regulation to a Unified Patent Court as the judicial system governing the EPUE and the source of law for it;
  - order the Parliament and the Council to pay the costs.
- 22 The Parliament and the Council, with the support of all the interveners, contend that the Court should:
- dismiss the action;
  - order the Kingdom of Spain to pay the costs.

### **The action**

- 23 In support of its action, the Kingdom of Spain relies on seven pleas in law: (i) infringement of the values of the rule of law; (ii) a lack of legal basis; (iii) a misuse of powers; (iv) infringement of Article 291(2) TFEU and, in the alternative, of the principles laid down in the judgment in *Meroni v High Authority* (9/56, EU:C:1958:7); (v) infringement of those principles owing to the delegation to the EPO of certain administrative tasks relating to the EPUE, and (vi) and (vii) infringement of the principles of autonomy and uniform application of EU law.

*First plea in law: infringement of the values of the rule of law*

Arguments of the parties

- 24 The Kingdom of Spain claims that the contested regulation must be annulled on the ground that it disregards the values of the rule of law set out in Article 2 TEU. It argues that the contested regulation provides for protection based on the European patent, although the administrative procedure preceding the grant of such a patent is not subject to judicial review to ensure the correct and uniform application of EU law and the protection of fundamental rights, which undermines the principle of effective judicial protection. The Kingdom of Spain adds that it is unacceptable that that regulation should ‘incorporate’ into the EU legal order measures emanating from an international body which is not subject to the aforementioned principles and that the EU legislature should incorporate within its legislation an international system in which compliance with the constitutional principles set out in the FEU Treaty is not guaranteed. The Kingdom of Spain argues, in that context, first, that the Boards of Appeal and the Enlarged Board of Appeal of the European Patent Office are bodies established within that office which are not independent of it, and, second, that the decisions of those boards of appeal are not subject to any form of judicial review, since the European Patent Organisation enjoys immunity from legal proceedings and enforcement.
- 25 The Parliament, after stating that the EPUE system is based on a rational choice made by the EU legislature, which is recognised to have broad discretion in such matters, contends that the level of protection of rights of individuals which is offered by the contested regulation and guaranteed by both the EPC and the Unified Patent Court is compatible with the principles of the rule of law. Administrative appeals may be brought before various bodies within the European Patent Office against administrative decisions of that office regarding the grant of an EPUE. The level of protection enjoyed by individuals under the EPC has been deemed acceptable by the Member States, which are all parties to that convention.
- 26 The Council asserts that the first plea in law lacks clarity, contending, primarily, that the transfer of powers to an international organisation is compatible with the protection of human rights, provided that fundamental rights enjoy equivalent protection within the organisation concerned, as is the situation in the present case. In the alternative, according to the Council, Article 9(3) of the contested regulation obliges the Member States to ensure effective legal protection.
- 27 The interveners agree, in essence, with the arguments put forward by the Parliament and the Council. However, the Kingdom of Belgium, the Federal Republic of Germany, the French Republic and the Kingdom of Sweden also state, as a preliminary point, that the first plea in law is ineffective.

Findings of the Court

- 28 It is common ground that, according to Article 1 thereof, the contested regulation constitutes a special agreement within the meaning of Article 142 (headed ‘Unitary patents’) of the EPC. It follows from the latter provision that States which are party to such an agreement may agree that a European patent granted for those States has a unitary character throughout their territories and may also provide that a European patent may only be granted jointly in respect of all those States.
- 29 To that end, the contested regulation creates the legal conditions enabling that unitary character to be conferred on European patents previously granted by the EPO on the basis of the EPC in the territory of the participating Member States. Recital 7 of the contested regulation specifies in that regard that unitary protection, which has a strictly accessory nature, should be achieved ‘by attributing unitary effect to European patents in the post-grant phase by virtue of [that regulation] and in respect of all the participating Member States’. As is expressly indicated by the definitions provided in Article 2(b)

and (c) of that regulation, an EPUE is a European patent — that is to say, a patent granted by the EPO under the rules and procedures laid down in the EPC — which benefits from unitary effect in the participating Member States.

- 30 It follows from the foregoing that the contested regulation is in no way intended to delimit, even partially, the conditions for granting European patents — which are exclusively governed by the EPC and not by EU law — and that it does not ‘incorporate’ the procedure for granting European patents laid down by the EPC into EU law.
- 31 Instead, it necessarily follows from the characterisation of the contested regulation as ‘a special agreement within the meaning of Article 142 of the EPC’ — a characterisation which is not contested by the Kingdom of Spain — that that regulation merely (i) establishes the conditions under which a European patent previously granted by the EPO pursuant to the provisions of the EPC may, at the request of the patent proprietor, benefit from unitary effect and (ii) provides a definition of that unitary effect.
- 32 It follows, as the Advocate General stated in point 61 of his Opinion, that the first plea in law, which is intended to contest the legality, in the light of EU law, of the administrative procedure preceding the grant of a European patent, is ineffective and must therefore be rejected.

*Second plea in law: lack of a legal basis for the contested regulation*

Arguments of the parties

- 33 The Kingdom of Spain submits that the first paragraph of Article 118 TFEU was not an adequate legal basis for adopting the contested regulation and that the regulation must be deemed legally non-existent. It is devoid of substantial content and its adoption has not been accompanied by measures providing uniform protection of intellectual property rights throughout the Union; nor does it bring about an approximation of the laws of the Member States for that purpose.
- 34 The Kingdom of Spain asserts that the contested regulation is presented as a special agreement within the meaning of Article 142 of the EPC which (according to its title) implements enhanced cooperation in the area of the creation of unitary patent protection. However, the subject-matter and aim of that regulation do not correspond to the legal basis on which it is founded.
- 35 The Kingdom of Spain claims that the contested regulation does not specify the acts against which the EPUE provides protection and that it wrongly makes reference to the applicable national law, since the EPUE was created by the European Union and — according to the Kingdom of Spain — the Member States cannot exercise their competence except to the extent that the Union has not exercised its competence. Moreover, regarding the effects of the EPUE, the contested regulation refers to the UPC Agreement, which is an international public law agreement concluded by the Member States participating in enhanced cooperation (with the exception of the Republic of Poland) and the Italian Republic. That reference is contrary to the principle of the autonomy of the legal order of the European Union. In the circumstances of the present case, that regulation has been rendered devoid of content, since the ‘approximation of laws’ has been transferred to the UPC Agreement.
- 36 The Parliament and the Council maintain that Article 118 TFEU is an adequate legal basis for adopting the contested regulation. That provision does not require complete harmonisation of national laws so long as intellectual property rights are created which afford uniform protection in the participating Member States.

- 37 In view of its aim and content, those institutions contend that the contested regulation satisfies that requirement, as it establishes the EPUE, which affords uniform protection in the territories of the participating Member States, and it defines the nature, scope and effects of unitary patents.
- 38 The interveners who have submitted observations in respect of the second plea in law support the position taken by the Parliament and the Council.

#### Findings of the Court

- 39 According to settled case-law, the choice of the legal basis for a European Union measure must rest on objective factors amenable to judicial review, which include in particular the aim and content of the measure (judgments in *Commission v Council*, C-377/12, EU:C:2014:1903, paragraph 34 and the case-law cited, and *United Kingdom v Council*, C-81/13, EU:C:2014:2449, paragraph 35).
- 40 It should be borne in mind that the first paragraph of Article 118 TFEU enables the EU legislature to establish measures for the creation of European intellectual property rights to provide uniform protection of intellectual property rights throughout the Union. That provision, inserted into the FEU Treaty by the Treaty of Lisbon, specifically refers to the establishment and functioning of the internal market, which falls within an area where the European Union has shared competence under Article 4 TFEU (see, to that effect, judgment in *Spain and Italy v Council*, C-274/11 and C-295/11, EU:C:2013:240, paragraphs 16 to 26).
- 41 The Court has also held, with regard to the expression ‘throughout the Union’ used in that provision, that, since the power conferred by that article is exercised within the ambit of enhanced cooperation, the European intellectual property right so created and the uniform protection given by it must be in force, not in the Union in its entirety, but only in the territory of the participating Member States (see, to that effect, judgment in *Spain and Italy v Council*, C-274/11 and C-295/11, EU:C:2013:240, paragraphs 67 and 68).
- 42 Consequently, it is necessary to determine, in the light of the aim and content of the contested regulation, whether that regulation establishes measures providing uniform protection of intellectual property rights in the territory of the participating Member States and, accordingly, whether — as is argued by the Parliament, the Council and the interveners — it was validly based on the first paragraph of Article 118 TFEU, which is cited as the legal basis in the preamble to that regulation.
- 43 Regarding the aim of the contested regulation, it should be noted that, pursuant to Article 1(1) thereof, the objective of that regulation is ‘the creation of unitary patent protection’ which, according to recital 1 of that regulation, should feature amongst the legal instruments which undertakings have at their disposal so as to enable those undertakings to adapt their activities in manufacturing and distributing products across national borders. Recital 4 of that regulation confirms that objective by emphasising the need to improve the level of patent protection by making it possible for undertakings to obtain uniform protection in the participating Member States and the need to eliminate costs and complexity for undertakings throughout the Union.
- 44 So far as the content of the contested regulation is concerned, it is clear that the provisions of that regulation give expression, through their definition of the characteristics of the EPUE, to the EU legislature’s desire to provide uniform protection in the territory of the participating Member States.
- 45 Article 3(1) of the contested regulation provides that a European patent granted with the same set of claims in respect of all the participating Member States is to benefit from unitary effect in those States provided that its unitary effect has been registered in the Register for unitary patent protection.

In addition, Article 3(2) of that regulation provides that an EPUE is to have a unitary character, provide uniform protection and have equal effect in all the participating Member States, and that it may only be limited, transferred or revoked, or lapse, in respect of all the participating Member States.

- 46 In that regard, the designation of the national law of a single Member State, which is applicable in the territory of all the participating Member States, and the substantive provisions of which define the acts against which an EPUE provides protection and the characteristics of that EPUE as an object of property, helps to ensure the uniformity of the protection conferred by that patent.
- 47 Indeed, unlike the European patents granted in accordance with the rules laid down by the EPC which provide, in each of the States which are party to that convention, protection the extent of which is defined by the national law of each State, the uniformity of the protection conferred by the EPUE stems from the application of Article 5(3) and Article 7 of the contested regulation, which guarantee that the designated national law will be applied in the territory of all the participating Member States in which that patent has unitary effect.
- 48 Regarding the Kingdom of Spain's assertion that the contested regulation is 'devoid of substantial content', it should be stated, as the Advocate General did in point 89 of his Opinion, that in referring to establishing 'measures for the creation of European intellectual property rights to provide uniform protection of intellectual property rights throughout the Union', Article 118 TFEU, which forms part of Chapter 3 ('Approximation of laws') of Title VII of the FEU Treaty, does not necessarily require the EU legislature to harmonise completely and exhaustively all aspects of intellectual property law.
- 49 Notwithstanding the fact that the contested regulation contains no list of the acts against which an EPUE provides protection, that protection remains uniform in so far as, regardless of the precise extent of the substantive protection conferred by an EPUE by virtue of the national law which is applicable, under Article 7 of the contested regulation, that protection will apply, for that EPUE, in the territory of all the participating Member States in which that patent has unitary effect.
- 50 Moreover, in recital 9 of the contested regulation, the EU legislature stated that in matters not covered by that regulation or by Regulation No 1260/2012 the scope and limitations of the right conferred on the proprietor of a European patent with unitary effect to prevent any third party from committing acts against which that patent provides protection in the territory of all the participating Member States in which it has unitary effect should apply.
- 51 It follows from the foregoing that the unitary patent protection established by the contested regulation is apt to prevent divergences in terms of patent protection in the participating Member States and, accordingly, provides uniform protection within the meaning of the first paragraph of Article 118 TFEU.
- 52 It follows that that provision is an adequate legal basis for the adoption of the contested regulation.
- 53 The second plea in law must therefore be rejected.

### *Third plea in law: misuse of powers*

#### Arguments of the parties

- 54 The Kingdom of Spain submits that the Parliament and the Council have misused their powers, owing to the fact that the contested regulation, which is an 'empty shell', does not establish any judicial system capable of ensuring uniform protection of intellectual property rights throughout the European Union. Contrary to the Parliament's assertions, that issue was not settled by the Court in its judgment in *Spain and Italy v Council* (C-274/11 and C-295/11, EU:C:2013:240).



55 The Parliament and the Council, with the support of all the interveners, contend that the third plea in law should be rejected. The Parliament states that the Court, in its judgment in *Spain and Italy v Council* (C-274/11 and C-295/11, EU:C:2013:240), rejected the arguments put forward by the Kingdom of Spain and the Italian Republic alleging a misuse of powers. The Council adds that the contested regulation and the creation of the EPUE support the attainment of the objectives pursued by the European Union, since a proprietor of a European patent who wishes to obtain protection in the 25 Member States participating in enhanced cooperation would be required, in the absence of the unitary effect generated by the EPUE, to validate that patent in each of those Member States, with that patent then having to be confirmed and, in the event of a dispute, defended separately in each of those Member States.

#### Findings of the Court

- 56 According to settled case-law, a measure is vitiated by misuse of powers only if it appears, on the basis of objective, relevant and consistent evidence, to have been taken solely, or at the very least chiefly, for ends other than those for which the power in question was conferred or with the aim of evading a procedure specifically prescribed by the FEU Treaty for dealing with the circumstances of the case (judgments in *Fedesa and Others*, C-331/88, EU:C:1990:391, paragraph 24, and *Spain and Italy v Council*, C-274/11 and C-295/11, EU:C:2013:240, paragraph 33 and the case-law cited).
- 57 However, in the present case the Kingdom of Spain does not show that the contested regulation was adopted either with the sole or chief aim of achieving ends other than those for which the power in question was conferred as listed in Article 1(1) of that regulation or with the aim of evading a procedure specifically prescribed by the FEU Treaty for dealing with the circumstances of the case.
- 58 Indeed, in its plea alleging a misuse of powers, the Kingdom of Spain does no more than repeat its assertion that the contested regulation does not establish any judicial system capable of providing uniform protection of intellectual property rights throughout the European Union. That argument has, however, already been rejected in the context of the second plea in law.
- 59 It follows that the third plea in law is also unfounded and must be rejected.

*Fourth and fifth pleas in law: infringement of Article 291(2) TFEU and of the principles laid down in the judgment in Meroni v High Authority (9/56, EU:C:1958:7)*

#### Arguments of the parties

- 60 By the fourth plea in law, the Kingdom of Spain contests the assignment, in Article 9(2) of the contested regulation, to the participating Member States acting in a select committee of the Administrative Council of the European Patent Organisation of the power to set the level of renewal fees and to determine the share of distribution of those fees. The Kingdom of Spain claims that the assignment of such implementing powers to the participating Member States constitutes an infringement of Article 291 TFEU and of the principles laid down in the judgment in *Meroni v High Authority* (9/56, EU:C:1958:7).
- 61 The Kingdom of Spain primarily argues that Article 291 TFEU does not allow the legislature to delegate that power to the participating Member States. The first paragraph of that article is not applicable and the second paragraph of that article states that, where uniform conditions for implementing legally binding Union acts are needed, those acts are to confer implementing powers on either the Commission or the Council. That condition for applying Article 291(2) TFEU is, according to the Kingdom of Spain, clearly met in the present case in view of the wording of Article 9(2) of the contested regulation.



- 62 In the alternative, if the Court should find that Article 291(2) TFEU has not been infringed, the Kingdom of Spain claims that the delegation of the power in question does not meet the conditions laid down in the judgment in *Meroni v High Authority* (9/56, EU:C:1958:7), as confirmed by the judgments in *Romano* (98/80, EU:C:1981:104), *Tralli v ECB* (C-301/02 P, EU:C:2005:306) and *United Kingdom v Parliament and Council* (C-270/12, EU:C:2014:18).
- 63 By the fifth plea in law, the Kingdom of Spain claims that Article 9(1) of the contested regulation, which delegates certain administrative tasks to the EPO, disregards the principles laid down in the judgment in *Meroni v High Authority* (9/56, EU:C:1958:7). Contrary to what is maintained by several of the interveners, the powers concerned are those of the European Union and not those of the Member States. Although the EPO's expertise in the area concerned may, according to the Kingdom of Spain, be objective justification for such delegation, it is not possible for powers involving a broad discretion to be delegated in that way. The administration of the compensation scheme for the reimbursement of translation costs referred to in Article 5 of Regulation No 1260/2012, provided for in Article 9(1)(f) of the contested regulation, however, does involve a broad discretion. In addition, the EPO enjoys the privilege of immunity from legal proceedings and enforcement and, as a result, its acts are not subject to judicial review.
- 64 In response to the fourth plea in law, the Parliament contends that the assignment of certain powers to agencies has always been an exception to the Treaty rules on the implementation of EU law which is legally acceptable in certain circumstances. It also questions the relevance of the judgment in *Meroni v High Authority* (9/56, EU:C:1958:7) in situations where powers are assigned to an international body, such as the Select Committee of the Administrative Council of the European Patent Organisation.
- 65 The Council considers that, under Article 291(1) TFEU, where the EU institutions adopt legally binding acts, the adoption of appropriate implementing measures is the responsibility of the Member States. Under Article 291(2) TFEU, implementing measures are to be adopted by the Commission or, where appropriate, the Council, only where uniform conditions are needed for the implementation of those acts. In that regard, the Kingdom of Spain does not provide any justification for its assertion that the setting of renewal fees and the determination of the share of distribution of those fees must be implemented uniformly at EU level. It follows that the judgment in *Meroni v High Authority* (9/56, EU:C:1958:7) is irrelevant in the present case.
- 66 In any event, the Parliament and the Council maintain that the conditions laid down in the judgment in *Meroni v High Authority* (9/56, EU:C:1958:7) are satisfied.
- 67 In response to the fifth plea in law, the Parliament and the Council maintain that, for the reasons given in their response to the fourth plea in law, the case-law stemming from the judgment in *Meroni v High Authority* (9/56, EU:C:1958:7) is not applicable. Those institutions add that, unlike the other tasks referred to in Article 9(1) of the contested regulation, the task referred to in Article 9(1)(f) thereof is subject to criteria established indirectly by a reference to Article 5 of Regulation No 1260/2012. Contrary to what is claimed by the Kingdom of Spain, the EPO does not have complete *carte blanche* concerning the performance of that task. In particular, the assessment which must be carried out by the EPO is administrative or technical, rather than a matter of policy. The Parliament also observes that a representative of the Commission is to sit on the Select Committee of the Administrative Council of the European Patent Organisation as an observer. Concerning the alleged lack of judicial review, the Parliament and the Council refer to the arguments which they have already put forward in that regard.
- 68 The interveners support the arguments put forward by the Parliament and the Council.

## Findings of the Court

- 69 The first argument relied on in support of the fourth plea in law alleges infringement of Article 291(2) TFEU. The second argument relied on in support of that plea and in support of the fifth plea in law alleges infringement of the principles laid down in the judgment in *Meroni v High Authority* (9/56, EU:C:1958:7).
- 70 First, concerning the argument alleging infringement of Article 291(2) TFEU, it is common ground — as has been observed in paragraph 28 above — that the contested regulation constitutes a special agreement within the meaning of Article 142 of the EPC, with the result that the provisions of Part IX thereof, which relates to special agreements and includes Articles 142 to 149 of that convention, are applicable to that regulation.
- 71 According to Articles 143 and 145 of the EPC, a group of Contracting States making use of the provisions of Part IX of that convention may give tasks to the EPO and set up a select committee of the Administrative Council of the European Patent Organisation, as is mentioned in recital 16 of the contested regulation. In addition, Article 146 of the EPC states that where additional tasks have been given to the EPO under Article 143 of that convention, the group of Contracting States is to bear the expenses incurred by the European Patent Organisation in carrying out those tasks.
- 72 It is for the purpose of implementing the provisions mentioned above that Article 9(1) of the contested regulation states that the participating Member States are to give the EPO the series of tasks listed in that provision and that Article 9(2) of that regulation states that, in their capacity as Contracting States to the EPC, the participating Member States are to ensure the governance and supervision of the activities related to those tasks and are to ensure the setting of the level of renewal fees and the determination of the share of distribution of those fees in accordance with the provisions of that regulation. Recital 20 of the contested regulation states in that regard that the appropriate level and share of distribution of renewal fees should be determined in order to ensure that, in relation to unitary patent protection, all costs of the tasks entrusted to the EPO are fully covered by the resources generated by the EPUEs.
- 73 It follows from the foregoing that the amount of the renewal fees referred to in Article 9(2) of the contested regulation must necessarily cover the expenses generated by the EPO in carrying out the additional tasks given to it by the participating Member States pursuant to Article 143 of the EPC.
- 74 Those tasks are intrinsically linked to the implementation of the unitary patent protection introduced by the contested regulation.
- 75 It must therefore be held, contrary to what is maintained by some of the interveners, that the setting of the level of renewal fees and the share of distribution of those fees, referred to in Article 9(2) of the contested regulation, constitutes the implementation of a legally binding Union act for the purposes of Article 291(1) TFEU.
- 76 According to the latter provision, it is for the Member States to adopt all measures of national law necessary to implement legally binding Union acts.
- 77 Under Article 291(2) TFEU, it is only where uniform conditions for implementing legally binding Union acts are needed that those acts are to confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 TEU and 26 TEU, on the Council.
- 78 However, in its fourth plea in law the Kingdom of Spain does not explain why those uniform conditions are needed for the purposes of implementing Article 9(2) of the contested regulation.

- 79 The Kingdom of Spain does no more than submit that it follows from the provisions of that regulation and from the setting of a single fee for the EPUE rather than a fee for each Member State that such conditions are needed.
- 80 Such an argument cannot succeed.
- 81 Although Article 9(1)(e) of the contested regulation provides that the participating Member States are to give the EPO the task of ‘collect[ing] and administer[ing] renewal fees for [EPUEs]’, there is nothing in that regulation stating that the amount of those renewal fees should be uniform for all the participating Member States.
- 82 Moreover, it necessarily follows from the characterisation of the contested regulation as a special agreement within the meaning of Article 142 of the EPC, and from the fact — not contested by the Kingdom of Spain — that the setting of the level of renewal fees and the share of distribution of those fees is the responsibility of a select committee of the Administrative Council of the European Patent Organisation, that it inevitably falls to the participating Member States, and not to the Commission or the Council, to adopt all the measures necessary for the purposes of implementing Article 9(2) of the contested regulation, given that the European Union — unlike its Member States — is not a party to the EPC.
- 83 It follows that the Kingdom of Spain is wrong to claim that there has been an infringement of Article 291(2) TFEU.
- 84 Secondly, it is necessary to examine the argument alleging infringement of the principles laid down in the judgment in *Meroni v High Authority* (9/56, EU:C:1958:7) which is relied on in support of the fourth and fifth pleas in law. In that case-law, the Court held, inter alia, that the delegation by an EU institution to a private entity of a discretionary power implying a wide margin of discretion and capable, according to the use which is made of it, of making possible the execution of actual economic policy, is not compatible with the requirements of the FEU Treaty (see, to that effect, judgments in *Meroni v High Authority*, 9/56, EU:C:1958:7, pp. 151, 152 and 154, and *United Kingdom v Parliament and Council*, C-270/12, EU:C:2014:18, paragraphs 41 and 42).
- 85 In that regard, it should be borne in mind that the European Union — unlike its Member States — is not a party to the EPC. Accordingly, the EU legislature was entitled to state in Article 9(2) of the contested regulation that it is in their capacity as Contracting States to the EPC that the participating Member States are to ensure the setting of the level of renewal fees and the share of distribution of those fees.
- 86 As regards Article 9(1) of the contested regulation, it can be seen from the wording of that provision that it is the participating Member States, within the meaning of Article 143 of the EPC, who give the EPO the tasks listed in that provision.
- 87 Given that — contrary to the Kingdom of Spain’s assertions — the EU legislature did not delegate any implementing powers which are exclusively its own under EU law to the participating Member States or the EPO, the principles laid down by the Court in the judgment in *Meroni v High Authority* (9/56, EU:C:1958:7) cannot apply.
- 88 It follows that the fourth and fifth pleas in law must be rejected.

*Sixth and seventh pleas in law: infringement of the principles of autonomy and uniformity of EU law*

Arguments of the parties

- <sup>89</sup> By its sixth plea in law, the Kingdom of Spain submits that preservation of the autonomy of the EU legal order requires that the essential character of the powers of the European Union and of its institutions should not be altered by any international treaty. However, it claims that that cannot be said to be the case here.
- <sup>90</sup> By the first part of the sixth plea in law, the Kingdom of Spain asserts that there is no substantial difference between the UPC Agreement and the draft agreement creating a court with jurisdiction to hear actions related to European and Community patents, which the Court held to be incompatible with the provisions of the EU and FEU Treaties (Opinion 1/09, EU:C:2011:123). First, the Unified Patent Court does not form part of the institutional and judicial system of the European Union. Secondly, the UPC Agreement does not lay down any guarantees for the preservation of EU law. The direct attribution of actions of the Unified Patent Court to the Contracting Member States individually and collectively — including for the purposes of Articles 258, 259 and 260 TFEU — provided for in Article 23 of the UPC Agreement, even assuming that it is compatible with the Treaties, is insufficient in that regard.
- <sup>91</sup> By the second part of that plea, the Kingdom of Spain submits that, in acceding to the UPC Agreement, the participating Member States are exercising a competence which is now a competence of the European Union, in breach of the principles of sincere cooperation and autonomy of EU law. Since the entry into force of the Treaty of Lisbon, the European Union has the exclusive competence to conclude international agreements in so far as their conclusion may affect common rules or alter their scope. The UPC Agreement both affects and alters the scope of Regulation No 1215/2012 and the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed at Lugano on 30 October 2007 (OJ 2007 L 339, p. 3).
- <sup>92</sup> Last, by the third part of the sixth plea in law, the Kingdom of Spain submits that it follows from the first subparagraph of Article 18(2) of the contested regulation that the application of that regulation is absolutely dependent on the entry into force of the UPC Agreement. Article 89 of the UPC Agreement makes the entry into force of that agreement conditional upon the deposit of the thirteenth instrument of ratification or accession, including by the three Member States in which the highest number of European patents had effect in the year preceding the year in which the UPC Agreement was signed. It follows that the effectiveness of the competence exercised by the European Union through the contested regulation depends on the will of the Member States which are party to the UPC Agreement.
- <sup>93</sup> By its seventh plea in law, the Kingdom of Spain submits that the second subparagraph of Article 18(2) of the contested regulation gives the Member States the capacity to decide unilaterally whether that regulation is to apply to them. Thus, if a Member State were to decide not to ratify the UPC Agreement, the contested regulation would not be applicable to that Member State and the Unified Patent Court would not acquire exclusive jurisdiction over its territory to decide on EPUE cases, with the result that EPUEs would not have unitary effect as regards that Member State. Accordingly, that provision infringes the principles of autonomy and the uniform application of EU law.
- <sup>94</sup> The Parliament observes, as a preliminary point, that the relationship between the contested regulation and the UPC Agreement is an essential prerequisite of the functioning of the EPUE and does not constitute a breach of EU law. The UPC Agreement fulfils the two essential conditions required to preserve the autonomy of the EU legal order given that, first, the essential character of the powers of



the European Union and its institutions is not altered and, second, that agreement does not impose any particular interpretation of the EU legal provisions contained therein on the European Union or on its institutions in the exercise of their internal powers.

- 95 Neither does the creation of the Unified Patent Court undermine any competence of the European Union. First of all, the power to create a unified patent court and to determine the scope of its powers continues to fall to the Member States and has not been entrusted exclusively to the European Union. Next, the contested regulation expressly requires Member States to grant the Unified Patent Court exclusive jurisdiction. That regulation, the legal basis of which is the first paragraph of Article 118 TFEU, explicitly allows the Member States to adopt provisions in respect of patents which provide for derogations from Regulation No 1215/2012. Furthermore, the EU legislature makes the entry into force of the UPC Agreement conditional upon the necessary changes being made by that legislator to Regulation No 1215/2012 as regards the relationship between that regulation and that agreement. Last, several provisions of the FEU Treaty make the entry into force of an act of secondary EU legislation conditional upon its approval by the Member States.
- 96 The Parliament also contends that a Member State's refusal to ratify the UPC Agreement, which would mean that the contested regulation would not apply in its territory, would constitute a failure to fulfil its obligations under Article 4(3) TEU. According to that institution, even assuming that there is a risk to the uniform application of the contested regulation, such a risk is justified in view of the need to provide effective legal protection and to comply with the principle of legal certainty.
- 97 The Council contends that the policy choice made by the EU legislature was to link the EPUE to the functioning of a distinct judicial body (the Unified Patent Court), thereby both ensuring consistency of case-law and providing legal certainty. There is no legal obstacle to the creation of a link between the EPUE and the Unified Patent Court, a link which is explained in recitals 24 and 25 of the contested regulation. Moreover, there are several examples in legislative practice of cases where the applicability of a Union act has been conditional upon the occurrence of an event outside the scope of that act. Concerning the matter of the number of ratifications necessary for the UPC Agreement to enter into force, the reason for setting that number at 13 was the desire of the Member States to ensure that the EPUE and the Unified Patent Court be established quickly.
- 98 In addition, the Council states that Article 18(2) of the contested regulation provides for derogation only from Article 3(1) and (2) and Article 4(1) of that regulation, so that the unitary effect of an EPUE is limited to Member States which have ratified the UPC Agreement, while the other provisions of the regulation apply to all the participating Member States. In view of the importance of the relationship between the contested regulation and the UPC Agreement, it was considered that Article 18(2) provided an additional guarantee of the optimal operation of that relationship.
- 99 The interveners who have submitted observations in respect of the sixth and seventh pleas in law support the position taken by the Parliament and the Council.

#### Findings of the Court

- 100 As a preliminary point, it should be stated that the first two parts of the sixth plea in law are intended to establish, first, that the provisions of the UPC Agreement are not compatible with EU law and, second, that ratification by the participating Member States of the UPC Agreement is impossible unless they disregard their obligations under EU law.
- 101 However, it should be borne in mind that, in an action brought under Article 263 TFEU, the Court does not have jurisdiction to rule on the lawfulness of an international agreement concluded by Member States.

- 102 Nor do the Courts of the European Union have jurisdiction in such an action to rule on the lawfulness of a measure adopted by a national authority (see, to that effect, judgment in *Liivimaa Lihaveis*, C-562/12, EU:C:2014:2229, paragraph 48 and the case-law cited).
- 103 It follows that the first two parts of the sixth plea in law must be rejected as being inadmissible.
- 104 Regarding the third part of that plea, it should be noted that the first subparagraph of Article 18(2) of the contested regulation provides that that regulation is to apply ‘from 1 January 2014 or the date of entry into force of [the UPC Agreement], whichever is the later’.
- 105 According to the Court’s case-law, the direct application of a regulation, provided for in the second paragraph of Article 288 TFEU, means that its entry into force and its application in favour of or against those subject to it are independent of any measure of reception into national law, unless the regulation in question leaves it to the Member States themselves to adopt the necessary legislative, regulatory, administrative and financial measures to ensure the application of the provisions of that regulation (see judgments in *Bussone*, 31/78, EU:C:1978:217, paragraph 32, and *ANAFE*, C-606/10, EU:C:2012:348, paragraph 72 and the case-law cited).
- 106 That is the situation in the present case, as the EU legislature has left it to the Member States, for the purposes of ensuring the application of the provisions of the contested regulation, to adopt several measures within the legal framework established by the EPC and to establish the Unified Patent Court, which — as is stated in recitals 24 and 25 of that regulation — is essential in order to ensure the proper functioning of the EPUE, consistency of case-law and hence legal certainty, and cost-effectiveness for patent proprietors.
- 107 As regards the argument raised by the Kingdom of Spain in the seventh plea in law that the second subparagraph of Article 18(2) of the contested regulation gives the Member States the capacity to decide unilaterally whether that regulation is to apply to them, it is based on a false premiss, given that the provision in question allows for derogation only from Article 3(1) and (2) and Article 4(1) of the contested regulation, to the exclusion of all other provisions of that regulation. A partial and temporary derogation of that kind is moreover justified on the grounds set out in paragraph 106 above.
- 108 It follows from the foregoing that the sixth and seventh pleas in law must be rejected.
- 109 In the light of all the foregoing, the action, including the Kingdom of Spain’s claim in the alternative for the partial annulment of the contested regulation, must be dismissed in its entirety.

## **Costs**

- 110 Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party’s pleadings. As the Parliament and the Council have applied for costs and the Kingdom of Spain has been unsuccessful, the latter must be ordered to bear its own costs and to pay the costs incurred by those institutions.
- 111 Under Article 140(1) of those Rules, the Member States and institutions which have intervened in the proceedings are to bear their own costs.

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

### **1. Dismisses the action;**



2. **Orders the Kingdom of Spain to bear its own costs and to pay the costs incurred by the European Parliament and the Council of the European Union;**
3. **Orders the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg, Hungary, the Kingdom of the Netherlands, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland and the European Commission to bear their own costs.**

[Signatures]