Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 17 January 2013 [1]

Case C-583/11 P

Inuit Tapiriit Kanatami and Others
v
European Parliament
and

Council of the European Union

(Appeal — Regulation (EC) No 1007/2009 — Trade in seal products — Ban on placing on the market in the European Union — Exceptions for Inuit communities — Standing of natural and legal persons to institute proceedings under the fourth paragraph of Article 263 TFEU — Notion of 'regulatory act' and distinction between it and 'legislative act' — No direct or individual concern)

I – Introduction

1. The legal remedies available to individuals against European Union acts of general application have long been one of the most contentious issues in EU law. Starting with *Plaumann*,[2] the Court has adopted, in settled case-law, first on Article 173 of the EEC Treaty and subsequently on Article 230 EC, a relatively strict understanding of the direct standing of natural and legal persons to institute proceedings. Despite much criticism, the Court adhered to this case-law until very recently, confirming it in particular in *Unión de Pequeños Agricultores*[3] and *Jégo-Quéré*.[4]

2. Not least as a reaction to this case-law, the Treaty of Lisbon introduced a reform of the standing of individuals to institute proceedings, which entered into force on 1 December 2009. Since then, the fourth paragraph of Article 263 TFEU has also permitted natural and legal persons to bring an action for annulment 'against a regulatory act which is of direct concern to them and does not entail implementing measures'.

3. It is admittedly still fiercely debated how far that reform extended the standing of individuals to institute proceedings. In the present appeal proceedings, the Court is asked to rule on precisely this contentious issue and to take a position in particular on the interpretation of the notion of 'regulatory act'.[5] Above all, it must be clarified whether European Union legislative acts can also be categorised as regulatory acts.

1 — Original language: German.

2 — Case 25/62 *Plaumann* v *Commission* [1963] ECR 95.

3 — Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677.

4 — Case C-263/02 P *Commission* v *Jégo-Quéré* [2004] ECR I-3425.

5 — The Court will shortly have to consider *implementing measures*, which are also referred to in the fourth paragraph of Article 263 TFEU, in Case C-274/12 P *Telefónica* v *Commission*.

4. The cause of the present dispute is Regulation (EC) No 1007/2009 on trade in seal products, which was jointly adopted by the European Parliament and the Council of the European Union on 16 September 2009.[6] That regulation introduced a ban on the placing on the market of seal products in the European internal market, against which Inuit Tapiriit Kanatami, as the body representing the interests of the Canadian Inuit,[7] and a number of other parties – mainly producers of or traders in seal products – are seeking legal protection in the European Union Courts.

5. The claim made by Inuit Tapiriit Kanatami and its co-appellants was unsuccessful at first instance. The General Court of the European Union dismissed their action for annulment as inadmissible by order of 6 September 2011[8] (also 'the order under appeal'). As grounds, the General Court stated in particular that Regulation No 1007/2009 is a legislative act which cannot be regarded as a regulatory act within the meaning of the fourth paragraph of Article 263 TFEU. Inuit Tapiriit Kanatami and its co-appellants (also 'the appellants') – except for one of them[9] – have now brought the present appeal against that order.

II – The rules of EU law on the placing on the market of seal products

6. The rules of EU law on the placing on the market of seal products in the European internal market are contained partly in a basic regulation adopted by the Parliament and the Council in 2009 (Regulation No 1007/2009) and partly in a Commission implementing regulation adopted in 2010 (Regulation No 737/2010). The present case concerns only the standing of Inuit Tapiriit Kanatami and its co-appellants to institute proceedings against the basic regulation; the implementing regulation is the subject of separate proceedings brought by those parties, which are still pending in the General Court.[10]

A – *The basic regulation (Regulation No 1007/2009)*

7. The subject-matter of Regulation No 1007/2009 is defined, in Article 1, as follows:

'This Regulation establishes harmonised rules concerning the placing on the market of seal products.'

8. Under Article 3 of Regulation No 1007/2009, the following 'conditions for placing on the market' of seal products apply:

'1. The placing on the market of seal products shall be allowed only where the seal products result from hunts traditionally conducted by Inuit and other indigenous communities and contribute to their subsistence. These conditions shall apply at the time or point of import for imported products.

2. By way of derogation from paragraph 1:

(a) the import of seal products shall also be allowed where it is of an occasional nature and consists exclusively of goods for the personal use of travellers or their families. The nature and quantity of such goods shall not be such as to indicate that they are being imported for commercial reasons;

6 — Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products (OJ 2009 L 286, p. 36).

7 — The Inuit are an indigenous ethnic group who live primarily in the arctic and subarctic regions of central and north-eastern Canada, in Alaska, in Greenland and in parts of Russia. The term Eskimo(s) which is sometimes used colloquially describes other arctic ethnic groups in addition to the Inuit.

8 — Order in Case T-18/10 *Inuit Tapiriit Kanatami and Others* v *Parliament and Council* [2011] ECR II-5599.

9 — Mr Efstathios Andreas Agathos was among the applicants at first instance, but did not join the present appeal.

10 — Case T-526/10 *Inuit Tapiriit Kanatami and Others* v *Commission*, pending before the General Court.

(b) the placing on the market of seal products shall also be allowed where the seal products result from by-products of hunting that is regulated by national law and conducted for the sole purpose of the sustainable management of marine resources. Such placing on the market shall be allowed only on a non-profit basis. The nature and quantity of the seal products shall not be such as to indicate that they are being placed on the market for commercial reasons.

The application of this paragraph shall not undermine the achievement of the objective of this Regulation.

3. The Commission shall, in accordance with the management procedure ..., issue technical guidance notes setting out an indicative list of the codes of the Combined Nomenclature which may cover seal products subject to this Article.

4. Without prejudice to paragraph 3, measures for the implementation of this Article, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny …'

9. Furthermore, Article 2(4) of Regulation No 1007/2009 contains the following definition of 'Inuit':

'"Inuit" means indigenous members of the Inuit homeland, namely those arctic and subarctic areas where, presently or traditionally, Inuit have aboriginal rights and interests, recognised by Inuit as being members of their people and includes Inupiat, Yupik (Alaska), Inuit, Inuvialuit (Canada), Kalaallit (Greenland) and Yupik (Russia).'

B – *The implementing regulation (Regulation No 737/2010)*

10. On the basis of Article 3(4) of Regulation No 1007/2009, on 10 August 2010 the Commission adopted detailed implementing rules for the trade in seal products in the form of Regulation (EU) No 737/2010[11] (also 'the implementing regulation').

11. Article 1 of Regulation No 737/2010 provides:

'This Regulation lays down detailed rules for the placing on the market of seal products pursuant to Article 3 of Regulation (EC) No 1007/2009.'

12. Article 3 of Regulation No 737/2010 lays down the conditions which must be satisfied in order to place on the market seal products resulting from hunts by Inuit or other indigenous communities.

13. Article 4 of Regulation No 737/2010 defines the requirements under which seal products for the personal use of travellers or their families may be imported.

14. Lastly, Article 5 of Regulation No 737/2010 governs the circumstances under which seal products resulting from marine resources management may be placed on the market.

11 — Commission Regulation (EU) No 737/2010 of 10 August 2010 laying down detailed rules for the implementation of Regulation (EC) No 1007/2009 of the European Parliament and of the Council on trade in seal products (OJ 2010 L 216, p. 1).

III – Procedure before the Court

15. By written pleading of 21 November 2011, Inuit Tapiriit Kanatami and its co-appellants brought the present appeal. They claim that the Court should:

— set aside the order under appeal of the General Court and declare the application for annulment admissible, should the Court of Justice consider that all elements required to decide on the admissibility of the action for annulment of the contested regulation are present;

— in the alternative, set aside the order under appeal and refer the case back to the General Court;

— order the European Parliament and the Council of the European Union to pay the appellants' costs; and

— order the European Commission and the Kingdom of the Netherlands to bear their own costs.

16. The Parliament contends that the Court should:

— dismiss the appeal; and

— order the appellants to pay the costs.

17. The Council claims that the Court should:

— dismiss the appeal; and

— order the appellants jointly and severally to pay the costs.

18. The Commission, which had supported the Parliament and the Council as an intervener at first instance, also claims that the Court should dismiss the appeal and order the appellants to pay the costs.

19. On the other hand, the Kingdom of the Netherlands, which likewise intervened in the proceedings at first instance in support of the Parliament and the Council, did not participate in the proceedings before the Court of Justice.

20. The appeal was examined before the Court of Justice on the basis of the written documents and, on 20 November 2012, at a hearing.

IV – Assessment

21. The interpretation and application of the standing of natural and legal persons to institute proceedings under the fourth paragraph of Article 263 TFEU is of fundamental importance to the realisation of effective judicial protection. However, it also has significant effects on the division of powers and responsibilities between the European Union Courts and national courts. Its importance generally for the overall system of legal protection established in the European Treaties should not be underestimated.

22. All the parties in the present appeal proceedings agree that the fourth paragraph of Article 263 TFEU extended the standing of natural and legal persons to institute proceedings. However, they fiercely dispute the extent to which this was done. Consequently, the views of the parties as to the correct understanding of the fourth paragraph of Article 263 TFEU vary widely.

23. Whilst the three Union institutions participating in the proceedings – the Parliament, the Council and the Commission – defend the order under appeal by the General Court unanimously, and broadly with the same arguments, the appellants take the diametrically opposite view; they consider that the General Court interpreted the fourth paragraph of Article 263 TFEU too restrictively and thus disregarded the requirements of effective judicial protection.

24. Specifically, the appellants invoke a total of three grounds of appeal against the order of the General Court, the first of which relates to the fourth paragraph of Article 263 TFEU as such (see below, section A), whilst the second concerns the fundamental right to an effective remedy (see below, section B) and the third deals with the question whether the General Court correctly understood the appellants' arguments at first instance (see below, section C).

A – *First ground of appeal*

25. The first ground of appeal forms the main focus of the present case. The parties are in dispute as to the correct interpretation and application of the fourth paragraph of Article 263 TFEU, which, in the version now applicable, is based on the Treaty of Lisbon and reads as follows:

'Any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.'

1. The expression 'regulatory act' (first part of the first ground of appeal)

26. With the first part of its first ground of appeal, which is directed at paragraphs 38 to 56 of the order under appeal, the appellants allege that the General Court incorrectly interpreted and applied the expression 'regulatory act' in the third variant of the fourth paragraph of Article 263 TFEU.

27. The bone of contention for Inuit Tapiriit Kanatami and its co-appellants is the fact that in its order the General Court does not regard *legislative acts* within the meaning of Article 289(3) TFEU,[12] including the contested Regulation No 1007/2009, as *regulatory acts*. The legal opinion criticised by the appellants is summed up in paragraph 56 of the order under appeal, in which the General Court states:

'that the meaning of "regulatory act" for the purposes of the fourth paragraph of Article 263 TFEU must be understood as covering all acts of general application apart from legislative acts. Consequently, a legislative act may form the subject-matter of an action for annulment brought by a natural or legal person only if it is of direct and individual concern to them'.

The appellants consider this to be an excessively restrictive approach to the legal remedies available to individuals. In their view, the distinction between legislative acts and non-legislative acts seems excessively formalistic. On the other hand, the Union institutions participating in the proceedings, i.e. the Parliament, the Council and the Commission, consider the conclusion reached by the General Court to be correct and vigorously defend it.

12 — Article 289(3) TFEU defines legislative acts as 'legal acts adopted by legislative procedure'.

28. The interpretation of the new third variant of the fourth paragraph of Article 263 TFEU is also a very controversial subject in legal literature. It seems that the numbers of supporters and opponents of categorising legislative acts as regulatory acts are broadly equal. [13]

29. As I will explain below, the General Court's interpretation of the expression 'regulatory act' is correct (see immediately below, section a), and the counter-arguments put forward by the appellants are not convincing (see below, section b).

(a) The General Court's interpretation of the expression 'regulatory act'

30. The expression 'regulatory act' is not defined anywhere in the Treaties. Certainly, such acts must always be European Union acts of general application, as the General Court rightly states. [14] This does not necessarily mean, however, that *all* European Union acts of general application are also regulatory acts.

31. In particular, it would be rash to assume that all regulations are also regulatory acts, irrespective of whether or not they are legislative acts. It cannot be denied that in some language versions of the Treaties there is a certain degree of similarity between the term 'regulation' within the meaning of the second paragraph of Article 288 TFEU and the expression 'regulatory act' as used in the fourth paragraph of Article 263 TFEU. [15] However, to equate the expressions 'regulation' and 'regulatory act' on the selective basis of a few language versions of the FEU Treaty would disregard the fact that the European Treaties are now equally authentic in 23 different languages (Article 55(1) TEU and Article 358 TFEU). In many EU official languages there is certainly no etymological link between the terms 'regulation' and 'regulatory act'. [16]

32. It must therefore be assumed that the expression 'regulatory act' is a *sui generis* term of EU law, in whose interpretation regard must be had to the objective of the Treaty provision in question, the context in which it is used, [17] and its drafting history. Drafting history in particular has not played a role thus far in the interpretation of primary law, because the '*travaux préparatoires*' for the founding Treaties were largely not available. However, the practice of using conventions to prepare Treaty amendments, like the practice of publishing the mandates of intergovernmental conferences, has led

13 — For the current state of opinion, see, inter alia, Dougan, M., 'The Treaty of Lisbon 2007: Winning minds, not hearts', *Common Market Law Review* 45 (2008), pp. 617-703 (677 et seq.); Lenaerts, K., 'Le traité de Lisbonne et la protection juridictionnelle des particuliers en droit de l'Union', *Cahiers de droit européen* 2009, pp. 711-745 (725 et seq.); Görlitz, N./Kubicki, P., 'Rechtsakte "mit schwierigem Charakter"', *Europäische Zeitschrift für Wirtschaftsrecht* 2011, pp. 248-254 (250 et seq.); Herrmann, C., 'Individualrechtsschutz gegen Rechtsakte der EU "mit Verordnungscharakter" nach dem Vertrag von Lissabon', *Neue Zeitschrift für Verwaltungsrecht* 2011, pp. 1352-1357 (1354 et seq.); Mazák, J., 'Locus standi v konaní o neplatnosť: Od Plaumannovho testu k regulačným aktom', *Právník* 150 (2011), pp. 219-231 (223); Schwarze, J., 'Rechtsschutz Privater gegen Rechtsakte mit Verordnungscharakter gemäß Art. 263 Abs. 4 Var. 3 AEUV', in: Müller-Graff, P.-C./Schmahl, S./Skouris, V. (ed.), *Europäisches Recht zwischen Bewährung und Wandel – Festschrift für Dieter H. Scheuing*, Baden-Baden 2011, pp. 190-207 (199 et seq.); Everling, U., 'Klagerecht Privater gegen Rechtsakte der EU mit allgemeiner Geltung', *Europäische Zeitschrift für Wirtschaftsrecht* 2012, pp. 376-380 (378 et seq.); Wathelet, M./Wildemeersch, J., 'Recours en annulation: une première interprétation restrictive du droit d'action élargi des particuliers?', *Journal de droit européen* 2012, pp. 75-79 (79).

14 — Paragraph 56 of the order under appeal; see also paragraphs 42, 43 and 45 of that order.

15 — This is true in particular of the German ('Verordnung' and 'Rechtsakt mit Verordnungscharakter'), English ('regulation' and 'regulatory act'), French ('règlement' and 'acte réglementaire'), Greek ('κανονισμός' and 'κανονιστική πράξη'), Irish ('rialachán' and 'gníomh rialúcháin'), Italian ('regolamento' and 'atto regolamentare'), Latvian ('regula' and 'reglamentējošs akts'), Lithuanian ('reglamentas' and 'reglamentuojančio pobūdžio teisės aktas'), Maltese ('regolament' and 'att regolatorju'), Portuguese ('regulamento' and 'ato regulamentar' or, in its old form, 'acto regulamentar'), Spanish ('reglamento' and 'acto reglamentario') and Hungarian ('rendelet' and 'rendeleti jellegű jogi aktus') language versions of the fourth paragraph of Article 263 TFEU.

16 — That is the case, for example, with the expressions used for 'regulation' and 'regulatory act' respectively in the Bulgarian ('регламент' and 'подзаконов акт'), Danish ('forordning' and 'regelfastsættende retsakt'), Estonian ('määrus' and 'üldkohaldatav akt'), Finnish ('asetus' and 'säantelytoimi'), Dutch ('verordening' and 'regelgevingshandeling'), Polish ('rozporządzenie' and 'akt regulacyjny'), Romanian ('regulament' and 'act normativ'), Slovak ('nariadenie' and 'regulačný akt'), Slovene ('uredba' and 'predpis'), Swedish ('förordning' and 'regleringsakt') and Czech ('nařízení' and 'akt s obecnou působností') language versions of the fourth paragraph of Article 263 TFEU.

17 — Settled case-law; see, inter alia, Case 283/81 *CILFIT and Others* [1982] ECR 3415, paragraphs 18 to 20.

to a fundamental change in this area. The greater transparency in the preparations for Treaty amendments opens up new possibilities for interpreting the Treaties which should be utilised as supplementary means of interpretation if, as in the present case, the meaning of a provision is still unclear having regard to its wording, the regulatory context and the objectives pursued. [18]

33. The purpose of the revision of the former fourth paragraph of Article 230 EC by the present fourth paragraph of Article 263 TFEU was undoubtedly to strengthen individual legal protection by extending the legal remedies available to natural and legal persons against European Union acts of general application. [19] Seen in isolation, this objective supports a broad interpretation of the expression 'regulatory act'. [20]

34. It should be borne in mind, however, that the authors of the Treaty of Lisbon achieved the aim of strengthening individual legal protection not only by extending the direct legal remedies available to natural and legal persons under the third variant of the fourth paragraph of Article 263 TFEU, but also, with the second subparagraph of Article 19(1) TEU, intended to strengthen individual legal protection in the fields covered by Union law before national courts.

35. It can be inferred from the co-existence of the fourth paragraph of Article 263 TFEU and the second subparagraph of Article 19(1) TEU that the legal remedies available to individuals against European Union acts of general application do not necessarily always have to consist in a direct remedy before the European Union Courts.

36. Furthermore, a combined reading of the various paragraphs of Article 263 TFEU shows that there are differences specifically in the conditions for admissibility of the action for annulment depending on whether the action concerns a *legislative act* or a *regulatory act*. Whilst the first paragraph mentions 'legislative acts', the relevant fourth paragraph refers to a 'regulatory act'. These differences in terminology cannot be regarded as accidental. Rather, they are indicative of the fact that direct legal remedies with varying scopes have always been available to the different categories of applicants under Article 263 TFEU.

37. Whilst privileged applicants under the second paragraph of Article 263 TFEU and partially privileged applicants under the third paragraph of Article 263 TFEU may bring proceedings against all the types of European Union acts mentioned in paragraph 1, including legislative acts, the direct standing of natural and legal persons to institute proceedings under the fourth paragraph of Article 263 TFEU has always been limited to certain types of European Union acts. The third variant of the fourth paragraph of Article 263 TFEU provides them with easier access to a legal remedy only against regulatory acts, but not against legislative acts. As the General Court rightly states, legislative acts may still be directly challenged by individuals only exceptionally within the framework of the second variant of the fourth paragraph of Article 263 TFEU, namely in so far as they are of direct and individual concern to the particular applicant. [21]

38. The absence of easier direct legal remedies available to individuals against legislative acts can be explained principally by the particularly high democratic legitimation of parliamentary legislation. Accordingly, the distinction between legislative and non-legislative acts in respect of legal protection cannot be dismissed as merely formalistic; rather, it is attributable to a qualitative difference. In many national legal systems individuals have no direct legal remedies, or only limited remedies, against parliamentary laws.

18 — In its judgment of 27 November 2012 in Case C-370/12 *Pringle*, paragraph 135, the Court of Justice takes the same approach in referring to the preparatory work relating to the Treaty of Maastricht.

19 — See also Case T-262/10 *Microban International and Others* v *Commission* [2011] ECR II-7697, paragraph 32.

20 — The extent to which the EU fundamental right to an effective legal remedy specifically *necessitates* a broad interpretation of the expression 'regulatory act' is the subject of the second part of the second ground of appeal and will be discussed in greater detail in that connection (see below, points 105 to 124 of this Opinion).

21 — Second sentence of paragraph 56 of the order under appeal.

39. The fact that individuals are still not intended to benefit from easier access to legal remedies against legislative acts in the system of the European Treaties is confirmed if consideration is also given to the drafting history of the fourth paragraph of Article 263 TFEU. That provision was originally to be incorporated into the Treaty establishing a Constitution for Europe [22] ('the Constitutional Treaty') as Article III-365(4) and relies on the work on the European Convention.

40. In accordance with its Articles I-33 to I-37, the Constitutional Treaty was based on a clear distinction between and hierarchy of legislative acts and non-legislative acts, where the 'European regulation', as a 'non-legislative act of general application', fell solely into the latter category (first sentence of the fourth subparagraph of Article I-33(1) of the Constitutional Treaty). Consequently, where Article III-365(4) of the Constitutional Treaty mentioned a possibility for natural and legal persons to institute proceedings against a 'regulatory act', this clearly applied only to *non*-legislative acts. This is also confirmed by the preparatory documents of the European Convention on Article III-270(4) of the Draft Treaty establishing a Constitution for Europe, [23] the provision which subsequently reappeared in the Constitutional Treaty as Article III-365(4); according to those documents, the wording 'acts of general application' was debated in the Convention, but ultimately rejected and replaced by the more restrictive expression 'regulatory act', which was intended to express the distinction between legislative and non-legislative acts. [24]

41. The fact that the content of Article III-365(4) of the Constitutional Treaty was adopted in identical wording in the Treaty of Lisbon in nearly all the language versions [25] suggests that in the current fourth paragraph of Article 263 TFEU legislative acts are not meant to be covered by the reference to regulatory acts. This is expressed especially clearly in the numerous language versions of the FEU Treaty in which terms are used to designate 'regulatory act' which are less evocative of rule-making by the legislature than of rule-making by the executive. [26]

42. Of course, the Treaty of Lisbon does not establish a systematisation and hierarchisation of European Union acts like the Constitutional Treaty. In the system established by the EU Treaty and the FEU Treaty, legislative acts can also take the form of regulations within the meaning of the second paragraph of Article 288 TFEU. The distinction between legislative and non-legislative acts now has mainly procedural significance, for example in Articles 290(1) TFEU and 297 TFEU.

43. In view of the differences between the Constitutional Treaty and the Treaties now in force, it would be conceivable in theory to give the expression 'regulatory act' in the fourth paragraph of Article 263 TFEU a different meaning, as the appellants propose, and to understand it more broadly than was intended by the European Convention and the authors of the Constitutional Treaty, with the result that even legislative acts could be regulatory acts.

22 — Signed at Rome on 29 October 2004 (OJ 2004 C 310, p. 1).

23 — Adopted by the European Convention on 13 June 2003 and 10 July 2003, and submitted to the President of the European Council in Rome on 18 July 2003.

24 — Secretariat of the European Convention, Final report of the discussion circle on the Court of Justice of 25 March 2003 (Document CONV 636/03, paragraph 22) and Cover note from the Praesidium of 12 May 2003 (Document CONV 734/03, p. 20).

25 — There seem to be differences in only five language versions, which use a wording in the fourth paragraph of Article 263 TFEU for the expression 'regulatory act' ('üldkohaldatav akt' in the Estonian, 'reglamentuojančio pobūdžio teisės aktas' in the Lithuanian, 'regulačný akt' in the Slovak, 'predpis' in the Slovene and 'akt s obecnou působností' in the Czech language versions) which is different to Article III-365(4) of the Constitutional Treaty ('õiguse üldakt' in the Estonian, 'teisės aktas' in the Lithuanian, 'podzákonný právny akt' in the Slovak, 'izvršilni akt' in the Slovene and 'podzákonný právní akt' in the Czech language versions).

26 — This applies in particular to the Bulgarian ('подзаконов акт'), German ('Rechtsakt mit Verordnungscharakter'), English ('regulatory act'), French ('acte réglementaire'), Greek ('κανονιστική πράξη'), Irish ('gníomh rialúcháin'), Italian ('atto regolamentare'), Portuguese ('ato regulamentar' or, in its old form, 'acto regulamentar'), Slovak ('regulačný akt'), Spanish ('acto reglamentario') and Hungarian ('rendeleti jellegű jogi aktus') language versions of the fourth paragraph of Article 263 TFEU, and, it would appear, also to the Latvian ('reglamentējošs akts') and Lithuanian ('reglamentuojančio pobūdžio teisės aktas') language versions. On the other hand, the Danish ('regelfastsættende retsakt'), Estonian ('üldkohaldatav akt'), Finnish ('sääntelytoimi'), Maltese ('att regolatorju'), Dutch ('regelgevingshandeling'), Polish ('akt regulacyjny'), Romanian ('act normativ'), Swedish ('regleringsakt'), Slovene ('predpis') and Czech ('akt s obecnou působností') language versions seem to be less clear.

44. However, such a broad interpretation of the expression 'regulatory act' is difficult to reconcile with the mandate of the 2007 Intergovernmental Conference which negotiated the Treaty of Lisbon. The task of that Intergovernmental Conference was to abandon the constitutional concept underlying the Constitutional Treaty,[27] but otherwise not to call into question what had been achieved with the signing of the Constitutional Treaty.[28] The 'end product' of the Intergovernmental Conference was therefore to be as similar as possible in substance to the failed Constitutional Treaty and to stop short of it only in a few particularly symbolic aspects.[29]

45. It should be stressed for the purposes of the present case that under the mandate for the 2007 Intergovernmental Conference 'the *distinction* between what is legislative and what is not and *its consequences*' were to be maintained.[30]

46. Against this background, it is highly unlikely, and there is absolutely no concrete evidence in this regard, that the Intergovernmental Conference wished to go further than the Constitutional Treaty specifically with the fourth paragraph of Article 263 TFEU. Moreover, it could be expected that any extension of the legal remedies available to individuals compared with Article III-365(4) of the Constitutional Treaty would have been made clear by the authors of the Treaty of Lisbon in the wording of all the language versions of the fourth paragraph of Article 263 TFEU,[31] for example by using the expression 'acts of general application' discussed in the European Convention, but ultimately rejected by it.[32] This applies all the more since the latter wording is perfectly common elsewhere in the FEU Treaty (see Article 277 TFEU, first sentence of the second paragraph of Article 288 TFEU and Article 290(1) TFEU).

47. All in all, the General Court therefore interpreted the expression 'regulatory act' perfectly correctly as covering all European Union acts of general application other than legislative acts.

(b) The counter-arguments put forward by the appellants

48. Contrary to the view taken by the appellants, the interpretation and application of the third variant of the fourth paragraph of Article 263 TFEU by the General Court in the present case certainly does not mean that the standing of natural and legal persons to institute proceedings against regulatory acts is redundant and the *raison d'être* of the new possibility introduced by the Treaty of Lisbon is thus negated. Rather, the appellants' arguments themselves have serious deficiencies based, first, on an incorrect reading of the order under appeal and, second, on a fundamental misunderstanding of the acts and procedures provided for in the Treaties.

27 — See the mandate for the 2007 Intergovernmental Conference, based on the stipulations of the European Council of 21 and 22 June 2007 and reproduced in full in Council Document No 11218/07 of 26 June 2007. Paragraph 1 of that mandate states: 'The constitutional concept … is abandoned.'

28 — See again the mandate for the 2007 Intergovernmental Conference, which states that the innovations resulting from the 2004 Intergovernmental Conference (on the Constitutional Treaty) will be integrated into the existing Treaties (paragraphs 1 and 4 of the mandate); the introduction before paragraph 1 of the mandate also states that the mandate provides 'the exclusive basis and framework for the work of the IGC'.

29 — Paragraph 3 of the mandate for the 2007 Intergovernmental Conference.

30 — Paragraph 19(v) of the mandate for the 2007 Intergovernmental Conference (emphasis added).

31 — It is not possible to infer from the few language versions in which Article III-365(4) of the Constitutional Treaty and the fourth paragraph of Article 263 TFEU are different (see above, footnote 25) any trend towards an extension of the standing of natural and legal persons to institute proceedings, since some of those language versions use broader terms than the Constitutional Treaty for the expression 'regulatory act' in the fourth paragraph of Article 263 TFEU and some use narrower terms.

32 — See again the documents from the European Convention cited above in footnote 24.

– Not all regulations, directives and decisions are legislative acts

49. First of all, the appellants claim that, on the basis of the interpretation of the fourth paragraph of Article 263 TFEU favoured by the General Court, only recommendations and opinions within the meaning of the fifth paragraph of Article 288 TFEU – which cannot be challenged in any case – may be categorised as regulatory acts, because the regulations, directives and decisions adopted by the Parliament and the Council are all legislative acts.

50. That argument is unfounded. It is evident that European Union acts other than recommendations and opinions can also be regarded as regulatory acts, in particular many regulations within the meaning of the second paragraph of Article 288 TFEU and many decisions within the meaning of the fourth paragraph of Article 288 TFEU. In practice, this even represents the vast majority of cases, as the Council and the Commission have rightly observed.

51. Regulations and decisions are, alongside directives, among the types of act which may be adopted in a legislative procedure (Article 289(1) and (2) TFEU). However, the appellants ignore the fact that far from all EU regulations, directives and decisions are adopted in such a legislative procedure. Non-legislative acts can also take the form of a regulation, a directive or a decision (Article 297(2) TFEU).

52. Regulations in particular are adopted by the Council or the Commission in many cases either as implementing regulations for legislative acts or as regulations in a *sui generis* procedure.[33] As far as decisions are concerned, they are indeed as a general rule adopted in procedures other than legislative procedures, mainly by the Council or the Commission, and, consequently, can possibly also be regarded as regulatory acts, especially where they do not specify the persons to whom they are addressed (second sentence of the fourth paragraph of Article 288 TFEU *e contrario*).

– Not all non-legislative acts are delegated acts

53. Secondly, the appellants argue that the drafters of the Treaty of Lisbon would not have mentioned ‘regulatory acts’, but ‘delegated acts’ within the meaning of Article 290 TFEU if they had the intention of distinguishing between legislative and non-legislative acts in the fourth paragraph of Article 263 TFEU. The use of the term ‘regulatory act’ indicates that it is aimed at something different than a non-legislative act.

54. That argument is also not convincing. The appellants fail to appreciate that not all non-legislative acts necessarily have to be delegated acts within the meaning of Article 290 TFEU. Non-legislative acts can also take the form of implementing acts within the meaning of Article 291 TFEU or be adopted in a *sui generis* procedure.[34]

– Implementing acts can also be regulatory acts

55. Thirdly, the appellants claim that the category of implementing acts within the meaning of Article 291 TFEU is not covered by the distinction between legislative and non-legislative acts operated by the General Court.

33 — Such a *sui generis* procedure is laid down, for example, in Articles 31 TFEU, 43(3) TFEU, 45(3)(d) TFEU, 66 TFEU, 103 TFEU, 109 TFEU and 215(1) and (2) TFEU.

34 — See again the examples mentioned in footnote 33.

56. That claim is also erroneous. As has just been stated,[35] implementing acts within the meaning of Article 291 TFEU can, without any problem, be categorised as non-legislative acts. If such implementing acts have general application, which will be the case as a rule for implementing regulations and often for implementing decisions, they must be regarded as regulatory acts.

– The effects of the fourth paragraph of Article 263 TFEU on cases such as *Unión de Pequeños Agricultores* and *Jégo-Quéré*

57. Lastly, the appellants claim that an interpretation and application of standing to institute proceedings like that applied by the General Court is not capable of filling the 'gap in legal protection' identified in *Unión de Pequeños Agricultores*[36] and *Jégo-Quéré*.[37]

58. That claim is also mistaken.

59. In *Jégo-Quéré* the action for annulment was directed at a Commission implementing regulation for fisheries. Today, within the temporal scope of the fourth paragraph of Article 263 TFEU, such an act would have to be regarded as a regulatory act which does not entail implementing measures.

60. *Unión de Pequeños Agricultores*, on the other hand, concerned a common organisation of the market in the field of agricultural policy. Today, such a regulation would have to be adopted in the ordinary legislative procedure (Article 43(2) TFEU) and would therefore constitute a legislative act (Article 289(3) TFEU). Consequently, natural and legal persons would not have any direct standing to institute proceedings against it in the European Union Courts even under the fourth paragraph of Article 263 TFEU, unless the regulation was of direct and, above all, individual concern to them (second variant of the fourth paragraph of Article 263 TFEU). Of course, this does not mean that individuals cannot obtain effective legal protection against rules in common organisations of the market. Rather, they are free to make an indirect challenge against a common organisation of the market, depending on the situation, either in the course of actions for annulment brought against Commission implementing measures in the European Union Courts or in appeals to national courts against implementing measures taken by national authorities.[38]

61. I would point out in passing that also in the present case Inuit Tapiriit Kanatami and its co-appellants are not deprived of legal protection by the General Court's interpretation of the expression 'regulatory act' in the third variant of the fourth paragraph of Article 263 TFEU. Rather, they have the possibility of making an indirect challenge to contest the alleged unlawfulness of Regulation No 1007/2009 in any legal actions brought against implementing measures for that regulation. Most of them have done precisely that before the General Court of the European Union in a still pending action brought against Commission Implementing Regulation No 737/2010.[39]

62. All in all, the first part of the first ground of appeal is therefore unfounded.

35 — See above, point 54 of this Opinion.

36 — Judgment cited in footnote 3.

37 — Judgment cited in footnote 4.

38 — See the detailed observations below in points 116 to 123 of this Opinion.

39 — Case T-526/10 *Inuit Tapiriit Kanatami and Others* v *Commission*.

2. The question of direct and individual concern to the appellants (second part of the first ground of appeal)

63. Since, according to my proposed solution, the first part of the first ground of appeal has no prospect of success, it is now necessary to consider the second part of that ground of appeal, which is raised in the alternative. By that plea, the appellants complain that the General Court incorrectly interpreted and applied the condition for admissibility of 'direct and individual concern'.

64. The criterion of direct and individual concern (second variant of the fourth paragraph of Article 263 TFEU) is intended to provide natural and legal persons with effective legal protection against European Union acts not addressed to them, without at the same time extending the scope of the action for annulment into a kind of popular action (*actio popularis*).

65. The General Court considered that criterion in paragraphs 68 to 93 of the order under appeal, after it had concluded that Inuit Tapiriit Kanatami and its co-appellants could not challenge Regulation No 1007/2009, a legislative act within the meaning of Article 289(3) TFEU, under the less onerous conditions applicable to regulatory acts (third variant of the fourth paragraph of Article 263 TFEU).

(a) Direct concern to the appellants

66. First, the appellants challenge the view taken by the General Court that the contested regulation is of direct concern to only four of them, namely Ta Ma Su Seal Products, NuTan Furs, GC Rieber Skinn and the Canadian Seal Marketing Group;[40] according to the factual findings of the General Court, they are three undertakings and an association of undertakings which are active in the marketing of seal products, including in the European internal market.

67. The appellants object that the General Court thus gave an excessively restrictive interpretation of the criterion of direct concern. In their view, the contested regulation must be considered to be of direct concern to those of them acting upstream of the marketing of seal products on the European internal market, in particular hunters and trappers, as well as organisations representing their interests, but also to the appellant Karliin Aariak, who is active in the design and sale of sealskin garments.

– Preliminary observations

68. It should be stated by way of introduction that the criterion of direct concern contained in the fourth paragraph of Article 263 TFEU cannot be subject to a more restrictive interpretation than the identically worded criterion in the precursor provisions in the fourth paragraph of Article 173 of the E(E)C Treaty and the fourth paragraph of Article 230 EC.[41] This has been rightly pointed out by the appellants. The institutions participating in the proceedings have not questioned this either.

69. The notion of direct concern is the same in the second and in the third variants of the fourth paragraph of Article 263 TFEU. Accordingly, the following statements apply even if, contrary to my proposal, the Court should regard the contested regulation as a regulatory act.[42]

40 — See paragraphs 85 and 86 and also paragraph 79 of the order under appeal.

41 — See *Microban International and Others* v *Commission*, cited in footnote 19, paragraph 32.

42 — See, with regard to the first part of the first ground of appeal, points 30 to 47 of this Opinion above.

70. In defining the legal conditions governing direct concern within the meaning of the fourth paragraph of Article 263 TFEU, the General Court employed the formula often used in the recent case-law of the European Union Courts. [43] In accordance with that case-law, the condition that a Union act must be of direct concern to a natural or legal person means that that act must affect directly the legal situation of the individual and leave no discretion to its addressees, who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from Union rules without the application of other intermediate rules. [44]

71. I have some doubts whether this formula is actually capable of giving a definitive description of the criterion of direct concern within the meaning of the fourth paragraph of Article 263 TFEU. First of all, in case-law, actions for annulment brought by individuals against European Union acts have – perfectly correctly – been admitted repeatedly where the effects of those acts on the respective applicants are not legal, but merely factual, for example because they are directly affected in their capacity as market participants in competition with other market participants. [45] Secondly, there are previous cases where direct concern to a person was recognised even in the existence of a certain margin of discretion for the authorities responsible for implementing a European Union act, provided it could be predicted with sufficient probability that that discretion would be exercised in a certain way. [46]

72. However, these nuances in the formulation of the criterion of direct concern are irrelevant in the present case. Even if it is assumed that under the second variant of the fourth paragraph of Article 263 TFEU consideration must be given not only to the effects of a European Union act on an individual's legal situation, but also to its factual effects on that individual, such effects must be more than merely indirect. This must be determined specifically in each individual case having regard to the regulatory content of the Union act in question.

– The situation of persons active in upstream levels of trade

73. In the present case, according to Article 1 thereof, Regulation No 1007/2009 establishes 'harmonised rules concerning the placing on the market of seal products' in the European Union. By contrast, that regulation does not make any provision as regards seal hunting, the production of products from seal materials or the connected research. [47]

74. The General Court was therefore correct in its view that the contested regulation is not of direct concern to all the parties which are active at such a level of trade upstream of the actual marketing of seal products in the European Union. This applies on the one hand to hunters and trappers and organisations representing their interests and on the other to all persons and associations involved in the broadest sense with the processing of the materials obtained from seal hunting.

43 — Paragraph 71 of the order under appeal.

44 — Case C-404/96 P *Glencore Grain* v *Commission* [1998] ECR I-2435, paragraph 41; Case C-125/06 P *Commission* v *Infront WM* [2008] ECR I-1451, paragraph 47; and Case C-343/07 *Bavaria and Bavaria Italia* [2009] ECR I-5491, paragraph 43.

45 — In settled case-law, for example, the European Union Courts have confirmed the standing of competitors to institute proceedings against Commission decisions to authorise State aid (see Case 169/84 *Cofaz and Others* v *Commission* [1986] ECR 391, and Case C-525/04 P *Spain* v *Lenzing* [2007] ECR I-9947, in which direct concern is taken for granted) and to authorise concentrations (see Case T-114/02 *BaByliss* v *Commission* [2003] ECR II-1279, paragraph 89, and Case T-158/00 *ARD* v *Commission* [2003] ECR II-3825, paragraph 60).

46 — Case 62/70 *Bock* v *Commission* [1971] ECR 897, paragraphs 6 to 8; Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, paragraphs 8 to 10; and Case C-386/96 P *Dreyfus* v *Commission* [1998] ECR I-2309, paragraph 44.

47 — In this respect the present case differs from *Microban International and Others* v *Commission* (judgment cited in footnote 19, in particular paragraph 28), in which not only the marketing of an additive as such, but also its use in the manufacture of other products was subject to restrictions under EU law.

75. Because none of them place seal products on the market in the European Union themselves, the contested regulation affects them only indirectly, not directly. Admittedly, the rules established by the contested regulation may also have appreciable economic effects on this category of persons. As the Union institutions participating in the proceedings have rightly stated, however, the criterion of direct concern would be deprived of its function and deformed and the category of potential applicants would be expanded endlessly if persons active at upstream levels of trade were considered to be directly affected.

– The situation of Karliin Aariak

76. The situation of the appellant Karliin Aariak, who, according to the findings of the General Court, herself belongs to the Inuit community and is active in the design and sale of sealskin garments, is less clear. The General Court rejected direct concern in her case because she 'does not claim to be active in the placing on the market of products other than those covered by the [Inuit] exception at issue'. [48]

77. It should be noted, first of all, that it is not clear from the factual findings of the General Court whether Ms Aariak herself places the sealskin garments designed and sold by her on the European internal market or whether she simply sells those products to intermediaries, which then market them in the European Union in their own name and for their own account. In the latter case, Ms Aariak, like the abovementioned hunters and trappers, would be active merely at an upstream level of trade and could not therefore be considered to be directly affected by Regulation No 1007/2009.

78. Since the General Court has not made all the necessary findings in this regard, its order is vitiated by an error in law on this point.

79. If it is assumed, however, as the General Court seems to have in mind, that Ms Aariak actually places seal products on the European internal market herself, [49] it can hardly be denied that the contested regulation is of direct concern to her. Ms Aariak's business activity is then directly subject to the rules concerning the placing on the market of seal products established by Regulation No 1007/2009.

80. The fact that the possible application of the Inuit exception to Ms Aariak requires clarification by means of Commission implementing rules (see Article 3(1) in conjunction with Article 3(3) and (4) of Regulation No 1007/2009) does *not* rule out direct concern to that appellant, contrary to the view taken by the General Court. [50]

81. One option is, like the General Court, to regard the Commission's implementing rules as so essential that, until they are adopted, the Inuit exception provided for by the Union legislature cannot be applied. In that case, during the transitional period until those implementing rules are adopted, all seal products are equally subject to the general ban on placing on the market in the European internal market laid down in Article 3(1) of Regulation No 1007/2009. That would then be of direct concern to all persons active in the marketing of seal products, including Ms Aariak.

48 — Paragraph 82 of the order under appeal.

49 — In response to my question at the hearing, Ms Aariak explained that she marketed some garments herself and some through intermediaries in the European internal market.

50 — Paragraph 82 in conjunction with paragraphs 76 to 79 of the order under appeal (see in particular the last sentence of paragraph 78 of the order).

82. The other option is, to consider, unlike the General Court, that the Commission's implementing rules are so immaterial that the Inuit exception provided for by the Union legislature may be applied even before they are adopted. In that case, the placing on the market of seal products from hunts traditionally conducted by Inuit and other indigenous communities within the meaning of Article 3(1) of Regulation No 1007/2009 in the European internal market is and continues to be permitted from the outset. Also on such an understanding, the rules would be of direct concern to all persons active in the marketing of seal products on the European internal market, including Ms Aariak.

83. In both cases, the EU legislation on the placing on the market of seal products is of direct concern to persons active in the marketing of seal products on the European internal market.[51] A grey area like that in which the General Court seems to place Ms Aariak cannot arise.

84. All in all, the General Court's findings with regard to direct concern to the appellant Karliin Aariak are therefore marred by errors in law. However, this legally defective application of the criterion of direct concern by the General Court cannot in itself result in the setting aside of the order under appeal. Rather, individual concern to the appellants must still be considered as a further absolute bar to proceeding.[52]

(b) Individual concern to the appellants

85. Regardless of the question whether the contested regulation is of *direct* concern to some of the appellants, and to how many of them this might apply, that regulation would also have to be of *individual* concern to them in order for them to be able to bring an admissible action for annulment on the basis of the second variant of the fourth paragraph of Article 263 TFEU.

86. In accordance with settled case-law dating back to *Plaumann*, an act of the Union institutions is to be regarded as of individual concern to a natural or legal person if that act affects him by reason of certain attributes which are peculiar to him or by reason of circumstances in which he is differentiated from all other persons and by virtue of these factors distinguishes him individually just as in the case of the person addressed.[53]

87. Regulation No 1007/2009 has no such effects vis-à-vis Inuit Tapiriit Kanatami and its co-appellants. As the General Court rightly stated,[54] the prohibition of the placing on the market of seal products laid down in the contested regulation is expressed in a general manner and is capable of applying equally to any trader who is covered by that regulation. The contested regulation applies to objectively determined situations and produces legal effects in regard to categories of persons envisaged generally and in the abstract. None of the appellants is distinguished individually by that regulation in the same way as the addressee of a decision. Rather, the appellants are concerned by the contested regulation like any other market participant who produces seal products or places them on the market.[55]

51 — Direct concern to an individual does not depend on whether he can derive a requirement, a prohibition or a permission for himself from a European Union act. At most, it may be that the interest in bringing an action for annulment may be absent in the case of a permission if and in so far as the individual concerned can no longer obtain any benefit from his action.

52 — See Case C-362/06 P *Sahlstedt and Others* v *Commission* [2009] ECR I-2903, paragraphs 22 and 23.

53 — *Plaumann*, cited in footnote 2, p. 238; *Piraiki-Patraiki and Others* v *Commission*, cited in footnote 46, paragraph 11; *Unión de Pequeños Agricultores* v *Council*, cited in footnote 3, paragraph 36; *Commission* v *Jégo-Quéré*, cited in footnote 4, paragraph 45; Case C-78/03 P *Commission* v *Aktionsgemeinschaft Recht und Eigentum* [2005] ECR I-10737, paragraph 33; *Commission* v *Infront WM*, cited in footnote 44, paragraph 70; and Joined Cases C-71/09 P, C-73/09 P and C-76/09 P *Comitato 'Venezia vuole vivere' and Others* v *Commission* [2011] ECR I-4727, paragraph 52.

54 — See paragraphs 89 and 90 of the order under appeal.

55 — See settled case-law, for example *Plaumann* v *Council*, cited in footnote 2, p. 238; *Piraiki-Patraiki and Others* v *Commission*, cited in footnote 46, paragraph 14; Case 147/83 *Binderer* v *Commission* [1985] ECR 257, paragraph 13; Case 26/86 *Deutz and Geldermann* v *Council* [1987] ECR 941, paragraphs 8 and 12; Case C-213/91 *Abertal and Others* v *Commission* [1993] ECR I-3177, paragraphs 17, 19 and 20; Case C-451/98 *Antillean Rice Mills* v *Council* [2001] ECR I-8949, paragraph 51; and *Commission* v *Jégo-Quéré*, cited in footnote 4, paragraphs 43 and 46.

88. The appellants do not dispute this, but nevertheless take the view that they should be regarded as individually concerned. They consider that with the Treaty of Lisbon the time has come for the Court of Justice to abandon the *Plaumann* case-law on individual concern.

89. That argument must be rejected. Contrary to the view taken by the appellants, the entry into force of the Treaty of Lisbon does not necessitate any reassessment of the case-law of the European Union Courts on individual concern. Rather, the fact that the condition for admissibility of (direct and) individual concern was adopted unchanged from the second variant of the fourth paragraph of Article 230 EC in the second variant of the present fourth paragraph of Article 263 TFEU suggests that the *Plaumann* case-law should be retained.

90. The authors of the Treaty decided, after intensive discussion of the whole problem in the European Convention, with a view to strengthening the legal protection of individuals against European Union acts of general application, not to revise the criterion of individual concern, but instead to introduce into the fourth paragraph of Article 263 TFEU a completely new, third possibility for instituting proceedings: the possibility discussed above [56] for natural and legal persons to institute proceedings against a regulatory act which is of direct concern to them and does not entail implementing measures. [57]

91. Consequently, the second part of the first ground of appeal also cannot be accepted.

3. Interim conclusion

92. All in all, the first ground of appeal must therefore be rejected.

B – *Second ground of appeal*

93. With its second ground of appeal, the appellants argue that the General Court, first, failed to state adequate reasons for its order and, second, disregarded the requirements of effective judicial protection.

1. The requirements relating to the statement of reasons for the order at first instance (first part of the second ground of appeal)

94. In the first part of this second ground of appeal, the appellants object to the statement of reasons in the order under appeal, which is inadequate in their view. The failure to state reasons is purported to lie in the fact that the General Court did not address in sufficient detail the arguments put forward at first instance by Inuit Tapiriit Kanatami and its co-appellants regarding Article 47 of the Charter of Fundamental Rights of the European Union [58] and regarding Articles 6 and 13 ECHR, [59] in which connection the appellants state in particular that the General Court did not even say a word about Articles 6 and 13 ECHR.

56 — See my statements on the first part of the first ground of appeal (in points 26 to 62 of this Opinion above).

57 — See again documents CONV 636/03, cited in footnote 24, paragraphs 17 to 23, and CONV 734/03, cited in footnote 24, p. 20 et seq.

58 — The Charter of Fundamental Rights of the European Union was solemnly proclaimed, first, in Nice on 7 December 2000 (OJ 2000 C 364, p. 1) and then, for a second time, in Strasbourg on 12 December 2007 (OJ 2007 C 303, p. 1, and OJ 2010 C 83, p. 389).

59 — European Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR', signed at Rome on 4 November 1950).

95. It is correct that it may constitute a failure to state reasons if the General Court does not sufficiently examine a party's submissions in its decision at first instance.[60]

96. According to settled case-law, however, the obligation to state reasons does not require the General Court to provide an account which follows exhaustively and one by one all the arguments put forward by the parties to the case and the reasoning may therefore be implicit on condition that it enables the persons concerned to know why the General Court has not upheld their arguments and provides the Court of Justice with sufficient material for it to exercise its power of review.[61]

97. The Court of First Instance satisfied these requirements in the present case.

98. The arguments in question by Inuit Tapiriit Kanatami and its co-appellants regarding the fundamental right to an effective remedy were contained, according to their own statements, in paragraphs 53 to 57 of their written reply submitted at first instance to the pleas of inadmissibility raised by the Parliament and the Council. The General Court indisputably addressed these arguments in paragraph 51 of the order under appeal. It stated that the Courts of the European Union may not interpret the standing of individuals to institute proceedings against a regulation, even in the light of the principle of effective judicial protection, in a way which has the effect of setting aside the conditions expressly laid down in the Treaty.

99. This answer could be regarded as brief. However, the detail with which the General Court is required to deal with a party's arguments in the reasons for its decision concluding the proceedings depends not least on how substantiated those submissions are and on the weight attached to them in comparison with that party's other submissions. In view of the brevity and superficiality of the arguments made by the appellants at first instance regarding the fundamental right to an effective remedy,[62] the General Court can hardly be reproached for failing to subject this issue to a more detailed assessment in the order under appeal.

100. This applies all the more because the General Court was able to rely in this regard on the settled case-law of the European Union Courts.[63] The statements made by the General Court in paragraph 51 of the order under appeal, in conjunction with the citation of the relevant case-law,[64] indicate adequately the reasons for which the General Court did not uphold the arguments made by Inuit Tapiriit Kanatami and its co-appellants regarding the requirements of effective legal protection.

101. It is irrelevant in this connection that in paragraph 51 of the order under appeal the General Court cited only Article 47 of the Charter of Fundamental Rights, but not Articles 6 and 13 ECHR. In the paragraph in question the General Court addressed in *general* terms the appellants' arguments on the right to an effective remedy and in this connection mentioned Article 47 of the Charter only as one example ('inter alia').[65]

60 — Judgments in Case C-283/90 P *Vidrányi* v *Commission* [1991] ECR I-4339, paragraph 29; Case C-123/03 P *Commission* v *Greencore* [2004] ECR I-11647, paragraphs 40 and 41; Case C-583/08 P *Gogos* v *Commission* [2010] ECR I-4469, paragraph 29; and Case C-90/09 P *General Química and Others* v *Commission* [2011] ECR I-1, paragraphs 59 to 62; and judgments of 25 October 2007 in Case C-167/06 P *Komninou and Others* v *Commission*, paragraphs 21 to 28; and of 5 May 2011 in Case C-200/10 P *Evropaïki Dynamiki* v *Commission*, paragraphs 33 and 43.

61 — Joined Cases C-120/06 P and C-121/06 P *FIAMM and Others* v *Council and Commission* [2008] ECR I-6513, paragraph 96; Case C-440/07 P *Commission* v *Schneider Electric* [2009] ECR I-6413, paragraph 135; and Case C-263/09 P *Edwin* v *OHIM* [2011] ECR I-5853, paragraph 64.

62 — In the written reply submitted at first instance to the pleas of inadmissibility, fundamental rights are dealt with in 5 of 84 paragraphs (or 1 of 22 pages), whilst they are not mentioned at all in the application at first instance.

63 — See immediately below my statements regarding the second part of the second ground of appeal (points 105 to 124 of this Opinion).

64 — Paragraph 51 of the order under appeal cites *Jégo-Quéré*, cited in footnote 4, paragraph 36, and the order of 9 January 2007 in Case T-127/05 *Lootus Teine Osaühing* v *Council*, paragraph 50.

65 — It should be noted in passing that Inuit Tapiriit Kanatami and Others did not themselves mention Article 13 ECHR in the relevant passage of their written pleading at first instance. They can hardly therefore criticise the General Court for having disregarded that provision.

102. Furthermore, the appellants complain that it is contradictory if in paragraph 51 of the order under appeal the General Court mentions, with regard to the limits of the direct legal remedies available to individuals, a condition for admissibility 'expressly laid down in the Treaty', even though it first had to infer this laboriously by way of interpretation.

103. That argument is also not convincing, however. It is evident that the expression 'regulatory act' requires interpretation. Nevertheless, this does not alter the fact that it is a condition for admissibility *expressly* laid down in the fourth paragraph of Article 263 TFEU for actions for annulment brought by natural and legal persons.

104. All in all, the General Court therefore set out its reasoning on the issue of effective judicial protection without contradiction and with sufficient clarity. The appellants may take a different substantive view to the General Court. However, that fact in itself cannot constitute a failure to state reasons in the order under appeal,[66] but is at most a substantive defect which will now have to be examined in connection with the second part of the second ground of appeal.

2. The alleged violation of the fundamental right to an effective remedy (second part of the second ground of appeal)

105. Because the first part of the second ground of appeal has no prospect of success, consideration must be given below to the second part of this ground of appeal, which is raised in the alternative. In the view of the appellants, the interpretation of the fourth paragraph of Article 263 TFEU on the basis of which the General Court declared the action brought at first instance inadmissible infringes the requirements of effective judicial protection, as laid down in Article 47 of the Charter of Fundamental Rights and in Articles 6 and 13 ECHR 'as general principles of EU law'.

106. The right to an effective remedy is recognised as a general principle of law at EU level[67] and now enjoys the status of a fundamental right of the European Union under Article 47 of the Charter of Fundamental Rights.

107. Due account must undoubtedly be taken of this fundamental right – irrespective of whether it is based on the Charter or on the general principles of EU law – in interpreting and applying the conditions for admissibility of actions for annulment brought by natural and legal persons[68] in all three variants of the fourth paragraph of Article 263 TFEU.

108. The Court has already made clear, however, that the right to an effective remedy does *not* require an extension of the direct legal remedies available to natural and legal persons against European Union acts of general application. Contrary to the view taken by the appellants, it cannot simply be inferred from that fundamental right that natural and legal persons must necessarily have available a direct legal remedy against European Union legislative acts before the European Union Courts.[69]

66 — Case C-362/05 P *Wunenburger* v *Commission* [2007] ECR I-4333, paragraph 80, and *Gogos* v *Commission*, cited in footnote 60, paragraph 35.

67 — Case 222/84 *Johnston* [1986] ECR 1651, paragraph 18; *Unión de Pequeños Agricultores* v *Council*, cited in footnote 3, paragraph 39; *Commission* v *Jégo-Quéré*, cited in footnote 4, paragraph 29; Case C-432/05 *Unibet* [2007] ECR I-2271, paragraph 37; Joined Cases C-402/05 P and C-415/05 P *Kadi and Others* v *Council and Commission* [2008] ECR I-6351, paragraph 335; and Case C-279/09 *DEB* [2010] ECR I-13849, paragraph 29.

68 — *Unión de Pequeños Agricultores* v *Council*, cited in footnote 3, paragraph 44, and *Commission* v *Jégo-Quéré*, cited in footnote 4, paragraph 30.

69 — See *Unión de Pequeños Agricultores* v *Council*, cited in footnote 3, in particular paragraphs 37 to 40, and *Commission* v *Jégo-Quéré*, cited in footnote 4, paragraphs 29 and 30.

109. With the entry into force of the Treaty of Lisbon on 1 December 2009, the applicable requirements as regards fundamental rights have not changed substantially. That Treaty has now elevated the Charter of Fundamental Rights to the status of binding EU primary law and prescribed that the Charter and the Treaties have the same legal value (first subparagraph of Article 6(1) TEU). However, this has not changed the substance of the fundamental right to an effective remedy recognised at EU level. This is clear in particular from the Explanations,[70] which are drafted as guidance for the interpretation of the Charter and to which the European Union Courts and the courts of the Member States must have due regard (third subparagraph of Article 6(1) TEU in conjunction with Article 52(7) of the Charter).

110. The situation is the same in respect of the homogeneity clause, which is enshrined in the first sentence of Article 52(3) of the Charter and, under the third subparagraph of Article 6(1) TEU, must be given due regard in interpreting and applying the fundamental right to an effective remedy. Under that clause, fundamental rights contained in the Charter which correspond to rights guaranteed by the ECHR are to have the same meaning and scope as those laid down by the ECHR. Consequently, regard must be had, in connection with the fundamental right under EU law to an effective remedy, to Articles 6 and 13 ECHR, on which Article 47 of the Charter of Fundamental Rights is based.[71] Contrary to the view taken by the appellants, however, those two fundamental rights under the ECHR do not, as their interpretation by the European Court of Human Rights stands at present, require that individuals must be accorded a direct legal remedy against legislative acts.[72]

111. Certainly, under the second sentence of Article 52(3) of the Charter, it is possible for EU law to go beyond the standard set in the ECHR. However, due regard must be had to the intention of the authors of the Treaty, who, as I explained above,[73] ultimately rejected extending the direct legal remedies available to natural and legal persons against legislative acts, following intensive discussion in the European Convention.

112. The authors of the Treaty also made clear that the provisions of the Charter must not extend in any way the competences of the Union as defined in the Treaties (second subparagraph of Article 6(1) TEU). Accordingly, fundamental rights contained in the Charter, including the right to an effective remedy in Article 47 of the Charter, cannot be invoked in support of categorising legislative acts as regulatory acts (third variant of the fourth paragraph of Article 263 TFEU) or relaxing the requirements governing whether legislative acts are of direct and individual concern to individuals (second variant of the fourth paragraph of Article 263 TFEU). Such an interpretation would amount to an extension of the competences of the Union which is not compatible with the second subparagraph of Article 6(1) TEU, or more precisely an extension of the judicial competences of the Court of Justice of the European Union as an EU institution (first sentence of Article 19(1) TEU).

70 — Those Explanations (OJ 2007 C 303, p. 17 [29 et seq.]) state with regard to Article 47 of the Charter: '… The inclusion of this precedent in the Charter has not been intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to admissibility for direct actions before the Court of Justice of the European Union. The European Convention has considered the Union's system of judicial review including the rules on admissibility, and confirmed them while amending them as to certain aspects, as reflected in [Articles 251 to 281 TFEU], and in particular in [the fourth paragraph of Article 263 TFEU]. …'

71 — The close relationship between Article 47 of the Charter and Articles 6 and 13 ECHR is clearly expressed in the Explanations relating to the Charter (cited above in footnote 70). The Court's case-law in which the right to an effective remedy has been recognised as a general legal principle is also based substantially on the two provisions of the ECHR (see the judgments cited in footnote 67 above).

72 — The appellants themselves also failed to cite a single relevant judgment of the European Court of Human Rights and were forced to admit, when questioned, that they were not aware of any such judgment.

73 — See above, points 39 to 46 of this Opinion.

113. The same conclusion is suggested by an examination of Article 51(2) of the Charter, to which, under the third subparagraph of Article 6(1) TEU, due regard must be had in interpreting and applying the rights, freedoms and principles in the Charter. Under that provision, the Charter does not establish any new power or task for the Union, or modify *powers and tasks defined by the Treaties*. The fundamental importance that the Member States attach to that provision was reflected not least in the fact that its wording was expressly reiterated in a joint declaration on the Treaties. [74]

114. In the light of the foregoing, an extension of the standing of natural and legal persons to institute proceedings under the third variant of the fourth paragraph of Article 263 TFEU to legislative acts could not be carried out by the European Union Courts by way of interpretation, but would require a Treaty amendment procedure to be conducted. [75] The same would apply if it were intended to modify fundamentally the requirements governing direct and individual concern to individuals laid down in the second variant of the fourth paragraph of Article 263 TFEU in connection with legislative acts.

115. Contrary to the view taken by the appellants, there is nevertheless no reason to fear a gap in the legal remedies available to individuals against European Union legislative acts. The system of legal protection established by the Treaties has created a complete system of legal remedies and procedures which also offer individuals effective legal protection against legislative acts, aside from direct legal remedies, in the form of an *indirect challenge* to contest lawfulness. [76]

116. As Article 19(1) TEU also shows, the system of legal protection established by the Treaties rests on two pillars, one of which is based on the European Union Courts and the other on the national courts. [77]

117. If the European Union act in question needs to be implemented by EU authorities, its lawfulness may be reviewed indirectly by the European Union Courts pursuant to Article 277 TFEU in the course of an action for annulment of the respective implementing act. If, on the other hand, the European Union act in question needs to be implemented by national authorities – as is often the case – its lawfulness may be referred to the Court for review in preliminary ruling proceedings under Article 19(3)(b) TEU in conjunction with letter (b) of the first paragraph of Article 267 TFEU, [78] and such a reference for a preliminary ruling may possibly even be mandatory. [79]

118. Of course, the objection will sometimes be raised that a merely indirect examination of the lawfulness of a legislative act is not an adequate substitute for the lack of a direct legal remedy against that act for the individuals concerned. In particular, an individual may not be placed in a position in which he considers that he is compelled to infringe a directly effective requirement or ban under EU law merely in order to provoke an implementing act on the part of the competent authority, against which he is then able to defend himself in court. [80]

74 — Second paragraph of Declaration No 1 on the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon signed on 13 December 2007 (OJ 2007 C 306, p. 249; OJ 2008 C 115, p. 337; OJ 2010 C 83, p. 339; OJ 2012 C 326, p. 339).

75 — See *Unión de Pequeños Agricultores* v *Council*, cited in footnote 3, paragraph 45; Case C-354/04 P *Gestoras Pro Amnistía and Others* v *Council* [2007] ECR I-1579, paragraph 50, last sentence; and Case C-355/04 P *Segi and Others* v *Council* [2007] ECR I-1657, paragraph 50, last sentence.

76 — See *Unión de Pequeños Agricultores* v *Council*, cited in footnote 3, paragraph 40; *Commission* v *Jégo-Quéré*, cited in footnote 4, paragraph 30; Case C-167/02 P *Rothley and Others* v *Parliament* [2004] ECR I-3149, paragraph 46; and Case C-461/03 *Gaston Schul Douane-expediteur* [2005] ECR I-10513, paragraph 22.

77 — See Opinion 1/09 [2011] ECR I-1137, paragraph 66; see also Joined Cases C-143/88 and C-92/89 *Zuckerfabrik Süderdithmarschen and Others* [1991] ECR I-415, paragraph 16; Case C-465/93 *Atlanta Fruchthandelsgesellschaft and Others* [1995] ECR I-3761, paragraph 20; and the case-law cited immediately above in footnote 76.

78 — *Unión de Pequeños Agricultores* v *Council*, cited in footnote 3, paragraph 40; *Commission* v *Jégo-Quéré*, cited in footnote 4, paragraph 30; Case C-550/09 *E and F* [2010] ECR I-6213, paragraph 45; and Case C-370/12 *Pringle* [2012] ECR, paragraph 39.

79 — A duty to make a reference exists not only for courts of last instance, but also, under the conditions set out in the *Foto-Frost* case-law (see Case 314/85 *Foto-Frost* [1987] ECR 4199, paragraphs 12 to 19, and *Gaston Schul Douane-expediteur*, cited in footnote 76, paragraph 22), for courts or tribunals of a Member State against whose decisions there is a judicial remedy under national law.

80 — According to Advocate General Jacobs, for example, in his Opinion in *Unión de Pequeños Agricultores* v *Council*, cited in footnote 3, points 43 and 102.

119. It would indeed be insufficient, having regard to the EU fundamental right to an effective remedy, if a natural or legal person first had to act unlawfully and thus possibly even run the risk of a penalty merely in order to be able to take the route of a judicial review of the European Union act in question before the courts or tribunals having jurisdiction. [81] However, such a situation is *not* to be feared in the system of the European Treaties with regard to EU legislative acts.

120. Normally – for example in the case of the ban on the placing on the market of seal products in the present case – it will fall to national authorities to monitor observance of a directly effective requirement or ban under an EU legislative act. An individual is then free to write to the competent authority – in the present case, for example, the competent national import or customs administration – and to request confirmation that the requirement or ban in question is not applicable to him. [82] A negative decision by that national authority must, on grounds of effective legal protection, be open to review by national courts, which in turn may, or possibly even must, refer the question of the validity of the underlying European Union act to the Court for a preliminary ruling. [83]

121. In general, Member States must provide remedies sufficient to ensure effective legal protection in the fields covered by Union law. [84] Since the entry into force of the Treaty of Lisbon, this duty has been expressly laid down in the second subparagraph of Article 19(1) TEU. This means not least that conditions for admissibility of actions before national courts, including possible preventive actions for declarations or injunctions, may not be excessively restrictive. [85]

122. If, exceptionally, monitoring of the observance of a directly effective requirement or ban under EU law falls within the competence of an institution, body, office or agency of the Union, the individual is free to write to it and to request confirmation that the requirement or ban in question is not applicable to him. In accordance with the principle of good administration, the body in question would be required to decide on that request. [86] A negative decision by that body would, on grounds of effective legal protection, have to be regarded as a decision within the meaning of the fourth paragraph of Article 288 TFEU, against which the person to which it is addressed could bring an action for annulment pursuant to the first variant of the fourth paragraph of Article 263 TFEU, in the course of which he would be free to make an ancillary challenge in accordance with Article 277 TFEU to contest the lawfulness of the underlying EU legislative act.

123. In urgent cases, there is the possibility of granting interim legal protection both in the European Union Courts (Articles 278 TFEU and 279 TFEU) and in national courts and tribunals. [87] This was rightly pointed out by the Council at the hearing before the Court.

124. All in all, the appellants' arguments regarding the requirements of effective legal protection must therefore be rejected.

81 — This is recognised both by the Court in its case-law (*Unibet*, cited in footnote 67, paragraph 64) and by the European Convention (see the documents cited above in footnote 24).

82 — This possibility has already been intimated in *Commission* v *Jégo-Quéré* (cited in footnote 4, paragraph 35).

83 — *Unión de Pequeños Agricultores* v *Council*, cited in footnote 3, paragraph 40, and *Commission* v *Jégo-Quéré*, cited in footnote 4, paragraph 30; with regard to the duty of national courts and tribunals to make a reference in such a situation, see the *Foto-Frost* case-law cited above in footnote 79.

84 — For examples from the practice of national courts and tribunals, see Case C-344/04 *IATA and ELFAA* [2006] ECR I-403, paragraph 19, Case C-58/08 *Vodafone and Others* [2010] ECR I-4999, paragraph 29, and Joined Cases C-92/09 and C-93/09 *Schecke and Eifert* [2010] ECR I-11063, paragraph 28; similarly, albeit in connection with directives and their national implementation, Case C-491/01 *British American Tobacco (Investments) and Imperial Tobacco* [2002] ECR I-11453, paragraph 24; Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04 *ABNA and Others* [2005] ECR I-10423, paragraphs 19, 25 and 34; Case C-343/09 *Afton Chemical* [2010] ECR I-7027, paragraph 8; Case C-366/10 *Air Transport Association of America and Others* [2011] ECR I-13755, paragraph 43.

85 — *Unibet*, cited in footnote 67, in particular paragraphs 38 to 44; see also *Unión de Pequeños Agricultores* v *Council*, cited in footnote 3, paragraph 42, and *Commission* v *Jégo-Quéré*, cited in footnote 4, paragraph 32.

86 — See Article 41(1) and (4) of the Charter of Fundamental Rights and also the fourth paragraph of Article 24 TFEU.

87 — *Zuckerfabrik Süderdithmarschen and Others*, paragraphs 17, 20 and 23 to 33, and *Atlanta Fruchthandelsgesellschaft and Others*, paragraphs 24, 25 and 32 to 51, each cited in footnote 77.

3. Interim conclusion

125. The second ground of appeal is therefore unfounded in its entirety.

C – *Third ground of appeal*

126. The third ground of appeal alleges a distortion of evidence. The appellants claim that the General Court 'wrongly presents and distorts' its arguments at first instance.

127. First of all, the appellants take the view that the General Court wrongly attributed to them, in paragraph 47 of the order under appeal, the statement that the distinction between legislative and regulatory acts consists of adding the qualifier 'legislative' to the word 'act' with reference to the first two possibilities in the fourth paragraph of Article 263 TFEU.[88] In this way, the General Court confused the arguments invoked by the appellants and those invoked by the Parliament and the Council.

128. Secondly, the appellants complain that, in paragraph 48 of the order under appeal, the General Court implied that they claimed that the objective of the Member States was to limit the scope of the last variant of the fourth paragraph of Article 263 TFEU solely to delegated acts within the meaning of Article 290 TFEU.

1. Admissibility

129. The Union institutions participating in the proceedings contest the admissibility of this ground of appeal by simply stating that it is not evidence that might have been distorted, but at best legal argument.

130. This plea is untenable. The Court, as an appellate body, has the power to review the decision taken at first instance in order to ascertain not only whether the General Court distorted facts or evidence, but also whether it distorted the arguments of the parties.[89]

131. Furthermore, the appellants have described with sufficient precision in which part of the order under appeal they place the alleged distortion and what is purported to constitute that distortion.

132. The third ground of appeal is thus admissible.

2. Substance

133. The starting point for the assessment of the substance of this ground of appeal can be settled case-law on the distortion of evidence. According to that case-law, such distortion exists only where, without recourse to new evidence, the assessment of the existing evidence is manifestly incorrect.[90]

88 — Footnote does not apply to the English version of the Opinion.

89 — Case C-407/08 P *Knauf Gips* v *Commission* [2010] ECR I-6375, paragraphs 30 and 31; similarly *Commission* v *Aktionsgemeinschaft Recht und Eigentum*, cited in footnote 53, paragraphs 44 to 50, and the judgment of 29 November 2007 in Case C-176/06 P *Stadtwerke Schwäbisch Hall and Others* v *Commission*, paragraph 25.

90 — Case C-229/05 P *PKK and KNK* v *Council* [2007] ECR I-439, paragraph 37; Case C-260/05 P *Sniace* v *Commission* [2007] ECR I-10005, paragraph 37; and Case C-413/08 P *Lafarge* v *Commission* [2010] ECR I-5361, paragraph 17.

134. If that criterion is applied to a party's submission at first instance, such a distortion may be assumed to exist where the party's submission was clearly misunderstood by the General Court or reproduced by it in such a way as to misrepresent its meaning. [91] I will examine below whether that is the case in the contested paragraphs 47 and 48 of the order under appeal.

(a) Paragraph 47 of the order under appeal

135. Paragraph 47 of the order under appeal concerns the point in dispute between the parties whether natural and legal persons may be permitted, under any of the variants of the fourth paragraph of Article 263 TFEU, to institute proceedings against legislative acts. In the proceedings at first instance, the Parliament and the Council took the view that such proceedings cannot be admissible under the third variant of the fourth paragraph of Article 263 TFEU, but may be admissible under the first and second variants in that provision. [92] Inuit Tapiriit Kanatami and its co-appellants then criticised those two institutions for adding the qualifier 'legislative' to the word 'act' in the first and second variants of the fourth paragraph of Article 263 TFEU. [93]

136. It is this presentation of the Parliament's and the Council's arguments by Inuit Tapiriit Kanatami and its co-appellants which is described by the General Court in paragraph 47 of the order under appeal as 'the applicants' arguments'. The General Court does not therefore imply in that passage of its order that the appellants themselves add the qualifier 'legislative' to the word 'act', but merely considers what consequences the arguments put forward by the Parliament and the Council might have in the eyes of the appellants. The General Court solely rejects this interpretation of the opposing party's arguments by Inuit Tapiriit Kanatami and its co-appellants in paragraph 47 of the order under appeal.

137. Accordingly, the General Court cannot be accused of manifestly misconstruing the appellants' arguments or reproducing them in such a way as to misrepresent their meaning in paragraph 47 of the order under appeal. On the contrary, it is the appellants themselves which proceed on the basis of a manifestly incorrect reading of the contested passage.

(b) Paragraph 48 of the order under appeal

138. The situation is different with regard to paragraph 48 of the order under appeal, in which the General Court states that, 'contrary to the applicants' claim', the objective of the Member States was not to limit the scope of the final part of the fourth paragraph of Article 263 TFEU solely to delegated acts within the meaning of Article 290 TFEU.

139. The General Court thus implied in that passage of its order that Inuit Tapiriit Kanatami and its co-appellants had claimed in the proceedings at first instance that the objective of the Member States was to limit the scope of the final part of the fourth paragraph of Article 263 TFEU solely to delegated acts within the meaning of Article 290 TFEU.

91 — See my Opinions in Case C-109/10 P *Solvay* v *Commission* [2011] ECR I-10329, point 94, and Case C-110/10 P *Solvay* v *Commission* [2011] ECR I-10439, points 126 and 131.

92 — See in particular paragraph 17 of the plea of inadmissibility raised by the Parliament and paragraph 15 of the plea of inadmissibility raised by the Council.

93 — See in particular paragraph 30 of the written reply submitted at first instance by Inuit Tapiriit Kanatami and Others to the plea of inadmissibility raised by the Parliament and the Council.

140. By this wording the General Court manifestly reproduced the appellants' arguments at first instance in such a way as to misrepresent their meaning. In actual fact, Inuit Tapiriit Kanatami and its co-appellants have not claimed at any point in the proceedings that it was the intention of the Member States for the final part of the fourth paragraph of Article 263 TFEU to cover solely delegated acts within the meaning of Article 290 TFEU. This would also have run directly counter to their interests in the present case.

141. The appellants have consistently taken the view in both sets of proceedings that the Treaty of Lisbon *should have used* the term 'delegated act' within the meaning of Article 290 TFEU rather than the expression 'regulatory act' if it *had intended* to limit the scope of the fourth paragraph of Article 263 TFEU to non-legislative acts. [94]

142. Consequently, in paragraph 48 of the order under appeal, the General Court distorted the arguments put forward by Inuit Tapiriit Kanatami and its co-appellants.

143. Of course, such a distortion does not have to result in the annulment of the decision taken at first instance by the General Court. [95] This was rightly pointed out by the Parliament.

144. Specifically in the present case, it would not appear appropriate to annul the order under appeal since the incorrect presentation of some points of the appellants' arguments had no effects at all on the decision by the General Court. Rather, the General Court, like all the parties, took the view that the expression 'regulatory act' is broader than the term 'delegated act' within the meaning of Article 290 TFEU.

145. This is expressed not least in the contested paragraph 48 of the order under appeal, in which the General Court stated, with reference to the final part of the fourth paragraph of Article 263 TFEU, 'that the objective of the Member States was not to limit the scope of that provision solely to delegated acts within the meaning of Article 290 TFEU, but more generally, to regulatory acts'.

146. Consequently, the complaint raised by the appellants against paragraph 48 of the order under appeal is substantively correct, but ineffective (French: 'inopérant'). [96]

3. Interim conclusion

147. All in all, the third ground of appeal is therefore also unfounded.

D – *Summary*

148. Because none of the grounds put forward by the appellants is successful, the appeal must be dismissed in its entirety.

94 — For the arguments made at first instance by Inuit Tapiriit Kanatami and its co-appellants, see in particular paragraph 49 of their written reply to the pleas of admissibility raised by the Parliament and the Council; for their essentially identical arguments in the appeal proceedings, see above, point 53 of this Opinion.

95 — Joined Cases C-442/03 P and C-471/03 P *P&O European Ferries (Vizcaya) and Diputación Foral de Vizcaya* v *Commission* [2006] ECR I-4845, paragraphs 133 and 134, and Case C-266/05 P *Sison* v *Council* [2007] ECR I-1233, paragraphs 67 to 72; see also the judgment of 9 September 2010 in Case T-17/08 P *Andreasen* v *Commission*, paragraph 76.

96 — See Case C-30/91 P *Lestelle* v *Commission* [1992] ECR I-3755, paragraph 28; *Kadi and Others* v *Council and Commission*, cited in footnote 67, paragraph 233; and *FIAMM and Others* v *Council and Commission*, cited in footnote 61, paragraph 189.

V – Costs

149. If, as I propose in this case, the appeal is dismissed, the Court will make a decision as to costs (Article 184(2) of the Rules of Procedure), the details of which are set out in Articles 137 to 146 in conjunction with Article 184(1) of those Rules of Procedure. [97]

150. It follows from Article 138(1) and (2) in conjunction with Article 184(1) of the Rules of Procedure that 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 is more than one unsuccessful party, the Court decides how costs are to be shared. Since the Parliament and the Council have applied for costs and the appellants have been unsuccessful, they must be ordered to pay the costs. They must pay these costs jointly and severally since they brought the appeal jointly. [98]

151. A different decision must be taken on the costs incurred by the Commission. That institution, which intervened in the proceedings at first instance in support of the Parliament and the Council, also participated in the written or oral part of the appeal proceedings. Under the second sentence of Article 184(4) of the Rules of Procedure, the Court may decide that such a party must bear its own costs.

152. According to its wording ('may'), the latter provision certainly does not prevent the Court, where appropriate, from taking a different decision and ordering the unsuccessful appellants to pay the costs incurred by the opposing intervener at first instance if the latter, like the Commission in the present case, has been successful in its pleas in the appeal proceedings. [99] In the present case, however, it would seem that the rule laid down in the second sentence of Article 184(4) of the Rules of Procedure should be applied. The present appeal proceedings clarified a question of principle which is of considerable institutional interest to the Commission going far beyond the scope of the individual case at issue. It is thus perfectly fair for the Commission to bear its own costs.

153. Lastly, as regards the Kingdom of the Netherlands, which likewise intervened at first instance in support of the Parliament and the Council, it cannot be ordered to pay any costs, as the appellants request, because it did not participate in the appeal proceedings (first sentence of Article 184(4) of the Rules of Procedure).

VI – Conclusion

154. In the light of the foregoing, I propose that the Court:

(1) dismisses the appeal;

(2) orders the European Commission to bear its own costs;

97 — Pursuant to the general principle that new procedural rules apply to all proceedings pending at the time when they enter into force (settled case-law, see, for example, Joined Cases 212/80 to 217/80 *Meridionale Industria Salumi and Others* [1981] ECR 2735, paragraph 9), the decision on costs in the present case is based on the Rules of Procedure of the Court of Justice of 25 September 2012, which entered into force on 1 November 2012 (see the judgment of 6 December 2012 in Case C-441/11 P *Commission* v *Verhuizingen Coppens*, paragraphs 83 to 85). There is, however, no substantive difference from Article 69(2), in conjunction with Article 118 and Article 122(1), of the Rules of Procedure of the Court of Justice of 19 June 1991.

98 — Case C-550/07 P *Akzo Nobel Chemicals and Akcros Chemicals* v *Commission and Others* [2010] ECR I-8301, paragraph 123; see also Joined Cases C-122/99 P and C-125/99 P *D and Sweden* v *Council* [2001] ECR I-4319, paragraph 65; in the latter case, D and the Kingdom of Sweden even lodged two separate appeals and were nevertheless ordered jointly and severally to pay the costs.

99 — See, for example, Case C-337/09 P *Council* v *Zhejiang Xinan Chemical Industrial Group* [2012] ECR, paragraph 112; in that case, the Council, as the unsuccessful appellant, was ordered to pay the costs including those incurred by Audace as the opposing intervener at first instance, which had been successful in its pleas in the appeal proceedings.

(3) orders, for the remainder, the appellants jointly and severally to bear the costs of the proceedings.