Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

26 January 2017*

(Appeal — Competition — Agreements, decisions and concerted practices — Bathroom fittings and fixtures markets of Belgium, Germany, France, Italy, the Netherlands and Austria — Decision finding an infringement of Article 101 TFEU and Article 53 of the Agreement on the European Economic Area — Price coordination and exchange of sensitive business information — Single infringement — Proof — Fines — Unlimited jurisdiction — Reasonable time — Proportionality)

In Case C-625/13 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 29 November 2013,

Villeroy & Boch AG, established in Mettlach (Germany), represented by M. Klusmann and T. Kreifels, Rechtsanwälte, assisted by S. Thomas, Professor,

appellant,

the other party to the proceedings being:

European Commission, represented by L. Malferrari, F. Castillo de la Torre and F. Ronkes Agerbeek, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (First Chamber),

composed of A. Tizzano, Vice-President of the Court, acting as President of the First Chamber, M. Berger, E. Levits, S. Rodin (Rapporteur) and F. Biltgen, Judges,

Advocate General: M. Wathelet,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 10 September 2015,

after hearing the Opinion of the Advocate General at the sitting on 26 November 2015,

gives the following

* * Language of the case: German.

Judgment

1 By its appeal, Villeroy & Boch AG ('Villeroy & Boch' or 'the appellant') asks the Court of Justice to set aside the judgment of the General Court of the European Union of 16 September 2013, *Villeroy & Boch Austria and Others* v *Commission* (T-373/10, T-374/10, T-382/10 and T-402/10, not published, 'the judgment under appeal', EU:T:2013:455), in so far as, by that judgment, the General Court dismissed in part Villeroy & Boch's action for annulment of Commission Decision C(2010) 4185 final of 23 June 2010 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (COMP/39092 — Bathroom Fittings and Fixtures) ('the decision at issue') in so far as the decision concerned it.

Legal context

Regulation (EC) No 1/2003

2 Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101] and [102 TFEU] (OJ 2003 L 1, p. 1) provides, in Article 23(2) and (3):

'2. The Commission may by decision impose fines on undertakings and associations of undertakings where, either intentionally or negligently:

(a) they infringe Article [101] or [102 TFEU] …

…

For each undertaking and association of undertakings participating in the infringement, the fine shall not exceed 10% of its total turnover in the preceding business year.

…

3. In fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement.'

The 2006 Guidelines

3 The Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2; 'the 2006 Guidelines') state, in point 2, that, so far as concerns the setting of fines, 'the Commission must have regard both to the gravity and to the duration of the infringement' and that 'the fine imposed may not exceed the limits specified in Article 23(2), second and third subparagraphs, of Regulation No 1/2003'.

4 Point 37 of the 2006 Guidelines states:

'Although these Guidelines present the general methodology for the setting of fines, the particularities of a given case or the need to achieve deterrence in a particular case may justify departing from such methodology or from the limits specified in point 21. …'

Background to the dispute and the decision at issue

5 The products covered by the cartel are bathroom fittings and fixtures belonging to the following three product sub-groups: taps and fittings, shower enclosures and accessories, and ceramic sanitary ware (ceramics) ('the three product sub-groups').

6 The background to the dispute, as set out by the General Court in paragraphs 1 to 19 of the judgment under appeal, may be summarised as follows.

7 By the decision at issue, the Commission found that there had been an infringement of Article 101(1) TFEU and Article 53 of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3, 'the EEA Agreement') in the bathroom fittings and fixtures sector. That infringement, in which 17 undertakings had allegedly participated, was said to have taken place over various periods between 16 October 1992 and 9 November 2004 and to have taken the form of anticompetitive agreements or concerted practices covering the territory of Belgium, Germany, France, Italy, the Netherlands and Austria.

8 More specifically, the Commission stated, in the decision at issue, that the infringement found consisted in (i) the coordination by those bathroom fittings and fixtures manufacturers of annual price increases and additional pricing elements within the framework of regular meetings of national industry associations; (ii) the fixing or coordination of prices on the occasion of specific events such as the increase of raw material costs, the introduction of the euro and the introduction of road tolls; and (iii) the disclosure and exchange of sensitive business information. The Commission also found that price setting in the bathroom fittings and fixtures industry followed an annual cycle. In that context, the manufacturers fixed their price lists, which generally remained in force for a year and formed the basis for commercial relations with wholesalers.

9 Villeroy & Boch and the other applicants at first instance, Villeroy & Boch Austria GmbH ('Villeroy & Boch Austria'), Villeroy & Boch SAS ('Villeroy & Boch France') and Villeroy & Boch Belgium SA ('Villeroy & Boch Belgium'), are active in the bathroom fittings and fixtures sector. Villeroy & Boch holds the entirety of the share capital in Villeroy & Boch Austria, Villeroy & Boch France, Villeroy & Boch Belgium, Ucosan BV and its subsidiaries and Villeroy & Boch SARL ('Villeroy & Boch Luxembourg').

10 On 15 July 2004, Masco Corp. and its subsidiaries, including Hansgrohe AG, which manufactures taps and fittings, and Hüppe GmbH, which manufactures shower enclosures, informed the Commission of the existence of a cartel in the bathroom fittings and fixtures sector and submitted an application for immunity from fines under the Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3; 'the 2002 Leniency Notice'), or, in the alternative, for a reduction of any fines that might be imposed on them. On 2 March 2005, the Commission adopted a decision granting Masco conditional immunity from fines pursuant to points 8(a) and 15 of the 2002 Leniency Notice.

11 On 9 and 10 November 2004, the Commission conducted unannounced inspections at the premises of various companies and national industry associations operating in the bathroom fittings and fixtures sector.

12 On 15 and 19 November 2004 respectively, Grohe Beteiligungs GmbH and its subsidiaries and American Standard Inc. ('Ideal Standard') and its subsidiaries each applied for immunity from fines under the 2002 Leniency Notice or, in the alternative, for a reduction in fines.

13 Between 15 November 2005 and 16 May 2006, the Commission sent requests for information to a number of companies and associations active in the bathroom fittings and fixtures sector, including the applicants before the General Court. The Commission then, on 26 March 2007, adopted a statement of objections which was notified, inter alia, to those applicants.

14 On 17 and 19 January 2006 respectively, Roca SARL and Hansa Metallwerke AG and its subsidiaries each applied for immunity from fines under the 2002 Leniency Notice or, in the alternative, for a reduction in fines. On 20 January 2006, Aloys F. Dornbracht GmbH & Co. KG Armaturenfabrik submitted a similar application.

15 Following a hearing, which took place from 12 to 14 November 2007, in which the applicants at first instance took part, the sending, on 9 July 2009, of a letter of facts, drawing their attention to certain evidence on which the Commission was minded to rely when adopting a final decision, and further requests for information that were subsequently addressed to the applicants, the Commission, on 23 June 2010, adopted the decision at issue. By that decision the Commission held that the practices described in paragraph 8 of the present judgment formed part of an overall plan to restrict competition among the addressees of that decision and had the characteristics of a single and continuous infringement, which covered the three product sub-groups and extended to Belgium, Germany, France, Italy, the Netherlands and Austria. In that regard, the Commission highlighted, in particular, the fact that those practices had followed a recurring pattern which was consistent in each of the six Member States covered by the Commission's investigation. The Commission also pointed to the existence of national industry associations concerning all three product sub-groups, which it termed 'umbrella associations', national industry associations with members active in at least two of those three product sub-groups, which it termed 'cross-product associations', as well as product-specific associations with members active in only one of those three product sub-groups. Lastly, it found that a central group of undertakings participated in the cartel in several Member States and in cross-product associations and umbrella associations.

16 According to the Commission, the applicants at first instance took part in the infringement at issue in their capacity as members of the following associations: in Germany, the IndustrieForum Sanitär, which, as of 2001, replaced the Freundeskreis der deutschen Sanitärindustrie, the Arbeitskreis Baden und Duschen, which, as of 2003, replaced the Arbeitskreis Duschabtrennungen, and the Fachverband Sanitär-Keramische Industrie ('FSKI'), in Austria, the Arbeitskreis Sanitärindustrie ('ASI'), in Belgium, the Vitreous China-group ('VCG'), in the Netherlands, the Sanitair Fabrikanten Platform and, in France, the Association française des industries de céramique sanitaire ('AFICS'). As regards the infringement in the Netherlands, the Commission found, in essence, in recital 1179 of the decision at issue, that the undertakings that had taken part in it could no longer be fined for the infringement because the limitation period had expired.

17 In Article 1 of the decision at issue, the Commission listed the undertakings which it found to have committed an infringement of Article 101 TFEU and, from 1 January 1994, Article 53 of the EEA Agreement on account of their participation, for various periods between 16 October 1992 and 9 November 2004, in a cartel in the bathroom fittings and fixtures sector in Belgium, Germany, France, Italy, the Netherlands and Austria. As regards the applicants at first instance, the Commission, in Article 1(1) of the decision at issue, made findings of infringement against Villeroy & Boch for its participation in the single infringement from 28 September 1994 to 9 November 2004 and against its subsidiaries Villeroy & Boch Belgium, Villeroy & Boch France and Villeroy & Boch Austria for periods from 12 October 1994, at the earliest, to 9 November 2004.

18 In Article 2(8) of the decision at issue, the Commission imposed fines of (i) EUR 54 436 347 on Villeroy & Boch, (ii) EUR 6 083 604 on Villeroy & Boch and Villeroy & Boch Austria jointly and severally, (iii) EUR 2 942 608 on Villeroy & Boch and Villeroy & Boch Belgium jointly and severally and (iv) EUR 8 068 441 on Villeroy & Boch and Villeroy & Boch France jointly and severally. The total amount of the fines imposed on the applicants at first instance was therefore EUR 71 531 000.

19 For the purpose of setting those fines, the Commission took as a basis the 2006 Guidelines.

Proceedings before the General Court and the judgment under appeal

20 By application lodged at the Registry of the General Court on 8 September 2010, Villeroy & Boch brought an action in Case T-374/10 for annulment of the decision at issue in so far as the decision concerned it or, in the alternative, for reduction of the fines imposed on it.

21 In support of its claim for annulment, Villeroy & Boch argued, before the General Court, that the Commission had erred in characterising the infringement found as a single, complex and continuous infringement and, in the alternative, that in so doing it had breached its duty to state reasons in that it had, inter alia, failed to define the relevant markets with sufficient precision.

22 Villeroy & Boch also maintained that it had committed no infringement in the relevant product and geographical markets, namely in Belgium, Germany, France, Italy, the Netherlands and Austria. As regards more particularly the infringements allegedly committed in Germany, France and Austria, Villeroy & Boch argued that liability for the anticompetitive conduct of its subsidiaries on those markets could not be imputed to it.

23 Lastly, Villeroy & Boch challenged the joint and several imposition of its fines and claimed, as a subsidiary plea, that the amount of those fines should be reduced since the Commission had, incorrectly, taken into account sales that were unrelated to the infringement, that amount was disproportionate and thus in breach of Article 23(3) of Regulation No 1/2003 and the duration of the administrative procedure was excessive.

24 In the alternative, Villeroy & Boch put forward a claim for reduction of the fines imposed.

25 The General Court held in paragraph 395 of the judgment under appeal that the Commission had not established that Villeroy & Boch had taken part in the single infringement at issue before 12 October 1994. The General Court's partial annulment of Article 1(7) of the decision at issue nevertheless did not affect the amount of the fines imposed on Villeroy & Boch in Article 2(8) of that decision. In fact, in setting the fine, the Commission had taken into account the fact that Villeroy & Boch participated in an infringement only from 12 October 1994, as is apparent from Table D in the decision at issue.

26 By the judgment under appeal, the General Court dismissed the remainder of the action.

The forms of order sought by the parties

27 The appellant claims that the Court should:

— set aside in its entirety the judgment under appeal in so far as the General Court thereby dismissed its action in part;

— in the alternative, annul in part Article 1 of the decision at issue in the form resulting from the judgment under appeal in so far as that article concerns it;

— in the further alternative, reduce the fine imposed on it by Article 2 of the decision at issue;

— in the yet further alternative, refer the case back to the General Court for a fresh decision; and

— order the Commission to pay the costs.

28 The Commission contends that the Court should:

— dismiss the appeal in its entirety as in part inadmissible and in part manifestly unfounded; and

— order the appellant to pay the costs.

Consideration of the appeal

29 The appellant raises 11 grounds in support of its appeal.

The first ground of appeal

Arguments of the parties

30 By its first ground of appeal, Villeroy & Boch asserts that the General Court made several errors of law to its detriment as regards acts committed in France.

31 It submits that the General Court (the same Chamber and the same Judge Rapporteur) made, on the same day and in respect of the same issues and the same decision, diametrically opposed assessments of two items of evidence –– namely the statements made in the context of the leniency programme by Ideal Standard and the statements made by Roca –– in the judgment under appeal and the judgment of 16 September 2013, *Keramag Keramische Werke and Others* v *Commission* (T-379/10 and T-381/10, not published, EU:T:2013:457, paragraphs 118 to 120), in breach of the principle of equal treatment and the presumption of innocence, to Villeroy & Boch's detriment.

32 In paragraphs 287 to 290 of the judgment under appeal, the General Court took the view that Ideal Standard's statements and Roca's statements had enabled it to be established that Villeroy & Boch France had taken part in three AFICS meetings organised in 2004, at which unlawful discussions had taken place. In that regard, the General Court, in essence, recalled that a statement provided by an undertaking that has applied for leniency may not, in accordance with the principle *testis unus, testis nullus* (one witness is no witness), serve as proof unless such a statement is supported by statements from other cartel participants. However, there was, according to the General Court, such support in the present case, since the statement provided by Ideal Standard in its leniency application was confirmed by Roca's statement.

33 According to Villeroy & Boch, the assessment of the evidence thus made by the General Court is clearly inconsistent with the assessment of the same evidence made in the judgment of 16 September 2013, *Keramag Keramische Werke and Others* v *Commission* (T-379/10 and T-381/10, not published, EU:T:2013:457, paragraphs 118 to 120), which also concerns the decision at issue.

34 Likewise, Villeroy & Boch submits that the General Court's assessments in that judgment and in the judgment under appeal of the evidential value of the statement made by Duravit AG are contradictory and that the General Court thus infringed the principle that evidence should be treated in the same way, as well as the principle of *in dubio pro reo*. In the judgment of 16 September 2013, *Keramag Keramische Werke and Others* v *Commission* (T-379/10 and T-381/10, not published, EU:T:2013:457, paragraphs 115 and 116), the General Court held that that statement could not be relied on as against the applicants in that case since it had not been communicated to them in the administrative procedure. By contrast, in the judgment under appeal, the General Court accepted that Duravit's statement should be taken into account. Thus, in paragraph 293 of the judgment under appeal, the General Court stated that, although the decision at issue 'does not rely' on that statement, the fact remains that it confirmed Ideal Standard's statement regarding the content of unlawful discussions that were held 'probably' on 24 February 2004.

35 Villeroy & Boch further submits that the General Court, in holding Duravit's statement against it, although it knew that the statement could not be relied on in that regard and that the Commission itself had not relied on it in the decision at issue, altered the reasoning of that decision and infringed Article 263 TFEU and the second paragraph of Article 296 TFEU.

36 Since no other item of evidence was put forward concerning the infringement for which Villeroy & Boch could allegedly be held accountable in France, the findings against it are based on the errors of law described above, in so far as concerns acts committed in France.

37 The Commission contends that the first ground of appeal should be rejected.

Findings of the Court

38 In order to address the first ground of appeal, it must be recalled that the assessment by the General Court of the evidential value of a document may not, as a rule, be subject to review by the Court of Justice in appeal proceedings. As is clear from Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, an appeal lies on points of law only. The General Court therefore has sole jurisdiction to find and appraise the relevant facts and to assess the evidence, except where those facts and that evidence have been distorted (see, inter alia, judgment of 2 October 2003, *Salzgitter* v *Commission*, C-182/99 P, EU:C:2003:526, paragraph 43 and the case-law cited), an allegation that has not been made in the present case.

39 On the other hand, it is settled case-law that the question whether the grounds of a judgment of the General Court are contradictory or sufficient is a question of law which is amenable, as such, to review on appeal (see, inter alia, judgment of 21 September 2006, *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied* v *Commission*, C-105/04 P, EU:C:2006:592, paragraph 71 and the case-law cited).

40 In the present case, the General Court, in paragraph 287 of the judgment under appeal, found that the Commission relied on the statements of Ideal Standard and Roca in order to establish that Villeroy & Boch France had participated in the AFICS meetings in 2004. In paragraph 289 of that judgment the General Court pointed out that, whilst it is clear from the case-law that a statement made by a party that has benefited from the cancellation or reduction of its fine, which is disputed by another party, must be corroborated, there is nothing to prevent such corroboration being provided by evidence proffered by another undertaking that has participated in the cartel, even if that other party has also benefited from a reduction in its fine. After examining the evidential value of the statement made by Roca, the General Court, in paragraph 290 of that judgment, concluded that it had to be held that Ideal Standard's statement, corroborated by that of Roca, proved to the requisite legal standard that the unlawful discussions at issue had taken place.

41 Villeroy & Boch submits that those grounds and the grounds in the judgment of 16 September 2013, *Keramag Keramische Werke and Others* v *Commission* (T-379/10 and T-381/10, not published, EU:T:2013:457), are contradictory.

42 It must be recalled, however, that, in accordance with settled case-law, the General Court's obligation to state the reasons for its judgments does not in principle extend to requiring it to justify the approach taken in one case as against that taken in another case, even if the latter concerns the same decision (see judgment of 11 July 2013, *Team Relocations and Others* v *Commission*, C-444/11 P, not published, EU:C:2013:464, paragraph 66 and the case-law cited).

43 Accordingly, Villeroy & Boch's argument that the grounds of the judgment under appeal and those of the judgment of 16 September 2013, *Keramag Keramische Werke and Others* v *Commission* (T-379/10 and T-381/10, not published, EU:T:2013:457), are contradictory must be rejected.

44 As regards Villeroy & Boch's argument that the General Court could not rely on Duravit's statement as against it, that argument is based on a misreading of the judgment under appeal. In fact, Duravit's statement is mentioned, in paragraph 293 of the judgment under appeal, solely for the purpose of responding to an argument advanced by the applicants at first instance which invoked that statement and sought to cast doubt on the veracity of the statements made by Ideal Standard and Roca. Accordingly, the General Court did not use Duravit's statement as inculpatory evidence with regard to Villeroy & Boch, as is confirmed by paragraph 295 of the judgment under appeal, in which the General Court found that the statements made by Ideal Standard and Roca were sufficient to establish the existence of an infringement of Article 101(1) TFEU.

45 In the light of the foregoing, the first ground of appeal must be rejected as unfounded.

The second ground of appeal

Arguments of the parties

46 By its second ground of appeal, which is divided into two parts, Villeroy & Boch submits, first, that the General Court infringed the obligation to state reasons inasmuch as, in paragraph 233 of the judgment under appeal, it rejected Villeroy & Boch's plea concerning the absence of any infringement in Italy, relying on the incorrect premiss that Villeroy & Boch had not denied that it had been aware that anticompetitive practices were being implemented in Italy.

47 Second, Villeroy & Boch argues that the judgment under appeal offends against the rules of logic and the prohibition of discrimination so far as concerns the assessment of the facts and the imputation of the infringement allegedly committed in Italy. It submits that, in paragraph 234 of the judgment under appeal, the General Court imputed that infringement to it, which was committed by a third party, on the basis of Villeroy & Boch's alleged knowledge of the infringement, even though it did not carry on business in Italy and had not attended the meetings of the trade association in Italy. It argues that, at the same time, the main complaints raised against the alleged key perpetrators of the same infringement were wholly or largely discounted in three other judgments concerning the decision at issue that were handed down on the same day by the same Chamber of the General Court composed of the same judges.

48 Thus, in paragraph 335 et seq. of the judgment of 16 September 2013, *Duravit and Others* v *Commission* (T-364/10, not published, EU:T:2013:477), the General Court found that Duravit, Duravit SA and Duravit BeLux SPRL/BVBA could not be found to have participated in the infringements committed in Italy or to have been aware of those infringements, even though they were present on the Italian market through the intermediary of a joint venture.

49 Villeroy & Boch argues that the same conclusion may be drawn from another judgment handed down by the same Chamber with the same Judge Rapporteur, on the same day, regarding the same questions relating to Italy, namely the judgment of 16 September 2013, *Wabco Europe and Others* v *Commission* (T-380/10, EU:T:2013:449, paragraph 70 et seq.). In that judgment the General Court stated that, even though it was established that the undertakings of the Ideal Standard group had taken part in meetings of the trade association in Italy at which discussions contrary to the competition rules had taken place, they were not to be held liable so far as the period from March 1993 to March 2000 was concerned.

50 In the judgment of 16 September 2013, *Keramag Keramische Werke and Others* v *Commission* (T-379/10 and T-381/10, not published, EU:T:2013:457, paragraphs 222 and 223), the same reasoning also led the General Court, contrary to what it held in the judgment under appeal, to annul in part the decision at issue with regard to the infringement complained of in Italy.

51 Villeroy & Boch maintains that, in view of the foregoing, the General Court's assessment of the evidence, in paragraph 233 of the judgment under appeal, in conjunction with paragraph 66 et seq. thereof, cannot be upheld as regards the substance.

52 The Commission contends that the second ground of appeal should be rejected.

Findings of the Court

53 As regards the first part of the second ground of appeal, it must be stated, on reading point 59 of the application for annulment to which the appellant refers in support of that ground of appeal, that, as the General Court in essence stated in paragraph 233 of the judgment under appeal, the appellant merely denied that it was aware of anticompetitive practices in Italy without advancing any arguments in support of that contention, which was not based on any detailed evidence. Furthermore, point 59 of the application for annulment relates to the first plea for annulment rather than to the third part of the third plea for annulment; consequently the General Court cannot be criticised for not addressing point 59 in the analysis of that third part in paragraphs 231 to 234 of the judgment under appeal.

54 It follows that the first part of the second ground of appeal is unfounded.

55 As regards the second part of the second ground of appeal, it should be recalled that, according to settled case-law, an infringement of Article 101(1) TFEU can result not only from an isolated act, but also from a series of acts or from continuous conduct, even if one or more aspects of that series of acts or continuous conduct could also, in themselves and taken in isolation, constitute an infringement of that provision. Accordingly, if the different actions form part of an 'overall plan' because their identical object distorts competition in the internal market, the Commission is entitled to impute responsibility for those actions on the basis of participation in the infringement considered as a whole (see judgment of 24 June 2015, *Fresh Del Monte Produce* v *Commission* and *Commission* v *Fresh Del Monte Produce*, C-293/13 P and C-294/13 P, EU:C:2015:416, paragraph 156 and the case-law cited).

56 An undertaking which has participated in a single and complex infringement of that kind by its own conduct, which fell within the definition of an agreement or concerted practice having an anticompetitive object within the meaning of Article 101(1) TFEU and was intended to help bring about the infringement as a whole, may thus be responsible also in respect of the conduct of other undertakings in the context of the same infringement throughout the period of its participation in the infringement. That is the position where it is shown that the undertaking intended, through its own conduct, to contribute to the common objectives pursued by all the participants and that it was aware of the offending conduct planned or put into effect by other undertakings in pursuit of the same objectives or that it could reasonably have foreseen it and was prepared to take the risk (see judgment of 24 June 2015, *Fresh Del Monte Produce* v *Commission* and *Commission* v *Fresh Del Monte Produce*, C-293/13 P and C-294/13 P, EU:C:2015:416, paragraph 157 and the case-law cited).

57 An undertaking may thus have participated directly in all the forms of anticompetitive conduct comprising the single and continuous infringement, in which case the Commission is entitled to attribute liability to it in relation to that conduct as a whole and, therefore, in relation to the infringement as a whole. Equally, the undertaking may have participated directly in only some of the forms of anticompetitive conduct comprising the single and continuous infringement, but have been aware of all the other unlawful conduct planned or put into effect by the other participants in the cartel in pursuit of the same objectives, or could reasonably have foreseen that conduct and have been prepared to take the risk. In such cases, the Commission is also entitled to attribute liability to that undertaking in relation to all the forms of anticompetitive conduct comprising such an infringement and, accordingly, in relation to the infringement as a whole (see judgment of 24 June 2015, *Fresh Del Monte Produce* v *Commission* and *Commission* v *Fresh Del Monte Produce*, C-293/13 P and C-294/13 P, EU:C:2015:416, paragraph 158 and the case-law cited).

58 Moreover, for the purpose of characterising various instances of conduct as a single and continuous infringement, it is not necessary to ascertain whether they present a link of complementarity, in the sense that each of them is intended to deal with one or more consequences of the normal pattern of competition, and, through interaction, contribute to the attainment of the set of anticompetitive effects desired by those responsible, within the framework of a global plan having a single objective. By contrast, the condition relating to a single objective requires that it be ascertained whether there are any elements characterising the various instances of conduct forming part of the infringement which are capable of indicating that the instances of conduct in fact implemented by other participating undertakings do not have an identical object or identical anticompetitive effect and, consequently, do not form part of an 'overall plan' as a result of their identical object distorting the normal pattern of competition within the internal market (see, to that effect, judgment of 19 December 2013, *Siemens and Others* v *Commission*, C-239/11 P, C-489/11 P and C-498/11 P, not published, EU:C:2013:866, paragraphs 247 and 248).

59 Furthermore, it cannot be inferred from the Court's case-law that Article 101(1) TFEU concerns only either (i) the undertakings operating on the market affected by the restrictions of competition or indeed on the markets upstream or downstream of that market or neighbouring markets or (ii) undertakings which restrict their freedom of action on a particular market under an agreement or as a result of a concerted practice. Indeed, it follows from well-established case-law of the Court that the text of Article 101(1) TFEU refers generally to all agreements and concerted practices which, in either horizontal or vertical relationships, distort competition on the internal market, irrespective of the market on which the parties operate, and that only the commercial conduct of one of the parties need be affected by the terms of the arrangements in question (see, to that effect, judgment of 22 October 2015, *AC-Treuhand* v *Commission*, C-194/14 P, EU:C:2015:717, paragraphs 34 and 35 and the case-law cited).

60 It follows from that case-law that the General Court could, without erring in law, hold that Villeroy & Boch had participated in a single infringement covering, amongst other places, Italy, since it had been aware that anticompetitive practices were being engaged in in Italy which formed part of the overall plan described in paragraph 15 of the present judgment, even though it did not itself put those practices into effect.

61 As regards the argument relating to the approach taken in the judgments of 16 September 2013, *Wabco Europe and Others* v *Commission* (T-380/10, EU:T:2013:449); of 16 September 2013, *Keramag Keramische Werke and Others* v *Commission* (T-379/10 and T-381/10, not published, EU:T:2013:457); and of 16 September 2013, *Duravit and Others* v *Commission* (T-364/10, not published, EU:T:2013:477), it should be recalled, as has been stated in paragraph 42 of the present judgment, that the General Court's obligation to state the reasons for its judgments does not in principle extend to requiring it to justify the approach taken in one case as against that taken in another case, even if the latter concerns the same decision.

62 Moreover, the fact that the General Court may have annulled the decision at issue in part in so far as it concerns the participation in the alleged unlawful acts of certain other members of the cartel concerned, on particular geographic markets and over specific periods of time, is not sufficient to cast doubt on the finding made in the judgment under appeal that there was an overall plan covering the three product sub-groups and the six Member States concerned as a result of the identical object of the conduct in question distorting competition in the internal market. Should the case arise, such partial annulments can result only in a reduction of the fine imposed on each of the undertakings concerned, provided that the geographic markets in question have been taken into account in the calculation of the fine imposed on those undertakings.

63 Accordingly, Villeroy & Boch is incorrect in its assertion that the General Court made an error of law in rejecting its plea relating to the absence of an infringement in Italy, whilst holding that the participation of certain undertakings present on the Italian market in that infringement was not established, or was only established in part, for the entirety of the periods on which the Commission relied.

64 It follows that the second part of the second ground of appeal is unfounded.

65 The second plea must therefore be rejected as unfounded.

The third ground of appeal

Arguments of the parties

66 By the first part of its third ground of appeal, Villeroy & Boch criticises, in essence, the fact that the General Court unlawfully accepted that the Commission had a legitimate interest in finding an infringement in the Netherlands although the limitation period had expired and that it thus acted in breach both of its powers under Article 263 TFEU and of the obligation to state reasons laid down in the second paragraph of Article 296 TFEU. It submits that this case does not concern a situation in which such a legitimate interest exists.

67 By the second part of its third ground of appeal, Villeroy & Boch maintains that point 2 of the operative part of the judgment under appeal and the grounds of the judgment are clearly contradictory. It submits that the Commission had initially considered there to be a continuous infringement of over five years' duration in the Netherlands. The General Court, in paragraph 321 of the judgment under appeal, ultimately held, however, that Villeroy & Boch could be penalised for the Netherlands infringement only for periods running, first, from 26 November 1996 to 1 December 1997 and, second, from 20 January to 1 December 1999. In accordance with its own statements, the General Court should — as was done in point 2 of the operative part of the judgment under appeal with regard to the German infringement — have annulled the decision at issue in that respect, in so far as it was stated therein that Villeroy & Boch participated in a cartel in the bathroom fittings and fixtures sector for periods in excess of the periods mentioned above. Villeroy & Boch argues that the General Court failed to take this into account: that amounts to an error of law, the consequence of which is that the judgment under appeal must be set aside, at least in part.

68 The Commission contends that the third ground of appeal should be rejected.

Findings of the Court

69 In order to address the first part of the third ground of appeal, it should be recalled, as regards, in the first place, Villeroy & Boch's argument concerning an infringement of Article 263 TFEU, that, according to settled case-law, it follows from Article 256 TFEU, Article 58, first paragraph, of the Statute of the Court of Justice of the European Union and Article 169(2) of the Rules of Procedure of the Court of Justice that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal. Where an appeal merely reproduces the pleas in law and arguments previously submitted to the General Court, without even including an argument specifically identifying the error of law allegedly vitiating the judgment under appeal, it fails to satisfy that requirement. Such an appeal amounts in reality to no more than a request for a re-examination of the application submitted to the General Court, which the Court of Justice does not have jurisdiction to undertake (see, to that

effect, judgments of 30 June 2005, *Eurocermex* v *OHIM*, C-286/04 P, EU:C:2005:422, paragraphs 49 and 50, and of 12 September 2006, *Reynolds Tobacco and Others* v *Commission*, C-131/03 P, EU:C:2006:541, paragraphs 49 and 50).

70 Villeroy & Boch does not explain the reasons why it considers that the General Court acted in breach of its powers under Article 263 TFEU in holding that, in the present case, the Commission had a legitimate interest in finding the Netherlands infringement.

71 This argument is therefore inadmissible.

72 As regards, in the second place, Villeroy & Boch's argument concerning an infringement of the obligation to state reasons, it must be recalled that, according to settled case-law, the General Court is not required to provide an account which follows exhaustively and one by one all the arguments put forward by the parties to the case, provided that the reasoning 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 (see, inter alia, judgments of 2 April 2009, *Bouygues and Bouygues Télécom* v *Commission*, C-431/07 P, EU:C:2009:223, paragraph 42, and of 22 May 2014, *Armando Álvarez* v *Commission*, C-36/12 P, EU:C:2014:349, paragraph 31).

73 The General Court pointed out that, by virtue of Article 7(1) of Regulation No 1/2003 and settled case-law, the Commission may, when it has a legitimate interest in doing so, make a finding of infringement although the infringement can no longer result in the imposition of a fine because the limitation period has expired. It then held, in paragraph 304 of the judgment under appeal, that the Commission had such an interest in the present case. To reinforce its finding that a single infringement had been committed, the Commission had, in the General Court's view, a legitimate interest in making a finding in respect of all the unlawful practices in which undertakings such as Villeroy & Boch –– which the Commission considered formed part of a 'central group of undertakings' that had implemented the infringement complained of –– had allegedly participated, including in respect of periods which might be regarded as being time-barred.

74 In taking that approach, the General Court, which was not required to respond to every submission made by Villeroy & Boch, gave a sufficient statement of its reasons.

75 It follows that the first part of the third ground of appeal is partly inadmissible and partly unfounded.

76 As regards the second part of this ground of appeal, which alleges that the grounds of the judgment under appeal and point 2 of its operative part are contradictory in that point 2 does not reflect the findings made by the General Court in paragraph 321 of that judgment, it should be stressed that those findings do not invalidate the finding, in point 2 of the operative part, that Villeroy & Boch participated, with effect from 12 October 1994, in a single infringement in the bathroom fittings and fixtures sector in Belgium, German, France, Italy, the Netherlands and Austria: the General Court in fact explained that the unlawful conduct at issue had started on that date in Austria. Moreover, in Case T-374/10, the General Court –– contrary to what has been argued by Villeroy & Boch and as is clear when paragraph 321 of the judgment under appeal is read in conjunction with paragraph 395 thereof –– annulled the decision at issue in part not because it considered that the Commission had made an error of assessment with regard to the infringement in Germany, but rather because the Commission had failed to establish to the requisite legal standard that Villeroy & Boch had participated in an infringement in the Netherlands from 28 September 1994.

77 It follows that the second part of the third ground of appeal is unfounded.

78 Having regard to the foregoing considerations, the third ground of appeal must be rejected as partly inadmissible and partly unfounded.

The fourth ground of appeal

Arguments of the parties

79 By its fourth ground of appeal, which is divided into four parts, Villeroy & Boch argues, in the first place, that an incorrect account was given of the submissions made by it in the proceedings concerning the acts committed in Belgium, which resulted in an error in the reasoning of the judgment under appeal, contrary to the second paragraph of Article 296 TFEU. It submits that the grounds set out by the General Court, in paragraph 243 et seq. of the judgment, are based on the incorrect premiss that Mr Z. continued to be a member of the staff of Villeroy & Boch Belgium after 1 January 2003. The appellant argues that, in fact, as it explained at the hearing before the General Court and as the General Court itself noted, Mr Z. ceased to have, with effect from that date, any organisational tie, or relationship under an employment contract, with Villeroy & Boch Belgium, which thus precludes any imputation of those acts to the appellant.

80 In the second place, the appellant submits, in the alternative, that the General Court infringed Article 101 TFEU in holding that Villeroy & Boch Belgium had participated in a ceramics infringement in Belgium when it had not been active on that market since the end of 2002. In particular, the General Court failed to indicate which 'offending acts' the company could, after its withdrawal from the market, have coordinated with the other cartel participants in order to restrict competition on that market. The appellant submits that, in the light of the reasoning of the General Court in the judgments of 16 September 2013, *Wabco Europe and Others* v *Commission* (T-380/10, EU:T:2013:449, paragraph 79 et seq.), and of 16 September 2013, *Keramag Keramische Werke and Others* v *Commission* (T-379/10 and T-381/10, not published, EU:T:2013:457, paragraph 222 et seq.), liability for the acts of third parties, which it maintains were committed after the date of that withdrawal from the market, cannot be imputed to Villeroy & Boch Belgium, or indirectly to the appellant. As the General Court indicated in those judgments, such a complaint would have required the other constituent elements of a single infringement to be established, more specifically the corresponding 'object' or 'effect' of the restrictions of competition on the Belgian market, a condition which is clearly not met in the present case. In any event, the conflicting assessments of the facts in the judgment under appeal and the judgment of 16 September 2013, *Wabco Europe and Others* v *Commission* (T-380/10, EU:T:2013:449), constitutes an infringement of the principle of equal treatment to the appellant's detriment.

81 In the third place, as regards proof of the existence of concerted practices at the meetings on 28 and 29 April 2003 in Belgium, Villeroy & Boch submits that the General Court's appraisal of the evidence, in paragraph 271 of the judgment under appeal, amounted merely to the observation that the fact that no single rate was agreed upon for wholesaler bonuses 'does not preclude the possibility that competition was distorted by the exchange of information in question'. However, even if that proposition of the General Court were considered to be correct, that would not suffice, as a matter of logic, to prove the infringement. There is, in the appellant's submission, either an infringement of the obligation to state reasons, laid down in the second paragraph of Article 296 TFEU, or an infringement of the principle of *in dubio pro reo* inherent in Article 48(1) of the Charter of Fundamental Rights of the European Union ('the Charter').

82 In the fourth place, Villeroy & Boch submits that the judgment under appeal errs in law in paragraphs 272 and 274 inasmuch as it is based on the premiss of a single, complex and continuous infringement in the case of all the infringements on the Belgian market for ceramic bathroom ware.

83 It maintains that the findings of fact made by the Commission on the basis of the VCG meeting do not support the conclusion that the whole period of the infringement found must be regarded as forming a single infringement. On the contrary, after the VCG meeting on 28 and 29 April 2003, there was a clear break, which prevents the meetings that took place before and after that meeting from being combined, in legal terms, so as to form a single and continuous infringement.

84 The Commission contends that the fourth ground of appeal should be rejected.

Findings of the Court

85 As regards, in the first place, the first part of the fourth ground of appeal, which alleges infringement of the obligation to state reasons in that the General Court failed to take account of Villeroy & Boch's argument that Mr Z. no longer had any connection with Villeroy & Boch Belgium as of 1 January 2003, it should be noted that, in the written procedure before the General Court, Villeroy & Boch had merely indicated, in order to deny that it had participated in the cartel in Belgium on or after that date, that Villeroy & Boch Luxembourg 'had taken over the Belgian company's ceramics business at the end of 2002'. Thus, it was only during the oral procedure before the General Court that Villeroy & Boch, for the first time, expressly put forward its contention that it could not be held liable for anticompetitive conduct on the Belgian ceramics market from 1 January 2003 onwards, because the person who attended the cartel meetings, namely Mr Z., had, since that date, been employed by Villeroy & Boch Luxembourg rather than by Villeroy & Boch Belgium.

86 Article 48(2) of the Rules of Procedure of the General Court provides that no new plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure. Accordingly, the argument which Villeroy & Boch put forward at the hearing before the General Court was manifestly inadmissible since it concerned a new plea in law based on a matter of fact which the appellant was the first to know about and which did not come to light in the course of the procedure.

87 It is true that the General Court did not expressly rule on whether that argument was admissible or well founded. However, in accordance with the case-law of the Court of Justice, the General Court cannot be required, every time that a party raises, in the course of the procedure, a new plea in law which clearly does not satisfy the requirements of Article 48(2) of its Rules of Procedure, either to explain in its judgment the reasons for which that plea is inadmissible, or to examine it in detail (see, inter alia, judgment of 20 March 2014, *Rousse Industry* v *Commission*, C-271/13 P, not published, EU:C:2014:175, paragraph 22 and the case-law cited).

88 It follows that the General Court did not infringe the obligation to state reasons when, in paragraph 248 of the judgment under appeal, it stated — without taking account of Villeroy & Boch's late argument that Mr Z. had ceased to be employed by Villeroy & Boch Belgium as of 1 January 2003 and without explaining why that argument was manifestly inadmissible — that Mr Z.'s participation in the cartel meetings 'establishes that Villeroy & Boch Belgium continued actively to participate in the infringement on its own behalf and on behalf of the undertaking, within the meaning of competition law, of which it formed part'.

89 The first part of the fourth ground of appeal is therefore unfounded.

90 As regards, in the second place, the second part of this ground of appeal, alleging infringement of Article 101 TFEU, it should be noted that the appellant does not call into question the General Court's finding that the VCG meetings that took place before and after 1 January 2003 were unlawful but submits that the General Court was incorrect in considering that it had participated in the infringement although Villeroy & Boch Belgium had not been active on the Belgian ceramics market since the end of 2002.

91 It follows from the case-law cited in paragraph 59 of the present judgment that the General Court was correct in holding, in paragraph 242 of the judgment under appeal, that an undertaking can infringe the prohibition laid down in Article 101(1) TFEU where the purpose of its conduct, as coordinated with that of other undertakings, is to restrict competition on a particular relevant market, which does not necessarily require that the undertaking itself be active on that market.

92 Contrary to what is maintained by the appellant, the General Court established that Villeroy & Boch Belgium had actively participated in the alleged infringement. Thus, in paragraphs 244 and 248 of the judgment under appeal, it pointed out that Mr Z.'s uninterrupted participation on behalf of Villeroy & Boch Belgium at the VCG meetings — the unlawful nature of which is not disputed by the appellant — before and after 1 January 2003, that is to say, including after that company had ceased to be active on the ceramics market, established Villeroy & Boch Belgium's active participation in the infringement. Moreover, contrary to the appellant's contention, the various instances of conduct alleged against the participants in that infringement, including Villeroy & Boch Belgium, were set out in detail in paragraphs 255 to 277 of the judgment under appeal.

93 It follows that the appellant's argument based on the fact that Villeroy & Boch Belgium had, with effect from the end of 2002, ceased to be active in the ceramics sector must be rejected.

94 Having regard to the case-law set out in paragraph 42 of the present judgment, that conclusion is not called into question in the light of the approach taken in the judgments of 16 September 2013, *Wabco Europe and Others* v *Commission* (T-380/10, EU:T:2013:449, paragraph 84), and of 16 September 2013, *Keramag Keramische Werke and Others* v *Commission* (T-379/10 and T-381/10, not published, EU:T:2013:457, paragraph 220 et seq.).

95 Accordingly, the second part of the fourth ground of appeal is unfounded.

96 Finally, concerning, in the third place, the arguments put forward by the appellant in the third and fourth parts of this ground of appeal, it must be stated that, by those arguments, the appellant, whilst purporting to claim that the General Court made errors of law, is essentially seeking to challenge the assessment of the evidence relating to various unlawful meetings, a matter in respect of which the General Court has sole jurisdiction. Those arguments must therefore be rejected as inadmissible.

97 Having regard to the foregoing considerations, the fourth ground of appeal must be rejected as partly inadmissible and partly unfounded.

The fifth ground of appeal

Arguments of the parties

98 By its fifth ground of appeal, Villeroy & Boch asserts that the judgment under appeal infringes Article 101 TFEU in so far as it confirms the existence of an infringement in Germany from 2002 to 2004.

99 Concerning more particularly the evidence of anticompetitive practices relating to shower enclosures in 2002, the General Court's reasoning in paragraphs 116 and 117 of the judgment under appeal errs in law since it ignores the arguments made by Villeroy & Boch before the General Court in point 135 of its application for annulment and point 49 of its reply. The General Court also made an error of law in classifying a discussion between competitors about the date for sending out new annual price lists as an unlawful exchange of sensitive business information.

100 As regards the evidence of anticompetitive acts in the ceramics sector in 2002, Villeroy & Boch maintains that the General Court had no ground for holding, in paragraph 143 of the judgment under appeal, that –– because the unlawful discussions that took place in 2001 produced anticompetitive effects in 2002 and because Villeroy & Boch had not publicly distanced itself either from those discussions or from the discussions that took place in 2003 –– it had not interrupted its participation in the unlawful practices in 2002, even though, as the General Court found, there was no direct evidence that unlawful meetings had been held in 2002.

101 As regards the acts complained of on the ceramics market in 2003, Villeroy & Boch maintains that paragraph 144 of the judgment under appeal distorts its submissions relating to the evidence of its participation in the FSKI meetings on 17 January 2003 and 4 and 5 July 2003, thereby infringing Article 101 TFEU and the right to due process. The General Court indicated that Villeroy & Boch did not dispute that, according to the minutes of the last-mentioned meeting, 'the ceramics manufacturers had agreed that an increase in the costs of road tolls should not be borne by the ceramics manufacturers alone but should be passed on to their customers' and also that it did not dispute 'the credibility' of those minutes. That is incorrect and wholly contrary to the arguments clearly put forward by Villeroy & Boch before the General Court.

102 In addition, the General Court failed, in paragraph 145 of the judgment under appeal, to explain in what respect the exchanges that took place in those meetings actually reduced the secrecy of competition by removing uncertainties about matters relevant to competition. Nor did it explain what aspects of the information exchanged were in fact secret. Since, as Villeroy & Boch explained before the General Court, the information exchanged in the present case involved matters of common knowledge, those exchanges cannot be classified as an unlawful cartel prohibited by Article 101 TFEU.

103 Villeroy & Boch submits that it was likewise not established that there was an infringement concerning shower enclosures and ceramics in 2004. To establish that Villeroy & Boch participated in such an infringement, the General Court, in paragraphs 121 and 148 of the judgment under appeal, relied exclusively on (i) the fact that the members of IndustrieForum Sanitär and Freundeskreis der deutschen Sanitärindustrie had, at a meeting on 20 July 2004, exchanged 'sensitive business information, company by company, relating to the development of their turnover in Germany and to their exports as well as information about their forecast growth' and (ii) in particular, the fact that Villeroy & Boch had indicated that its turnover had increased by 5.5%, that exports were increasing and that it was forecasting a 5% increase in turnover in Germany.

104 First, Villeroy & Boch submits that the judgment under appeal is insufficiently reasoned in that the General Court did not give the reasons why it considered that the discussions that took place at the meeting on 20 July 2004 could reduce the secrecy of competition protected under Article 101 TFEU.

105 Secondly, Villeroy & Boch argues that the communication of an undertaking's, or a group's, total turnover for the preceding business year to competitors or to non-competing third parties, the exchange of information concerning an increase in exports and the communication of forecasts relating to increases in turnover or of statistics on the development of turnover cannot be classified as breaches of Article 101 TFEU. No conclusion may be drawn on the basis of those commercial data alone as to the practices of the undertaking concerned on the market, to the profitability of its operations or as to the strategy it has in mind for attaining the goals set for the development of turnover. Thus no market operator could, on the basis of the information exchanged, anticipate with greater certainty the future commercial conduct of its competitors on the market. Furthermore, some of those data are published regularly and promptly by virtually all undertakings, such publication being, in most cases, compulsory under commercial law, the law governing capital markets and the rules applying to concentrations.

106 The Commission contends that the fifth ground of appeal should be rejected.

Findings of the Court

107 In view of the case-law set out in paragraph 38 of the present judgment, the arguments put forward by the appellant in its fifth ground of appeal are inadmissible in so far as they seek a fresh assessment of the facts and evidence concerning the infringements committed in Germany in the period 2002 to 2004.

108 For the rest, it must be noted that, as regards, in the first place, the activities relating to shower enclosures in 2002, the appellant is incorrect when it complains that the General Court did not address the submissions made in point 135 of its application for annulment and point 49 of its reply. As the Commission has pointed out, those submissions concerned the Austrian infringement rather than the German infringement.

109 Moreover, Villeroy & Boch's argument that the General Court made an error of law in classifying as an unlawful exchange a discussion between competitors about the date for sending out new annual price lists is based on a misreading of the judgment under appeal. In fact, in paragraphs 116 and 117 of that judgment the General Court found only that that exchange of information established that, between 2001 and 2003, Villeroy & Boch and its competitors had not stopped passing sensitive business information to one another. Thus, the General Court did not hold that that exchange, on its own, infringed Article 101 TFEU.

110 As regards, in the second place, Villeroy & Boch's arguments concerning actions taken in the ceramics sector in 2002, the General Court held, in paragraph 143 of the judgment under appeal, that, despite the lack of direct evidence of Villeroy & Boch's participation in unlawful meetings in 2002, the Commission could properly consider that there was, in that year, no break in Villeroy & Boch's participation in the infringement alleged against it. In that regard, the General Court found (i) that the unlawful discussions that had taken place in 2001 concerning price increases for 2002 (meetings which Villeroy & Boch attended) produced anticompetitive effects in 2002 and (ii) that Villeroy & Boch had participated, in 2001 and 2003, in unlawful discussions concerning price increases and had not publicly distanced itself from those discussions.

111 According to settled case-law of the Court, the existence of anticompetitive practices or agreements must, in most cases, be inferred from a number of coincidences or indicia which, taken together, may, in the absence of another plausible explanation, constitute evidence of an infringement of the competition rules. Thus, as regards, in particular, an infringement extending over a number of years, the fact that direct evidence of a company's participation in that infringement during a specified period has not been produced does not preclude that participation from being regarded as established also during that period, provided that that finding is based on objective and consistent indicia; the lack of any public distancing on the part of that company may be taken into account in that regard (see, to that effect, judgment of 17 September 2015, *Total Marketing Services* v *Commission*, C-634/13 P, EU:C:2015:614, paragraphs 26 to 28 and the case-law cited).

112 In view of that case-law and the General Court's findings of fact described in paragraph 110 of the present judgment, the General Court did not make an error of law or of reasoning in holding that Villeroy & Boch could be regarded as having continued to participate in the cartel in question throughout 2002.

113 Concerning, in the third place, the year 2003, the fact that — contrary to what the General Court is said to have stated in paragraph 144 of the judgment under appeal — Villeroy & Boch allegedly challenged, at point 115 of its application for annulment, the Commission's interpretation of the minutes of the FSKI meeting on 4 and 5 July 2003, is not in itself such as to undermine the findings of fact made by the General Court.

114 Furthermore, so far as the validity of the findings made in paragraph 145 of the judgment under appeal is concerned, it must be noted that, contrary to what is maintained by Villeroy & Boch, the General Court did not hold that every exchange of information between competitors was capable of infringing Article 101 TFEU and explained why it considered that the discussions that took place at the FSKI meeting on 4 and 5 July 2003 were anticompetitive in nature. In that regard, the General Court did not err in law in holding that discussions during which the ceramics manufacturers agreed that the increase in road toll costs should be passed on to the customers remove uncertainty between competitors and amount to price coordination, so that such discussions constitute an anticompetitive practice even if third parties or the public would have foreseen that there would be such a passing on of costs.

115 Concerning, in the fourth place, the year 2004, the appellant's argument that the judgment under appeal is insufficiently reasoned must be rejected. Contrary to the appellant's assertion, the General Court set out, in paragraphs 123 and 149 of the judgment under appeal, the reasons why it considered that the exchanges of information referred to in paragraphs 121 and 148 of that judgment were anticompetitive. Thus, the General Court noted that those exchanges supported the coordination of price increases that was decided upon in 2003 for the year 2004 and that they made it possible for Villeroy & Boch and its competitors to anticipate with greater certainty their respective future commercial conduct on the market. The General Court thereby stated reasons for the judgment under appeal.

116 As regards, moreover, the validity of the abovementioned findings of the General Court, it is sufficient to note that Villeroy & Boch does not challenge the General Court's finding in paragraphs 123 and 149 of the judgment under appeal that the exchanges referred to in paragraphs 121 and 148 of that judgment are anticompetitive because they support the coordination of price increases that was decided upon in 2003 for the year 2004: nor is the existence of such coordination disputed by Villeroy & Boch in this appeal. Since such a factor is sufficient for a finding of infringement, the appellant's arguments that those exchanges do not, in themselves, constitute an infringement of the competition rules are ineffective.

117 The fifth ground of appeal must therefore be rejected as in part inadmissible, in part ineffective and in part unfounded.

The sixth ground of appeal

Arguments of the parties

118 By its sixth ground of appeal, the appellant submits that, so far as concerns the infringements allegedly committed in Austria during the period from 12 October 1994 to 9 November 2004, the findings of the General Court are incorrect and must be set aside.

119 Concerning more particularly the year 1994, the appellant claims that, in paragraphs 175 and 176 of the judgment under appeal, the General Court gave an overly broad interpretation of the Commission's findings and thus altered the reasoning of the decision at issue in breach of the second paragraph of Article 296 TFEU. Contrary to what was held by the General Court, the Commission had not found, in recitals 299 to 301 of that decision, that the ASI meetings in 1994 concerned not only shower enclosures and taps and fittings but also ceramic bathroom ware.

120 Concerning the years 1995 to 1997, the General Court, in paragraphs 185, 190 and 196 of the judgment under appeal, observed that Villeroy & Boch Austria took part in unlawful discussions at the meetings on 16 November 1995, 23 April 1996 and 15 October 1997.

121 However, as regards the meeting on 16 November 1995, the appellant essentially submits that that conclusion is vitiated by errors of law, if for no other reason than because the General Court did not address all its arguments. The General Court's observations in paragraph 189 et seq. of the judgment under appeal concerning the meeting on 23 April 1996, according to which it is immaterial that the discussion at issue was organised at the wholesalers' request, also err in law, since there is another, wholly legitimate, explanation of the practices complained of. That explanation is that the wholesalers in the bathroom fittings and fixtures sector expressly required annual price lists to be introduced on certain dates in order to be able to publish their catalogues. As regards the meeting on 15 October 1997, the General Court, in paragraph 194 of the judgment under appeal, also went beyond the limits of the review of legality for which Article 263 TFEU provides by relying on reasons which were not included in the Commission's statement of objections.

122 So far as 1998 is concerned, the appellant submits that the General Court's observations, in paragraph 197 et seq. of the judgment under appeal, concerning Villeroy & Boch Austria's alleged involvement in a cartel infringement also err in law as they are contradictory. The General Court observed, in paragraphs 197 to 202 of that judgment, that the Commission had failed to prove that Villeroy & Boch Austria had participated, in 1998, in discussions that were contrary to competition law. In particular, Masco's statement was said not to prove such participation. It is illogical that the General Court should then rely, in paragraph 203 of the judgment under appeal, on the same statement of Masco to prove that Villeroy & Boch did not distance itself from the unlawful practices in 1998. The General Court thus also failed to apply the legal principles developed in the case-law, whereby a set of indicia is sufficient to establish that a meeting is contrary to competition law only when it shows the systematic character of the meetings and their anticompetitive content and when that is supported by a statement of an undertaking that has significant probative value. In the appellant's submission, neither of those conditions is fulfilled in the present case.

123 Concerning the year 1999, the appellant submits that there are errors of law in the General Court's conclusions in paragraph 208 of the judgment under appeal, according to which the evidence produced by the Commission, namely the handwritten notes of the ASI meeting on 6 September 1999 drawn up by Ideal Standard, establishes to the requisite legal standard the participation of Villeroy & Boch in unlawful discussions. The statement of an undertaking which has applied for a reduction in its fine under the 2002 Leniency Notice cannot constitute sufficient evidence of an infringement where the accuracy of the statement is challenged by a number of other undertakings under investigation.

124 Concerning the year 2000, the General Court, in paragraph 214 of the judgment under appeal, considered, relying on the minutes of the ASI meeting on 12 and 13 October 2000, that, despite the lack of direct evidence that Villeroy & Boch Austria took part in the anticompetitive actions in that year, 'it must be found that the unlawful discussions which took place in 1999 produced effects in the course of the year 2000'. The appellant maintains, however, that those minutes, which, moreover, were misinterpreted by the General Court, do not constitute sufficient evidence in that regard.

125 As regards the year 2001, it is submitted that the General Court, in paragraphs 214 to 218 of the judgment under appeal, accepted –– solely on the ground that the unlawful discussions alleged to have taken place in 2000 continued to produce effects –– that Villeroy & Boch Austria had participated in unlawful discussions in 2001. In stating its reasons, the General Court merely referred to recitals 652 to 658 of the decision at issue, without explaining in what respect the explanations therein were persuasive.

126 So far as the years 2002 and 2003 are concerned, the General Court did not take Villeroy & Boch's submissions into account.

127 As regards, lastly, the year 2004, the appellant submits that the observations made by the General Court in paragraph 228 of the judgment under appeal are contradictory and vitiated by an error of law. The General Court held, in that paragraph, that Villeroy & Boch Austria, which did not attend the ASI meeting on 22 January 2004, was informed, by the minutes of the meeting, of the decisions taken by its competitors at the meeting, whilst, in paragraph 212 of the judgment under appeal, the General Court held that the fact that minutes of ASI meetings were as a rule to be sent to all the members of that association did not serve to establish, on its own, that Villeroy & Boch Austria had actually acquainted itself with them.

128 The Commission contends that the sixth ground of appeal should be rejected.

Findings of the Court

129 By its sixth ground of appeal, the appellant claims that there are various errors in the General Court's findings concerning infringements allegedly committed in Austria between 12 October 1994 and 9 November 2004.

130 As regards, first, the appellant's arguments relating to 1994, the Court finds that, in the present proceedings, the appellant merely reproduces the arguments which it advanced before the General Court. The same is true of the arguments concerning the meeting of 23 April 1996. In view of the case-law set out in paragraph 69 of the present judgment, those arguments must therefore be rejected as inadmissible.

131 The Court must also reject, secondly, the appellant's arguments concerning the meetings that took place on 16 November 1995 and 15 October 1997, which in essence allege that the judgment under appeal is insufficiently reasoned. In fact, the General Court, in paragraphs 180 to 185 and 192 to 196 of the judgment under appeal, examined and rejected the appellant's arguments relating to the infringements in Austria so far as those various meetings are concerned. For each of them, the General Court referred to the relevant evidence and to the decision at issue before rejecting the appellant's arguments as unfounded. In doing so, the General Court stated reasons for the judgment under appeal.

132 So far as the meeting on 15 October 1997 is concerned, the Court also rejects the appellant's argument that the General Court relied on reasons which were not included in the Commission's statement of objections. The General Court in fact relied, in paragraph 194 of the judgment under appeal, on the reasons set out in recitals 295 and 307 of the decision at issue. Villeroy & Boch, however, did not allege, before the General Court, that there was any inconsistency between that decision and the statement of objections on this point. Consequently, in accordance with settled case-law (see, inter alia, judgment of 22 October 2015, *AC-Treuhand* v *Commission*, C-194/14 P, EU:C:2015:717, paragraph 54), it cannot put forward such an argument at the stage of the appeal before the Court of Justice.

133 Concerning, thirdly, the meetings of 30 April and 18 June 1998, it should be noted that the General Court found, in paragraph 199 of the judgment under appeal, that none of the evidence produced by the Commission established that Villeroy & Boch had taken part in the infringement. However, in paragraph 203 of the judgment, the General Court clearly held that, in the absence of any 'public distancing' on the part of Villeroy & Boch and owing to the fact that the agreement of 15 October 1997 continued to produce anticompetitive effects throughout the following year, the Commission could consider that the appellant had not ceased to participate in the infringement in 1998. In proceeding in that way, the General Court fulfilled its obligation to state reasons, thereby enabling the parties to challenge its reasoning and the Court of Justice to exercise its power of review in the appeal. Having regard to the case-law set out in paragraph 111 of the present judgment, it did not make any error of law in its taking and appraisal of the evidence. Nor did the General Court contradict itself or

fail in its obligation to state reasons in holding that, although Masco's statement did not, on its own, establish the participation of Villeroy & Boch in exchanges of information in 1998, it could properly be taken into account, together with other material, as part of the set of consistent indicia described in paragraph 203 of the judgment under appeal in order to show that Villeroy & Boch Austria did not interrupt its participation in the unlawful practices in 1998.

134 As regards, fourthly, the meetings that took place in 1999, it should be noted that, as is made quite clear by paragraph 206 of the judgment under appeal, the Commission relied on a handwritten account of the meeting on 6 September 1999, drawn up by a representative of Ideal Standard on the actual day of the unlawful meeting. Contrary to the appellant's contention, such evidence, which does not date from the time when that company made an application under the 2002 Leniency Notice but which, as the General Court stated in paragraph 207 of the judgment under appeal, is contemporaneous with the facts, does not require there to be other corroborating evidence. That argument must therefore be rejected as unfounded.

135 Concerning, fifthly, the ASI meeting on 12 and 13 October 2000, the appellant's arguments are based on a misreading of paragraph 214 of the judgment under appeal. Contrary to the appellant's claim, the General Court did not rely on the minutes of that meeting in finding that the unlawful discussions that took place in 1999 produced effects in the course of the year 2000. Furthermore, those arguments essentially seek to call in question the General Court's assessment of the evidence, without, however, proving that the clear sense of the evidence has been distorted. Accordingly, in view of the case-law set out in paragraph 38 of the present judgment, those arguments are inadmissible.

136 Concerning, sixthly, the year 2001, the appellant's argument is also based on a misreading of the judgment under appeal and must therefore be rejected. Indeed, paragraphs 215 to 218 of that judgment make quite clear that the General Court did not base its finding that Villeroy & Boch Austria had participated in the unlawful discussions that took place in 2001 on the ground that the discussions which took place in 2000 continued to produce effects the following year. In fact, in paragraphs 215 to 217 of that judgment, the General Court took as its basis the fact that that company had attended several meetings in 2001 at which the participants agreed on the date on which price lists would be sent to the wholesalers and on the date of the price increase, as well as on the fact that those meetings were coordinated with others that took place in 2000 and 2001, which Villeroy & Boch Austria did not attend but at which ASI members mentioned figures for price increases from 1 January 2002.

137 Concerning, seventhly, the appellant's arguments that the judgment under appeal is insufficiently reasoned in that the General Court did not take account of its submissions relating to the years 2002 and 2003, it is sufficient to note that, for each of the relevant meetings, the General Court, in paragraphs 219 to 226 of the judgment under appeal, referred to the relevant evidence and to the decision at issue before rejecting the appellant's arguments as unfounded. In view of the case-law set out in paragraph 72 of the present judgment, the General Court was not required to respond to each and every one of the appellant's submissions. Accordingly, the appellant's present arguments must be rejected.

138 As regards, finally, the appellant's arguments concerning the meeting on 22 January 2004, it is clear that the appellant is seeking to call into question the General Court's assessment of the evidence, without, however, raising a claim that the clear sense of that evidence has been distorted. Accordingly, in view of the case-law set out in paragraph 38 of the present judgment, those arguments are inadmissible.

139 It follows from the foregoing that the sixth ground of appeal must be rejected as partly inadmissible and partly unfounded.

The seventh and ninth grounds of appeal

Arguments of the parties

140 By its seventh ground of appeal, raised in the alternative, the appellant submits that the acts complained of in connection with the infringements allegedly committed in Belgium, France and Austria, do not establish that it participated in those infringements, since they are attributable to its subsidiaries, rather than to it personally.

141 The appellant submits in that regard that the concept of an 'economic unit', as applied by the Commission and the General Court in the present case, entails the imputation of acts to a company irrespective of all fault on the latter's part, in breach of (i) the safeguards offered by the Charter, in particular the right to be presumed innocent and the principle of *in dubio pro reo* guaranteed by Article 48(1) thereof, (ii) the principle of *nullum crimen, nulla poena sine lege* and (iii) Article 101 TFEU, particularly since the presumption that an economic unit exists is in practice irrefutable where the subsidiary is wholly owned by its parent. While the Court accepted that concept in its case-law predating the entry into force of the Charter, that case-law should, in the appellant's submission, evolve. In addition, the judgment under appeal is in breach of the obligation to state reasons deriving from the second paragraph of Article 296 TFEU, since it does not address Villeroy & Boch's arguments in that regard and does not contain any reasons so far as significant parts of the alleged infringement are concerned.

142 By its ninth ground of appeal, the appellant objects to the fact that the judgment under appeal upheld the fine imposed on it jointly and severally with its subsidiary.

143 It argues that, even if it were possible to rely on the responsibility of the parent company for the acts of its subsidiary on the basis of the concept of an 'economic unit', joint and several liability for the payment of fines imposed on the appellant's subsidiaries should not be accepted since (i) no EU legal act contains provision for a fine to be imposed on a joint and several basis and (ii) acceptance of such joint and several liability denies the appellant the right to be fined individually on the basis of the fault complained of, in breach of the principle of personal responsibility. In the alternative, the appellant submits that the Commission and the General Court should in any event have calculated the proportion of the fine owed by each of the debtors on the basis of the responsibility borne by each of them.

144 The Commission contends that the seventh and ninth grounds of appeal should be rejected.

Findings of the Court

145 It should be recalled that, according to settled case-law, which has not been called into question by the entry into force of the Charter, in certain circumstances, a legal person who is not the perpetrator of an infringement of competition law may nevertheless be penalised for the unlawful conduct of another legal person, if both those persons form part of the same economic entity and thus constitute an undertaking within the meaning of Article 101 TFEU (judgment of 10 April 2014, *Commission* v *Siemens Österreich and Others* and *Siemens Transmission & Distribution and Others* v *Commission*, C-231/11 P to C-233/11 P, EU:C:2014:256, paragraph 45).

146 It is settled case-law that the conduct of a subsidiary may be imputed to the parent company in particular where, although having a separate legal personality, that subsidiary does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company, having regard in particular to the economic,

organisational and legal links between those two legal entities (judgment of 10 April 2014, *Commission* v *Siemens Österreich and Others* and *Siemens Transmission & Distribution and Others* v *Commission*, C-231/11 P to C-233/11 P, EU:C:2014:256, paragraph 46 and the case-law cited).

147 In that regard, the Court has made clear that, in the particular case in which a parent company holds, directly or indirectly, all or almost all of the capital in a subsidiary which has committed an infringement of the EU competition rules, there is a rebuttable presumption that that parent company actually exercises a decisive influence over its subsidiary (judgment of 16 June 2016, *Evonik Degussa and AlzChem* v *Commission*, C-155/14 P, EU:C:2016:446, paragraph 28 and the case-law cited).

148 In such a situation, it is sufficient for the Commission to prove that all or almost all of the capital in the subsidiary is held, directly or indirectly, by the parent company in order to take the view that that presumption takes effect. The parent company then has the burden of rebutting the presumption, by adducing sufficient evidence relating to the organisational, economic and legal links between itself and its subsidiary to show that its subsidiary acts independently on the market. If the parent company fails to rebut the presumption, the Commission will be able to consider the parent and its subsidiary to form part of the same economic unit and to consider the parent to be responsible for the subsidiary's conduct and it will be able to hold the two companies jointly and severally liable for payment of a fine, without having to establish the personal involvement of the parent company in the infringement (see, to that effect, judgment of 16 June 2016, *Evonik Degussa and AlzChem* v *Commission*, C-155/14 P, EU:C:2016:446, paragraphs 27 and 29 to 32 and the case-law cited).

149 It should also be made clear that, contrary to what is maintained by the appellant, the foregoing case-law does not infringe the right to be presumed innocent that is guaranteed by Article 48(1) of the Charter or the principles of *in dubio pro reo* and *nullum crimen, nulla poena sine lege*. The presumption that a parent company exercises decisive influence over its subsidiary when it holds all or almost all of the capital in the subsidiary does not lead to a presumption of guilt on the part of either one of those companies and therefore does not infringe either the right to be presumed innocent or the principle of *in dubio pro reo*. As regards the principle of *nullum crimen, nulla poena sine lege*, it requires that the law give a clear definition of offences and the penalties which they attract. That requirement is satisfied where the person concerned is in a position to ascertain from the wording of the relevant provision and, if need be, with the assistance of the courts' interpretation of it, what acts and omissions will make him criminally liable (judgment of 22 May 2008, *Evonik Degussa* v *Commission*, C-266/06 P, not published, EU:C:2008:295, paragraph 39). The case-law of the Court of Justice set out in paragraphs 145 to 148 of the present judgment does not infringe that principle.

150 As regards the fact that the fines were not divided up between the companies concerned, it should be recalled that, inasmuch as it is merely the manifestation of an *ipso jure* effect of the concept of an 'undertaking', the EU law concept of joint and several liability for payment of a fine concerns only the undertaking itself and not the companies of which it is made up (judgment of 10 April 2014, *Commission* v *Siemens Österreich and Others* and *Siemens Transmission & Distribution and Others* v *Commission*, C-231/11 P to C-233/11 P, EU:C:2014:256, paragraph 57).

151 While it follows from Article 23(2) of Regulation No 1/2003 that the Commission is entitled to hold a number of companies jointly and severally liable for payment of a fine, in so far as they formed part of the same undertaking, it is not possible to conclude on the basis of either the wording of that provision or the objective of the joint and several liability mechanism that that power to impose penalties extends, beyond the determination of joint and several liability from an external perspective, to the power to determine the shares to be paid by those held jointly and severally liable from the perspective of their internal relationship (judgment of 10 April 2014, *Commission* v *Siemens Österreich and Others* and *Siemens Transmission & Distribution and Others* v *Commission*, C-231/11 P to C-233/11 P, EU:C:2014:256, paragraph 58).

152 On the contrary, the mechanism of joint and several liability is intended to constitute an additional legal device available to the Commission to strengthen the effectiveness of the action taken by it for the recovery of fines imposed for infringements of the competition rules, since that mechanism reduces for the Commission, as creditor of the debt represented by such fines, the risk of insolvency: that is part of the objective of deterrence pursued generally by competition law, as the General Court essentially observed, correctly, at paragraph 325 of the judgment under appeal (judgment of 10 April 2014, *Commission* v *Siemens Österreich and Others* and *Siemens Transmission & Distribution and Others* v *Commission*, C-231/11 P to C-233/11 P, EU:C:2014:256, paragraph 59 and the case-law cited).

153 The determination, in the context of the internal relationship of those held jointly and severally liable for payment of a fine, of the shares each of them is required to pay does not pursue that dual objective. That is a contentious issue, to be resolved at a later stage, and, in principle, the Commission no longer has any interest in the matter, where the fine has been paid in full by one or more of those held liable. Accordingly, the Commission cannot be required to determine such shares (see, to that effect, judgment of 10 April 2014, *Commission* v *Siemens Österreich and Others* and *Siemens Transmission & Distribution and Others* v *Commission*, C-231/11 P to C-233/11 P, EU:C:2014:256, paragraphs 60 to 64).

154 In the present case, Villeroy & Boch does not deny that it owned, at the time of the infringement imputed to it, the entire share capital of the companies whose employees took part in the anticompetitive discussions in question in Belgium, France and Austria and does not claim that it submitted to the General Court any matters capable of rebutting the presumption that it exercised decisive influence over those companies. Accordingly, in view of the case-law set out in paragraphs 145 to 153 of the present judgment, the General Court was fully entitled to hold that the Commission could impute to Villeroy & Boch the anticompetitive conduct of its subsidiaries in Belgium, France and Austria and hold it and those subsidiaries jointly and severally liable for the payment of fines, without determining the shares of those fines payable by each of them.

155 Finally, Villeroy & Boch's arguments alleging that the judgment under appeal is insufficiently reasoned must be rejected. Thus, as regards in particular whether it was possible for the Commission to hold Villeroy & Boch answerable for the acts of its subsidiaries in France and Austria, paragraphs 155 to 165 of the judgment under appeal and paragraph 284 of the judgment, which refers to paragraphs 97 and 98 thereof, must be held to be sufficiently reasoned. After outlining the case-law concerning the concept of an 'economic unit', the General Court stated that Villeroy & Boch held all the share capital in its subsidiaries and that it had not sought to rebut the presumption that it exercised decisive influence over them. It then addressed Villeroy & Boch's arguments alleging an infringement of the principle of *nullum crimen, nulla poena sine lege* and of the right to be presumed innocent. As regards whether it was possible for the Commission to impute to Villeroy & Boch the conduct of Villeroy & Boch Belgium on the ground that it exercised a decisive influence over the latter, the General Court was not required to define its position on that point in the judgment under appeal since, contrary to what it maintains, Villeroy & Boch did not dispute that that possibility existed.

156 The seventh and ninth grounds of appeal must therefore be rejected as unfounded.

The eighth ground of appeal

Arguments of the parties

157 By its eighth ground of appeal Villeroy & Boch maintains that the judgment under appeal under appeal infringes Article 101 TFEU and Article 53 of the EEA Agreement because the General Court erred in holding there to be a single, complex and continuous infringement in the present case.

158 In that regard, Villeroy & Boch submits, in the first place, that the legal concept of a single, complex and continuous infringement is, in itself, incompatible with Article 101 TFEU and Article 53 of the EEA Agreement and therefore cannot be applied. In its submission, that concept has no legal basis under EU law. It further submits that the judgment under appeal is insufficiently reasoned inasmuch as the General Court failed to respond to its arguments on this point.

159 In the second place, Villeroy & Boch maintains that, in finding there to be a single infringement in the present case, the judgment under appeal breached the principles of due process. Since the General Court held that unlawful conduct in which Villeroy & Boch did not participate, but which forms part of a single infringement in which it did take part, may be imputed to it, Villeroy & Boch is unable, for the purpose of disputing its participation in that single infringement, to construct a successful argument on the basis of the fact that it did not take part in the first-mentioned unlawful conduct and is therefore denied an effective ground of defence. Thus, the only point it may dispute is that it was aware of the infringement in question.

160 In the third place, Villeroy & Boch argues, in the alternative, that the conditions for the recognition of a single infringement were not met in the present case since the Commission did not define the relevant market and since it has not been established that there was a relationship of complementarity between the various acts complained of.

161 In the fourth place, Villeroy & Boch considers that, in any event, because the decision at issue was annulled in part with regard to certain Member States by the judgments of 16 September 2013, *Wabco Europe and Others* v *Commission* (T-380/10, EU:T:2013:449); of 16 September 2013, *Keramag Keramische Werke and Others* v *Commission* (T-379/10 and T-381/10, not published, EU:T:2013:457); and of 16 September 2013, *Duravit and Others* v *Commission* (T-364/10, not published, EU:T:2013:477), and because certain undertakings may not have been aware of the entirety of the infringement, there cannot have been an overall infringement as defined in that decision.

162 The Commission contends that the eighth ground of appeal should be rejected.

Findings of the Court

163 In view of the case-law set out in paragraphs 55 to 59 of the present judgment, the Court must, first, reject the appellant's arguments that the legal concept of a single, complex and continuous infringement is incompatible with Article 101 TFEU and Article 53 of the EEA Agreement and breaches the principles of due process, leaving aside the question of the admissibility of the latter argument.

164 Secondly, the Court finds that, contrary to the appellant's contention, the General Court, in setting out that case-law in paragraphs 32 to 34, 41, 42 and 46 to 48 of the judgment under appeal, gave a sufficient statement of its reasons.

165 Thirdly, as regards the appellant's argument that the conditions for the recognition of a single infringement were not met in the present case since the Commission did not define the relevant market, it must be noted, as the General Court correctly stated in paragraph 54 of the judgment under appeal and as the appellant accepts, that the fact that the infringement extended over distinct product and geographic markets does not in any event preclude the finding of a single infringement. Thus, this argument is in any event ineffective.

166 Fourthly, the General Court, in paragraphs 63 to 71 of the judgment under appeal, did not err in law in holding that the Commission could in the present case find there to be a single objective tending to establish a single infringement. Indeed, the General Court, on the basis of the findings of fact made in paragraphs 66, 69 and 71 of the judgment under appeal, established to the requisite legal standard that

the various instances of conduct complained of pursued the same goal, namely, as regards all the bathroom fittings and fixtures manufacturers, coordinating their conduct in relation to the wholesalers. In that regard, attention should be drawn to the fact that, contrary to what is maintained by the appellant, the concept of a common objective was defined — as is clear from paragraphs 66, 69 and 71 of the judgment under appeal — not by a general reference to a distortion of competition on the markets concerned by the infringement, but rather by reference to various objective factors, such as the central role played by the wholesalers in the distribution chain, the features of that chain, the existence of umbrella associations and cross-product associations, the similarities in the way the collusive arrangements were implemented and the material, geographic and temporal overlap between the practices concerned.

167 There is in those circumstances no need to establish a link of complementarity between the practices complained of, given that a single and continuous infringement may be imputed to undertakings that are not in competition and does not require the relevant markets to be systematically defined. Moreover, in view of the fact that the appellant is (i) liable for its direct participation in the infringement complained of and (ii) liable for its indirect participation in that infringement since it was aware of all the offending conduct planned or implemented by the other cartel members in pursuit of the same objectives or could reasonably have foreseen that conduct and was prepared to take the risk, the General Court cannot be criticised for holding that the Commission did not make an error in concluding that there was a single and continuous infringement in the present case.

168 Finally, as regards the arguments relating to the fact that, in other cases concerning the present cartel, the decision at issue was annulled in part, it should be recalled that the assessment of the evidence concerning the various national markets falls within the exclusive jurisdiction of the General Court. In so far as these arguments seek to call into question the existence of a single, complex and continuous infringement, it should be made clear, as has been stated in paragraph 62 of the present judgment, that the fact that the General Court partially annulled the decision at issue in so far as it concerns the participation in the alleged infringement of certain of the undertakings concerned on certain geographic markets for given periods of time is not sufficient to cast doubt on the General Court's finding as to the existence of (i) an overall plan covering the three product sub-groups and the six Member States concerned and (ii) an identical object distorting competition in the internal market.

169 Consequently, the eighth ground of appeal must be rejected as in part ineffective and in part unfounded.

The 10th and 11th grounds of appeal

Arguments of the parties

170 By its 10th ground of appeal, Villeroy & Boch argues that the General Court erred in law in failing fully to exercise its unlimited jurisdiction to review the decision at issue.

171 In the judgment under appeal, the General Court carried out solely a review of legality in respect of the setting of the amount of the fine, contrary to what was requested by Villeroy & Boch in its claim.

172 Villeroy & Boch submits that, for reasons of legal certainty and in order to safeguard the right to due process, the General Court and the Court of Justice are obliged, in every case before them which concerns the setting by the Commission of a fine or periodic penalty payment, actually to exercise the unlimited jurisdiction conferred on them by Article 31 of Regulation No 1/2003, in particular in a context in which there is no legal rule providing for any harmonisation in respect of penalties and in which three different methods of setting fines were applied by the Commission for the years 1998 to 2006.

173 Villeroy & Boch further submits that in the present case the General Court did not carry out an independent review of the initial amount of the fine and that the fine should have been reduced, in the exercise of the General Court's unlimited jurisdiction, in view of the gravity of the infringement, which concerned only a limited number of, mostly small, Member States. In that regard, it is impossible to understand the reasons why the Commission penalised the misconduct complained of in the present case more severely than similar cartels covering the whole of the European Economic Area. In addition, the General Court should have granted Villeroy & Boch a reduction in its fine for breach of the principle that the procedure must be concluded within a reasonable time ('the reasonable time principle'), owing to the excessive duration of the administrative procedure, which went on for almost six years in total.

174 By its 11th ground of appeal, the appellant invokes a breach of the principle of proportionality. In that regard, it submits that, in determining the gravity of the infringement, the General Court is obliged to take into account the effects of the infringement in question on the market, as well as the turnover achieved on the markets concerned: it failed to do so here.

175 The General Court should also have satisfied itself that the amount of the fines imposed by the decision at issue was strictly proportionate; that is not the case when the turnover covered by the infringement is EUR 115 million and the total amount of the fines is EUR 71.5 million.

176 The appellant therefore asks the Court of Justice to remedy these unlawful omissions on the part of the General Court and itself reduce the fines imposed.

177 The Commission contends that the 10th and 11th grounds of appeal should be rejected.

Findings of the Court

178 According to settled case-law, the review of legality provided for in Article 263 TFEU entails the EU judicature conducting a review, in respect of both the law and the facts, of the contested decision in the light of the arguments relied on by an applicant, which means that it has the power to assess the evidence, annul the decision and to alter the amount of the fines (see judgment of 10 July 2014, *Telefónica and Telefónica de España* v *Commission*, C-295/12 P, EU:C:2014:2062, paragraph 53 and the case-law cited).

179 The review of legality is supplemented by the unlimited jurisdiction conferred on the EU judicature by Article 31 of Regulation No 1/2003, in accordance with Article 261 TFEU. That jurisdiction empowers the competent Court, in addition to carrying out a mere review of legality with regard to the penalty, to substitute its own appraisal for the Commission's and, consequently, to cancel, reduce or increase the fine or penalty payment imposed (judgment of 8 December 2011, *Chalkor* v *Commission*, C-386/10 P, EU:C:2011:815, paragraph 63 and the case-law cited).

180 In order to satisfy the requirements of Article 47 of the Charter when conducting a review in the exercise of its unlimited jurisdiction with regard to the fine, the EU judicature is bound, in the exercise of the powers conferred by Articles 261 and 263 TFEU, to examine all complaints based on issues of fact and law which seek to show that the amount of the fine is not commensurate with the gravity or the duration of the infringement (see judgment of 18 December 2014, *Commission* v *Parker Hannifin Manufacturing and Parker-Hannifin*, C-434/13 P, EU:C:2014:2456, paragraph 75 and the case-law cited).

181 However, the exercise of unlimited jurisdiction is not equivalent to an own-motion review, and proceedings are *inter partes*. It is, in principle, for the applicant to raise pleas in law against the contested decision and to adduce evidence in support of those pleas (see judgment of 18 December 2014, *Commission* v *Parker Hannifin Manufacturing and Parker-Hannifin*, C-434/13 P, EU:C:2014:2456, paragraph 76 and the case-law cited).

182 It should be noted in that regard that the absence of an own-motion review of the whole of the contested decision does not contravene the principle of effective judicial protection. Compliance with that principle does not require that the General Court — which is indeed obliged to respond to the pleas in law raised and to carry out a review of both the law and the facts — should be obliged to undertake of its own motion a new and comprehensive investigation of the file (see judgment of 8 December 2011, *Chalkor* v *Commission*, C-386/10 P, EU:C:2011:815, paragraph 66).

183 Moreover, according to settled case-law of the Court of Justice, the General Court alone has jurisdiction to examine how in each particular case the Commission assessed the gravity of unlawful conduct. In an appeal, the purpose of review by the Court of Justice is, first, to examine to what extent the General Court took into consideration, in a legally correct manner, all the essential factors to assess the gravity of particular conduct in the light of Article 101 TFEU and Article 23 of Regulation No 1/2003 and, second, to consider whether the General Court responded to a sufficient legal standard to all the arguments raised in support of the claim for reduction of the fine. The gravity of infringements of EU competition law must be determined by reference to numerous factors such as, in particular, the deterrent effect of fines, the specific circumstances and context of the case, including the conduct of each of the undertakings, the role played by each of them in the establishment of the cartel, the profit which they were able to derive from it, their size, the value of the goods concerned and the threat that infringements of that type pose to the objectives of the European Union (see, to that effect, judgment of 11 July 2013, *Team Relocations and Others* v *Commission*, C-444/11 P, not published, EU:C:2013:464, paragraphs 95, 99 and 100).

184 Moreover, it is not for the Court of Justice, when ruling on questions of law in the context of an appeal, to substitute, on grounds of fairness, its own assessment for that of the General Court exercising its unlimited jurisdiction to rule on the amount of fines imposed on undertakings for their infringement of EU law. Accordingly, only where the Court of Justice considers that the level of the penalty is not merely inappropriate, but also excessive to the point of being disproportionate, does it have to find that the General Court erred in law, on account of the inappropriateness of the amount of a fine (see, inter alia, judgment of 30 May 2013, *Quinn Barlo and Others* v *Commission*, C-70/12 P, not published, EU:C:2013:351, paragraph 57 and the case-law cited).

185 It is necessary to examine the 10th and 11th grounds of appeal in the light of the abovementioned case-law.

186 It is clear from that case-law that, first, a review in the exercise of unlimited jurisdiction concerns solely the penalty imposed and not the entirety of the contested decision and, second, neither the exercise of unlimited jurisdiction nor the review of legality are equivalent to an own-motion review and they therefore do not require the General Court to undertake of its own motion a new and comprehensive investigation of the file, independently of the claims put forward by the applicant.

187 In the present case, it must be found that the General Court did in fact carry out, in paragraph 335 et seq. of the judgment under appeal, a review of the amount of the fine, that it responded to Villeroy & Boch's various arguments and that, in paragraphs 397 to 402 of the judgment, it ruled on the claims for reduction of the fine; it therefore did not confine itself to merely reviewing the legality of that amount, contrary to what is maintained by the appellant. In that connection, the General Court stated in particular, in paragraph 384 of the judgment under appeal, that the multiplier of 15% in respect of the multipliers for 'gravity of the infringement' and for the 'additional amount' was the lowest possible in

view of the particularly serious nature of the infringement at issue, then held, in paragraphs 397 to 401 of the judgment, that none of the matters put forward by the applicants at first instance justified a reduction of the fine.

188 Concerning more particularly the examination of the gravity of the alleged infringement, it should be noted that the General Court referred, in paragraph 381 of the judgment under appeal, in particular to point 23 of the 2006 Guidelines, which states that 'horizontal price-fixing, market-sharing and output-limitation agreements, which are usually secret, are, by their very nature, among the most harmful restrictions of competition. As a matter of policy, they will be heavily fined. Therefore, the proportion of the value of sales taken into account for such infringements will generally be set at the higher end of the scale'. The General Court set out, in paragraph 383 of the judgment under appeal, the reasoning adopted by the Commission in recital 1211 of the decision at issue, which stated that horizontal price coordination was, owing to its very nature, one of the most harmful restrictions of competition and that the infringement was a single, continuous and complex infringement covering six Member States and concerning the three product sub-groups. The General Court went on to make findings (i) in paragraph 384 of that judgment, as to the particularly serious nature of the infringement in question, which justified the application of a multiplier for gravity of 15%, and (ii) in paragraph 385 of the judgment, as to Villeroy & Boch's participation in 'the central group of undertakings' that implemented the infringement found.

189 In thus taking account of all the relevant criteria for assessing the gravity of the infringement in question (horizontal price coordination and Villeroy & Boch's involvement in it also being proven) and in responding to the latter's arguments on that point, the General Court did not make an error of law and fulfilled its obligation to carry out an effective judicial review of the decision at issue.

190 Concerning the assessment of the excessive duration of the administrative procedure, it should be recalled that, although an infringement by the Commission of the reasonable time principle can justify the annulment of a decision taken by it following an administrative procedure based on Article 101 or 102 TFEU inasmuch as it also entails an infringement of the rights of defence of the undertaking concerned, such an infringement of the reasonable time principle, if established, cannot lead to a reduction of the fine imposed (see, inter alia, judgments of 9 June 2016, *CEPSA* v *Commission*, C-608/13 P, EU:C:2016:414, paragraph 61, and of 9 June 2016, *PROAS* v *Commission*, C-616/13 P, EU:C:2016:415, paragraph 74 and the case-law cited). In the present case, as follows from paragraph 173 of the present judgment, it is clear that, with its argument that the General Court's assessment of the excessive duration of the administrative procedure was incorrect, the appellant is seeking solely a reduction of the fine imposed on it.

191 Accordingly, regardless of its merits, that argument must be rejected as ineffective.

192 Finally, as regards the proportionality of the fine imposed, the appellant has put forward no argument capable of demonstrating that the level of the fine imposed is inappropriate or excessive. In that regard, the Court rejects the argument that a fine of EUR 71.5 million is disproportionate in relation to the turnover concerned by the cartel (EUR 115 million). It is not disputed that, in the present case, the final amount of the fine imposed was reduced so as not to exceed 10% of the appellant's total turnover in the preceding business year, in accordance with Article 23(2) of Regulation No 1/2003. That limit is already a guarantee that the fine is not disproportionate to the size of the undertaking, determined by reference to its worldwide turnover (see, to that effect, judgment of 28 June 2005, *Dansk Rørindustri and Others* v *Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02, EU:C:2005:408, paragraphs 280 to 282).

193 Having regard to the foregoing considerations, the 10th and 11th grounds of appeal must be rejected as partly ineffective and partly unfounded.

194 Since none of the grounds of appeal relied upon by the appellant has been upheld, the appeal must be dismissed in its entirety.

Costs

195 Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to the costs. Under Article 138(1) of those rules, which applies to the procedure on appeal by virtue of Article 184(1) of those rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the appellant has been unsuccessful and the Commission has applied for costs against it, the appellant must be ordered to pay the costs.

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

1. Dismisses the appeal;

2. Orders Villeroy & Boch AG to pay the costs.

[Signatures]