



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

14 June 2016*

(Appeal — Resource conservation measures and restructuring of the fisheries sector — Requests for increased safety tonnage — Annulment by the European Union judicature of the decision initially rejecting those requests — Article 266 TFEU — Repeal of the legal basis on which that initial decision was founded — Competence and legal basis to adopt new decisions — Annulment by the General Court of new decisions rejecting the requests — Principle of legal certainty)

In Case C-361/14 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 25 July 2014,

European Commission, represented by A. Bouquet and A. Szmytkowska, acting as Agents, and by B. Doherty, Barrister-at-Law,

appellant,

the other parties to the proceedings being:

Peter McBride, residing in Downings (Ireland),

Hugh McBride, residing in Downings,

Mullglen Ltd, established in Largy (Ireland),

Cathal Boyle, residing in Fiafannon (Ireland),

Thomas Flaherty, residing in Kilronan (Ireland),

Ocean Trawlers Ltd, established in Killybegs (Ireland),

Patrick Fitzpatrick, residing in Killeany (Ireland),

Eamon McHugh, residing in Killybegs,

Eugene Hannigan, residing in Killybegs,

Larry Murphy, residing in Castletownbere (Ireland),

Brendan Gill, residing in Lifford (Ireland),

applicants at first instance,

* Language of the case: English.

represented by N. Travers, Senior Counsel, D. Barry, Solicitor, and E. Barrington, Senior Counsel,

THE COURT (Grand Chamber)

composed of K. Lenaerts, President, M. Ilešič, L. Bay Larsen, T. von Danwitz, A. Arabadjiev, C. Toader, D. Šváby and C. Lycourgos, Presidents of Chambers, A. Rosas, A. Borg Barthet (Rapporteur), M. Safjan, M. Berger, A. Prechal, E. Jarašiūnas and C.G. Fernlund, Judges,

Advocate General: E. Sharpston,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 1 September 2015,

after hearing the Opinion of the Advocate General at the sitting on 19 January 2016,

gives the following

Judgment

- 1 By its appeal, the European Commission requests that the judgment of the General Court of the European Union of 13 May 2014 in *McBride and Others v Commission* (T-458/10 to T-467/10 and T-471/10, not published, ‘the judgment under appeal’, EU:T:2014:249) be set aside. By that judgment, the General Court annulled Commission Decisions C(2010) 4758, C(2010) 4748, C(2010) 4757, C(2010) 4751, C(2010) 4764, C(2010) 4750, C(2010) 4761, C(2010) 4767, C(2010) 4754, C(2010) 4753 and C(2010) 4752 of 13 July 2010 (‘the decisions at issue’) rejecting the request submitted by Ireland for an increase in the objectives of the Multiannual Guidance Programme IV (‘MAGP IV’) in order to take into account safety improvements relating to vessels belonging to Mr Peter McBride, Mr Hugh McBride, Mullglen Ltd, Mr Cathal Boyle, Mr Thomas Flaherty, Ocean Trawlers Ltd, Mr Patrick Fitzpatrick, Mr Eamon McHugh, Mr Eugene Hannigan, Mr Larry Murphy and Mr Brendan Gill (‘McBride and Others’).

Legal context

- 2 Article 4(2) of Council Decision 97/413/EC of 26 June 1997 concerning the objectives and detailed rules for restructuring the Community fisheries sector for the period from 1 January 1997 to 31 December 2001 with a view to achieving a balance on a sustainable basis between resources and their exploitation (OJ 1997 L 175, p. 27) is worded as follows:

‘In the Multiannual Guidance Programmes for Member States, increases in capacity resulting exclusively from safety improvements shall justify, on a case-by-case basis, an increase by the same amount of the objectives for fleet segments where they do not increase the fishing effort of the vessels concerned.’

- 3 As regards the procedures for implementing Decision 97/413, Article 10 of that decision referred to Article 18 of Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture (OJ 1992 L 389, p. 1), which required there to be consultation with the Management Committee for Fisheries and Aquaculture.

- 4 Article 1 of Council Decision 2002/70/EC of 28 January 2002 amending Decision 97/413 (OJ 2002 L 31, p.77) provides that Article 2(1) of Decision 97/413 is to be replaced by the following:

‘By 31 December 2002 at the latest, the fishing effort of each Member State shall be reduced ... ’

- 5 Article 4(2) of Decision 97/413 was repealed with effect from 1 January 2002 by Decision 2002/70.
- 6 According to point 3.3 of the Annex to Commission Decision 98/125/EC of 16 December 1997 approving the multiannual guidance programme for the fishing fleet of Ireland for the period from 1 January 1997 to 31 December 2001 (OJ 1998 L 39, p. 41):

‘Member States may at any time submit to the Commission a programme of safety improvements. In accordance with Articles 3 and 4 of Decision 97/413/EC the Commission will decide whether any capacity increase foreseen by such a programme justifies a corresponding increase in the objectives of the MAGP IV.

... ’

- 7 Article 6 of Council Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector (OJ 1999 L 337, p. 10) reads as follows:

‘1. Fleet renewal and the modernisation of fishing vessels shall be organised in accordance with this title.

Each Member State shall submit to the Commission, for approval in accordance with the procedure laid down in Article 23(2), permanent arrangements for monitoring fleet renewal and modernisation. Within the framework of these arrangements Member States shall demonstrate that entries and exits from the fleet will be managed in such a way that the capacity does not exceed the annual objectives fixed in the multiannual guidance programme, overall and for the segments concerned, or where appropriate that fishing capacity is gradually reduced to attain these objectives.

These arrangements shall, in particular, take into account that capacity, other than that of vessels of less than 12 metres overall length excluding trawlers, which has been withdrawn with public aid, cannot be replaced.

2. Member States can submit a request for a clearly identified and quantified increase in the capacity objectives for measures to improve safety, navigation at sea, hygiene, product quality and working conditions provided that these measures do not result in an increase in the exploitation rate of the resources concerned.

Such a request shall be examined by the Commission and approved in accordance with the procedure laid down in Article 23(2). Any capacity increase shall be managed by the Member States under the permanent arrangements referred to in paragraph 1.’

- 8 Article 6 of Regulation No 2792/1999 was repealed by point 6 of Article 1 of Council Regulation (EC) No 2369/2002 of 20 December 2002 amending Regulation No 2792/1999 (OJ 2002 L 358, p. 49) as from 1 January 2003.

Background to the dispute

- 9 Between 1 November and 14 December 2001, McBride and Others submitted to the Department of Communications, Marine & Natural Resources, Ireland, applications for increases in capacity for their fishing vessels on grounds of safety improvements, in accordance with Article 4(2) of Decision 97/413.
- 10 In support of those individual applications, the Department of Communications, Marine & Natural Resources, by letter of 14 December 2001, requested the Commission to increase the capacity of the polyvalent segment of the Irish fleet by 1 304 gross tonnes and that of the pelagic segment by 5 335 gross tonnes under Article 4(2) of Decision 97/413 ('the original request').
- 11 On 4 April 2003, the Commission adopted Decision 2003/245/EC on the requests it had received to increase MAGP IV objectives to take into account improvements in safety, navigation at sea, hygiene, product quality and working conditions for vessels of more than 12 metres in length overall (OJ 2003 L 90, p. 48, 'the initial decision'). The vessels belonging to McBride and Others were all included in Annex II to that decision, which, according to the second paragraph of Article 2 of the decision, listed the requests rejected by the Commission.
- 12 The initial decision was based on both Article 4 of Decision 97/413 and Article 6 of Regulation No 2792/1999.
- 13 The initial decision was the subject of a number of actions for annulment which gave rise to the judgment of 13 June 2006 in *Boyle and Others v Commission* (T-218/03 to T-240/03, EU:T:2006:159), by which the General Court annulled that decision in so far as it applied to the vessels belonging to Mr P. McBride, Mr H. McBride, Mullglen, Mr Boyle, Mr Fitzpatrick, Mr McHugh, Mr Hannigan and Mr Gill. It held that the Commission had adopted criteria not provided for in the applicable rules and had exceeded its powers. By letter of 14 June 2006, the owners of the vessels concerned requested the Commission to adopt a new decision complying with the criteria set out in that judgment.
- 14 An appeal was brought against the judgment of 13 June 2006 in *Boyle and Others v Commission* (T-218/03 to T-240/03, EU:T:2006:159). That resulted in the judgment of 17 April 2008 in *Flaherty and Others v Commission* (C-373/06 P, C-379/06 P and C-382/06 P, EU:C:2008:230), by which the Court of Justice annulled — for the same reasons as those set out in *Boyle and Others v Commission* — the initial decision in so far as it applied to the vessels belonging to Mr Flaherty, Ocean Trawlers and Mr Murphy.
- 15 By an email of 25 April 2008, McBride and Others' representative asked the Commission what steps it had taken to comply with the judgment of 13 June 2006 in *Boyle and Others v Commission* (T-218/03 to T-240/03, EU:T:2006:159).
- 16 The requests made by McBride and Others were followed by several exchanges of correspondence between Ireland and the Commission. In particular, the Commission requested additional information from Ireland relating to the technical characteristics of the vessels at issue.
- 17 By the decisions at issue, the Commission again rejected the original request so far as the vessels belonging to McBride and Others were concerned. It considered that:
 - as regards the vessels belonging to Mr P. McBride, Mr H. McBride, Mr Fitzpatrick and Mr Hannigan, the replacement of several smaller vessels by a new vessel had not resulted in an increase in the total capacity of the polyvalent segment of the Irish fleet, with the result that Article 4(2) of Decision 97/413 did not apply;

- as regards the vessels belonging to Mullglen, Mr Boyle, Mr Flaherty, Ocean Trawlers, Mr McHugh and Mr Murphy, the increase in tonnage of the new vessels did not result exclusively from safety improvements and had led to an increase in the fishing effort; and
 - as regards the vessel belonging to Mr Gill, the increase in tonnage deriving from the lengthening of the vessel did not result exclusively from safety improvements and had led to an increase in the fishing effort.
- 18 The Commission also stated in the decisions at issue that there was no longer a specific legal basis for those decisions since Article 4(2) of Decision 97/413 had been repealed by Article 1, point (3), of Decision 2002/70 and had not been replaced by an equivalent provision. Consequently, the Commission stated that it was compelled to adopt an ad hoc decision applying the substantive rules which were in force at the time of the original request.

The procedure before the General Court and the judgment under appeal

- 19 By applications lodged at the Registry of the General Court on 27 and 28 September 2010, McBride and Others brought actions for annulment of the decisions at issue.
- 20 In support of their actions, McBride and Others relied on six pleas in law, alleging lack of legal basis, infringement of essential procedural requirements, misinterpretation of Article 4(2) of Decision 97/413, manifest error in the application of that provision, infringement of the principle of good administration and infringement of the principle of equal treatment.
- 21 By the judgment under appeal, the General Court held that the Commission was not competent to adopt the decisions at issue and accepted the first plea in law in so far as it raised the question of lack of competence of the Commission. Consequently, it annulled the decisions at issue without examining the other pleas in law.

Forms of order sought

- 22 By its appeal, the Commission claims that the Court should:
- set aside the judgment under appeal;
 - dismiss the action for annulment, and in any case the first plea;
 - in the alternative, refer the case back to the General Court; and
 - order McBride and Others to pay the costs of the appeal and of the procedure before the General Court.
- 23 McBride and Others contend that the Court should:
- dismiss the appeal;
 - order the Commission to pay the costs;

- in the alternative, set aside the judgment under appeal, uphold the actions for annulment, in particular the first and second pleas in law advanced in support of those actions, and annul the decisions at issue, or, in the further alternative, set aside the judgment under appeal and refer the case back to the General Court, and order the Commission to pay the costs of the appeal and of the procedure before the General Court.

The appeal

- 24 In support of its appeal, the Commission puts forward two grounds of appeal maintaining (i) that the General Court misinterpreted and misapplied Article 266 TFEU, in conjunction with the principle of conferral of competences, laid down in Article 5(1) and (2) TEU and Article 13(2) TEU, and the principle of legal certainty, and (ii) that the General Court failed to give proper reasons for its judgment.

The first ground of appeal

Arguments of the parties

- 25 In the first place, the Commission, referring in this regard to paragraph 27 of the judgment of 26 April 1988 in *Asteris and Others v Commission* (97/86, 99/86, 193/86 and 215/86, EU:C:1988:199), submits that Article 266 TFEU requires the institution concerned fully to implement a judgment which has annulled one of its acts. This means that the institution must take account of the operative part of the judgment but also of the grounds which indicate the specific reasons which underlie the finding of illegality contained in the operative part.
- 26 It argues that that obligation must be balanced against the principle of legal certainty, in accordance with the approach taken by the Court in its judgment of 26 April 1988 in *Asteris and Others v Commission* (97/86, 99/86, 193/86 and 215/86, EU:C:1988:199). However, in paragraphs 43 and 44 of the judgment under appeal, the General Court erroneously focused solely on the principle of conferral of competences.
- 27 The Commission also maintains that Article 266 TFEU ranks equally with the principle of conferral of powers, laid down in Article 5(1) and (2) TEU and Article 13(2) TEU. It argues that, since those provisions are at the same level in the hierarchy of legal rules, the General Court made an error in law in holding that the principle of conferral should prevail over the obligation arising from Article 266 TFEU.
- 28 In the second place, the Commission submits that its obligation under Article 266 TFEU — namely, in the present case, to take a decision relating to the requests concerning the vessels belonging to McBride and Others in the wake of the judgments of 13 June 2006 in *Boyle and Others v Commission* (T-218/03 to T-240/03, EU:T:2006:159) and 17 April 2008 in *Flaherty and Others v Commission* (C-373/06 P, C-379/06 P and C-382/06 P, EU:C:2008:230) — could not be ignored merely because the EU legislature had removed the procedural provision which defined how the institution was to act. It thus applied the case-law established in the judgments of 25 October 2007 in *SP and Others v Commission* (T-27/03, T-46/03, T-58/03, T-79/03, T-80/03, T-97/03 and T-98/03, EU:T:2007:317) and 29 March 2011 in *ArcelorMittal Luxembourg v Commission and Commission v ArcelorMittal Luxembourg and Others* (C-201/09 P and C-216/09 P, EU:C:2011:190), which relates to the expiry of the ECSC Treaty. According to that case-law, where a legal basis has expired, its substantive rules may still be applied in conjunction with the procedural rules in force at the date of the act concerned.

- 29 The Commission accepts that Article 266 TFEU does not ‘revive’ a legal basis that has expired. It adds, however, that the aforementioned case-law suggests that there is scope within EU law to interpret a legal basis so that it can still be used for limited purposes after it has been repealed. It explains that the case-law in question is based, inter alia, on the principle of continuity of the legal order and the principle of legal certainty. Accordingly, Article 4(2) of Decision 97/413 continues, in the Commission’s submission, to give it the power to decide on the substance of the original request. As regards procedure, however, the fact that that provision was no longer in force prompted the Commission to use an ad hoc procedure without consultation of the Management Committee for Fisheries and Aquaculture, contrary to the provision made by Decision 97/413.
- 30 In the third place, the Commission complains that the General Court adopted an overly narrow interpretation of the principle of legal certainty and failed to acknowledge that a legal basis may be implicit. Thus, when the General Court, at paragraph 26 of the judgment under appeal, essentially focused on the need to indicate the legal basis of an act, it overlooked the other implications of the principle of legal certainty, account being taken of the judgment of 29 March 2011 in *ArcelorMittal Luxembourg v Commission and Commission v ArcelorMittal Luxembourg and Others* (C-201/09 P and C-216/09 P, EU:C:2011:190).
- 31 The Commission also submits that when the General Court, at paragraph 27 of the judgment under appeal, held, in essence, that the legal basis of an act must be in force at the time when the act is adopted, citing the case-law established in the judgments of 25 October 2007 in *SP and Others v Commission* (T-27/03, T-46/03, T-58/03, T-79/03, T-80/03, T-97/03 and T-98/03, EU:T:2007:317) and 29 March 2011 in *ArcelorMittal Luxembourg v Commission and Commission v ArcelorMittal Luxembourg and Others* (C-201/09 P and C-216/09 P, EU:C:2011:190), its citation of that case-law was incomplete. The General Court failed to mention that, according to that case-law, it is possible to apply a legal basis, as regards the substance, even though it is no longer in force. The fact that such application of the legal basis is possible is supported, so the Commission argues, by the rules of interpretation relating to the principle of the effectiveness of EU law. Thus, in the present case, Article 4(2) of Decision 97/413 was still available as an implied legal basis for the purpose of complying with the judgments of 13 June 2006 in *Boyle and Others v Commission* (T-218/03 to T-240/03, EU:T:2006:159) and 17 April 2008 in *Flaherty and Others v Commission* (C-373/06 P, C-379/06 P and C-382/06 P, EU:C:2008:230).
- 32 In the fourth place, the Commission maintains that, in misinterpreting Article 266 TFEU, the General Court indirectly undermined the effectiveness of the action for annulment for which Article 263 TFEU provides, since the judgment under appeal creates a gap in the remedies available to McBride and Others.
- 33 In the fifth place, the Commission argues that the judgment under appeal also undermines the principle of legal certainty. First, in holding, at paragraph 35 of that judgment, that the Commission had no legal basis after 1 January 2003 to decide upon either the original request or the requests made after the judgments of 13 June 2006 in *Boyle and Others v Commission* (T-218/03 to T-240/03, EU:T:2006:159) and 17 April 2008 in *Flaherty and Others v Commission* (C-373/06 P, C-379/06 P and C-382/06 P, EU:C:2008:230), the General Court cast doubt on the validity of the initial decision for those vessel operators for whom the decision was favourable. Second, the judgment under appeal also creates legal uncertainty as regards a decision adopted in 2010, which was favourable to a vessel owner, given that the judgment implies that there was no legal basis in 2010 to adopt that decision.
- 34 McBride and Others contend that the first ground of appeal should be dismissed.

Findings of the Court

- 35 In the first place, as regards the Commission's argument concerning its obligation under Article 266 TFEU, it should be recalled that, under that article, the institution whose act has been declared void is required to take the necessary measures to comply with the judgment annulling that act. The Court has held in this regard that, in order to comply with such a judgment and to implement it fully, the institution concerned is required to have regard not only to the operative part of that judgment but also to the grounds which led to the judgment and constitute the essential basis for it, in so far as they are necessary to determine the exact meaning of what is stated in the operative part (judgment of 26 April 1988 in *Asteris and Others v Commission*, 97/86, 99/86, 193/86 and 215/86, EU:C:1988:199, paragraph 27).
- 36 However, prior to the adoption of such measures by the institution whose act has been annulled, the question arises as to the competence of that institution, since the EU institutions may only act within the limits of the powers conferred on them, as the General Court rightly pointed out at paragraphs 23 to 25 of the judgment under appeal.
- 37 Since Decision 97/413 and Article 6 of Regulation No 2792/1999, which empowered the Commission to examine and decide on requests for safety tonnage increases, had been repealed and since no provision — not even a transitional one — empowered the Commission to adopt new decisions, there no longer existed, within the EU legal order, an appropriate legal basis enabling the Commission to adopt the decisions at issue.
- 38 In addition, as the General Court rightly held, at paragraph 44 of the judgment under appeal, the obligation to act which follows from Article 266 TFEU is not a source of competence for the Commission, nor does it permit the Commission to rely on a legal basis which has in the meantime been repealed.
- 39 Nor can the Commission profitably rely on the case-law established in the judgment of 26 April 1988 in *Asteris and Others v Commission* (97/86, 99/86, 193/86 and 215/86, EU:C:1988:199) to support the argument that the Court of Justice gave a broad interpretation to what is now Article 266 TFEU and balanced the Commission's obligation to act under that article against the principle of legal certainty. It is true that in *Asteris and Others v Commission* the Court held that, following the judgment annulling the regulation concerned, the Commission was under an obligation not only to adopt a new regulation remedying the illegality found but also to eliminate that illegality for the future. However, the Court did not express a view on the existence of a legal basis enabling the Commission to amend the regulation at issue for the future.
- 40 In the second place, as regards the Commission's argument concerning the application of the case-law established in the judgments of 25 October 2007 in *SP and Others v Commission* (T-27/03, T-46/03, T-58/03, T-79/03, T-80/03, T-97/03 and T-98/03, EU:T:2007:317) and 29 March 2011 in *ArcelorMittal Luxembourg v Commission* and *Commission v ArcelorMittal Luxembourg and Others* (C-201/09 P and C-216/09 P, EU:C:2011:190), it follows from that case-law that, although it is necessary — in order to comply with the principles governing the temporal application of the law and because of the requirements relating to the principles of legal certainty and the protection of legitimate expectations — to apply the substantive rules in force at the date of the facts in issue even if those rules are no longer in force when an EU institution adopts an act, the provision which forms the legal basis of an act and empowers the EU institution to adopt the act in question must, by contrast, be in force when the act is adopted. Similarly, the procedure for adopting that act must be carried out in accordance with the rules in force at the time of adoption.
- 41 So far as the present case is concerned, first, the Commission cannot usefully rely on that case-law to support its argument.

- 42 It is true that Article 4(2) of Decision 97/413, which was in force at the time when the original request was submitted, remained, despite its repeal with effect from 1 January 2002, applicable to that request as a substantive rule laying down the eligibility criteria for fishing vessel capacity increases. However, no provision providing the Commission with a legal basis for adopting the decisions at issue was in force when those decisions were adopted. Article 6(2) of Regulation No 2792/1999 — which contained, at the time when the original request was submitted, the legal basis empowering the Commission to decide upon such a request — was repealed from 1 January 2003 and was not replaced by an analogous or transitional provision providing the Commission with such a legal basis.
- 43 Furthermore, as the procedural rules relating to the application of Decision 97/413, which are referred to in Article 10 of that decision and Article 6 of Regulation No 2792/1999, were no longer in force when the decisions at issue were adopted, the Commission had recourse to an ad hoc procedure which was not, however, based on any provision in force at that time.
- 44 Secondly, the Court finds that the Commission's argument concerning the application of the case-law established in the judgments of 25 October 2007 in *SP and Others v Commission* (T-27/03, T-46/03, T-58/03, T-79/03, T-80/03, T-97/03 and T-98/03, EU:T:2007:317) and 29 March 2011 in *ArcelorMittal Luxembourg v Commission* and *Commission v ArcelorMittal Luxembourg and Others* (C-201/09 P and C-216/09 P, EU:C:2011:190) is based on an incorrect reading of that case-law.
- 45 As has been recalled at paragraph 40 of the present judgment, that case-law makes it possible to apply the substantive rules in force at the time of the facts of the case while following the procedural rules in force at the time when the act in question is adopted, provided that the legal basis empowering the institution to act is in force when the act in question is adopted. However, as the Advocate General has in essence stated at point 92 of her Opinion, that case-law cannot be read as making it possible, by means of the application of general principles of EU law, for the Commission to use an expired legal base, so as to enable it to apply a substantive rule (in this case Article 4(2) of Decision 97/413), as the basis for a decision on the original request, following the annulment by the EU judicature of the initial decision.
- 46 In the third place, the Commission cannot criticise the General Court for failing to acknowledge that a legal basis can be implicit.
- 47 The General Court, referring to the judgments of 26 March 1987 in *Commission v Council* (45/86, EU:C:1987:163) and 1 October 2009 in *Commission v Council* (C-370/07, EU:C:2009:590), correctly stated, at paragraph 26 of the judgment under appeal, that the requirement for legal certainty means that the binding nature of any act intended to have legal effects must be derived from a provision of EU law which prescribes the legal form to be taken by that act and which must be expressly indicated therein as its legal basis.
- 48 Whilst it is true that failure to refer to a specific provision of the Treaty need not necessarily constitute an infringement of essential procedural requirements if the legal basis for an act may be determined from other parts of the act, such explicit reference is, however, indispensable where, in its absence, the parties concerned and the Court are left uncertain as to the specific legal basis (judgments of 26 March 1987 in *Commission v Council*, 45/86, EU:C:1987:163, paragraph 9, and 1 October 2009 in *Commission v Council*, C-370/07, EU:C:2009:590, paragraph 56).
- 49 In the present case, as the General Court noted at paragraph 36 of the judgment under appeal, there was no longer a legal basis for the adoption of the decisions at issue on 13 July 2010. The objection cannot therefore be made that the General Court adopted a narrow interpretation of the principle of legal certainty in that regard.

- 50 Furthermore, contrary to the Commission's contention, the principle of effectiveness of EU law cannot entail Article 4(2) of Decision 97/413 being regarded — in order that the Commission may fulfil its obligations under Article 266 TFEU — as an implied legal basis enabling the Commission to decide upon the original request.
- 51 In the fourth place, as regards the Commission's argument that the judgment under appeal creates a gap in the remedies available to McBride and Others, the Court notes that those parties retain the right to bring an action for damages against the European Union, relying on the illegality of the initial decision.
- 52 Furthermore, whilst it follows from Article 266 TFEU that the institution whose act has been annulled is required to take the necessary measures to comply with judgments of the EU judicature, that provision does not however specify the nature of the measures to be taken by that institution for the purposes of such compliance.
- 53 As the Advocate General has noted at points 70 and 98 of her Opinion, it is thus for the institution concerned to identify those measures.
- 54 It follows that the fourth argument must be rejected.
- 55 In the fifth place, as regards the Commission's argument that the judgment under appeal undermines the principle of legal certainty, it is settled case-law that a decision which has not been challenged by its addressee within the period prescribed by Article 263 TFEU becomes definitive as against him (see to that effect, *inter alia*, judgments of 17 November 1965 in *Collotti v Court of Justice*, 20/65, EU:C:1965:115, and 9 March 1994 in *TWD Textilwerke Deggendorf*, C-188/92, EU:C:1994:90, paragraph 13).
- 56 The principle of legal certainty, which underlies that case-law, thus requires that the validity of the initial decision or of the decisions which the Commission adopted in 2010 and which were favourable to vessel operators or which had become definitive is not affected by the judgment under appeal, which concerns only those of the decisions at issue that were the subject of actions for annulment.
- 57 It follows from the foregoing considerations that the first ground of appeal must be dismissed.

The second ground of appeal

Arguments of the parties

- 58 In the first place, the Commission complains that the General Court breached its duty to state reasons, arguing that the Court distorted the legal arguments which the Commission made before it and consequently failed to respond to them. The Commission submits that it made it clear in this connection that, on the one hand, it could not use the procedures prescribed by Decision 97/413 and thus had to use an *ad hoc* procedure while, on the other, it retained a power to apply the substance of that decision, in accordance with the case-law established in the judgments of 25 October 2007 in *SP and Others v Commission* (T-27/03, T-46/03, T-58/03, T-79/03, T-80/03, T-97/03 and T-98/03, EU:T:2007:317) and 29 March 2011 in *ArcelorMittal Luxembourg v Commission and Commission v ArcelorMittal Luxembourg and Others* (C-201/09 P and C-216/09 P, EU:C:2011:190). The Commission submits that the argument relating to the distinction between rules of procedure and rules of substance is not correctly reflected in the judgment under appeal and that paragraphs 37 to 44 of that judgment respond to the arguments of McBride and Others rather than to its own arguments.

- 59 In the second place, the Commission maintains that the judgment under appeal does not address a question of admissibility which arose in *Gill v Commission*, T-471/10. It states that the applicant in that case lodged his application for annulment 1 hour and 21 minutes after expiry of the deadline because of technical difficulties with a fax. While the General Court was not required to address every legal issue raised before it, the Commission submits that the question of admissibility in that case should have been addressed explicitly.
- 60 McBride and Others contend that the second ground of appeal should be dismissed.

Findings of the Court

- 61 In the first place, as regards the Commission's argument that the General Court breached its duty to state reasons, it must be recalled that, according to settled case-law, the General Court's duty, under Article 36 and the first paragraph of Article 53 of the Statute of the Court of Justice of the European Union, to state reasons for its judgments does not require it to provide an account that follows exhaustively and one by one all the arguments articulated by the parties to the case. The reasoning may therefore be implicit, on condition that it enables the persons concerned to know why the measures in question were taken and provides the Court of Justice with sufficient material for it to exercise its power of review (judgment of 29 March 2011 in *ArcelorMittal Luxembourg v Commission and Commission v ArcelorMittal Luxembourg and Others*, C-201/09 P and C-216/09 P, EU:C:2011:190, paragraph 78 and the case-law cited).
- 62 First, the Court finds that the Commission, in making that argument, in essence repeats arguments that it has already put forward in support of its first ground of appeal.
- 63 Second, whilst it is true that the examination of the Commission's arguments in the judgment under appeal was brief, the reasoning of the General Court is clear and capable of (i) enabling the Commission to know why the decisions at issue were annulled and to lodge its appeal, as is shown by the many arguments that it has developed in the first ground of appeal, and (ii) providing the Court of Justice with sufficient material for it to exercise its power of review.
- 64 It follows that the judgment under appeal is not vitiated by a failure to state reasons.
- 65 In the second place, as regards the Commission's argument that the judgment under appeal did not address an issue of admissibility, it must be noted that by orders of 1 April 2011 in *Doherty v Commission* (T-468/10, EU:T:2011:133), *Conneely v Commission* (T-469/10, not published, EU:T:2011:134), *Oglesby v Commission* (T-470/10, not published, EU:T:2011:135), *Cavankee Fishing v Commission* (T-472/10, not published, EU:T:2011:136) and *McGing v Commission* (T-473/10, not published, EU:T:2011:137), the General Court dismissed as manifestly inadmissible the actions brought in the cases that gave rise to those orders on the ground that the actions had been brought out of time.
- 66 In each of those orders, the General Court, after noting that the fax machine in the General Court Registry was not responding when attempts were made, on 27 September 2010 at 23.53 and 23.57 Luxembourg time, to send the application in Case T-471/10, concluded that, taking into account the average transmission time of the faxes in *Hugh McBride v Commission*, T-459/10, *Boyle v Commission*, T-461/10, *Flaherty v Commission*, T-462/10, *Ocean Trawlers v Commission*, T-463/10, *Fitzpatrick v Commission*, T-464/10, *Hannigan v Commission*, T-466/10, and *Murphy v Commission*, T-467/10, even if the Registry's fax machine had functioned normally, only the application in *Gill v Commission*, T-471/10, could still have been sent by midnight, when the time limit for bringing an action expired.

- 67 In those circumstances, the General Court cannot be criticised for having failed properly to state the reasons for its decision that the action in *Gill v Commission*, T-471/10, had been brought within time.
- 68 It follows that the second argument must be rejected and, accordingly, the second ground of appeal must be dismissed in its entirety.
- 69 Consequently, the appeal must be dismissed.

Costs

- 70 In accordance with 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 the Rules of Procedure, which applies to the procedure on appeal by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.
- 71 Since McBride and Others have applied for costs and the Commission has been unsuccessful, the latter must be ordered to pay the costs.

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

- 1. Dismisses the appeal;**
- 2. Orders the European Commission to pay the costs.**

[Signatures]