Reports of Cases

JUDGMENT OF THE GENERAL COURT (First Chamber, Extended Composition)

22 March 2023 *

(Environment - Regulation (EU) No 517/2014 - Fluorinated greenhouse gases - Electronic registry for quotas for placing hydrofluorocarbons on the market - Undertakings with the same beneficial owner - Single producer or importer - Act having an adverse effect - Interest in bringing proceedings - Admissibility - Request to modify the application - Inadmissibility - Plea of illegality - Interpretation of an implementing regulation consistent with the basic regulation - Implementing power of the Commission)

In Cases T-825/19 and T-826/19,

Tazzetti SpA, established in Volpiano (Italy), represented by M. Condinanzi, E. Ferrero and C. Vivani, lawyers,

applicant in Case T-825/19,

Tazzetti SA, established in Madrid (Spain), represented by M. Condinanzi, E. Ferrero and C. Vivani, lawyers,

applicant in Case T-826/19,

v

European Commission, represented by G. Gattinara and E. Sanfrutos Cano, acting as Agents,

defendant,

THE GENERAL COURT (First Chamber, Extended Composition),

composed, at the time of the deliberations, of M. van der Woude, President, H. Kanninen (Rapporteur), N. Półtorak, O. Porchia and M. Stancu, Judges,

Registrar: P. Nuñez Ruiz, Administrator,

having regard to the written part of each procedure,

further to the hearing on 10 May 2022 for the purposes of which Cases T-825/19 and T-826/19 were joined,

gives the following

* Language of the case: Italian.

Judgment [1]

1 By their actions brought on 4 December 2019 under Article 263 TFEU, the applicant in Case T-825/19, Tazzetti SpA, and the applicant in Case T-826/19, Tazzetti SA, seek annulment, first, of decisions contained in three letters of 27 and 30 September 2019 and in two emails of 6 and 20 November 2019 from the European Commission, made pursuant to Commission Implementing Regulation (EU) 2019/661 of 25 April 2019 ensuring the smooth functioning of the electronic registry for quotas for placing hydrofluorocarbons on the market (OJ 2019 L 112, p. 11), and, secondly, Commission Implementing Decision (EU) 2020/1604 of 23 October 2020 determining, pursuant to Regulation (EU) No 517/2014 of the European Parliament and of the Council on fluorinated greenhouse gases, reference values for the period 1 January 2021 to 31 December 2023 for each producer or importer that has lawfully placed hydrofluorocarbons on the market in the Union from 1 January 2015, as reported under that Regulation (OJ 2020 L 364, p. 1).

…

III. Procedure and forms of order sought

33 In Case T-825/19, the Italian company, in its application, claims, in essence, that the Court should:

– annul the decision contained in the first letter of 27 September 2019;

– annul the decision contained in the second letter of 27 September 2019;

– annul the decision contained in the letter of 30 September 2019;

– annul the decision contained in the email of 6 November 2019, in particular and above all, with regard to designating Tazzetti SARL as a single declarant;

– annul the decision contained in the email of 20 November 2019;

– order the Commission to pay the costs.

34 In the statement of modification of the application lodged on 18 January 2021, the Italian company also claims that the Court should annul Implementing Decision 2020/1604.

35 The Commission claims that the Court should:

– dismiss the action as inadmissible;

– in the alternative, dismiss the action as unfounded;

– order the applicant to pay the costs.

36 By order of 17 December 2020, the Court reserved its decision on the plea of inadmissibility raised by the Commission under Article 130(1) of the Rules of Procedure of the General Court for the final judgment.

[1] Only the paragraphs of the present judgment which the Court considers it appropriate to publish are reproduced here.

37 In Case T-826/19, the Spanish company, in its application, claims, in essence, that the Court should:

– annul the decision contained in the first letter of 27 September 2019;

– annul the decision contained in the second letter of 27 September 2019;

– annul the decision contained in the letter of 30 September 2019;

– annul the decision contained in the email of 6 November 2019;

– annul the decision contained in the email of 20 November 2019;

– order the Commission to pay the costs.

38 In the statement of modification of the application lodged on 6 January 2021, the Spanish company also claims that the Court should annul Implementing Decision 2020/1604.

39 The Commission claims that the Court should:

– dismiss the action as inadmissible;

– in the alternative, dismiss the action as unfounded;

– order the applicant to pay the costs.

40 By order of 17 December 2020, the Court reserved its decision on the plea of inadmissibility raised by the Commission under Article 130(1) of the Rules of Procedure for the final judgment.

IV. Law

…

A. The actions against the second letter of 27 September 2019, the letter of 30 September 2019 and the email of 20 November 2019

…

1. Substance

129 In support of their claims for annulment of the contested acts, the applicants raise eight pleas in law. Those pleas are, in essence, identical in both actions.

…

131 It is appropriate to begin the examination with the first and second pleas in the two cases, taken together.

132 First, the applicants claim, in essence, that, if Article 7(1) of Implementing Regulation 2019/661 is interpreted in accordance with the provisions of Regulation No 517/2014, they should not fall under the single producer or importer rule, with the result that the contested acts are unlawful.

133 Secondly, even if the complaint concerning consistent interpretation is rejected by the Court, the pleas of illegality raised in the two actions against Article 7(1) of Implementing Regulation 2019/661 should be upheld, that article should not be applied and, consequently, the contested acts should be annulled.

(a) The complaint concerning an interpretation of Article 7(1) of Implementing Regulation 2019/661 consistent with Regulation No 517/2014

134 In the first place, it should be noted that the Court has held that although, according to settled case-law, an implementing regulation must be given, if possible, an interpretation consistent with the provisions of the basic regulation, that case-law does not apply in the case of a provision of an implementing regulation whose meaning is clear and unambiguous and therefore requires no interpretation. Otherwise, the principle that secondary EU law must be interpreted in conformity would serve as the basis for an interpretation of that law *contra legem*, which is not acceptable (see judgment of 15 September 2021, *Daimler* v *Commission*, T-359/19, EU:T:2021:568, paragraph 92 and the case-law cited).

135 Implementing Regulation 2019/661, which, according to its title, is an implementing regulation, is, according to its cited legal base, based on Regulation No 517/2014 and, in particular, on Article 17(2) of that regulation. It follows that Implementing Regulation 2019/661 is an implementing regulation for Regulation No 517/2014. Accordingly, the case-law cited above applies as regards the relationship between those two regulations.

136 In the second place, first, under Article 16(1) of Regulation No 517/2014, producers and importers who reported having placed hydrofluorocarbons (HFCs) on the market between 2009 and 2012 ('incumbent undertakings') are to be attributed a reference value determined by an implementing decision of 31 October 2014 at the latest.

137 Under Article 16(2) of Regulation No 517/2014, producers and importers that have not reported placing HFCs on the market between 2009 and 2012 ('new entrants') may declare their intention to place HFCs on the market in the following year.

138 It is apparent from Article 16(3) of Regulation No 517/2014 that, by 31 October 2017 and every three years thereafter, the Commission is to recalculate the reference values of the producers and importers referred to in paragraphs 1 and 2 of that article who have reported that they have placed HFCs on the market from 1 January 2015. Accordingly, as of 2017, reference values were established for both incumbent undertakings and new entrants that placed HFCs on the market for the period concerned (see, to that effect, judgment of 16 June 2021, *Krajowa Izba Gospodarcza Chłodnictwa i Klimatyzacji* v *Commission*, T-126/19, EU:T:2021:360, paragraph 62).

139 Secondly, under Article 7(1) of Implementing Regulation 2019/661, the producers and importers covered by Article 16(2) of Regulation No 517/2014 and those falling within the scope of Article 16(3) of that regulation are to be subject to certain rules where they have the same beneficial owner. The former are to be considered as one single declarant and the latter as one single producer or importer.

140 In the present case, it is common ground that the applicants reported that they had placed HFCs on the market from 1 January 2015 and that they thus fall within the scope of the procedure for recalculating the reference values provided for in Article 16(3) of Regulation No 517/2014. They submit that Article 7(1) of Implementing Regulation 2019/661, interpreted in accordance with Regulation No 517/2014, should not have been relied on against them because they are incumbent undertakings and only new entrants should be subject to that provision.

141 However, as the Commission submits, it is clear and unambiguous from the wording of Article 7(1) of Implementing Regulation 2019/661 that that provision applies both to new entrants making declarations pursuant to Article 16(2) of Regulation No 517/2014 and to all producers and importers subject to the procedure for recalculating the reference values laid down in Article 16(3) of Regulation No 517/2014 and that, with regard to the latter, no derogation is provided for in favour of incumbent undertakings.

142 Consequently, an interpretation consistent with Regulation No 517/2014 as advocated by the applicants, if it were followed, would serve as the basis for an interpretation of Article 7(1) of Implementing Regulation 2019/661 *contra legem*, which is not acceptable.

143 Accordingly, the applicants' argument based on an interpretation of Article 7(1) of Implementing Regulation 2019/661 consistent with Regulation No 517/2014 must be rejected.

144 It is therefore necessary to examine the pleas of illegality raised against Implementing Regulation 2019/661 in both actions.

(b) The pleas of illegality

145 As a preliminary point, it should be noted that, at the hearing, the applicants stated that the pleas of illegality raised in both actions were based on infringement of Article 16(5) and Article 17(2) of Regulation No 517/2014, of Article 291 TFEU and of the principle of proportionality.

146 The Commission maintains that the applicants, in their written pleadings, did not rely on the principle of proportionality in support of their pleas of illegality.

147 It is appropriate to examine, first of all, the applicants' arguments alleging infringement of Article 17(2) of Regulation No 517/2014 and Article 291 TFEU, the existence of which in the applicants' pleadings is not disputed by the Commission.

148 The applicants claim that, whereas the Commission's implementing power is limited, under Article 17 of Regulation No 517/2014, to the functioning of the HFC registry, Article 7(1) of Implementing Regulation 2019/661 altered the very functioning of the HFC quota mechanism, established by Regulation No 517/2014, in disregard of Article 291 TFEU.

149 First, they submit that Article 7(1) of Implementing Regulation 2019/661 is unlawful because it alters the rules on the 'distribution' of HFC quotas, that is to say, the right of undertakings to receive their own quota allocation.

150 Secondly, Article 7(1) of Implementing Regulation 2019/661 has the effect of prohibiting undertakings that are not considered a single producer or importer from transferring HFC quotas.

151 According to the Commission, the rule introduced by Article 7(1) of Implementing Regulation 2019/661 did not alter the mechanism for the allocation of HFC quotas. It amounts only, for undertakings with the same beneficial owner, to identifying an operator considered as one single producer or importer to whom a sole reference value and the corresponding HFC quotas are allocated, it being understood that the amount of the sole reference value is always determined according to the quantities of HFCs previously placed on the market. That rule thus prevents a circumvention of the quota system by one beneficial owner entering several undertakings in the registry in order to receive additional HFC quotas and ensures equal treatment of operators on the market.

152 Furthermore, the Commission submits that it is apparent from recital 19 of Regulation No 517/2014 that the transfer of HFC quotas does not have a financial aim but serves to preserve market flexibility, so that the loss of the possibility to transfer quotas for an undertaking linked to a single producer or importer is in accordance with the objective pursued by the EU legislature.

153 The applicants therefore, according to the Commission, fail to establish how Implementing Regulation 2019/661 infringes Article 291(2) TFEU. In addition, it is apparent from recital 18 and Article 17(1) of Regulation No 517/2014 that the HFC registry is to be used for the effective implementation of the HFC quota mechanism and from Article 17(2) of that regulation that the Commission has the task of ensuring the smooth functioning of the registry.

154 Under Article 291(2) TFEU, where uniform conditions for implementing legally binding EU acts are needed, those acts are to confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 TEU, on the Council. According to Article 291(4) TFEU, the word 'implementing' is to be inserted in the title of implementing acts.

155 It is apparent from Implementing Regulation 2019/661 that it is based on Article 17(2) of Regulation No 517/2014, according to which the Commission may, to the extent necessary, by means of implementing acts, ensure the smooth functioning of the HFC registry. That provision, consequently, applies Article 291(2) TFEU. Accordingly, the implementing power conferred on the Commission is delimited by both Article 291(2) TFEU and Article 17(2) of Regulation No 517/2014.

156 When an implementing power is conferred on the Commission on the basis of Article 291(2) TFEU, the Commission is called on to provide further detail in relation to the content of the legislative act (see, to that effect, judgment of 15 October 2014, *Parliament* v *Commission*, C-65/13, EU:C:2014:2289, paragraph 43).

157 The Commission provides further detail in relation to the legislative act if the provisions of the implementing act adopted by it (i) comply with the essential general aims pursued by the legislative act and (ii) are necessary or appropriate for the implementation of that act without supplementing or amending it, even as to its non-essential elements (see, to that effect, judgment of 15 October 2014, *Parliament* v *Commission*, C-65/13, EU:C:2014:2289, paragraphs 45 and 46).

158 Furthermore, under Article 17(1) of Regulation No 517/2014, by 1 January 2015, the Commission is to set up and ensure the operation of the HFC registry.

159 According to recital 18 of Regulation No 517/2014, the Commission should ensure that the HFC registry is in place to manage quotas, for the placing of HFCs on the market and the reporting, including the reporting on equipment placed on the market.

160 It is clear from those provisions that the Commission's implementing power provided for in Article 17(2) of Regulation No 517/2014 is limited to the smooth functioning of the HFC registry, which is an instrument for managing quotas, placing HFCs on the market and reporting, including reporting on equipment placed on the market.

161 In the present case, it is therefore necessary to examine whether, as the applicants submit, Article 7(1) of Implementing Regulation 2019/661 goes beyond the competence provided for in Article 17(2) of Regulation No 517/2014, taking into account the limits imposed on implementing powers generally by Article 291(2) TFEU. More specifically, it is necessary to examine whether, as the applicants submit, the Commission supplemented or amended Regulation No 517/2014 with regard to, first, the rights of undertakings to receive an allocation of HFC quotas and, secondly, the rights of undertakings to transfer HFC quotas.

(1) Whether Article 7(1) of Implementing Regulation 2019/661 supplemented or amended Regulation No 517/2014 with regard to the rights of undertakings to receive an allocation of HFC quotas

162 The applicants claim that Article 7(1) of Implementing Regulation 2019/661 is unlawful because it deprives certain undertakings of their own HFC quotas that they had before that provision came into force.

163 It is true that Article 7(1) of Implementing Regulation 2019/661 had, in the present case, direct effects on the procedure for recalculating the reference values (see paragraphs 80 to 86 above).

164 However, it is apparent from paragraph 1 of Annex VI to Regulation No 517/2014 establishing the allocation mechanism that the determination of a reference value for an undertaking leads to an allocation of HFC quotas for that undertaking.

165 It is therefore necessary to examine the rules laid down by Regulation No 517/2014 concerning the rights of undertakings to receive a reference value and, therefore, HFC quotas, in order to ascertain whether they have been amended or supplemented by Article 7(1) of Implementing Regulation 2019/661.

166 Pursuant to Article 16(3) of Regulation No 517/2014, by 31 October 2017 and every three years thereafter, the Commission is to recalculate the reference values for the producers and importers referred to in paragraphs 1 and 2 of that article on the basis of the annual average of the quantities of HFCs lawfully placed on the market from 1 January 2015 as reported under Article 19 for the years available.

167 Regulation No 517/2014 does not specify the definition of the term 'producers and importers' within the meaning of the provision referred to above.

168 It is therefore necessary, before examining the scope of Article 7(1) of Implementing Regulation 2019/661, to define, at the outset, the concept of 'producers and importers' within the meaning of Article 16(3) of Regulation No 517/2014.

(i) The term 'producers and importers' within the meaning of Article 16(3) of Regulation No 517/2014

169 In order to clarify the concept of 'producers and importers' used in Article 16(3) of Regulation No 517/2014, account must be taken, for the interpretation of that provision of EU law, not only of its wording, but also of its context and the objectives pursued by the legislation of which it forms part (see judgment of 7 May 2019, *Germany* v *Commission*, T-239/17, EU:T:2019:289, paragraph 40 and the case-law cited).

170 At the hearing, the Commission argued that that term should be interpreted in the light of the term 'undertaking' in Article 2(30) of that regulation.

171 Article 2(30)(a) to (c) of Regulation No 517/2014, in so far as is relevant to the present case, defines the concept of undertaking as any natural or legal person who, inter alia, produces, imports or places on the market fluorinated greenhouse gases; HFCs constitute such gases under paragraph 2 of that article.

172 According to the interpretation advocated by the Commission, the reference to 'producers and importers' in Article 16(3) of Regulation No 517/2014 therefore covers each undertaking, within the meaning of Article 2(30) of that regulation, that is to say, inter alia, each natural or legal person who produces, imports or places on the market HFCs.

173 In the first place, in favour of the Commission's argument, it should be noted that the EU legislature made no distinction between the concepts of undertaking and of producer or importer.

174 First of all, Article 16(3) of Regulation No 517/2014 provides that the procedure for recalculating the reference values concerns the producers and importers referred to in paragraphs 1 and 2 of that article.

175 The first subparagraph of Article 16(2) of Regulation No 517/2014 refers to the concept of producer or importer. However, the third subparagraph of Article 16(2) provides that, before submitting a declaration under paragraphs 2 and 4 of that article, 'undertakings' are to register with the HFC registry. Accordingly, the producers or importers referred to in the first subparagraph are undertakings pursuant to the third subparagraph.

176 Next, recital 16 of Regulation No 517/2014 states that, by regularly recalculating the reference values and quotas, the Commission should ensure that 'undertakings' are allowed to continue their activities on the basis of the average volumes they placed on the market in recent years.

177 Lastly, the phrase 'each undertaking' appears in Article 19(6) of Regulation No 517/2014, which imposes specific obligations on 'each producer [and] importer', referred to in paragraph 1 of that provision, that reports on the placing on the market of 10 000 tonnes of CO_2 equivalent or more of HFCs during the preceding calendar year.

178 In the second place, it is also apparent from the combined provisions of Article 16(1) and (3) of Regulation No 517/2014 that the producers and importers referred to in paragraph 3 of that article are natural or legal persons taken individually.

179 Article 16(1) of Regulation No 517/2014, to which paragraph 3 of that article refers, provides that the Commission is to determine for each producer or importer having reported data under Article 6 of Regulation No 842/2006, a reference value based on the quantities of HFCs the producer or importer reported to have placed on the market from 2009 to 2012.

180 Article 6(1)(a) and (b) of Regulation No 842/2006 provided that, by 31 March 2008 and every year thereafter, each producer, importer or exporter of fluorinated greenhouse gases was to communicate certain information to the Commission and to the Member State concerned. That obligation concerns, inter alia, 'each producer who produces more than one tonne of fluorinated greenhouse gases per annum' and 'each importer who imports more than one tonne of fluorinated greenhouse gases per annum'.

181 Although Regulation No 842/2006 did not define the terms 'producer' or 'importer', it follows from a literal interpretation of its provisions, in particular from the reference to 'each producer' or 'each importer', that any natural or legal person producing or importing at least one tonne of fluorinated greenhouse gases per annum was covered.

182 It should also be noted that recital 15 of Regulation No 517/2014, which concerns the quantitative limits applicable to operators who placed HFCs on the market during the reference period between 2009 and 2012, refers to the calculation of the reference values and the allocation of quotas 'to individual producers and importers'.

183 In the third place, the interpretation that the producers and importers referred to in Article 16(3) of Regulation No 517/2014 are natural or legal persons taken individually is supported by the references to 'each producer or importer' in recital 14 and in Article 16(1) and (5) of Regulation No 517/2014.

184 In the light of the foregoing, Article 16(3) of Regulation No 517/2014 must be interpreted as meaning that any undertaking, understood as a natural or legal person taken individually, which lawfully placed HFCs on the market from 1 January 2015 and which made the declaration provided for in Article 19 of Regulation No 517/2014 is entitled to a reference value upon the triennial recalculation of the reference values.

(ii) The scope of Article 7(1) of Implementing Regulation 2019/661

185 Under Article 7(1) of Implementing Regulation 2019/661, for the purpose of recalculating the reference values in accordance with Article 16(3) of Regulation No 517/2014, all undertakings with the same beneficial owner(s) are to be considered as one single producer or importer and that single producer or importer is to be the undertaking that was registered first or, where appropriate, another registered undertaking indicated by the beneficial owner.

186 First, it is apparent from recital 5 of Implementing Regulation 2019/661 that the purpose of the provisions of Article 7 of that implementing regulation is to prevent any circumvention or abuse of the requirements for quota allocations. In particular, where one or more of the same beneficial owner registers several undertakings with the aim of receiving a higher allocation of HFC quotas than a single undertaking's share of the maximum quantity of HFCs that can be placed on the market in the European Union, such undertakings registered with the same beneficial owner(s) should be considered as a single undertaking.

187 As the Commission pointed out at the hearing, Implementing Regulation 2019/661 thus introduces a new rule allowing it to treat several separate legal persons with the same beneficial owner as a single entity, in order to prevent a beneficial owner of an undertaking that has already been registered in the HFC registry from creating legal persons for the sole purpose of having them declare their intention to place HFCs on the market in the following year under Article 16(2) of Regulation No 517/2014, thereby obtaining HFC quotas and ultimately receiving, by way of Article 16(3) of that regulation, a reference value due to the quantities of HFCs that they would have lawfully placed on the market.

188 The concept of an undertaking within the meaning of Article 7(1) of Implementing Regulation 2019/661 must therefore be interpreted as referring, like the concept of undertaking within the meaning of Regulation No 517/2014, to a natural or legal person taken individually.

189 Secondly, it should be noted that, by adopting Article 7(1) of Implementing Regulation 2019/661, the Commission added conditions that are not provided for in Article 16(3) of Regulation No 517/2014 for determining the right of undertakings with the same beneficial owner to receive reference values.

190 Under Article 7(1) of Implementing Regulation 2019/661, certain undertakings are entitled, as single producers or importers, to a sole reference value determined in respect of their own declarations made in accordance with Article 19 of Regulation No 517/2014 and the same declarations made by other undertakings with the same beneficial owner.

191 Conversely, other undertakings, although they placed HFCs on the market and made declarations in accordance with Article 19 of Regulation No 517/2014, are not entitled to their own reference value, since it is attributed to another undertaking which has the same beneficial owner and satisfies the conditions to be considered as a single producer or importer.

192 The conditions referred to above thus have the effect of amending the system established by Article 16(3) of Regulation No 517/2014, since, under that provision, any undertaking which lawfully placed HFCs on the market from 1 January 2015 and which made a declaration under Article 19 of Regulation No 517/2014 is entitled to a reference value upon the triennial recalculation of the reference values, without the identity of its beneficial owner being taken into account.

193 Thirdly, the applicants are correct in claiming that Article 7(1) of Implementing Regulation 2019/661 also amends the system for the allocation of HFC quotas established by Regulation No 517/2014.

194 Pursuant to paragraph 1 of Annex VI to Regulation No 517/2014, a single producer or importer within the meaning of Article 7(1) of Implementing Regulation 2019/661 is allocated, as part of its sole reference value, not only the HFC quotas corresponding to the quantities of HFCs that it placed on the market from 1 January 2015, but also the quotas corresponding to the quantities of HFCs placed on the market from 1 January 2015 by undertakings with the same beneficial owner. However, in the absence of Article 7(1) of Implementing Regulation 2019/661, that undertaking would not have been deemed a single producer or importer and would therefore have received only the quotas corresponding to a reference value determined solely by reference to the quantities of HFCs which it placed on the market from 1 January 2015.

195 By contrast, undertakings with the same beneficial owner as a single producer or importer lose the right to their own reference value and, therefore, the right to receive their own allocation of HFC quotas in respect of such a value, even though they would have been entitled to those quotas in the absence of Article 7(1) of Implementing Regulation 2019/661.

196 It follows from all of the foregoing considerations that Article 7(1) of Implementing Regulation 2019/661 modified the rights which the undertakings concerned derived from Regulation No 517/2014 with regard to receiving a reference value and the possibility of being allocated their own HFC quotas.

(2) Whether Article 7(1) of Implementing Regulation 2019/661 supplemented or amended Regulation No 517/2014 with regard to the rights of undertakings to transfer HFC quotas

197 Under Article 18(1) of Regulation No 517/2014, any producer or importer for whom a reference value has been determined pursuant to Article 16(1) or (3) of that regulation and who has been allocated a quota in accordance with Article 16(5) of that regulation may transfer HFC quotas.

198 It follows that the right to transfer a HFC quota is reserved for undertakings which have received a quota allocation on the basis of a reference value.

199 It is apparent from paragraphs 189 to 192 above that, pursuant to Article 7(1) of Implementing Regulation 2019/661, undertakings with the same beneficial owner as a single producer or importer lost the right – which they had enjoyed before the entry into force of that provision solely on the basis of Article 16(3) of Regulation No 517/2014 – to their own reference value.

200 Consequently, those same undertakings, even if they could receive a transfer of HFC quotas, no longer satisfy, since Implementing Regulation 2019/661 entered into force, the conditions laid down in Article 18(1) of Regulation No 517/2014 to make such a transfer themselves.

201 As it has been established that there is a market where HFC quotas are traded (see paragraph 100 above), the undertakings referred to above have thus lost the right to transfer HFC quotas on the market.

202 It should be added that that loss of the right to transfer HFC quotas concerns undertakings that, like the Spanish company, have placed HFCs on the market after Regulation No 517/2014 entered into force, even though it is apparent from the Commission report of 13 July 2017 assessing the quota allocation method in accordance with Regulation (EU) No 517/2014 (COM(2017) 377 (final)) that the right to transfer HFC quotas was restricted in order to prevent undertakings that are not involved in the HFC trade from applying for free quotas for the sole purpose of selling those rights.

203 Consequently, the applicants are correct in claiming that Article 7(1) of Implementing Regulation 2019/661 amended Regulation No 517/2014 with regard to the rights of undertakings to transfer HFC quotas.

(3) Form of order sought

204 It follows from the foregoing considerations that, by adopting Article 7(1) of Implementing Regulation 2019/661, the Commission modified the rights which the undertakings concerned derived from Regulation No 517/2014 with regard to receiving a reference value, the possibility of being allocated their own HFC quotas and the ability to transfer those quotas.

205 Consequently, the applicants are correct in claiming that the Commission exceeded the implementing power conferred on it by Article 17(2) of Regulation No 517/2014.

206 Under that provision, that implementing power is limited to the smooth functioning of the HFC registry, which is an instrument for managing quotas, placing HFCs on the market and reporting, including reporting on equipment placed on the market (see paragraph 160 above). However, the rule laid down in Article 7(1) of Implementing Regulation 2019/661 does not concern managing quotas, placing HFCs on the market or reporting, in order to ensure the smooth functioning of the HFC registry. That provision, in so far as it directly affects the rights of the undertakings concerned to a reference value, an allocation of HFC quotas and to transfer quotas, reforms the very functioning of the HFC quota system.

207 In addition, as the applicants submit, by reforming, by means of Article 7(1) of Implementing Regulation 2019/661, the very functioning of the HFC quota system, the Commission did not confine itself to providing further detail in relation to the provisions of Regulation No 517/2014 in order to ensure uniform conditions of implementation, but amended that regulation, in disregard of the limits imposed on any implementing power under Article 291(2) TFEU.

208 The fact, noted by the Commission, that Article 7(1) of Implementing Regulation 2019/661 has no impact, in the present case, on the total quantity of HFC quotas allocated to all the undertakings with the same beneficial owner does not change the foregoing considerations that the Commission modified the rights of the undertakings concerned with regard to receiving a reference value, the possibility of being allocated their own HFC quotas and the ability to transfer those quotas.

209 Regarding the Commission's argument that Article 7(1) of Implementing Regulation 2019/661 is intended to ensure equal treatment between undertakings or to prevent them from exceeding the HFC quota allocated to them, it cannot, in any event, justify a derogation from the rules laid down in Article 17(2) of Regulation No 517/2014 and Article 291 TFEU with regard to the extent of the competence of the holder of the implementing power.

210 In the light of all the foregoing, it must be held that the Commission was not competent to adopt Article 7(1) of Implementing Regulation 2019/661.

211 Article 7(1) of Implementing Regulation 2019/661 is therefore an unlawful provision that cannot be applied in the present case.

212 Consequently, without there being any need to examine the other complaints put forward in support of the pleas of illegality and the other pleas in law raised by the applicants, the decisions contained in the contested acts, taken on the basis of the unlawful provision referred to above, must be annulled.

213 For the same reasons, the email of 20 November 2019 addressed to the applicants, and which thus constitutes a confirmatory act of the contested acts (see paragraph 127 above), must be annulled.

…

On those grounds,

THE GENERAL COURT (First Chamber, Extended Composition)

hereby:

1. **Joins Cases T-825/19 and T-826/19 for the purposes of the judgment;**

2. **Annuls the decisions contained in the second letter sent by the European Commission on 27 September 2019, in the letter of 30 September 2019 of the Commission, and in the email of 20 November 2019 of the Commission addressed to Tazzetti SpA and Tazzetti SA;**

3. **Dismisses the action as to the remainder;**

4. **Orders the Commission to bear its own costs and to pay those incurred by Tazzetti SpA and Tazzetti SA.**

van der Woude Kanninen Półtorak

Porchia Stancu

Delivered in open court in Luxembourg on 22 March 2023.

[Signatures]