Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

16 June 2022 *

(Appeals – Environment – Regulation (EC) No 1272/2008 – Classification, labelling and packaging of certain substances and mixtures – Regulation (EU) No 944/2013 – Classification of pitch, coal tar, high-temp as an Aquatic Acute 1 (H400) toxic substance and as an Aquatic Chronic 1 (H410) toxic substance – Annulment – Actions for damages)

In Joined Cases C-65/21 P and C-73/21 P to C-75/21 P,

FOUR APPEALS under Article 56 of the Statute of the Court of Justice of the European Union, brought on 2 February 2021,

SGL Carbon SE, established in Wiesbaden (Germany) (C-65/21 P),

Química del Nalón SA, formerly Industrial Química del Nalón SA, established in Oviedo (Spain) (C-73/21 P),

Deza a.s., established in Valašské Meziříčí (Czech Republic) (C-74/21 P),

Bilbaína de Alquitranes SA, established in Lutxana-Baracaldo (Spain) (C-75/21 P),

represented by M. Grunchard, P. Sellar and K. Van Maldegem, avocats,

appellants,

the other parties to the proceedings being:

European Commission, represented by A. Dawes, R. Lindenthal and K. Talabér-Ritz, acting as Agents,

defendant at first instance,

Kingdom of Spain, represented by L. Aguilera Ruiz and M.J. Ruiz Sánchez, acting as Agents,

European Chemicals Agency (ECHA), represented by W. Broere, M. Heikkilä and S. Mahoney, acting as Agents,

interveners at first instance,

THE COURT (Fourth Chamber),

* Language of the case: English.

composed of C. Lycourgos, President of the Chamber, S. Rodin, J.-C. Bonichot (Rapporteur), L.S. Rossi and O. Spineanu-Matei, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 3 February 2022,

gives the following

Judgment

1 By their appeals, SGL Carbon SE, Química del Nalón SA, formerly Industrial Química del Nalón SA, Deza a.s. and Bilbaína de Alquitranes SA seek to have set aside the judgments of the General Court of the European Union of 16 December 2020, respectively *SGL Carbon* v *Commission* (T-639/18, not published; 'the first judgment under appeal', EU:T:2020:628), *Industrial Química del Nalón* v *Commission*. (T-635/18; 'the second judgment under appeal', EU:T:2020:624), *Deza* v *Commission* (T-638/18, not published; 'the third judgment under appeal', EU:T:2020:627) and *Bilbaína de Alquitranes* v *Commission* (T-645/18, not published; 'the fourth judgment under appeal', EU:T:2020:629) (together, 'the judgments under appeal'), by which the General Court dismissed the appellants' actions for compensation for the damage which they claim to have suffered as a result of the adoption of Commission Regulation (EU) No 944/2013 of 2 October 2013 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (OJ 2013 L 261, p. 5; 'the regulation at issue'), in so far as that regulation classified pitch, coal tar, high-temp ('CTPHT') as an Aquatic Acute 1 (H400) and Aquatic Chronic 1 (H410) substance.

Legal context

2 Recitals 5 to 8 of Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ 2008 L 353, p. 1), as amended by Commission Regulation (EU) No 286/2011 of 10 March 2011 (OJ 2011 L 83, p. 1) ('Regulation No 1272/2008') state as follows:

> '(5) With a view to facilitating worldwide trade while protecting human health and the environment, harmonised criteria for classification and labelling have been carefully developed over a period of 12 years within the United Nations (UN) structure, resulting in the Globally Harmonised System of Classification and Labelling of Chemicals (hereinafter referred to as "the GHS").
>
> (6) This Regulation follows various declarations whereby the Community confirmed its intention to contribute to the global harmonisation of criteria for classification and labelling, not only at UN level, but also through the incorporation of the internationally agreed GHS criteria into Community law.

(7) The benefits for enterprises will increase as more countries in the world adopt the GHS criteria in their legislation. The Community should be at the forefront of this process to encourage other countries to follow and with the aim of providing a competitive advantage to industry in the Community.

(8) Therefore it is essential to harmonise the provisions and criteria for the classification and labelling of substances, mixtures and certain specific articles within the Community, taking into account the classification criteria and labelling rules of the GHS, but also by building on the 40 years of experience obtained through implementation of existing Community chemicals legislation and maintaining the level of protection achieved through the system of harmonisation of classification and labelling, through Community hazard classes not yet part of the GHS as well as through current labelling and packaging rules.'

3 Article 1(1) of Regulation No 1272/2008 is worded as follows:

'The purpose of this Regulation is to ensure a high level of protection of human health and the environment as well as the free movement of substances [and] mixtures … by:

(a) harmonising the criteria for classification of substances and mixtures, and the rules on labelling and packaging for hazardous substances and mixtures;

…'

4 The first paragraph of Article 3 of that regulation provides:

'A substance or a mixture fulfilling the criteria relating to physical hazards, health hazards or environmental hazards, laid down in Parts 2 to 5 of Annex I is hazardous and shall be classified in relation to the respective hazard classes provided for in that Annex.'

5 Article 37 of that regulation relates to the 'procedure for harmonisation of classification and labelling of substances'. Paragraph 1 of that article provides:

'A competent authority may submit to the Agency a proposal for harmonised classification and labelling of substances and, where appropriate, specific concentration limits or [multiplying factors; "M-factors"], or a proposal for a revision thereof.'

6 According to Article 37(4) of the regulation, the Risk Assessment Committee of the European Chemicals Agency (ECHA) ('the RAC') set up pursuant to Article 76(1)(c) of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1, and corrigendum OJ 2007 L 136, p. 3) is to adopt an opinion on any proposal 'submitted pursuant to paragraphs 1 or 2 within 18 months of receipt of the proposal, giving the parties concerned the opportunity to comment' and the ECHA 'shall forward this opinion and any comments to the Commission'.

7 The procedure for the adoption of the proposed classifications is laid down in Article 37(5) of Regulation No 1272/2008 as follows:

'Where the Commission finds that the harmonisation of the classification and labelling of the substance concerned is appropriate, it shall, without undue delay, submit a draft decision concerning the inclusion of that substance together with the relevant classification and labelling elements in Table 3.1 of Part 3 of Annex VI and, where appropriate, the specific concentration limits or M-factors.

…'

8 Annex I to that regulation is headed 'Classification and labelling requirements for hazardous substances and mixtures'. The foreword of that annex sets out, inter alia, the criteria for classification of substances and mixtures in hazard classes.

9 Point 4.1.1.1 of Annex I to that regulation is worded as follows:

'(a) "Acute aquatic toxicity" means the intrinsic property of a substance to be injurious to an aquatic organism in a short-term aquatic exposure to that substance.

…

(g) "Chronic aquatic toxicity" means the intrinsic property of a substance to cause adverse effects to aquatic organisms during aquatic exposures which are determined in relation to the life-cycle of the organism.

…'

10 Point 4.1.3, entitled 'Classification criteria for mixtures', of that annex provides:

'4.1.3.1. The classification system for mixtures covers all classification categories which are used for substances, i.e. categories Acute 1 and Chronic 1 to 4. In order to make use of all available data for purposes of classifying the aquatic environmental hazards of the mixture, the following is applied where appropriate:

The "relevant components" of a mixture are those which are classified "Acute 1" or "Chronic 1" and present in a concentration of 0.1% (w/w) or greater, and those which are classified "Chronic 2", "Chronic 3" or "Chronic 4" and present in a concentration of 1% (w/w) or greater, unless there is a presumption (such as in the case of highly toxic components (see [point] 4.1.3.5.5.5)) that a component present in a lower concentration can still be relevant for classifying the mixture for aquatic environmental hazards. Generally, for substances classified as "Acute 1" or "Chronic 1" the concentration to be taken into account is (0.1/M)% (for [an] explanation [of the] M-factor see [point] 4.1.3.5.5.5).

4.1.3.2. The approach for classification of aquatic environmental hazards is tiered, and is dependent upon the type of information available for the mixture itself and for its components. Figure 4.1.2 outlines the process to be followed.

Elements of the tiered approach include:

– classification based on tested mixtures;

– classification based on bridging principles;

– the use of "summation of classified components" and/or an "additivity formula".'

11 Point 4.1.3.5.5, entitled 'Summation method', of that annex provides:

'…

4.1.3.5.5.1.1. In case of the substance classification categories Chronic 1 to Chronic 3, the underlying toxicity criteria differ by a factor of 10 in moving from one category to another. Substances with a classification in a high toxicity band therefore contribute to the classification of a mixture in a lower band. The calculation of these classification categories therefore needs to consider the contribution of any substance classified as Chronic 1, 2 or 3.

4.1.3.5.5.1.2. When a mixture contains components classified as Acute 1 or Chronic 1, attention must be paid to the fact that such components, when their acute toxicity is below 1 mg/l and/or chronic toxicity is below 0.1 mg/l (if non-rapidly degradable) and 0.01 mg/l (if rapidly degradable) contribute to the toxicity of the mixture even at a low concentration. Active ingredients in pesticides often possess such high aquatic toxicity but also some other substances like organometallic compounds. Under these circumstances the application of the normal generic concentration limits leads to an "under-classification" of the mixture. Therefore, multiplying factors shall be applied to account for highly toxic components, as described in [point] 4.1.3.5.5.5.'

12 Point 4.1.3.5.5.3, entitled 'Classification for category Acute 1', of that annex is worded as follows:

'4.1.3.5.5.3.1 First all components classified as Acute 1 are considered. If the sum of the concentrations (in %) of these components multiplied by their corresponding M-factors is greater than 25% the whole mixture is classified as Acute 1.

…'

13 Point 4.1.3.5.5.4, entitled 'Classification for the categories Chronic 1, 2, 3 and 4', of Annex I to Regulation No 1272/2008 provides:

'4.1.3.5.5.4.1 First all components classified as Chronic 1 are considered. If the sum of the concentrations (in %) of these components multiplied by their corresponding M-factors is equal to or greater than 25%, the mixture is classified as Chronic 1. If the result of the calculation is a classification of the mixture as Chronic 1 the classification procedure is completed.'

14 That annex provides, in point 4.1.3.5.5.5, headed 'Mixtures with highly toxic components':

'4.1.3.5.5.5.1. Acute 1 and Chronic 1 components with toxicities below 1 mg/l and/or chronic toxicities below 0.1 mg/l (if non-rapidly degradable) and 0.01 mg/l (if rapidly degradable) contribute to the toxicity of the mixture even at a low concentration and shall normally be given increased weight in applying the summation of classification approach. When a mixture contains components classified as Acute or Chronic 1, one of the following shall be applied:

– the tiered approach described in [points] 4.1.3.5.5.3 and 4.1.3.5.5.4 using a weighted sum by multiplying the concentrations of Acute 1 and Chronic 1 components by a factor, instead of merely adding up the percentages. This means that the concentration of "Acute 1" in the left column of Table 4.1.1 and the concentration of "Chronic 1" in the left column of Table 4.1.2 are multiplied by the appropriate multiplying factor. The multiplying factors to be applied to these components are defined using the toxicity value, as summarised in Table 4.1.3. Therefore, in order to classify a mixture containing Acute/Chronic 1 components, the classifier needs to be informed of the value of the M-factor in order to apply the summation method;

…'

Background to the dispute and the judgments under appeal

15 SGL Carbon (Case C-65/21 P) is the parent company of a group of companies manufacturing carbon and graphite products, of which pitch, coal tar, high-temp ('CTPHT') is one of the raw materials. Química del Nalón (Case C-73/21 P), Deza (Case C-74/21 P) and Bilbaína de Alquitranes (Case C-75/21 P) are manufacturers of that substance.

16 The background to the dispute was set out in paragraphs 16 to 23 of the judgments under appeal as follows:

'16 CTPHT is, according to its description in Tables 3.1 and 3.2 of Annex VI to Regulation No 1272/2008, the residue from the distillation of high-temperature coal tar, a black solid with an approximate softening point from 30 °C to 180 °C, composed primarily of a complex mixture of three or more membered condensed ring aromatic hydrocarbons. … CTPHT is used mainly to produce electrode binders for the aluminium and steel industry.

17 In September 2010, the Kingdom of the Netherlands submitted a dossier to the ECHA, pursuant to Article 37 of Regulation No 1272/2008, proposing that CTPHT should be classified as Carcinogenic 1A (H350), Mutagenic 1B (H340), Toxic for reproduction 1B (H360FD), Aquatic Acute 1 (H400), and Aquatic Chronic 1 (H410).

18 After having received observations on the dossier in question during a public consultation, the ECHA referred that dossier to the RAC.

19 On 21 November 2011, the RAC adopted its opinion on CTPHT, confirming by consensus the proposal submitted by the Kingdom of the Netherlands. That opinion was accompanied by a background document containing the RAC's detailed analysis … and a document containing the answers of the Kingdom of the Netherlands to the observations made on the dossier drawn up by that Member State.

20 With regard to the classification of CTPHT as a substance having aquatic toxicity, the RAC considered in its opinion, as the Kingdom of the Netherlands had proposed in its dossier submitted to the ECHA, that this could not be based on data obtained in studies using the Water-Accommodated Fraction approach. The reasons stated by the RAC for that finding were, first, that those data had been obtained in the absence of ultraviolet (UV) irradiation, even though certain polycyclic aromatic hydrocarbon ("PAH") constituents of CTPHT are phototoxic and, secondly, that the studies concerned had been carried out with only a single loading. The RAC therefore took the view, as the Kingdom of the Netherlands had proposed in its dossier submitted to the ECHA, that the classification of that substance was to be based on an alternative approach, namely to regard CTPHT as a mixture. According to that approach, the 16 PAH constituents of CTPHT, which have been defined as priority substances by the United States Environmental Protection Agency (EPA), and for which sufficient effect and exposure data were available, were analysed separately in accordance with their aquatic toxicity effects. By applying the method referred to in point 4.1.3.5.5 of Annex I to Regulation No 1272/2008, consisting in finding the sum of the results obtained by the attribution of ["M-factors"] to the different PAHs in order to attach more weight to the highly toxic constituents of CTPHT ("the summation method"), that analysis showed, according to the RAC's opinion, that CTPHT had to be classified as Aquatic Acute 1 (H400) and Aquatic Chronic 1 (H410).

21 On 2 October 2013, on the basis of the RAC's opinion, the European Commission adopted the regulation [at issue]. In accordance with Article 1(2)(a)(i) and (b)(i) of [the regulation at issue], read together with Annexes II and IV thereto, CTPHT was classified as Carcinogenic 1A (H350), Mutagenic 1B (H340), Toxic for reproduction 1B (H360FD), Aquatic Acute 1 (H400), and Aquatic Chronic 1 (H410). Pursuant to Article 3(3) of [the regulation at issue], that classification was applicable from 1 April 2016. According to recital 5 of [the regulation at issue], a longer transition time before the harmonised classification had to be applied was foreseen as regards CTPHT, in order to allow operators to comply with the obligations resulting from the new harmonised classification for substances classified as very toxic to aquatic organisms which may cause long-term effects in the aquatic environment, in particular with those set out in Article 3 of Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods (OJ 2008 L 260, p. 13) and Annex III thereto.

22 By application lodged at the Court Registry on 20 December 2013 and registered as Case T-689/13, the [appellants and several other companies] brought an action for the partial annulment of [the regulation at issue] in so far as it classified CTPHT as an Aquatic Acute 1 (H400) and Aquatic Chronic 1 (H410) substance.

23 By judgment of 7 October 2015, *Bilbaína de Alquitranes and Others* v *Commission* (T-689/13, not published, EU:T:2015:767), the [General] Court annulled [the regulation at issue] in so far as it classified CTPHT as an Aquatic Acute 1 (H400) and Aquatic Chronic 1 (H410) substance.'

17 By document lodged at the Registry of the Court of Justice on 17 December 2015, the Commission appealed against the judgment of 7 October 2015, *Bilbaína de Alquitranes and Others* v *Commission* (T-689/13, not published, EU:T:2015:767).

18 By judgment of 22 November 2017, *Commission* v *Bilbaína de Alquitranes and Others* (C-691/15 P, EU:C:2017:882), the Court of Justice dismissed the Commission's appeal.

Procedure before the General Court and the judgments under appeal

19 By applications lodged at the Registry of the General Court on 23 October 2018, the appellants and two other companies each brought an action for damages seeking compensation for the loss they claimed to have suffered by reason of the unlawful classification of CTPHT as an Aquatic Acute 1 (H400) and Aquatic Chronic 1 (H410) substance by the regulation at issue.

20 They claimed, first, that the illegality of that classification as set out in the judgment of the General Court of 7 October 2015, *Bilbaína de Alquitranes and Others* v *Commission* (T-689/13, not published, EU:T:2015:767), confirmed by the judgment of the Court of Justice of 22 November 2017, *Commission* v *Bilbaína de Alquitranes and Others* (C-691/15 P, EU:C:2017:882), constitutes a sufficiently serious breach of a rule of law intended to confer rights on individuals. Second, they claimed, that that illegality had caused them financial harm in the total amount of EUR 1 022 172 including several costs: (i) costs incurred on account of the adaptation of the packaging and the conditions for transportation as set out in the UN Model Regulations for Transport of Dangerous Goods, that is to say, inter alia, the European Agreement concerning the International Carriage of Dangerous Goods by Road, the Regulations concerning the International Transport of Dangerous Goods by Rail and the International Maritime Dangerous Goods Code; (ii) the additional costs incurred as a result of the classification laid down in the regulation at issue, in order to update safety data sheets in accordance with Regulation No 1907/2006; (iii) the costs incurred in order to comply with Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC (OJ 2012 L 197, p. 1), which became applicable to the appellants as a result of the unlawful classification of CTPHT.

21 By six judgments delivered on 16 December 2020, including the judgments under appeal, the General Court dismissed, in identical terms, the actions for compensation, on the ground that the first condition for the European Union to incur non-contractual liability, namely the existence of a sufficiently serious breach of a rule of law intended to confer rights on individuals, had not been fulfilled.

Procedure before the Court of Justice and forms of order sought

22 By decision of 19 October 2021, Cases C-65/21 P and C-73/21 P to C-75/21 P were joined for the purposes of the oral part of the procedure and of the judgment.

23 By their respective appeals, worded identically, the appellants claim that the Court should:

– set aside the judgments under appeal;

– refer the cases back to the General Court, and

– reserve the question of the costs of the present proceedings to the General Court, to be decided once the case has been re-examined.

24 The Commission, the Kingdom of Spain and the ECHA contend that the Court should:

– dismiss the appeals, and

– order the appellants to pay the costs.

The appeal

25 In support of their appeal, the appellants put forward six grounds.

The first ground of appeal

Arguments of the parties

26 The appellants claim that the General Court erred in law in paragraph 71 of the first judgment under appeal, paragraph 72 of the second judgment under appeal, paragraph 69 of the third judgment under appeal and paragraph 72 of the fourth judgment under appeal when it rejected as inadmissible the plea alleging that the Commission was in breach of its duty of diligence, on the ground that that plea had not been raised specifically and independently in the applications. The General Court incorrectly considered that that plea had to be separated from the plea that the Commission had committed a manifest error of assessment by failing to take into account a relevant factor for the purposes of classifying CTPHT. As the appellants had raised the Commission's manifest error of assessment in their applications, they argue that there was no need for them also to raise a plea alleging that the Commission was in breach of its duty of diligence.

27 The Commission, supported by the ECHA, and the Spanish Government challenge that argument and contend that the first ground of appeal must be rejected.

Findings of the Court

28 In the paragraphs of the judgments under appeal referred to in paragraph 26 of the present judgment, the General Court declared inadmissible the plea alleging that the Commission was in breach of its duty of diligence on the ground that the appellants had not made that claim specifically and independently in their applications, but in their replies alone, and on the ground that nor could that plea be regarded as amplifying a plea previously put forward in those applications.

29 The appellants claim, in essence, that the plea alleging breach of the duty of diligence is not separate from – and merely amplified – the plea alleging manifest error of assessment which they had raised in their applications.

30 The duty to act diligently which is inherent in the principle of sound administration and applies generally to the actions of the EU administration in its relations with the public requires that that administration act with care and caution (judgments of 16 December 2008, *Masdar (UK)* v *Commission*, C-47/07 P, EU:C:2008:726, paragraphs 92 and 93, and of 4 April 2017, *Ombudsman* v *Staelen*, C-337/15 P, EU:C:2017:256, paragraph 34).

31 The EU institutions are under that duty when exercising their powers of assessment. Accordingly, where a party claims that the institution competent in the matter has committed a manifest error of assessment, the EU judicature must verify whether that institution has examined, carefully and impartially, all the relevant facts of the individual case (judgments of 18 July 2007, *Industrias Químicas del Vallés* v *Commission*, C-326/05 P, EU:C:2007:443, paragraph 77, and of 22 November 2017, *Commission* v *Bilbaína de Alquitranes and Others*, C-691/15 P, EU:C:2017:882, paragraph 35).

32 It follows from that case-law of the Court that pleas alleging breach of the duty of diligence frequently overlap with pleas alleging manifest error of assessment. Admittedly, the fact that all the relevant facts of the individual case have been taken into account carefully and impartially is not, of itself, sufficient to prevent the institution concerned from committing a manifest error of assessment. Nevertheless, a breach, by that institution, of its duty of diligence is the most common reason for such an error.

33 This is the case, more specifically, concerning the manifest error of assessment committed in the present case by the Commission by classifying CTPHT as an Aquatic Acute 1 (H400) and Aquatic Chronic 1 (H410) substance on the basis of its constituents, as found by the General Court in paragraph 30 of the judgment of 7 October 2015, *Bilbaína de Alquitranes and Others* v *Commission* (T-689/13, not published, EU:T:2015:767), on the ground that the Commission had 'failed to comply with its obligation to take into consideration all the relevant factors and circumstances'. In paragraph 55 of the judgment of 22 November 2017, *Commission* v *Bilbaína de Alquitranes and Others* (C-691/15 P, EU:C:2017:882, paragraph 55), the Court of Justice confirmed the General Court's finding.

34 However, it is apparent from paragraphs 55, 46, 46 and 45 of the applications of SGL Carbon, Química del Nalón, Deza and Bilbaína de Alquitranes, respectively, that those companies complained that the Commission committed a manifest error of assessment. Moreover, that error forms the very basis of their claims for damages, as recalled by the General Court in paragraph 61 of the first judgment under appeal, paragraph 62 of the second judgment under appeal, paragraph 59 of the third judgment under appeal and paragraph 62 of the fourth judgment under appeal.

35 Consequently, the General Court erred in law by rejecting as inadmissible the plea alleging breach of the duty of diligence on the ground that it did not amplify a plea previously put forward in the applications, but was a separate plea raised out of time.

36 Nevertheless, the fact that the plea alleging breach of the duty of diligence was incorrectly considered to be separate and was consequently rejected as out of time had no effect on the examination of the action at first instance, because that plea overlaps, as is apparent from paragraphs 32 and 33 of the present judgment, with that alleging manifest error of assessment, raised in the applications, as is apparent from paragraph 34 of the present judgment and which was examined and rejected by the General Court. In addition and in any event, in the last sentence of paragraph 114 of the first judgment under appeal, paragraph 115 of the second

judgment under appeal, paragraph 112 of the third judgment under appeal and paragraph 115 of the fourth judgment under appeal, the General Court ruled on the substance of the plea alleging breach of the duty of diligence, even if only for the sake of completeness, finding that that breach was not sufficiently serious for the European Union to incur liability.

37 It follows that the first ground of appeal must be rejected as ineffective.

The fourth ground of appeal

Arguments of the parties

38 By the fourth ground of their respective appeals – which it is appropriate to examine after the first ground of appeal, since it alleges, similarly to the first ground of appeal, breach of the duty of diligence – the appellants claim that the General Court erred in its application of the criterion of care and diligence. In support of that ground of appeal, they cite paragraphs 104 and 105 of the first judgment under appeal, paragraphs 105 and 106 of the second judgment under appeal, paragraphs 102 and 103 of the third judgment under appeal and paragraphs 105 and 106 of the fourth judgment under appeal.

39 By the first part of that ground of appeal, they complain that the General Court sought to ascertain, based on the RAC's opinion, whether solubility was mentioned expressly in Regulation No 1272/2008 as one of the relevant factors instead of examining whether the Commission had complied with the long-standing principle of law that all the relevant factors must be taken into consideration. The General Court's reasoning is, as a result, irrelevant to their applications.

40 By the second part of that ground of appeal, the appellants submit that the General Court should not have taken account of the RAC's opinion alone in order to assess whether the Commission had acted with care and diligence, whereas that committee itself is not under a duty of care and diligence.

41 The Commission, supported by the ECHA, and the Spanish Government dispute that that ground is well founded.

Findings of the Court

42 By the first part of the fourth ground of appeal, the appellants submit, in essence, that the General Court erred in finding that the illegality committed by the Commission had consisted in an infringement of Regulation No 1272/2008, while that illegality consists, as set out in their applications, in a failure to take into consideration all the relevant factors, that is, in a breach of the duty of diligence.

43 As recalled by the General Court in the judgments under appeal, the European Union may incur non-contractual liability only if a number of conditions are fulfilled, namely the existence of a sufficiently serious breach of a rule of law intended to confer rights on individuals, the fact of damage and the existence of a causal link between the breach of the obligation resting on the author of the act and the damage sustained by the injured parties (judgment of 10 September 2019, *HTTS* v *Council*, C-123/18 P, EU:C:2019:694, paragraph 32 and the case-law cited).

44 Regarding the first of those conditions, the General Court found, respectively, in paragraph 61 of the first judgment under appeal, paragraph 62 of the second judgment under appeal, paragraph 59 of the third judgment under appeal and paragraph 62 of the fourth judgment under appeal 'that the infringed rule, as the General Court and subsequently the Court of Justice held in their respective judgments, is in point 4.1.3.5.5 of Annex I to that regulation, namely the summation method'.

45 It must be stated that that method for the classification of aquatic environmental hazards consists of calculating the sum of the concentrations of the constituents coming within the categories of acute or chronic toxicity, each weighted by the M-factor corresponding to their toxicity profile. As observed by the Court of Justice in paragraph 51 of the judgment of 22 November 2017, *Commission* v *Bilbaína de Alquitranes and Others* (C-691/15 P, EU:C:2017:882), that method is based on the assumption that the constituents taken into consideration are 100% soluble. The constituents of CTPHT are released from CTPHT only to a limited extent and that substance is very stable, as the General Court considered correctly in paragraph 32 of the judgment of 7 October 2015, *Bilbaína de Alquitranes and Others* v *Commission* (T-689/13, not published, EU:T:2015:767).

46 From that finding, the General Court inferred, in paragraph 30 of that judgment, that the Commission had committed a manifest error of assessment when applying that method in order to calculate the aquatic toxicity of CTPHT, not that the Commission had infringed the summation method. In paragraphs 49 to 55 of the judgment of 22 November 2017, *Commission* v *Bilbaína de Alquitranes and Others* (C-691/15 P, EU:C:2017:882), the Court of Justice found that the General Court's assessment was not vitiated by any error of law.

47 In that connection, it should be borne in mind that the European Union can incur non-contractual liability without having infringed a specific rule of law. According to the settled case-law of the Court, that liability can also be incurred, where an EU institution applies a specific rule of law intended to confer rights on individuals, by that institution manifestly and gravely disregarding the limits of its discretion (see, to that effect, judgments of 5 March 1996, *Brasserie du pêcheur and Factortame*, C-46/93 and C-48/93, EU:C:1996:79, paragraph 55; of 4 July 2000, *Bergaderm and Goupil* v *Commission*, C-352/98 P, EU:C:2000:361, paragraph 43; and of 30 May 2017, *Safa Nicu Sepahan* v *Council*, C-45/15 P, EU:C:2017:402, paragraph 30).

48 Here, the General Court's finding, in the paragraphs of the judgments under appeal cited in paragraph 44 of the present judgment, that the Commission infringed the summation method, appears to disregard the scope of the judgment of the General Court of 7 October 2015, *Bilbaína de Alquitranes and Others* v *Commission* (T-689/13, not published, EU:T:2015:767), and that of the judgment of the Court of Justice of 22 November 2017, *Commission* v *Bilbaína de Alquitranes and Others* (C-691/15 P, EU:C:2017:882).

49 However, it is clear from the judgments under appeal, read together, that the description of the illegality committed by the Commission as an infringement of the summation method does not correspond to the final position taken by the General Court in those judgments.

50 In that connection, it must be observed that the General Court declared, in paragraph 89 of the first judgment under appeal, paragraph 90 of the second judgment under appeal, paragraph 87 of the third judgment under appeal and paragraph 90 of the fourth judgment under appeal, that it intended to examine whether the 'infringement on the part of the Commission' was sufficiently serious in the light of the considerations which had led the General Court in its judgment of

7 October 2015, *Bilbaína de Alquitranes and Others* v *Commission* (T-689/13, not published, EU:T:2015:767), and subsequently the Court of Justice in its judgment of 22 November 2017, *Commission* v *Bilbaína de Alquitranes and Others* (C-691/15 P, EU:C:2017:882), to the finding that the Commission had committed a manifest error of assessment when classifying CTPHT. Moreover, in the context of that examination, the General Court recalled, in paragraph 100 of the first judgment under appeal, paragraph 101 of the second judgment under appeal, paragraph 98 of the third judgment under appeal and paragraph 101 of the fourth judgment under appeal, that, according to the annulment judgments, the Commission had committed a manifest error of assessment 'when applying the summation method'.

51 In those circumstances, although the General Court referred, in certain paragraphs of the judgments under appeal, to the infringement of the summation method rule, it had, in fact, intended to refer to the incorrect application of that method by the Commission.

52 Consequently, as also observed by the Advocate General in point 62 of his Opinion, the General Court did not cast doubt on the findings made in the annulment judgments that the unlawfulness of the act at issue arose from the Commission's manifest error of assessment consisting in the failure to take into account all the relevant factors and circumstances in classifying CTPHT.

53 In that connection, it is appropriate to observe that, contrary to the appellants' claim in the first part of the fourth ground of appeal, the examination in the contested paragraphs of the judgments under appeal of whether solubility was referred to expressly in Regulation No 1272/2008 is relevant to the assessment of whether the error committed by the Commission – as found by the General Court and subsequently by the Court of Justice – was intentional or inexcusable.

54 The first part of the fourth ground of appeal must therefore be rejected.

55 By the second part of that ground of appeal, directed against paragraphs 104 and 105 of the first judgment under appeal, paragraphs 105 and 106 of the second judgment under appeal, paragraphs 102 and 103 of the third judgment under appeal and paragraphs 105 and 106 of the fourth judgment under appeal, the appellants complain that the General Court relied on the RAC's opinion alone for the finding that the Commission had acted as an administrative authority exercising ordinary care and diligence would have acted, failing to have regard to the fact that that committee was not under a duty of care and diligence.

56 It must first be noted that, in order to assess the seriousness of the Commission's error of assessment in classifying CTPHT, the General Court analysed, in paragraphs 88 to 108 of the first judgment under appeal, paragraphs 89 to 109 of the second judgment under appeal, paragraphs 86 to 106 of the third judgment under appeal and paragraphs 89 to 109 of the fourth judgment under appeal, evidence other than the RAC's opinion, addressed specifically in the paragraphs of the judgments under appeal referred to in paragraph 55 above. Consequently, the appellants cannot argue that the General Court relied on the RAC's opinion alone for the finding that the Commission acted as an administrative authority exercising ordinary care and diligence would have acted.

57 Moreover, it is clear that the General Court did not state, in the paragraphs of the judgments under appeal referred to in paragraph 56 of the present judgment, that the RAC had a duty of care and diligence. As a result, although the appellants sought to complain that the General Court found that the Commission could rely on the RAC's opinion and offload its duty of care and diligence onto the RAC, there is no support for that claim in those paragraphs.

58 It follows from the foregoing that the second part of the fourth ground of appeal must be rejected as unfounded.

59 It follows that the fourth ground of the appeals must be rejected in its entirety.

The second ground of appeal

Arguments of the parties

60 The appellants claim that, in paragraph 98 of the first judgment under appeal, paragraph 99 of the second judgment under appeal, paragraph 96 of the third judgment under appeal and paragraph 99 of the fourth judgment under appeal, the General Court found that point 4.1.3.5.5 of Annex I to Regulation No 1272/2008 could not, on the date when the regulation at issue was adopted, be regarded as a clear rule governing the Commission's discretion in applying the summation method. According to those parties, that finding is based on an incorrect understanding of their argument. They claim that they submitted, in their applications, that the Commission had failed to take into consideration a relevant factor – that is, the solubility of CTPHT – whereas it is settled case-law that the Commission should have taken into account all the relevant factors, including solubility. Thus, by answering the question whether the provision at issue was a clear rule, the General Court focused on an argument that the parties had not raised.

61 The appellants submit that the General Court went on to explain how that rule does not clarify expressly that the solubility of a given substance had to be taken into account. According to the appellants, the absence of express reference to a point in the wording of an EU act cannot release the Commission from its obligation to take into account all the relevant factors. The General Court failed to have regard to the general principle of law that, irrespective of the wording of an act, all the relevant factors must be taken into account.

62 In addition, according to the appellants, the factual and scientific difficulties raised by the classification of substances as described by the General Court are irrelevant in so far as, regarding, in the present situation, the assessment of the 'aquatic toxicity' of CTPHT, it was clear that the solubility of that substance had to be taken into account. Therefore, the General Court's observations in paragraphs 96 and 97 of the first judgment under appeal, paragraphs 97 and 98 of the second judgment under appeal, paragraphs 94 and 95 of the third judgment under appeal and paragraphs 97 and 98 of the fourth judgment under appeal are irrelevant in the light of the clear and settled case-law recalled in paragraph 35 of the judgment of the Court of Justice of 22 November 2017, *Commission* v *Bilbaína de Alquitranes and Others* (C-691/15 P, EU:C:2017:882), which requires the Commission to take into account, in exercising its discretion, all the relevant factors when classifying a substance.

63 The Commission, supported by the ECHA, and the Spanish Government challenge those arguments.

Findings of the Court

64 As recalled in paragraph 43 of the present judgment, an illegality committed by an EU institution can render that institution liable only if the breach is sufficiently serious.

65 The factors that can be taken into account by the EU judicature in order to assess whether that condition is fulfilled include, inter alia, according to the settled case-law of the Court of Justice, the degree of clarity and precision of the rule infringed or incorrectly applied, the measure of discretion left by that rule to the EU authorities and whether the error of law or assessment was excusable or inexcusable (see, to that effect, inter alia, judgments of 5 March 1996, *Brasserie du pêcheur and Factortame*, C-46/93 and C-48/93, EU:C:1996:79, paragraphs 55 and 56; of 25 January 2007, *Robins and Others*, C-278/05, EU:C:2007:56, paragraph 70; and of 19 June 2014, *Specht and Others*, C-501/12 to C-506/12, C-540/12 and C-541/12, EU:C:2014:2005, paragraph 102).

66 Accordingly, it falls to the EU judicature, when it must assess whether an illegality committed by an institution is capable of rendering the European Union liable, to examine all the relevant factors in that regard, such as the factors set out above, even if they are not relied on by the parties.

67 It follows that the appellants cannot criticise the General Court for having made a finding, in the paragraphs of the judgments under appeal set out in paragraph 60 of the present judgment, relating to the degree of clarity of the summation method on the ground that they themselves had not referred to that factor in their written submissions.

68 Even if the appellants had also intended to challenge the substance of the General Court's assessment, in the same paragraphs of the judgments under appeal, that the rule in point 4.1.3.5.5 of Annex I to Regulation No 1272/2008 is unclear, they did not, however, raise any arguments that might call into question that assessment, based on the finding that the wording of that rule does not state that its applicability may vary depending on the solubility of the mixture.

69 It follows from the foregoing that the second ground of the appeals must also be rejected.

The third ground of appeal

Arguments of the parties

70 The appellants complain that, in paragraphs 105 and 107 of the first judgment under appeal, paragraphs 106 and 108 of the second judgment under appeal, paragraphs 103 and 105 of the third judgment under appeal and paragraphs 106 and 108 of the fourth judgment under appeal, the General Court ruled that the legal context of the cases in question was complex and that that complexity could excuse the Commission's failure to take account of the solubility of CTPHT in applying the summation method.

71 However, in order to limit the costs awarded, the General Court itself ruled, in paragraph 22 of the order of 25 September 2019, *Bilbaína de Alquitranes and Others* v *Commission*. (T-689/13 DEP, not published, EU:T:2019:698), that the same rule of law was clear. Therefore, according to the appellants, when it did not give reasons to justify such divergence, the General Court failed to give sufficient reasons, in breach of Article 36 and of the first paragraph of Article 53 of the Statute of the Court of Justice of the European Union.

72 The Commission, supported by the ECHA, and the Spanish Government contend that that ground of appeal must be rejected.

Findings of the Court

73 It must be observed from the outset that there is no contradiction between, on the one hand, the finding in the judgments under appeal that the legal context of the classification of CTPHT is complex and, on the other hand, the reasoning in paragraph 22 of the order of 25 September 2019, *Bilbaína de Alquitranes and Others* v *Commission* (T-689/13 DEP, not published, EU:T:2019:698), that the questions raised by the classification of CTPHT in the context of the action brought against that classification were not atypical and complex enough to warrant the action being referred to a chamber sitting in extended composition.

74 In addition, the appellants do not set out in what way the alleged divergence between the judgments under appeal and that order relating to the degree of clarity of the summation method is, in itself – assuming that divergence to be established – such as to vitiate those judgments.

75 In any event, it is settled case-law 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 (see, to that effect, judgments 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, and of 26 January 2017, *Duravit and Others* v *Commission*, C-609/13 P, EU:C:2017:46, paragraph 90 and the case-law cited).

76 It follows from the foregoing that the third ground of the appeals must also be rejected.

The fifth ground of appeal

Arguments of the parties

77 By their fifth ground, the appellants complain that the reasons given in paragraphs 101 and 112 of the first judgment under appeal, paragraphs 102 and 113 of the second judgment under appeal, paragraphs 99 and 110 of the third judgment under appeal and paragraphs 102 and 113 of the fourth judgment under appeal are not sufficient.

78 By the first part of that ground, they submit that the General Court could not describe the Commission's approach as 'rigorous' and 'prudent', as it did in paragraph 101 of the first judgment under appeal, paragraph 102 of the second judgment under appeal, paragraph 99 of the third judgment under appeal and paragraph 102 of the fourth judgment under appeal, when that approach was vitiated by a manifest error of assessment.

79 By the second part of the ground, the appellants claim that the reasons given in paragraph in paragraph 112 of the first judgment under appeal, paragraph 113 of the second judgment under appeal, paragraph 110 of the third judgment under appeal and paragraph 113 of the fourth judgment under appeal are contradictory, in that the General Court found, on the one hand, that the reasons why the CTPHT had not been re-classified since that classification had been cancelled

were unknown and, on the other hand, that the absence of a new classification highlighted the difficulties of applying the summation method correctly and thus prevented the error committed by the Commission from being characterised as 'inexcusable'.

80 The Commission, supported by the ECHA, and the Spanish Government contend that that ground of appeal cannot succeed.

Findings of the Court

81 By the first part of the ground, the appellants complain that the General Court considered, in the paragraphs of the judgments under appeal referred to in paragraph 78 of the present judgment, that the Commission had adopted, in the present situation, a rigorous and prudent approach, on the ground that it '[had] applied the summation method by following the wording of [point 4.1.3.5.5 of Annex I to Regulation No 1272/2008]', 'intended to act within its powers, which, as a general rule, can be regarded as a prudent approach' and, referring to point 75 of Advocate General Bobek's Opinion in *Commission* v *Bilbaína de Alquitranes and Others* (C-691/15 P, EU:C:2017:646), that 'in principle such a vision can only be commended'.

82 However, it must be stated that this reasoning is based on an incorrect reading of the judgments under appeal.

83 First, contrary to the appellants' claim, the General Court did not describe the Commission's approach in the present situation as 'prudent', but merely stated that it is prudent for institutions, as a general rule, to act within their powers. The General Court mainly stressed that the Commission had intended to act within the scope of its powers and that, as a result, its error of assessment was not intentional or inexcusable.

84 Second, the General Court did not fail to point out, at the end of paragraph 101 of the first judgment under appeal, paragraph 102 of the second judgment under appeal, paragraph 99 of the third judgment under appeal and paragraph 102 of the fourth judgment under appeal and in the beginning of the following paragraphs of those judgments, that the Commission's approach had proved incorrect and had been found, by the General Court and by the Court of Justice, to be vitiated by a manifest error of assessment.

85 Consequently, the complaint made by the appellants in the first part of the fifth ground of appeal is unfounded.

86 The second part of that ground of appeal concerns the allegedly contradictory reasons given in the paragraphs of the judgments under appeal set out in paragraph 79 of the present judgment, in which the General Court determined the implications of the fact, set out in paragraph 111 of the first judgment under appeal, paragraph 112 of the second judgment under appeal, paragraph 109 of the third judgment under appeal and paragraph 112 of the fourth judgment under appeal, that the Commission had not – as of the date of delivery of the judgments under appeal and following the judgment of the Court of Justice of 22 November 2017, *Commission* v *Bilbaína de Alquitranes and Others* (C-691/15 P, EU:C:2017:882), which confirmed the partial annulment of the regulation at issue – made a new classification of CTPHT.

87 It is clear that, as the appellants claim, the reasoning in those paragraphs is contradictory. Thus, although the General Court acknowledges, in the first sentence, that no implication can be determined from the absence of a new classification of CTPHT – since the cancellation of the

previous classification – because the reasons for that absence are unknown, it goes on to assert in the following sentences that this 'can serve as an illustration of the difficulties of applying the summation method correctly' and that 'the fact that it is difficult to correct the error committed by the Commission, as potentially highlighted by the present case, thus … runs counter to the characterisation of that error as inexcusable'.

88 Nevertheless, that contradiction does not warrant the annulment of the judgments under appeal.

89 It must be noted that the General Court found that the Commission's manifest error of assessment was excusable following a demonstration in paragraphs 99 to 113 of the first judgment under appeal, paragraphs 100 to 114 of the second judgment under appeal, paragraphs 97 to 111 of the third judgment under appeal and paragraphs 100 to 114 of the fourth judgment under appeal.

90 Accordingly, the paragraphs of the judgments under appeal referred to in paragraph 79 of the present judgment, challenged in the second part of the fifth ground of appeal, concern a merely ancillary aspect of the reasoning set out by the General Court in support of the operative part of the judgments under appeal, which explains primarily that the Commission's manifest error of assessment was excusable because of the complexity of classifying a substance and the difficulty of interpreting the summation method rule. The appeals do not contain any arguments seeking to show that those reasons given as a whole are not sufficient. It follows that the second part of the fifth ground of appeal is incapable of justifying the annulment of the judgments under appeal and must therefore be rejected.

The sixth plea in law

Arguments of the parties

91 The appellants claim that the General Court erred in law in paragraphs 106 and 108 of the first judgment under appeal, paragraphs 107 and 109 of the second judgment under appeal, paragraphs 104 and 106 of the third judgment under appeal and paragraphs 107 and 109 of the fourth judgment under appeal by considering that the Commission's approach could be excused on the basis of the precautionary principle.

92 According to the appellants, the application of the precautionary principle assumes that there is uncertainty as to the existence or extent of risks to human health and that protective measures may be taken without having to wait until the reality and seriousness of those risks become fully apparent.

93 That principle is not intended to apply in the context of the classification of a substance, as is clear from the fact that the principle is not referred to in Regulation No 1272/2008. The principle can be relied on only once a risk assessment has been carried out, as the Court ruled in the judgment of 1 October 2019, *Blaise and Others* (C-616/17, EU:C:2019:800). It is only after carrying out a risk assessment that the competent authorities could rely on the precautionary principle to justify restrictions. However, the precautionary principle cannot be relied on at an earlier stage.

94 The Commission, supported by the ECHA, and the Spanish Government challenge those arguments.

Findings of the Court

95 It must be noted, at the outset, that, while Article 191(2) TFEU provides that the policy on the environment is to be based on, inter alia, the precautionary principle, that principle is also applicable in the context of other EU policies, in particular the policy on the protection of public health and where the EU institutions adopt, under the common agricultural policy or the policy on the internal market, measures for the protection of human health (judgment of 1 October 2019, *Blaise and Others*, C-616/17, EU:C:2019:800, paragraph 41 and the case-law cited).

96 The precautionary principle entails that, where there is uncertainty as to the existence or extent of risks to human health, protective measures may be taken without having to wait until the reality and seriousness of those risks become fully apparent. Where it proves to be impossible to determine with certainty the existence or extent of the alleged risk because the results of studies conducted are inconclusive, but the likelihood of real harm to public health persists should the risk materialise, the precautionary principle justifies the adoption of restrictive measures (judgment of 1 October 2019, *Blaise and Others*, C-616/17, EU:C:2019:800, paragraph 43 and the case-law cited).

97 Accordingly, that principle is applicable in the context of the classification of a substance under Regulation No 1272/2008 where the assessment of the risks of that substance to the environment and to human health gives rise to uncertainty.

98 Thus, the General Court was fully entitled, in the paragraphs of the judgments under appeal referred to in paragraph 91 of the present judgment, to consider that 'the precautionary principle … cannot be disregarded when classifying chemical substances and mixtures', that that principle 'authorises the competent authorities, where there is uncertainty, to take appropriate measures in order to prevent certain potential risks for public health, safety and the environment without having to wait until the reality and seriousness of those risks become fully apparent' and that the classification of substances and mixtures pursues 'the objective of ensuring a high level of protection of the environment in full compliance with the precautionary principle'.

99 On those grounds, the General Court considers, at least implicitly, that the precautionary principle is applicable here and could have justified the classification of CTPHT as an Aquatic Acute 1 (H400) and Aquatic Chronic 1 (H410) substance. That interpretation of the judgments under appeal, put forward by the appellants, is borne out in paragraph 105 of the first judgment under appeal, paragraph 106 of the second judgment under appeal, paragraph 103 of the third judgment under appeal and paragraph 106 of the fourth judgment under appeal by a reference to 'uncertainty surrounding the exact composition of CTPHT'.

100 It is not apparent from the judgment of the General Court of 7 October 2015, *Bilbaína de Alquitranes and Others* v *Commission* (T-689/13, not published, EU:T:2015:767) – which found that the Commission had committed a manifest error of assessment vitiating the classification of CTPHT – or from the judgment of the Court of Justice of 22 November 2017, *Commission* v *Bilbaína de Alquitranes and Others* (C-691/15 P, EU:C:2017:882) – which dismissed the appeal against the first judgment – that there was uncertainty regarding the risk of aquatic toxicity of CTPHT so that the Commission had grounds to rely on the precautionary principle. Given that the General Court and the Court of Justice have ruled that the Commission had vitiated its risk assessment by that error, it cannot be asserted that that incorrect assessment gave rise to uncertainty as to the extent of those risks.

101 It follows that the General Court erred in law in considering that the precautionary principle could apply to the classification of CTPHT, so that the error committed in that regard by the Commission was not such as to give rise to the non-contractual liability of the European Union.

102 However, it is apparent from the judgments under appeal, in paragraph 106 of the first judgment under appeal, paragraph 107 of the second judgment under appeal, paragraph 104 of the third judgment under appeal and paragraph 107 of the fourth judgment under appeal more specifically, that it was only for the sake of completeness that the General Court found that the precautionary principle was also capable of justifying such classification. As is apparent from, inter alia, paragraph 114 of the first judgment under appeal, paragraph 115 of the second judgment under appeal, paragraph 112 of the third judgment under appeal and paragraph 115 of the fourth judgment under appeal, the General Court found that the error committed by the Commission was not such as to give rise to the non-contractual liability of the European Union primarily in the light of the complexity of classifying a substance and of the difficulty of interpreting the summation method rule.

103 The sixth ground of the appeals is therefore ineffective and must be rejected.

104 It follows from all of the foregoing considerations that the appeals must be dismissed.

Costs

105 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) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

106 Article 140(1) of the Rules of Procedure, which applies to the procedure on appeal by virtue of Article 184(1) thereof, provides that the Member States and institutions which have intervened in the proceedings are to bear their own costs.

107 Article 184(4) of the Rules of Procedure provides that, where an intervener at first instance takes part in the proceedings, the Court may decide that it is to bear its own costs.

108 Since the Commission has applied for costs against the appellants and they have been unsuccessful, they must be ordered to bear their own costs and to pay those incurred by the Commission.

109 The Kingdom of Spain and the ECHA, interveners at first instance, shall bear their own costs.

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

1. **Dismisses the appeals;**

2. **Orders SGL Carbon SE, Química del Nalón SA, Deza a.s. and Bilbaína de Alquitranes SA to bear their own costs and to pay those incurred by the European Commission;**

3. Orders the Kingdom of Spain and the European Chemicals Agency (ECHA) to bear their own costs.

Lycourgos Rodin Bonichot

Rossi Spineanu-Matei

Delivered in open court in Luxembourg on 16 June 2022.

A. Calot Escobar
Registrar

C. Lycourgos
President of the Fourth Chamber