Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber)

26 January 2017*

(Protection of the health and safety of consumers and workers — Directive 2006/42/EC — Safeguard clause — National measure of withdrawal from the market and prohibition of placing on the market of a lawn mower — Requirements concerning protective devices — Successive versions of a harmonised standard — Legal certainty — Commission Decision declaring the measure justified — Error of law)

In Case T-474/15,

Global Garden Products Italy SpA (GGP Italy), established in Castelfranco Veneto (Italy), represented by A. Villani, L. D'Amario and M. Caccialanza, lawyers,

applicant,

v

European Commission, represented initially by G. Braga da Cruz and L. Cappelletti, and subsequently by Braga da Cruz and C. Zadra, acting as Agents,

defendant,

supported by

Republic of Latvia, represented by I. Kalniņš and D. Pelše, acting as Agents,

intervener,

ACTION pursuant to Article 263 TFEU for annulment of Commission Implementing Decision (EU) 2015/902 of 10 June 2015 on a measure taken by Latvia in accordance with Directive 2006/42/EC of the European Parliament and of the Council to prohibit the placing on the market of a lawn mower manufactured by GGP Italy SpA (OJ 2015 L 147, p. 22).

THE GENERAL COURT (Second Chamber),

composed S. Gervasoni, acting as President, L. Madise (Rapporteur) and Z. Csehi, Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written part of the procedure and further to the hearing on 21 September 2016,

gives the following

* Language of the case: Italian.

Judgment

Background to the dispute

1 The provisions of Article 11 of Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC (recast) (OJ 2006 L 157, p. 24), provide for a safeguard clause according to which, inter alia, a Member State which ascertains that machinery, within the meaning of that directive, risks compromising the health and safety of persons is take all appropriate measures to prevent those risks and to inform the Commission thereof so that the latter can consider whether those measures are justified and communicate its decision in that regard to all the Member States.

2 The applicant, Global Garden Products Italy SpA (GGP Italy), manufactures gardening equipment. It in particular manufactures the electric lawn mower called 'Stiga Collector 35 EL (C 350, 297352654/S13)' ('the lawn mower at issue'), which, according to its information, it exported to several Member States, including Latvia.

3 According to the 'EC' declaration of conformity of the lawn mower at issue in the provisions of Directive 2006/42, established by the applicant and which is dated 3 September 2012, the machine was subject to a conformity examination by the notified body, within the meaning of Article 14 of that directive, TÜV Rheinland LGA Products GmbH. The latter in particular referred to the harmonised standard of the European Committee for Electrotechnical Standardisation (Cenelec) EN 60335-2-77:2006, entitled 'Household and similar electrical appliances — Safety — Part 2-77: Particular requirements for pedestrian-controlled walk-behind electrically powered lawn mowers IEC 60355-2-77:1996 (Modified)'.

4 Harmonised standard EN 60335-2-77:2006 was intended to enable attestation, for the appliances it covered and which complied therewith, of a presumption of conformity with the essential health and safety requirements set out in Annex I to Directive 98/37/EC of the European Parliament and of the Council of 22 June 1998 on the approximation of the laws of the Member States relating to machinery (OJ 1998 L 207, p. 1), which was replaced by Directive 2006/42. In the light of the facts at issue in the proceedings, it should be noted that point 1.3.8 of that annex covers the 'choice of protection against risks arising from moving parts' and formulates requirements concerning the types of guards or protective devices depending on whether the moving parts of the appliances have a transmission function or whether they are involved in the process. Point 1.4.1 of that annex sets out the general requirements for guards and protective devices, which must, inter alia, 'be located at an adequate distance from the danger zone'. However, in that regard, harmonised standard EN 60335-2-77:2006 did not provide for a precise minimum distance between the edge of the mobile cutting device and the rear wall of the cutting device enclosure (point 20.103.1.1).

5 In April 2013, the Patērētāju tiesību aizsardzības centrs (Consumer Rights Protection Centre, Latvia), appointed by the Republic of Latvia as competent market surveillance authority, for the purposes of Article 4 of Directive 2006/42, obtained some examples of the lawn mower at issue from a distributor established in Latvian. The obtaining of those examples took place in the context of a joint action concerning the surveillance of lawn mowers placed on the market, initiated in 2011 by Prosafe (Product Safety Forum of Europe), an association bringing together inter alia national authorities such as the Consumer Rights Protection Centre.

6 One example of the lawn mower at issue, manufactured in 2013, was inspected by the Slovenski institut za kakovost in meroslovje (Slovenian Institute of Quality and Metrology), Ljubljana, a notified body within the meaning of Article 14 of Directive 2006/42. It is apparent from the inspection report

that the latter was carried out, in particular, in the light of the requirements of that directive and the provisions of the Cenelec harmonised standard EN 60335-2-77:2010, which has the same purpose as the previous harmonised standard EN 60335-2-77:2006, referred to in paragraphs 3 and 4 above.

7 The Slovenian Institute of Quality and Metrology found that the machine at issue failed to comply with the provisions of harmonised standard EN 60335-2-77:2010 concerning the distance between the edge of the mobile cutting device and the rear wall of the cutting device enclosure. That distance was calculated to be 87 mm although point 20.107.1.1 of that standard lays down a minimum distance of 120 mm. The body concluded from that finding that the provisions of points 1.3.8 and 1.4.1 of Annex I to Directive 2006/42 were not respected. Those points have the same purpose as the equivalent points of Annex I to Directive 98/37, referred to in paragraph 1 above, and they are drafted in identical terms concerning the requirement that the guards and protective devices must 'be located at an adequate distance from the danger zone'. The body's report was received by the Consumer Rights Protection Centre ('the Latvian authorities') on 9 October 2013.

8 By letter of 3 December 2013, the latter requested the distributor of the lawn mower at issue in Latvia to undertake voluntary actions so as 'to prevent the distribution in the country of an unsafe lawn mower'.

9 By letter of 12 December 2013, the Latvian authorities also informed the applicant of the result of the inspection of the lawn mower at issue and of the non-compliance found with respect to the distance between the edge of the mobile cutting device and the rear wall of the guard. They requested that applicant to provide explanations concerning that non-compliance, to explain which measures it intended to take and to state why the EC declaration of conformity referred to harmonised standard EN 60335-2-77:2006, according to those authorities applicable until 2011, although the machine was manufactured in 2013. The report of the Slovenian Institute of Quality and Metrology was attached to the letter.

10 In the course of the various discussions that it subsequently had with the Latvian authorities the applicant claimed that harmonised standard EN 60335-2-77:2010 had definitively superseded harmonised standard EN 60335-2-77:2006 only on 1 September 2013, that the lawn mower at issue had no longer been manufactured since that date and that it complied with harmonised standard EN 60335-2-77:2006. The applicant acknowledged that in the *Official Journal of the European Union* of 8 April 2011, in which harmonised standard EN 60335-2-77:2010 had been published for the first time (OJ 2011 C 110, p. 52), the references to the superseded harmonised standard and the date of cessation of presumption of conformity conferred by that standard had been omitted from the table of titles and references to harmonised standards. It noted, however, that the column of the table relating to that date included a note 1 stating that '[g]enerally the date of cessation of presumption of conformity [is] the date of withdrawal ('dow'), set by the European Standardisation Organisation' and that 'attention of users of these standards [was] drawn to the fact that in certain exceptional cases this [could] be otherwise'. In that regard, the applicant referred to the information contained in harmonised standard EN 60335-2-77:2010 itself and to that included on the Internet website of the European Committee for Standardisation (CEN), according to which the date of withdrawal (dow) ('the date of withdrawal') mentioned was in this case 1 September 2013.

11 For their part, by referring to Directive 2006/42, the Latvian authorities made clear that Article 5 provided that the manufacturer of machinery or his authorised representative must ensure, before placing it on the market, that it satisfies the relevant essential health and safety requirements identified by that directive. Those authorities noted that that could be done, in accordance with Article 7 of that directive, by a declaration of conformity with a harmonised standard published in the Official Journal, itself relevant for the machinery considered, which would give rise to a presumption of conformity with those requirements. Alternatively, the interested party had to show by another means that those requirements were respected to a degree at least equivalent to that resulting from respect for the harmonised standard. The Latvian authorities added that, since harmonised standard EN

60335-2-77:2010 was published in the Official Journal on 8 April 2011, in the course of 2012 and 2013, respectively the year of the EC declaration of conformity of the lawn mower at issue and the year of manufacture of the example investigated, harmonised standard EN 60335-2-77:2006 was no longer applicable and that conformity with that standard no longer provided a presumption of conformity with the essential health and safety requirements. Harmonised standard EN 60335-2-77:2010 is admittedly more demanding than the previous standard, but it represents the 'state of the art' in that regard. The investigation report of the Slovenian Institute of Quality and Metrology shows also that the lawn mower at issue did not provide a degree of safety at least equivalent to that resulting from conformity with the applicable harmonised standard. The Latvian authorities announced on 19 March 2014 that they were going to prohibit the sale.

12 In May 2014, an opinion concerning the lawn mower at issue was published in RAPEX (Community Rapid Information System for dangerous non-food products). That system, provided for by Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (OJ 2002 L 11, p. 4), involves the Commission and the consumer protection authorities of the Member States and of other States parties to the Agreement on the European Economic Area. It allows the Commission to establish and publish every week a list of products presenting a serious risk to consumer health and safety, upon notification by the national authorities.

13 The opinion of RAPEX concerning the lawn mower at issue refers however to 'other level of risk' and not 'serious risk' as for the other products mentioned in the weekly list. The risk identified is that of cuts and it is stated that 'the blades are not sufficiently protected', that 'consequently a person could suffer cuts to the feet or hands during use or while carrying out maintenance' and that '[t]he product does not comply with the requirements of the machinery directive and the relevant harmonised standard EN 60335-2-77'. It is added that voluntary measures of withdrawal from the market were taken.

14 It should be noted that, in accordance with Article 2 of Directive 2001/95, withdrawal is defined as any measure aimed at preventing the distribution, display and offer of a product dangerous to the consumer and is distinguished from recall, which is defined as any measure aimed at achieving the return of a dangerous product that has already been supplied or made available to consumers by the producer or distributor.

15 By letter of 11 June 2014, the distributor of the lawn mower at issue in Latvia informed the Latvian authorities that the machine had been withdrawn from the market. Moreover, in a letter of 28 August 2014, the applicant confirmed that, with a view to having the opinion concerning its product, which was liable to tarnish its reputation, removed from RAPEX, it withdrew the lawn mower at issue from the market and stated that that product had no longer been manufactured or placed on the market anywhere in the European Union since 1 September 2013.

16 On 1 July 2014, the Latvian authorities notified to the Commission, on the basis of Article 11(2) of Directive 2006/42, a voluntary measure of withdrawal from the market and of not making available on the market with respect to the lawn mower at issue. The provisions of that article on the safeguard clause provide as follows:

'(1) Where a Member State ascertains that machinery covered by this Directive, bearing the CE marking, accompanied by the EC declaration of conformity and used in accordance with its intended purpose or under conditions which can reasonably be foreseen, is liable to compromise the health and safety of persons …, it shall take all appropriate measures to withdraw such machinery from the market, to prohibit the placing on the market and/or putting into service of such machinery or to restrict free movement thereof.

(2) The Member State shall immediately inform the Commission and the other Member States of any such measure, indicating the reasons for its decision and, in particular, whether the non-conformity is due to:

(a) failure to satisfy the essential [relevant health and safety] requirements [set out in Annex I];

…

(3) The Commission shall enter into consultation with the parties concerned without delay.

The Commission shall consider, after this consultation, whether or not the measures taken by the Member State are justified, and it shall communicate its decision to the Member State which took the initiative, the other Member States, and the manufacturer or his authorised representative.

…

(5) Where machinery does not conform and bears the CE marking, the competent Member State shall take appropriate action against whomsoever has affixed the marking and shall so inform the Commission. The Commission shall inform the other Member States.

(6) The Commission shall ensure that Member States are kept informed of the progress and outcome of the procedure.'

17 The Latvian authorities' notification form mentions a failure to conform with the essential health and safety requirements set out in points 1.3.8 and 1.4.1 of Annex I to Directive 2006/42 concerning the guards and protective devices covering moving parts, which was referred to in paragraphs 4 and 7 above. It states that a test was carried out under the provisions of harmonised standard EN 60335-2-77:2010 and that it was found in that regard that there was an insufficient distance between the edge of the mobile cutting device and the rear wall of the cutting device enclosure, which affects the normal functioning of the lawn mower at issue. The form mentions also that voluntary measures of withdrawal from the market and of not making available on the market were taken by the distributor and that the manufacturer was informed by letter of 12 December 2013. The investigation report of the Slovenian Institute of Quality and Metrology referred to in paragraph 7 above was attached to the form.

18 By letter of 24 September 2014, the Commission, in accordance with the provisions of Article 11(3) of Directive 2006/42 and referring to a prohibition against the placing on the market, requested the applicant to submit its observations on the Latvian authorities' notification, mentioning the failures to conform with standard EN 60335-2-77:2010 found in the investigation report of the Slovenian Institute of Quality and Metrology. In that letter, the Commission suggested a meeting with the applicant.

19 By letter of 4 October 2014, the applicant replied to the Commission that the lawn mower at issue had no longer been manufactured since 1 September 2013 and that it was no longer marketed, a withdrawal of the product having in particular been carried out with the distributors and dealers in Latvia. The applicant added that, in its opinion, the lawn mower at issue respected the requirements of the 'machinery directive' applicable at the time of its manufacture and placing on the market.

20 It is in those circumstances that, on 10 June 2015, the Commission adopted Commission Implementing Decision (EU) 2015/902 on a measure taken by Latvia in accordance with Directive 2006/42/EC of the European Parliament and of the Council to prohibit the placing on the market of a lawnmower manufactured by GGP Italy SpA (OJ 2015 L 147, p. 22) ('the contested decision').

21 The Commission refers in particular in the contested decision to the Latvian authorities' notification and stated that those authorities adopted a measure seeking to prohibit the placing on the market of the lawn mower at issue, that the latter bore the 'CE' marking in accordance with Directive 2006/42, that, nevertheless, it did not satisfy, according to the file, the essential health and safety requirements set out in points 1.3.8 and 1.4.1 of Annex I to that directive 'on the grounds that the distance between the rear wall of the machine and the point of the blade tip circle [was] too short, leading to deficiency in safe operation of the machine', that the manufacturer had referred to a voluntary withdrawal from the Latvian market and that it was necessary to consider the national measure adopted to be justified. The Member States were designated as addressees of the contested decision.

22 In July 2015, the Swedish authorities, referring to the contested decision, issued a publication stating that the lawn mower at issue could be neither sold nor used.

Procedure and forms of order sought

23 By application lodged at the Registry of the General Court on 17 August 2015, the applicant brought the present action.

24 By a separate document, lodged at the Registry of the General Court on 16 October 2015, the applicant also submitted an application for interim measures seeking the suspension of the application of the contested decision and the adoption of any other measure considered to be useful. By order of 10 December 2015, *GGP Italy* v *Commission* (T-474/15, EU:T:2015:958), the President of the General Court rejected that application and reserved the costs.

25 By document lodged at the Court Registry on 16 November 2015, the Republic of Latvia applied for leave to intervene in support of the form of order sought by the Commission. By decision of 16 December 2015, the President of the Second Chamber of the Court granted leave to intervene.

26 Acting on a report from the Judge-Rapporteur, the Court decided to open the oral part of the procedure.

27 At the hearing of 21 September 2016, the parties presented oral arguments and answered the questions put to them by the Court.

28 The applicant claims that the Court should:

— annul the contested decision;

— adopt any other measure deemed necessary;

— order the Commission to pay the costs.

29 The Commission contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

30 The Republic of Latvia contends that the Court should dismiss the action.

Law

The admissibility of the head of claim requesting the Court to 'adopt any other measures that are deemed necessary'

31 It follows from Article 21 of the Statute of the Court of Justice of the European Union, applicable to the General Court in accordance with Article 53 of that statute, and Article 76 of the Rules of Procedure of the General Court that an application must state clearly and precisely the subject-matter of the proceedings, the heads of claim and a summary of the pleas in law on which the application is based, so as to enable the defendant to prepare a defence and the Court to rule on the application. It follows therefrom that the heads of claim must be set out unambiguously so that the court does not rule *ultra petita* or indeed fail to rule on a complaint (see, to that effect, judgments of 14 December 1962, *Meroni* v *High Authority*, 46/59 and 47/59, EU:C:1962:44, p. 801; of 10 May 2012, *Commission* v *Estonia*, C-39/10, EU:C:2012:282, paragraph 24, and order of 13 April 2011, *Planet* v *Commission*, T-320/09, EU:T:2011:172, paragraph 22).

32 In the present case, the head of claim presented by the applicant according to which the Court should 'adopt any other measures that are deemed necessary' clearly does not comply with the requirements referred to in the above paragraph. It is therefore inadmissible.

Substance

33 The applicant puts forward two pleas in law in support of its action for annulment. First, in essence, Article 20 of Directive 2006/42 was infringed in so far as the Commission adopted the contested decision following a procedure which is unlawful in the light of the requirements of that article, which seek to safeguard the rights of defence of the interested parties. Secondly, Article 5(1), Article 6(1), Article 7 and Article 11 of that directive, which include the provisions seeking to allow manufacturers of machinery to demonstrate that their products conform with the essential health and safety requirements and other requirements set out in that directive and to therefore sell them freely in the EU and to allow, under certain conditions, the public authorities to adopt safeguard measures, were also infringed.

The plea in law alleging infringement of Article 20 of Directive 2006/42

34 Article 20 of Directive 2006/42 stipulates:

'Any measure taken pursuant to this Directive which restricts the placing on the market and/or putting into service of any machinery covered by this Directive shall state the exact grounds on which it is based. Such a measure shall be notified as soon as possible to the party concerned, who shall at the same time be informed of the legal remedies available to him under the laws in force in the Member State concerned and of the time limits to which such remedies are subject.'

35 In that regard, the applicant claims that it did not receive notification of the Latvian authorities' decision to withdraw the lawn mower at issue from the market and to prohibit it being placed on the market, on the basis of which the Commission adopted the contested decision. The Latvian Government's statement in intervention states moreover that no definitively binding decision had been adopted before the Commission was informed. The latter therefore confirmed a non-existent decision and to that extent the contested decision is also unlawful. Consequently, none of the requirements of Article 20 of Directive 2006/42 was respected. In particular, the remedies in Latvia were neither stated nor practicable in the light of the above. The Commission contented itself, as is apparent from the defence, solely on the basis of the form sent to it by the Latvian authorities, with a purely formal review of the alleged notification by those authorities to the distributor in Latvia and the

manufacturer of the measures taken with respect to the lawn mower at issue. The information in that form is ambiguous, or even incorrect or incompatible with the explanations provided by the Latvian Government in its statement in intervention, in particular as regards the measure adopted with regard to the distributor and the notification thereof to the manufacturer, and moreover does not correspond, as regards the nature of that measure, with what was declared by the Commission in the contested decision. The latter merely sets out a prohibition on placing on the market and not on withdrawing from the market, which the form however mentions.

36 According to the Commission, the plea in law does not concern the contested decision, but the measure adopted by the Latvian authorities. It is inadmissible. Alternatively, the Commission states that, in the context of the application of Article 11 of Directive 2006/42 concerning the safeguard mechanism triggered by a Member State, it is not for it to review every aspect of the legality of national measures, which is the responsibility of the national courts, but to review whether those measures are, according to their substance, justified. The Commission refers in that regard to the judgment of 15 July 2015, *CSF* v *Commission* (T-337/13, EU:T:2015:502, paragraph 100). The Commission adds that the applicant did not mention procedural problems with the national authorities when it consulted that applicant. Although the contested decision mentions only a prohibition on placing on the market and not on withdrawing from that market, that is because the applicant itself adopted market withdrawal measures, already announced on 28 August 2014 to the Latvian authorities, and the decision seeks to prohibit a possible re-marketing of the machine at issue in any Member State of the European Union.

37 For its part, the Latvian Government contends that the Latvian authorities complied with national procedure and that, by their letter of 19 March 2014, referred to in paragraph 11 above, they gave reasons for their position and announced a restrictive measure. However, they did not take definitive measures subject to internal appeal in order to await the Commission's confirmation (or lack thereof) in the context of the application of Article 11 of Directive 2006/42.

38 It must first be acknowledged, contrary to what is primarily claimed by the Commission, that the present plea in law is directed against the contested decision and not against the measure adopted by the Latvian authorities, even if it is based on a critique of the behaviour of those authorities. It is indeed presented as an application for annulment of the contested decision and consists in a complaint that the Commission infringed Article 20 of Directive 2006/42 by declaring a national measure itself adopted in breach of that provision to be justified. Therefore, the present plea in law cannot be held to be inadmissible, nor can it even be regarded from the outset as ineffective, as was claimed by the Commission at the hearing.

39 As regards the substance, it should be noted, as has already been held in the judgment of 15 July 2015, *CSF* v *Commission* (T-337/13, EU:T:2015:502, paragraph 100), mentioned by the Commission, that it is not for the Commission, in the context of the adoption of a decision such as the contested decision, taken on the basis of Article 11(3) of Directive 2006/42, to review every aspect of the legality of national measures leading to the triggering of the safeguard clause provided for in that article. In that regard, Article 20 of that directive, which the applicant claims was infringed, explicitly mentions the 'legal remedies available to him under the laws in force in the Member State concerned', which shows, first, that it covers national measures taken on the basis of the directive and, secondly, that the review of those measures is the responsibility of the national courts. That article therefore does not create obligations for the Commission.

40 In the context of the implementation of Article 11(3) of Directive 2006/42, the Commission's primary role is to review whether the appropriate measures which are notified to it by a Member State are justified, from a factual and legal point of view, in order to avoid the risk that machinery could compromise, as it is stated in Article 11(1) of that directive, the health and safety of persons or, where appropriate, domestic animals, property or the environment (judgment of 15 July 2015, *CSF* v *Commission*, T-337/13, EU:T:2015:502, paragraph 101). It should be noted, in response to an

argument put forward by the applicant at the hearing, that the analysis carried out in the judgment referred to above in the context of the alleged infringement, by the national authorities, of the principle of equal treatment is equally relevant in the present case, in which it is alleged that the national authorities infringed a provision of the directive. Both cases concern possible failure, on the part of national authorities, to comply with principles or rules of EU law, which the national courts are able to determine.

41 Therefore, the applicant's arguments that the Commission infringed Article 20 of Directive 2006/42 by approving a national measure which was itself adopted in breach of that provision cannot succeed.

42 Moreover, in response to the argument put forward by the applicant based on evidence submitted by the Latvian Government in the course of proceedings, in accordance with which, in essence, the Commission could also not, without infringing Article 20 of Directive 2006/42, approve a non-binding national decision, or even any national decision, it should be pointed out that nothing opposes that the 'appropriate measures' which Member States must adopt and communicate to the Commission under the safeguard clause provided for in Article 11 of that directive take the form of non-unilateral measures or measures which are not directly binding. Moreover, if such measures do not fall within the scope of application of that safeguard clause, the scope thereof could be significantly reduced, because neither the Commission nor the Member States other than the Member State which detected a risk in relation to machinery would be informed thereof, since the manufacturer of that machinery, his authorised representative or the distributors would have adopted voluntary measures or would themselves have complied with non-binding measures. Therefore, the communication, as in the present case, of the fact that, following action taken by the national authorities, the distributor took voluntary measures of withdrawal from the market and not to place on the market does constitute the communication of an appropriate measure capable of giving rise to a Commission decision taken on the basis of Article 11(3) of Directive 2006/42.

43 It follows from the above that the plea in law alleging infringement of Article 20 of Directive 2006/42 by the Commission must be rejected as unfounded.

The plea in law alleging infringement of Article 5(1), Article 6(1), Article 7 and Article 11 of Directive 2006/42

44 Among the provisions of Directive 2006/42 invoked by the applicant, Article 5(1) provides that, before placing machinery on the market or putting it into service, the manufacturer or his authorised representative must, in particular, ensure that it satisfies the relevant essential health and safety requirements set out in Annex I to that directive, that they must draw up the EC declaration of conformity and affix the EC marking to the machinery. Article 6(1) provides that Member States are not to prohibit, restrict or impede the placing on the market and/or putting into service in their territory of machinery which complies with the directive. Article 7 provides in particular that Member States are to regard machinery bearing the CE marking and accompanied by the EC declaration of conformity as complying with the provisions of the directive and that machinery manufactured in conformity with a harmonised standard, the references to which have been published in the Official Journal by the Commission, is to be presumed to comply with the essential health and safety requirements covered by such a harmonised standard. It should be noted that the harmonised standard is itself defined in Article 2 as 'a non-binding technical specification adopted by a standardisation body, namely the European Committee for Standardisation (CEN), the European Committee for Electrotechnical Standardisation (CENELEC) or the European Telecommunications Standards Institute (ETSI), on the basis of a remit issued by the Commission in accordance with the procedures laid down in Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical

standards and regulations and of rules on Information Society services [(OJ 1998 L 204, p. 37)]'. Finally, Article 11 of Directive 2006/42, which is partially reproduced in paragraph 16 above, defines the conditions for the implementation of the safeguard clause.

45 In essence, the applicant considers that the Commission's refusal, following that of the Latvian authorities, to acknowledge that, for the purposes of placing on the market or putting into service before 1 September 2013, the conformity of the lawn mower at issue with the essential health and safety requirements set out in Directive 2006/42 could be presumed by its conformity with harmonised standard EN 60335-2-77:2006 constitutes an infringement of the abovementioned provisions.

46 Since the question of the temporal application of various relevant texts is important for the examination of the present plea in law and the arguments of the parties relating to it, it is useful to note the following dates:

— from 1993: application of the first 'machinery' directive and amendments thereto which, consolidated, gave rise to Directive 98/37;

— 9 June 2006: publication in the Official Journal of Directive 2006/42;

— 6 November 2007: first publication in the Official Journal of harmonised standard EN 60335-2-77:2006;

— 28 March 2009: last publication in the Official Journal of harmonised standard EN 60335-2-77:2006;

— 29 December 2009: repeal of Directive 98/37 and date the measures transposing Directive 2006/42 took effect;

— 8 April 2011: first publication in the Official Journal of harmonised standard EN 60335-2-77:2010;

— 3 September 2012: EC declaration of conformity of the lawn mower, referring to harmonised standard EN 60335-2-77:2006;

— 1 September 2013: date of withdrawal of harmonised standard EN 60335-2-77:2006, fixed by Cenelec.

47 At the hearing, the Commission contended, first of all, that the applicant's plea in law was ineffective. The contested decision prohibits any future re-marketing of the lawn mower at issue throughout the EU and it is not disputed that, in June 2015, the date on which the contested decision was adopted, the machine did not conform with the essential health and safety requirements set out in Directive 2006/42, irrespective of whether, until 31 August 2013, it could benefit from a presumption of conformity with those requirements by virtue of its conformity with the harmonised standard EN 60335-2-77:2006.

48 For its part, the applicant notes that the reference to the standard which superseded harmonised standard EN 60335-2-77:2006 for 'pedestrian-controlled walk-behind electrically powered lawn mowers', namely harmonised standard EN 60335-2-77:2010, was published in the Official Journal on 8 April 2011, without the Commission explicitly stating in the appropriate column of titles and references to the relevant harmonised standards by that publication the date of cessation of the presumption of conformity granted by the superseded standard. In those circumstances, it is necessary to refer to Note 1 of that column, stating that, '[g]enerally the date of cessation of presumption of conformity [is] the date of withdrawal ("dow"), set by the European Standardisation Organisation' and that 'attention of users of these standards [was] drawn to the fact that in certain exceptional cases this

[could] be otherwise'. However, the date of withdrawal of harmonised standard EN 60335-2-77:2006 is indeed, as it is stated in several documents of the standardisation body and in standard EN 60335-2-77:2010 itself, 1 September 2013.

49 The applicant adds that, during the period from 8 April 2011 to 31 August 2013, both versions of harmonised standard EN 60335-2-77, that of 2006 and that of 2010, could allow it to be presumed that the machinery referred to by them conforms with the essential health and safety requirements set out in Directive 2006/42. Such an overlapping period, moreover corresponding to the period during which national standards which are not compatible with the new version of the harmonised standard may still be maintained, is necessary so that manufacturers of machinery have time to adapt their products and, where relevant, their processes and production tools to requirements of the new version of the harmonised standard and have time to sell machinery which complies with the requirements of the superseded standard. It is implausible to consider that, from 8 April 2011, the date of publication of harmonised standard EN 60335-2-77:2010, overnight, machinery designed in the light of harmonised standard EN 60335-2-77:2006 could no longer be manufactured or marketed and that it was necessary to manufacture and market products in compliance with an unofficial standard as a harmonised standard several days previously.

50 The applicant acknowledges that, in exceptional circumstances, the date of cessation of the presumption of conformity provided under the earlier version of the harmonised standard can be fixed by the Commission at an earlier or later date than the date of withdrawal, but, in that case, the Commission should precisely indicate it in the appropriate column of the publication in the Official Journal concerning the new version of the harmonised standard, which has not been done in the present case.

51 In order to support its argument, the applicant relies in particular on two documents published by the Commission, namely the 'Guide to application of the Machinery Directive 2006/42/EC — 2nd edition June 2010' (paragraph 161, entitled 'State of the art') and the 'Blue Guide on the implementation of EU product rules — 2014' (point 4.1.2.6, entitled 'Revision of harmonised standards').

52 In so far as the Commission's argument in defence assumes that, from 29 December 2009 to 8 April 2011, there was no harmonised standard conferring, with respect to 'pedestrian-controlled walk-behind electrically powered lawn mowers', a presumption of conformity with the essential health and safety requirements set out in Directive 2006/42, the applicant notes that the manufacturers of such machinery had little option other than to continue referring to the most recently published harmonised standard, namely harmonised standard EN 60335-2-77:2006, in order to show compliance with those requirements, particularly since that standard had been transposed in the national legal systems, in particular the Italian legal system of which it is a part, and that the national implementing standards could remain valid until the withdrawal date indicated in the replacement harmonised standard. For the period after 8 April 2011 and until that withdrawal date, the persistence of national standards implementing harmonised standard EN 60335-2-77:2006 shows that it was still possible to refer to the provisions thereof, even if the manufacturers could also refer to the new harmonised standard.

53 For its part, in so far as the plea in law is examined in detail, the Commission, supported by the Latvian Government, contests the applicant's arguments. It contends that Directive 2006/42 replaced Directive 98/37 and that the Member States should, in accordance with Article 26 of Directive 2006/42, apply the provisions of the latter with effect from 29 December 2009, the date of repeal of Directive 98/37. It never allowed the creation of such a presumption with regard to the essential health and safety requirements imposed pursuant to Directive 2006/42. That explains why the publications in the Official Journal mentioning harmonised standard EN 60335-2-77:2010, all relating to the harmonised standards under Directive 2006/42, in particular that of 8 April 2011 mentioning that standard for the first time, do not include any mention of harmonised standard EN 60335-2-77:2006 in the columns of the tables relating to the superseded standards. Therefore, Note 1

in the second of those columns, concerning the date of cessation of the presumption of conformity of the superseded standard, invoked by the applicant in order to claim that it could refer to harmonised standard EN 60335-2-77:2006 until the date of withdrawal applied to the latter, is not relevant in the present case. In general, information provided by the standardisation bodies concerning the withdrawal dates is not relevant for the purpose of determining whether compliance with a harmonised standard can confer a presumption of conformity with the relevant essential health and safety requirements to the extent that those dates are not reproduced by the Commission in the publications relating to the harmonised standards.

54 The Commission states that, therefore, with respect to the 'pedestrian-controlled walk-behind electrically powered lawn mowers', the manufacturers experienced three different periods as regards evidence of the conformity of their products with the essential health and safety requirements set out in the relevant successive directives. Until 28 December 2009, the last date of application of Directive 98/37, they could refer to harmonised standard EN 60335-2-77:2006 in order to benefit from a presumption that their products conform with the essential health and safety requirements set out in that directive. Since between 29 December 2009 and 8 April 2011, Directive 2006/42 had replaced Directive 98/37, but no harmonised standard under Directive 2006/42 had yet been published in the Official Journal with respect to the 'pedestrian-controlled walk-behind electrically powered lawn mowers', the manufacturers should have demonstrated the conformity of their machinery with the essential health and safety requirements set out in Directive 2006/42 by any means other than reference to a harmonised standard, in particular by reference, in the technical file of the product, to other standards and technical specifications, for example national rules, non-harmonised European or international standards or the manufacturer's own technical specifications. Finally, since 8 April 2011, the manufacturers have been able to benefit from a presumption of conformity with the essential health and safety requirements set out in Directive 2006/42 by referring to harmonised standard EN 60335-2-77:2010. Therefore, in the EC declaration of conformity of the lawn mower at issue made in September 2012, it was not possible to refer to harmonised standard EN 60335-2-77:2006 as evidence of a presumption of conformity with the essential health and safety requirements set out in Directive 2006/42. Likewise, examples manufactured in 2013 in accordance with that standard could not benefit from such a presumption.

55 It is necessary first of all to examine the Commission's argument, raised at the hearing, that the second ground for annulment put forward by the applicant is ineffective, because the contested decision prohibits any re-marketing of the lawn mower at issue as from its publication in June 2015, which is later than the period referred to by that ground for annulment, which relates to part of 2012 and 2013.

56 That argument cannot be upheld.

57 The plea in law under examination is directed against a decision confirming the assessment of the national authorities in relation to machinery placed on the market in 2012, or in 2013 before 1 September, in accordance with which that machinery did not conform with the essential health and safety requirements set out in Directive 2006/42, on the ground that it did not comply with harmonised standard EN 60335-2-77:2010, although the manufacturer thereof relied on a presumption of conformity with those requirements on the basis of its conformity with harmonised standard EN 60335-2-77:2006. Consequently, the plea in law under examination, which directly contests that assessment, cannot, if it is well founded, be ineffective. It can be added that the applicant had and retains a legal interest in bringing proceedings against the contested decision, even though it confirmed the voluntary withdrawal from the market and non-placing on the market of the lawn mower at issue, in so far as the contested assessment definitely leads to reputational damage, in the light in particular of the fact that the brand of the lawn mower at issue is well known, and in so far as it had already led the Swedish authorities to state that that machinery should not be used. The applicant's legal interest in bringing proceedings also exists to the extent that the possible annulment of the contested decision would allow a recurrence of the unlawfulness to be avoided (see, to that

effect and by analogy, judgments of 19 September 1985, *Hoogovens Groep* v *Commission*, 172/83 and 226/83, EU:C:1985:355, paragraph 19, and of 28 May 2013, *Abdulrahim* v *Council and Commission*, C-239/12 P, EU:C:2013:331, paragraphs 61 to 83 and the case-law cited).

58 As regards, next, the substantive examination of the plea in law, it should be noted, first of all, that the reference to a harmonised standard is only one of the possibilities available to a manufacturer to show that his machinery complies with the essential health and safety requirements set out in the relevant directive. Both Directive 98/37, in Article 8 and Annexes V or VI, and Directive 2006/42, in Article 12 and Annexes VII, VIII, IX or X, provide for conformity assessment procedures which are not necessarily based on harmonised standards, the references of which have been published.

59 However, in the present case, first, the Commission based its conclusion relating to the non-conformity with the essential health and safety requirements set out in Directive 2006/42 only on the finding that the lawn mower at issue did not conform with harmonised standard EN 60335-2-77:2010, as is apparent from the contested decision and the letter mentioned in paragraph 18 above. Secondly, for its part, the applicant did not seek, either during the procedure before the Latvian authorities or during that before the Commission, to show that the lawn mower at issue conformed with the essential health and safety requirements set out in Directive 2006/42 other than by referring to harmonised standard EN 60335-2-77:2006. It is necessary therefore to assess whether that harmonised standard, compliance with which by the lawn mower at issue is not contested by either the Commission or the Latvian authorities, could create in favour of it a presumption of conformity with the essential health and safety requirements set out in Directive 2006/42 from 3 September 2012, the date on which the EC declaration of conformity of that lawn mower was established, until 31 August 2013, the final date of its manufacture according to the applicant.

60 As stated in paragraph 44 above, under Article 7 of Directive 2006/42, more specifically under paragraphs (2) and (3) thereof, it is the publication by the Commission of the reference of a harmonised standard in the Official Journal which confers on it legal force allowing manufacturers of machinery or their representatives to benefit, with respect to the machinery they market and which are in conformity, from a presumption of conformity with the essential health and safety requirements set out in that directive and covered by that published harmonised standard. It can incidentally be noted that the mechanism was in essence the same, subject to transposition of the harmonised standard as a national standard, under Directive 98/37, the first subparagraph of Article 5(2) of which provided that '[w]here a national standard transposing a harmonised standard, the reference for which has been published in the *Official Journal of the European Communities*, cover[ed] one or more of the essential safety requirements, machinery or safety components constructed in accordance with this standard [were] presumed to comply with the relevant essential requirements'. Therefore, as Advocate General Campos Sánchez-Bordona stated in point 54 of his Opinion in *James Elliott Construction* (C-613/14, EU:C:2016:63), mentioned at the hearing by the Commission, the decisions relating to the publication of harmonised standards are legal acts against which an action for annulment may be brought (see, to that effect, judgment of 27 October 2016, *James Elliott Construction*, C-613/14, EU:C:2016:821, paragraphs 38 to 43). In the Order of 25 May 2004, *Schmoldt and Others* v *Commission* (T-264/03, EU:T:2004:157, paragraphs 91 to 94), the General Court stated that it concerned acts of general application. It follows that the publication system is that of acts of general application of the institutions of the Union.

61 It should be noted that Article 7 of Directive 2006/42 refers without restriction to harmonised standards, the references of which have been published in the Official Journal, without restricting its scope and contents to harmonised standards whose references were published under that directive. That provision therefore precludes a finding that the publications of references of harmonised standards made under Directive 98/37 were implicitly repealed at the same time as that directive. It follows that harmonised standards whose references were published under Directive 98/37 fall within the scope of application of Article 7 of Directive 2006/42 as long as the decision giving them legal force so as to provide a presumption of conformity with the essential health and safety requirements

set out in the directive applicable at the time the machinery concerned was placed on the market or entered into service, namely the publication of their reference in the Official Journal, is not explicitly repealed. That interpretation is consistent with the provisions of the second subparagraph of Article 25 of Directive 2006/42, according to which '[r]eferences made to … Directive [98/37] shall be construed as being made to this Directive and should be read in accordance with the correlation table in Annex XII'. Those provisions seek, in general, to avoid acts or legal provisions whose implementation was initially linked with provisions of Directive 98/37 being deprived of effect simply as a result of the repeal of Directive 98/37 and its replacement by Directive 2006/42 and leading, as the case may be, to a legal vacuum (see, to that effect and by analogy, judgment of 16 October 2003, *Ireland* v *Commission*, C-339/00, EU:C:2003:545, paragraphs 35 to 39). In this case, the table in Annex XII to Directive 2006/42 indeed establishes a correspondence between the first subparagraph of Article 5(2) of Directive 98/37 and Article 7(2) and (3) of Directive 2006/42, on which the publications of references of harmonised standards in the Official Journal were successively based.

62 The issue in this case is therefore whether the publication of the reference of harmonised standard EN 60335-2-77:2006, originally made under Directive 98/37 by the Commission [first publication on 6 November 2007 (OJ 2007 C 254, p. 52), last publication on 28 March 2009 (OJ 2009 C 74, p. 55)], valid, as previously stated, under Article 7 of Directive 2006/42 for the period up to its repeal, was explicitly repealed before or during the period at issue in the present case, from 3 September 2012 (date of the 'EC' declaration of conformity of the lawn mower at issue) to 31 August 2013 (date of the end of manufacture of the lawn mower at issue according to the applicant). It should be noted that it is common ground between the parties that that publication was in any event no longer valid for the purpose of conferring on the machinery placed on the market or entered into service from 1 September 2013 a presumption of conformity with the essential health and safety requirements set out in Directive 2006/42, as a result, with respect to the applicant's position, of the arrival of the date of withdrawal of that version of the harmonised standard which was fixed in the following version EN 60335-2-77:2010.

63 In the absence of an implicit repeal of an act of general application resulting from its incompatibility with a later superior rule of law and where it is not stated, at the time of its publication, that it is of limited duration, the repeal of such an act may result from a new decision of the competent authority, which is itself published. It should be noted in that regard that the principle of legal certainty, which is a general principle of EU law, requires EU laws and regulations to be clear and precise and, in particular, that their application be foreseeable by those who are subject to them (see, to that effect, judgments of 9 July 1981, *Gondrand and Garancini*, 169/80, EU:C:1981:171, paragraph 17, and of 22 February 1984, *Kloppenburg*, 70/83, EU:C:1984:71, paragraph 11). More specifically, as was held in the judgment of 21 October 1997, *Deutsche Bahn* v *Commission* (T-229/94, EU:T:1997:155, paragraph 113), the principle of legal certainty aims to ensure that situations and legal relationships governed by EU law remain foreseeable. For that purpose, it is essential for the institutions to respect the principle that they may not alter measures which they have adopted and which affect the legal and factual situation of persons, so that they may amend such acts only in accordance with the rules on competence and procedure.

64 In this case, the successive publications in the Official Journal of the references of harmonised standard EN 60335-2-77:2006 does not contain a end date of each of those publications, although they were made after the adoption of Directive 2006/42. In addition, none of the publications of references of harmonised standards made subsequently under that new directive or any other document published by the Commission provide information relating to the repeal of the publication of harmonised standard EN 60335-2-77:2006, beyond Note 1 of the column entitled 'Date of cessation of presumption of conformity of superseded standard' of the tables of publications containing references to harmonised standard EN 60335-2-77:2010. For the record, that note states that '[g]enerally the date of cessation of presumption of conformity [of the superseded standard is] the date of withdrawal ('dow'), set by the European standardisation organisation' and that 'attention of users of these standards [was] drawn to the fact that in certain exceptional cases this [could] be otherwise'. As was previously

stated in paragraph 10 above, the European Standards Body Cenelec declared in harmonised standard EN 60335-2-77:2010 the date of 1 September 2013 to be the date of withdrawal of the superseded harmonised standard EN 60335-2-77:2006 and, consequently, the repeal of the publication of the reference of the latter took place on that date. In those circumstances, conformity of the lawn mower at issue with harmonised standard EN 60335-2-77:2006 could, in contrast to what is claimed by the Commission and the Latvian Government, provide a presumption of conformity of that machinery with the essential health and safety requirements set out Directive 2006/42 for the purpose of placing it on the market or putting it into service up to and including 31 August 2013.

65 It can in addition be observed that the position defended by the Commission conflicts moreover with the general scheme of the system adopted by the two successive directives 98/37 and 2006/42, seeking to implement for the whole area of the Union an effective mechanism which, involving the standardisation bodies authorised by the Commission, allows manufacturers or their representatives to conform with the essential health and safety requirements as regards the machinery they market in a context which provides them with a certain degree of security, which simplifies placing it on the market in all the Member States and which also provides the public with significant guarantees. Without being the only possibility for a manufacturer or its representative to show conformity with those requirements, conformity with a harmonised standard adopted by those bodies and reference to which is published in the Official Journal, allows them, in the context of a clear procedure, to benefit, with respect to the product at issue, from a presumption of conformity with the essential requirements covered by that harmonised standard. Both Directive 98/37, in Article 5 thereof, and Directive 2006/42, in Article 7 thereof, contain in that regard provisions emphasising the mechanism of conformity with published harmonised standards. The latter article even strengthens that mechanism by providing the possibility of referring to those harmonised standards in order to benefit from the abovementioned presumption of the existence of national standards 'transposing' them.

66 The Commission position, which implies that all of the harmonised standards adopted initially under Directive 98/37 are devoid of effect for the purpose of providing a presumption of conformity with the essential health and safety requirements set out in Directive 2006/42, results in very significantly reducing the number of harmonised standards which can be used during the early part of the application of that directive and therefore adversely affects the effectiveness of the system. In that regard, the last publication in the Official Journal of 'titles and references of harmonised standards under [Directive 98/37]', in March 2009, contains 57 pages (OJ 2009 C 74, p. 4), whereas the first equivalent publication under Directive 2006/42, in September 2009, contains only 26 pages (OJ 2009 C 214, p. 1) and the second analogous publication, made just before the implementation of the measures transposing Directive 2006/42, on 29 December 2009, still contains only 37 pages (OJ 2009 C 309, p. 29). Given that one page of those publications lists on average around ten harmonised standards, the Commission's position results in the fact that, at the time of the actual implementation of the provisions of Directive 2006/42, at the end of December 2009, approximately 200 standards less than at the end of the period of application of Directive 98/37 could be used by manufacturers in order to establish the existence of a presumption of conformity of their products with the essential health and safety requirements set out in the new directive, which is incompatible with the important role given to the mechanism of conformity with harmonised standards by the two successive directives. It should be noted that it is necessary to await the April 2011 publication (OJ 2011 C 110, p. 1) in order to find a comparable volume of harmonised standards references to which have been published for the two directives.

67 The adverse effect on the general scheme of the system adopted by the two successive directives 98/37 and 2006/42 is fully illustrated by the succession of three periods identified by the Commission to which reference is made in paragraph 54 above, which results in a type of machinery which has been covered for several years by a published harmonised standard being 'without a harmonised standard' during a not insignificant period of time (approximately 15 months for the 'pedestrian-controlled walk-behind electrically powered lawn mowers') before obtaining a new published harmonised standard. Admittedly, the Commission's interpretation does not create a legal vacuum, since the

manufacturers and their representatives have means other than resorting to harmonised standards whose references have been published in order to conform with the essential health and safety requirements set out in the relevant directive with respect to the machinery that they wish to market. However, it must be noted that those other means are more onerous. Consequently, the Commission's position does not contribute, at least during a certain period, to facilitating the free movement of goods in the internal market whilst ensuring a high level of protection of health and safety of users, as is required by the legal basis of Directive 2006/42, namely Article 114 TFEU.

68 It is true, as the Commission pointed out at the hearing, that, on different aspects, the essential health and safety requirements set out in Directive 2006/42 are more extensive than those set out in Directive 98/37, but it was then, as the case may be, for the Commission to encourage the rapid adoption, with respect to certain types of machinery or other equipment covered by the new directive, of a new harmonised standard allowing a response to those new requirements and to indicate where necessary, in particular cases, that a harmonised standard published under Directive 98/37 did not allow the provision of a presumption of conformity with those new requirements. Article 10 of Directive 2006/42 provides moreover for a 'procedure for disputing a harmonised standard', which can be initiated by a Member State or by the Commission and which can, in particular, lead to the references of the harmonised standard concerned included in the Official Journal being retained with restrictions or withdrawn. However, in those cases, the Commission should have indicated in the column entitled 'Date of cessation of presumption of conformity of superseded standard' publication tables of titles and references of harmonised standards under Directive 2006/42 a date different from the date of withdrawal if the harmonised standard at issue was indeed superseded, or indicated in the Official Journal by another appropriate means the repeal of the publication of references of the harmonised standard at issue where that standard has not yet been superseded. As was noted in paragraph 64 above, the lack of a specific indication in the publication tables of titles and references of harmonised standards under Directive 2006/42 or in another form indicates, *a contrario*, in accordance with Note 1 of the column entitled 'Date of cessation of presumption of conformity of superseded standard', that that date corresponds to the date of withdrawal defined by the standardisation body. It can moreover be noted that the developments of the 'machinery' directives, the first version of which was Council Directive 89/392/EEC of 14 June 1989 on the approximation of the laws of the Member States relating to machinery (OJ 1989 L 183, p. 9), including when they resulted in the repeal of previous versions or to substantial supplements, did not lead to the general repeal of publications of harmonised standards made under previous versions (see, for example, OJ 2000 C 252, p. 5).

69 It should finally be noted that the conformity of a harmonised standard, the reference of which have been published under Directive 98/37 during the period of application of Directive 2006/42 and before the date of cessation of presumption of conformity with the essential health and safety requirements set out therein provides, precisely, merely a presumption of conformity with those requirements. In that regard, if a Member State and subsequently the Commission had considered that machinery which complies with such a harmonised standard nevertheless did not comply with the essential health and safety requirements set out in Directive 2006/42, they would not have been prevented from implementing the safeguard clause provided for in Article 11 of that directive, the burden however being on them to prove a failure to conform with those essential requirements.

70 It follows from the foregoing that the applicant was justified in claiming, in essence, that the lawn mower at issue benefited from a presumption of conformity with the essential health and safety requirements set out in Directive 2006/42 from 3 September 2012, the date on which its EC declaration of conformity was established, until 31 August 2013, the final date of its manufacture according to its information. Harmonised standard EN 60335-2-77:2006, with which it is not disputed that the lawn mower at issued conformed, could validly confer on it between those dates, for the purposes of placing it on the market and putting it into service, a presumption of conformity with the essential health and safety requirements set out in that directive, in so far as, despite its reference being published under Directive 98/37, that presumption remained valid under Directive 2006/42, in the

absence of information to the contrary published in the Official Journal by the Commission, until the date of withdrawal retained by the standardisation body at the time the harmonised standard replacing it was adopted, namely 1 September 2013.

71 By rejecting the applicant's position in that regard, the Commission therefore committed an error of law. Since the contested decision is moreover not based, as was stated in paragraph 59 above, on a clear demonstration of an infringement of the essential health and safety requirements set out in Directive 2006/42, but on the mere non-conformity of the lawn mower at issue with harmonised standard EN 60335-2-77:2010 although its conformity with harmonised standard EN 60335-2-77:2006 still conferred on it, during the period concerned, a presumption of conformity with those requirements, the second plea in law put forward by the applicant must be upheld and the contested decision annulled.

Costs

72 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the applicant, including the costs of the interlocutory proceedings.

73 Under Article 138(1) of the Rules of Procedure, Member States which intervene in the proceedings are to bear their own costs. The Republic of Latvia shall therefore bear its own costs.

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby:

1. **Annuls Commission Implementing Decision (EU) 2015/902 of 10 June 2015 on a measure taken by Latvia in accordance with Directive 2006/42/EC of the European Parliament and of the Council to prohibit the placing on the market of a lawnmower manufactured by GGP Italy SpA;**

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

3. **Orders the European Commission to bear its own costs and those incurred by Global Garden Products Italy SpA (GGP Italy) in the context of the present proceedings and during the interlocutory proceedings;**

4. **Orders the Republic of Latvia to bear its own costs.**

Gervasoni Madise Csehi

Delivered in open court in Luxembourg on 26 January 2017.

[Signatures]