



Reports of Cases

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

23 September 2015*

(HICP — Regulation (EC) No 2494/95 — Harmonised indices of consumer prices at constant tax rates (HICP-CT) — Regulation (EU) No 119/2013 — Owner-occupied housing price indices — Regulation (EU) No 93/2013 — Eurostat — Comitology — Implementing measures — Regulatory procedure with scrutiny)

In Joined Cases T-261/13 and T-86/14,

Kingdom of the Netherlands, represented by M. Bulterman and J. Langer, and, in Case T-261/13, by B. Koopman, acting as Agents,

applicant,

v

European Commission, represented by M. Clausen and P. Van Nuffel, acting as Agents,

defendant,

APPLICATION, in Case T-261/13, for the annulment of Commission Regulation (EU) No 119/2013 of 11 February 2013 amending Regulation (EC) No 2214/96 concerning harmonised indices of consumer prices (HICP): transmission and dissemination of sub-indices of the HICP, as regards establishing harmonised indices of consumer prices at constant tax rates (OJ 2013 L 41, p. 1) and, in the alternative, for the annulment of Article 1(2) of Regulation No 119/2013 and, in Case T-86/14, for the annulment of Commission Regulation (EU) No 93/2013 of 1 February 2013 laying down detailed rules for the implementation of Council Regulation (EC) No 2494/95 concerning harmonised indices of consumer prices, as regards establishing owner-occupied housing price indices (OJ 2013 L 33, p. 14) and, in the alternative, for the annulment of Article 4(1) of Regulation No 93/2013,

THE GENERAL COURT (Sixth Chamber, Extended Composition),

composed of S. Frimodt Nielsen, President, F. Dehousse (Rapporteur), I. Wiszniewska-Białecka, A.M. Collins and I. Ulloa Rubio, Judges,

Registrar: J. Plingers, Administrator,

having regard to the written procedure and further to the hearing on 27 February 2015,

gives the following

* Language of the case: Dutch.

Judgment

Legal context and subject matter of the present actions

Rules concerning the procedures for the exercise of implementing powers conferred on the European Commission

- 1 Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23) was adopted on the basis of Article 202 EC. It was amended by Council Decision 2006/512/EC of 17 July 2006 (OJ 2006 L 200, p. 11), Article 1(7) of which established the regulatory procedure with scrutiny (new Article 5a of Decision 1999/468).
- 2 Recital 7a of Decision 1999/468, as amended, is worded as follows:

‘It is necessary to follow the regulatory procedure with scrutiny as regards measures of general scope which seek to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 [EC], inter alia by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements. This procedure should enable the two arms of the legislative authority to scrutinise such measures before they are adopted. The essential elements of a legislative act may only be amended by the legislator on the basis of the Treaty[.]’
- 3 Article 2(2) of Decision 1999/468, as amended, provides:

‘Where a basic instrument, adopted in accordance with the procedure referred to in Article 251 [EC], provides for the adoption of measures of general scope designed to amend non-essential elements of that instrument, inter alia by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements, those measures shall be adopted in accordance with the regulatory procedure with scrutiny.’
- 4 The conduct of the regulatory procedure with scrutiny (‘the regulatory procedure with scrutiny’) is governed by Article 5a of Decision 1999/468, as amended. In the course of that procedure, a Regulatory Procedure with Scrutiny Committee is involved, composed of the representatives of the Member States and chaired by the representative of the European Commission. The representative of the Commission is to submit to the Committee a draft of the measures to be taken. The Committee is to deliver its opinion on the draft (Article 5a(1) and (2)). Next, the procedure varies according to whether the measures envisaged are in accordance with the opinion of the Committee (Article 5a(3)) or whether those measures are not in accordance with such an opinion or if that Committee has not delivered an opinion (Article 5a(4)). In all cases, Article 5a of Decision 1999/468, as amended, lays down the applicable procedure, which involves the Council of the European Union and the European Parliament, which may oppose the draft measures.
- 5 Article 12 of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers (OJ 2011 L 55, p. 13) provides for the repeal of Decision 1999/468 but establishes that the effects of Article 5a of that decision are to be maintained for the purposes of existing basic acts making reference thereto.

Rules on price indices

Regulation (EC) No 2494/95

- 6 In order to ensure that the European Union has comparable indices of consumer prices in the Member States, on 23 October 1995 the Council adopted Regulation (EC) No 2494/95 concerning harmonised indices of consumer prices (OJ 1995 L 257, p. 1). That regulation, concerning harmonised indices of consumer prices ('HICPs'), has been amended, inter alia, by Regulation (EC) No 596/2009 of the European Parliament and of the Council of 18 June 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny (OJ 2009 L 188, p. 14).
- 7 Article 4 of Regulation No 2494/95, as amended, entitled 'Comparability', provides:
- 'HICPs shall be considered to be comparable if they reflect only differences in price changes or consumption patterns between countries.
- HICPs which differ on account of differences in the concepts, methods or practices used in their definition and compilation shall not be considered comparable.
- The Commission (Eurostat) shall adopt rules to be followed to ensure the comparability of HICPs. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3).'
- 8 Article 5(3) of Regulation No 2494/95, entitled 'Timetable and derogations therefrom', provides:
- 'The Commission shall adopt implementing measures for this Regulation which are necessary in order to ensure the comparability of HICPs and to maintain and improve their reliability and relevance. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3). The Commission shall request the ECB to provide an opinion on the measures which it proposes to submit to the Committee.'
- 9 Article 9 of Regulation No 2494/95, entitled 'Production of results', provides:
- 'Member States shall process the data collected in order to produce the HICP, which shall be a Laspeyres-type index, covering the categories of the Coicop international classification (classification of individual consumption by purpose), which shall be adapted by the Commission for the purposes of establishing comparable HICPs. The Commission shall determine the methods, procedures and formulae to ensure that the comparability requirements are met. Those measures, designed to amend non-essential elements of this Regulation, inter alia, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 14(3).'
- 10 Article 14(3) of Regulation No 2494/95 provides:
- 'Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468 ... shall apply, having regard to the provisions of Article 8 thereof.'

Measures implementing Regulation No 2494/95 in Case T-261/13

- 11 In addition to Regulation (EC) No 1749/96 of 9 September 1996 on initial implementing measures for Regulation No 2494/95 (OJ 1996 L 229, p. 3), the Commission adopted Regulation (EC) No 2214/96 of 20 November 1996 concerning harmonised indices of consumer prices: transmission and dissemination of sub-indices of the HICP (OJ 1996 L 296, p. 8), amended on several occasions and most recently by Commission Regulation (EU) No 119/2013 of 11 February 2013 amending Regulation No 2214/96, as regards establishing harmonised indices of consumer prices at constant tax rates (OJ 2013 L 41, p. 1).
- 12 Article 1(1) of Regulation No 119/2013 adds a second paragraph to Article 2 of Regulation No 2214/96, which now provides that ‘harmonised indices of consumer prices at constant tax rates’ (HICP-CT) means indices that measure changes in consumer prices without the impact of changes in rates of taxes on products over the same period of time.
- 13 Article 1(2) of Regulation No 119/2013 replaces Article 3 of Regulation No 2214/96 with the following:
- ‘1. Member States shall produce and provide to the Commission (Eurostat) each month all sub-indices (Annex I) which have a weight accounting for more than one part in a thousand of the total expenditure covered by the HICP. Together with the index for January each year, Member States shall provide corresponding weighting information to the Commission (Eurostat).
2. In addition, Member States shall produce and provide to the Commission (Eurostat) each month the same sub-indices computed at constant tax rates (HICP-CT). The Commission (Eurostat), in close cooperation with the Member States, shall establish guidelines that provide a methodological framework for the computation of the HICP-CT index and sub-indices. When duly justified, the Commission (Eurostat) shall update the reference methodology, in accordance with procedural arrangements approved by the European Statistical System Committee.
3. Indices shall be provided following the standards and procedures for provision of data and metadata as established by the Commission (Eurostat).’

Measures implementing Regulation No 2494/95 in Case T-86/14

- 14 On 1 February 2013, the Commission adopted Regulation (EU) No 93/2013 laying down detailed rules for the implementation of Council Regulation No 2494/95, as regards establishing owner-occupied housing price indices (OJ 2013 L 33, p. 14).
- 15 Article 1 of Regulation No 93/2013 provides that the latter ‘establishes owner-occupied housing price indices with a view to improving the relevance and comparability of ... HICP’.
- 16 Article 4 of Regulation No 93/2013, entitled ‘Methodological manual’, provides:
- ‘1. The Commission (Eurostat), in close cooperation with the Member States, shall establish a manual which provides a methodological framework for owner-occupied housing and house price indices produced pursuant to this Regulation (hereinafter referred to as the “OOH-HPI manual”). When duly justified, the Commission (Eurostat) shall update the manual, in accordance with procedural arrangements approved by the ESS Committee.
2. The quality criteria referred to in Article 12(1) of Regulation (EC) No 223/2009 of the European Parliament and of the Council shall apply to the compilation of the owner-occupied housing and house price indices.

3. Member States shall provide the Commission (Eurostat), at its request, with the necessary information to assess the compliance of owner-occupied housing and house price indices with the provisions of this Regulation.'

- 17 Article 5(1) of Regulation No 93/2013 provides that 'Member States shall compile and provide the Commission (Eurostat) with price indices for the categories laid down in Article 3 in accordance with the OOH-HPI manual'.

Statistical rules

- 18 Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ 2009 L 87, p. 164) provides that cooperation and coordination should be reinforced between the authorities that contribute to the development, production and dissemination of European statistics (recital 1) and that, in order to enhance trust in those statistics, the national statistical authorities should in each Member State, as should the [Union] statistical authority within the Commission, enjoy professional independence and ensure impartiality and high quality in the production of European statistics (recital 20).

- 19 Article 6 of Regulation No 223/2009 states that:

'1. The Community statistical authority, as designated by the Commission to develop, produce and disseminate European statistics, shall be referred to as "the Commission (Eurostat)" in this Regulation.

2. At Community level, the Commission (Eurostat) shall ensure the production of European statistics according to established rules and statistical principles. In this respect, it shall have the sole responsibility for deciding on processes, statistical methods, standards and procedures, and on the content and timing of statistical releases.

...'

- 20 Article 12 of Regulation No 223/2009 provides in particular that 'to guarantee the quality of results, European statistics shall be developed, produced and disseminated on the basis of uniform standards and of harmonised methods'.
- 21 Article 3 of Commission Decision 2012/504/EU of 17 September 2012 on Eurostat (OJ 2012 L 251, p. 49) established Eurostat (the Statistical Office of the European Union) as the statistical authority of the European Union referred to in Article 6(1) of Regulation No 223/2009 and defined it as a service of the Commission, headed by a Director-General. Its tasks are the development, production and dissemination of European statistics and Article 6(1)(b) of Decision 2012/504 provides that, to that end, Eurostat is, in particular, to develop and promote statistical standards, methods and procedures.
- 22 Article 7(1) of Decision 2012/504 provides that, 'with regard to European statistics, the Director-General of Eurostat shall have sole responsibility for deciding on processes, statistical methods, standards and procedures, or on the content and timing of statistical releases, in accordance with the European statistical programme and the annual work programme'. It specifies that, 'when carrying out these statistical tasks, the Director-General of Eurostat shall act in an independent manner' and that 'he or she shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State, or from any other institution, body, office or entity'.

The subject matter of the present actions

- 23 As is clear from the legal context set out above, Regulation No 2494/95 established the statistical bases necessary for arriving at the calculation of comparable indices of consumer prices at EU level. Various regulations have been adopted in order to meet the comparability requirements for indices, including Regulations No 119/2013 and No 93/2013, at issue in the present case.
- 24 The Kingdom of the Netherlands states that it opposed the adoption of those regulations when they were being drawn up. It deeply regretted that Article 1(2) of Regulation No 119/2013 and Article 4(1) of Regulation No 93/2013 failed to provide that the guidelines and the manual, which establish the methodological frameworks applicable, were to be adopted in accordance with the regulatory procedure with scrutiny, in the same way as an implementing measure, although they were specifically intended, both in their content and in their purpose, to ensure the comparability of HICPs and to maintain and improve their reliability and relevance, in accordance with the third paragraph of Article 4 and Article 5(3) of Regulation No 2494/95.
- 25 Accordingly, Regulations No 119/2013 and No 93/2013 are the subject matter of the present actions.

Procedure and forms of order sought

- 26 By applications lodged on 3 May 2013 and 25 April 2013, respectively, the Kingdom of the Netherlands brought the present actions.
- 27 On 5 March 2014, the Commission requested that Cases T-261/13 and T-86/14 be joined. On 10 March 2014, the Kingdom of the Netherlands stated that it had no objection to the joinder. By order of 10 December 2014, the President of the Sixth Chamber, Extended Composition, of the Court joined Cases T-261/13 and T-86/14 for the purposes of the oral procedure and the judgment, in accordance with Article 50 of the Rules of Procedure of 2 May 1991.
- 28 By way of measures of organisation of the procedure, the parties were invited to respond in writing to certain questions raised by the Court.
- 29 The parties presented oral argument and replied to the oral questions raised by the Court at the hearing on 27 February 2015.
- 30 The Kingdom of the Netherlands claims that the Court should:
- in the action in Case T-261/13, annul Regulation No 119/2013 and, in the alternative, annul Article 1(2) of Regulation No 119/2013;
 - in the action in Case T-86/14, annul Regulation No 93/2013 and, in the alternative, annul Article 4(1) of Regulation No 93/2013;
 - order the Commission to pay the costs.
- 31 The Commission contends that the Court should:
- dismiss the applications;
 - order the Kingdom of the Netherlands to pay the costs.

Law

- 32 First, the Kingdom of the Netherlands alleges infringement of Article 5(3) of Regulation No 2494/95 and of Article 13(2) TEU in that Eurostat, instead of the Commission, is designated as the entity responsible for establishing and updating the guidelines and the manual, which are legally binding acts (first and second pleas in Case T-261/13 and first plea in Case T-86/14). Secondly, it claims, in the alternative, infringement of Article 338(1) TFEU in that guidelines, instead of the legal instruments listed in Article 288 TFEU, are used for the purposes of establishing HICP-CT (third plea in Case T-261/13 and second plea in Case T-86/14). Thirdly, it claims, in the further alternative, infringement of Article 5(3) and Article 14(3) of Regulation No 2494/95, read in conjunction with Article 5a of Decision 1999/468, on the ground that it was the regulatory procedure with scrutiny which should have been provided for (fourth plea in Case T-261/13 and third plea in Case T-86/14). Fourthly, it claims, in the even further alternative, infringement of Article 291 TFEU, read in conjunction with Regulation No 182/2011, on the ground that one of the procedures laid down in Regulation No 182/2011 should have been required for the establishment and updating of the guidelines (fifth plea in Case T-261/13 and fourth plea in Case T-86/14).
- 33 The Commission, for its part, starts from the premiss that the methodological frameworks at issue are not legally binding acts. It argues that they are not implementing measures within the meaning of Article 5(3) of Regulation No 2494/95 or, more generally, implementing measures for the purposes of Article 291 TFEU. In the Commission's view, those documents fall under the administrative cooperation between the EU statistical authority and the national statistical institutes and therefore could be drawn up in the form of guidelines, without being adopted in accordance with the regulatory procedure with scrutiny. It contends that the Court should reject each of the pleas put forward.
- 34 At the outset, the Court notes that, in actual fact, the pleas raised by the Kingdom of the Netherlands seek the annulment of Article 1(2) of Regulation No 119/2013 and Article 4(1) of Regulation No 93/2013, by which Eurostat, in close cooperation with Member States, is made responsible for establishing and updating the methodological frameworks for calculating price indices. The Kingdom of the Netherlands also acknowledged at the hearing that the action in Case T-261/13 was to be understood as seeking only the annulment of Article 1(2) of Regulation No 119/2013 and that the action in Case T-86/14 was to be understood as seeking only the annulment of Article 4(1) of Regulation No 93/2013, as was noted in the minutes of the hearing. The present actions must therefore be regarded as seeking, in fact, only the annulment, respectively, of Article 1(2) of Regulation No 119/2013 and of Article 4(1) of Regulation No 93/2013.
- 35 The Court considers that it is appropriate to examine the pleas alleging infringement of Article 5(3) and Article 14(3) of Regulation No 2494/95, read in conjunction with Article 5a of Decision 1999/468, on the ground that the regulatory procedure with scrutiny should have been provided for (fourth plea in Case T-261/13 and third plea in Case T-86/14).
- 36 In that regard, the Kingdom of the Netherlands argues that Article 5(3) and Article 14(3) of Regulation No 2494/95 require the application of the regulatory procedure with scrutiny for the adoption of implementing measures for that regulation and for the adoption of measures to implement those implementing measures. However, it considers that the contested provisions, which provide that Eurostat is to establish and update the methodological frameworks without being required to follow the regulatory procedure with scrutiny, undermine the 'institutional balance' of the European Union and should therefore be annulled.
- 37 The Commission submits, for its part, that the methodological frameworks at issue are not legally binding implementing measures within the meaning of Article 5(3) of Regulation No 2494/95 and that it was therefore not necessary to adopt them in accordance with the regulatory procedure with scrutiny, which is, moreover, unsuitable for organising the type of administrative cooperation necessary for establishing guidelines. According to the Commission, when an implementing document

which is not legally binding is adopted, the situation is not one in which the legal act must be implemented under uniform conditions. Furthermore, a non-binding measure cannot establish uniform conditions for implementation.

- 38 The Court recalls that the third paragraph of Article 4 and Article 5(3) of Regulation No 2494/95 (paragraphs 7 and 8 above), read in conjunction with Article 14(3) of that regulation (paragraph 10 above), provide that the Commission is to adopt, in accordance with the regulatory procedure with scrutiny, implementing measures which are necessary for ensuring the comparability of HICPs. Article 9 of Regulation No 2494/95, concerning the production of results, also provides for application of the regulatory procedure with scrutiny for determining the methods, procedures and formulae to ensure that the comparability requirements are met (paragraph 9 above).
- 39 The Commission adopted, by means of the regulatory procedure with scrutiny, Regulations No 119/2013 and No 93/2013, which constitute measures implementing Regulation No 2494/95.
- 40 Article 1(2) of Regulation No 119/2013 and Article 4(1) of Regulation No 93/2013 provide, for their part, that the Commission (Eurostat) is to define the methodological frameworks for calculating the indices at issue, namely the HICP-CT and the owner-occupied housing price indices ('the OOH'), in close cooperation with the Member States and therefore without applying the regulatory procedure with scrutiny.
- 41 The pleas relied on by the Kingdom of the Netherlands concerning the absence of recourse to the regulatory procedure with scrutiny therefore raise the question of whether Regulation No 2494/95 has been correctly implemented by the Commission where, in the contested provisions, the Commission has entrusted Eurostat with the task of establishing and updating the methodological frameworks for calculating price indices without providing for the application of the regulatory procedure with scrutiny.
- 42 In that regard, the Court recalls that Article 291(2) TFEU provides that where uniform conditions for implementing legally binding Union acts are needed, those acts are to confer implementing powers on the Commission.
- 43 It follows from the case-law that, when an implementing power is conferred on the Commission on the basis of Article 291(2) TFEU, the Commission is called on to provide further detail in relation to the content of the legislative act, in order to ensure that it is implemented under uniform conditions in all Member States (judgments of 18 March 2014 in *Commission v Parliament and Council*, C-427/12, ECR, EU:C:2014:170, paragraph 39, and 15 October 2014 *Parliament v Commission*, C-65/13, ECR, EU:C:2014:2289, paragraph 43).
- 44 Moreover, it is settled case-law that, within the framework of the Commission's implementing power, the limits of which must be determined by reference amongst other things to the essential general aims of the legislative act in question, the Commission is authorised to adopt all the measures which are necessary or appropriate for the implementation of that act, provided that they are not contrary to it (see judgment in *Parliament v Commission*, cited in paragraph 43 above, EU:C:2014:2289, paragraph 44 and case-law cited).
- 45 Accordingly, the Commission must be deemed to provide further detail in relation to the legislative act within the meaning of the case-law cited in paragraph 43 above, if the provisions of the implementing measure adopted by it (i) comply with the essential general aims pursued by the legislative act and (ii) are necessary or appropriate for the implementation of that act (see, to that effect, judgment in *Parliament v Commission*, cited in paragraph 43 above, EU:C:2014:2289, paragraph 46).

- 46 In the present case, as regards the general aims pursued, it must be recalled that, in the context of the achievement of economic and monetary union and in respect of a high degree of price stability, inflation must be measured by means of the consumer price index on a comparable basis, taking into account differences in national definitions (first and second recitals of Regulation No 2494/95). The applicable regulation thus has the aim of establishing the statistical bases necessary for arriving at the calculation of comparable indices of consumer prices at EU level, in order to have available, for the management of monetary policy, reliable instruments for measuring inflation. The third recital of Regulation No 2494/95 recalls in that regard that the fiscal and monetary authorities of the European Union must have regular and timely consumer price indices for the purpose of providing comparisons of inflation in the macroeconomic and international context as distinct from indices for national and microeconomic purposes.
- 47 In that context, the provisions contested by the present actions provide for the adoption of methodological frameworks which are necessary or useful for the implementation under uniform conditions of Regulation No 2494/95. The provisions of those methodological frameworks are intended to establish concepts, methods and practices allowing for comparability of HICPs for the purposes of the second paragraph of Article 4 of Regulation No 2494/95 (paragraph 7 above) and therefore form part of the rules to be followed to ensure the comparability of HICPs, as provided for in the third paragraph of Article 4 and Article 5(3) of Regulation No 2494/95.
- 48 Those methodological frameworks therefore constitute implementing measures which must be complied with in order to give practical effect to the applicable regulations and to ensure the comparability of HICPs. As such, the methodological frameworks concerned are therefore, in the same way as Regulations No 93/2013 and No 119/2013, measures implementing Regulation No 2494/95 which are necessary for ensuring the comparability of HICPs and for maintaining and improving their reliability and relevance, for the purposes of the third paragraph of Article 4 and Article 5(3) of Regulation No 2494/95.
- 49 However, it is important to bear in mind in that regard that the rules regarding the manner in which the EU institutions arrive at their decisions are laid down in the Treaty and are not at the disposal of the Member States or of the institutions themselves. To acknowledge that an institution can establish secondary legal bases, whether for the purpose of strengthening or easing the detailed rules for the adoption of an act, is tantamount to according that institution a legislative power which exceeds that provided for by the Treaty. It is also tantamount to enabling the institution concerned to undermine the principle of institutional balance which requires that each of the institutions must exercise its powers with due regard for the powers of the other institutions (see, by analogy, judgment of 6 May 2008 in *Parliament v Council*, C-133/06, ECR, EU:C:2008:257, paragraphs 54 to 57).
- 50 It follows that the contested provisions should have provided for application of the regulatory procedure with scrutiny for the adoption of the necessary implementing measures, as provided for in Regulation No 2494/95.
- 51 The Commission's arguments do not invalidate that finding.
- 52 First, the Commission argues that the methodological frameworks at issue, which are not legal acts within the meaning of Article 288 TFEU, are not legally binding implementing measures and therefore were not required to be adopted according to the regulatory procedure with scrutiny.
- 53 However, it should be pointed out that those methodological frameworks are required to supplement and provide further detail in relation to the existing regulations in terms of concepts, methods and practices, to enable the indices produced to meet the comparability requirements laid down by Articles 4 and 5 of Regulation No 2494/95. They therefore constitute, in principle, in the same way as

Regulations No 93/2013 and No 119/2013, measures intended to provide further detail in relation to the content of the legislative act, namely Regulation No 2494/95, in order to ensure that it is implemented under uniform conditions so as to ensure the comparability of HICPs.

- 54 Indeed, that finding is confirmed by the circumstances of the case. As regards the HICP-CT, Regulation No 119/2013 merely provides for them in principle and refers, for their calculation and that of the sub-indices, to the methodological framework, comprising in this case, in particular, the ‘reference methodology’ established in 2011. However, the fact remains that that ‘reference methodology’ provides guidance concerning whether or not to take into consideration particular categories of taxes and concerning mathematical formulae and reference periods. That methodology thus provides the necessary details to ensure that the indices produced meet the comparability requirements laid down by Regulation No 2494/95. In that regard, it also follows from the clarifications provided by the Commission at the hearing that elements relating to the reference period to be taken into account or to the categories of taxes to be excluded from the scope of the calculation, as determined by the ‘reference methodology’ established in 2011, constitute essential elements for the comparability of the indices and should have been included in Regulation No 119/2013.
- 55 Similarly, in the context of the action in Case T-86/14 concerning the OOH, it follows from the actual wording of Article 5(1) of Regulation No 93/2013 that the OOH are to be provided ‘in accordance with the OOH-HPI manual’. Accordingly, the actual wording of Regulation No 93/2013 provides that the Member States and, in practice, the national statistical institutes which provide the indices must comply with the methodological framework, so as to ensure that the applicable regulations are implemented under uniform conditions.
- 56 It follows that, in the present case, the methodological frameworks to which the contested provisions refer constitute measures implementing Regulation No 2494/95 in the same way as Regulations No 119/2013 and No 93/2013.
- 57 It should be added that that finding has no bearing on the fact that the methodological frameworks at issue could have been drawn up by Eurostat.
- 58 The third paragraph of Article 4 of Regulation No 2494/95 expressly refers to Eurostat. Although Article 5(3) and Article 9 of Regulation No 2494/95 do not expressly provide that the Commission entrusts Eurostat with the mission of establishing the methodological framework, they do not prohibit it.
- 59 Moreover, the statistical rules specifically provide that the EU statistical authority, as designated by the Commission to develop, produce and disseminate European statistics, is to be referred to as ‘the Commission (Eurostat)’ and that, at EU level, ‘the Commission (Eurostat)’ is to ensure the production of European statistics according to established rules and statistical principles. In that respect, Article 6 of Regulation No 223/2009 provides that the Commission (Eurostat) is to have the sole responsibility for deciding on processes, statistical methods, standards and procedures, and on the content and timing of statistical releases. Under Regulation No 223/2009, Decision 2012/504 established Eurostat as the statistical authority of the European Union referred to in Article 6(1) of Regulation No 223/2009 and defined it as a service of the Commission, headed by a Director-General. The tasks of that statistical authority are the development, production and dissemination of European statistics. To that end, Eurostat is, in particular, to develop and promote statistical standards, methods and procedures.
- 60 It follows that Eurostat, as a Directorate-General, is the service having responsibility, within the Commission, for establishing the methodological frameworks concerned.

- 61 Furthermore, it is likewise not necessary to call into question the relevance of the administrative cooperation and the coordination between European and national statisticians, which are legally non-binding, in the process of drawing up those methodological frameworks.
- 62 However, the fact remains that, once they have been drawn up by Eurostat in the context of that administrative cooperation, the rules to be followed and the implementing measures which provide for further detail in relation to the content of the legislative act, namely Regulation No 2494/95, in order to ensure that it is implemented under uniform conditions, and which are necessary in order to ensure the comparability of HICPs must be adopted by the Commission after applying the regulatory procedure with scrutiny, in accordance with the third paragraph of Article 4 and Article 5(3) of Regulation No 2494/95, read in conjunction with Article 14(3) of the same regulation.
- 63 The contested provisions do not provide for recourse to such a procedure.
- 64 Accordingly, the provisions contested by the present actions must be annulled, on the ground that they provide for the adoption of methodological frameworks which constitute implementing measures within the meaning of Regulation No 2494/95, without providing for the application of the regulatory procedure with scrutiny, in breach of that regulation.
- 65 Secondly, the Commission argues that the regulatory procedure with scrutiny is unsuitable for organising the type of administrative cooperation necessary for establishing methodological frameworks.
- 66 However, as implementing measures, those methodological frameworks should have been adopted in accordance with the procedure provided for by Regulation No 2494/95, irrespective of whether or not that procedure was suitable.
- 67 In that regard, as stated by the Kingdom of the Netherlands, if the Commission regards that procedure as being unsuitable, it should consider amending Regulation No 2494/95. The fact that such an amendment has recently been the subject matter of a Commission proposal, referred to at the hearing, is irrelevant in this case. Moreover, the wording of Article 4(4) of the Proposal for a regulation of the European Parliament and of the Council on harmonised indices of consumer prices and repealing Regulation No 2494/95 (COM(2014) 724 final) is clear. According to that provision, in order to ensure uniform conditions, the appropriate methodology for producing comparable harmonised indices is to be defined by means of implementing acts. Those implementing acts are to be adopted in accordance with the examination procedure referred to in Article 11(2) of that provision, which refers to Article 5 of Regulation No 182/2011. That provision therefore confirms that the methodological frameworks are implementing acts to be adopted in accordance with the relevant procedure laid down.
- 68 Thirdly, according to the Commission, when an implementing document which is not legally binding is adopted, the situation is not one in which the legal act must be implemented under uniform conditions. Furthermore, a non-binding measure cannot establish uniform conditions for implementation.
- 69 However, that argument must be rejected. The requirement of comparability of HICPs and the effectiveness of the applicable regulations specifically require compliance with and implementation of the methodological frameworks referred to by the contested provisions under uniform conditions, so as to ensure the comparability of HICPs.
- 70 It follows from all the foregoing that it is necessary to uphold the fourth plea in Case T-261/13 and the third plea in Case T-86/14, alleging infringement of Article 5(3) and Article 14(3) of Regulation No 2494/95, read in conjunction with Article 5a of Decision 1999/468, on the ground that provision

should have been made for application of the regulatory procedure with scrutiny for the adoption of the methodological frameworks concerned, which constitute the implementing measures necessary to ensure the comparability of HICPs.

- 71 It follows that Article 1(2) of Regulation No 119/2013 and Article 4(1) of Regulation No 93/2013 must be annulled, without there being any need to examine the other pleas.

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 incurred by the Kingdom of the Netherlands, in accordance with the form of order sought by the latter.

On those grounds,

THE GENERAL COURT (Sixth Chamber, Extended Composition)

hereby:

1. **Annuls, in Case T-261/13, Article 1(2) of Commission Regulation (EU) No 119/2013 of 11 February 2013 amending Regulation (EC) No 2214/96 concerning harmonised indices of consumer prices (HICP): transmission and dissemination of sub-indices of the HICP, as regards establishing harmonised indices of consumer prices at constant tax rates;**
2. **Annuls, in Case T-86/14, Article 4(1) of Commission Regulation (EU) No 93/2013 of 1 February 2013 laying down detailed rules for the implementation of Council Regulation (EC) No 2494/95 concerning harmonised indices of consumer prices, as regards establishing owner-occupied housing price indices;**
3. **Orders the European Commission to bear its own costs and those incurred by the Kingdom of the Netherlands.**

Frimodt Nielsen

Dehousse

Wiszniewska-Białecka

Collins

Ulloa Rubio

Delivered in open court in Luxembourg on 23 September 2015.

[Signatures]