



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

26 March 2015*

(Appeals — Internal market in natural gas — Obligation of natural gas undertakings — Organisation of a system of negotiated third party access to gas storage facilities — Decision of the Czech authorities — Temporary exemption for future underground gas storage facilities in Dambořice — Commission decision — Order to withdraw the exemption decision — Directives 2003/55/EC and 2009/73/EC — Temporal application)

In Case C-596/13 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 21 November 2013,

European Commission, represented by L. Armati and K. Herrmann, acting as Agents, with an address for service in Luxembourg,

appellant,

the other parties to the procedure being:

Moravia Gas Storage a.s., formerly Globula a.s., established in Hodonín (Czech Republic), represented by P. Zákoucký and D. Kolářek, advokáti,

applicant at first instance,

Czech Republic, represented by M. Smolek, T. Müller and J. Vlášil, acting as Agents,

intervener at first instance,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, J.-C. Bonichot, A. Arabadjiev, J.L. da Cruz Vilaça and C. Lycourgos, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 11 December 2014,

gives the following

* Language of the case: English.

Judgment

- 1 By its appeal the European Commission seeks to have set aside the judgment of the General Court of the European Union in *Globula v Commission* (T-465/11, EU:T:2013:406, ‘the judgment under appeal’) annulling Commission Decision C(2011) 4509 of 27 June 2011 on the exemption of an underground gas storage facility in Dambořice from the internal market rules on third party access (‘the contested decision’).

Legal context

- 2 Article 22 of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ 2003 L 176, p. 57) provides:

‘1. Major new gas infrastructures, i.e. interconnectors between Member States, [liquefied natural gas (LNG)] and storage facilities, may, upon request, be exempted from the provisions of Articles 18, 19, 20, and 25(2), (3) and (4) under the following conditions:

 - (a) the investment must enhance competition in gas supply and enhance security of supply;
 - (b) the level of risk attached to the investment is such that the investment would not take place unless an exemption was granted;
 - (c) the infrastructure must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that infrastructure will be built;
 - (d) charges are levied on users of that infrastructure;
 - (e) the exemption is not detrimental to competition or the effective functioning of the internal gas market, or the efficient functioning of the regulated system to which the infrastructure is connected.

2. Paragraph 1 shall apply also to significant increases of capacity in existing infrastructures and to modifications of such infrastructures which enable the development of new sources of gas supply.
3.
 - (a) The regulatory authority referred to in Article 25 may, on a case by case basis, decide on the exemption referred to in paragraphs 1 and 2. However, Member States may provide that the regulatory authorities shall submit, for formal decision, to the relevant body in the Member State its opinion on the request for an exemption. This opinion shall be published together with the decision.
 - (b)
 - (i) The exemption may cover all or parts of, respectively, the new infrastructure, the existing infrastructure with significantly increased capacity or the modification of the existing infrastructure.
 - (ii) In deciding to grant an exemption consideration shall be given, on a case by case basis, to the need to impose conditions regarding the duration of the exemption and non-discriminatory access to the interconnector.

- (iii) When deciding on the conditions in this subparagraph account shall, in particular, be taken of the duration of contracts, additional capacity to be built or the modification of existing capacity, the time horizon of the project and national circumstances.
 - (c) When granting an exemption the relevant authority may decide upon the rules and mechanisms for management and allocation of capacity in so far as this does not prevent the implementation of long term contracts.
 - (d) The exemption decision, including any conditions referred to in (b), shall be duly reasoned and published.
 - (e) In the case of an interconnector any exemption decision shall be taken after consultation with the other Member States or regulatory authorities concerned.
4. The exemption decision shall be notified, without delay, by the competent authority to the Commission, together with all the relevant information with respect to the decision. This information may be submitted to the Commission in aggregate form, enabling the Commission to reach a well-founded decision.

In particular, the information shall contain:

- (a) the detailed reasons on the basis of which the regulatory authority, or Member State, granted the exemption, including the financial information justifying the need for the exemption;
- (b) the analysis undertaken of the effect on competition and the effective functioning of the internal gas market resulting from the grant of the exemption;
- (c) the reasons for the time period and the share of the total capacity of the gas infrastructure in question for which the exemption is granted;
- (d) in case the exemption relates to an interconnector, the result of the consultation with the Member States concerned or regulatory authorities;
- (e) the contribution of the infrastructure to the diversification of gas supply.

Within two months after receiving a notification, the Commission may request that the regulatory authority or the Member State concerned amend or withdraw the decision to grant an exemption. The two month period may be extended by one additional month where additional information is sought by the Commission.

If the regulatory authority or Member State concerned does not comply with the request within a period of four weeks, a final decision shall be taken in accordance with the procedure referred to in Article 30(2).

The Commission shall preserve the confidentiality of commercially sensitive information.'

3 Article 36 of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (OJ 2009 L 211, p. 94) provides:

‘1. Major new gas infrastructure, i.e. interconnectors, LNG and storage facilities, may, upon request, be exempted, for a defined period of time, from the provisions of Articles 9, 32, 33 and 34 and Article 41(6), (8) and (10) under the following conditions:

- (a) the investment must enhance competition in gas supply and enhance security of supply;
- (b) the level of risk attached to the investment must be such that the investment would not take place unless an exemption was granted;
- (c) the infrastructure must be owned by a natural or legal person which is separate at least in terms of its legal form from the system operators in whose systems that infrastructure will be built;
- (d) charges must be levied on users of that infrastructure; and
- (e) the exemption must not be detrimental to competition or the effective functioning of the internal market in natural gas, or the efficient functioning of the regulated system to which the infrastructure is connected.

2. Paragraph 1 shall also apply to significant increases of capacity in existing infrastructure and to modifications of such infrastructure which enable the development of new sources of gas supply.

3. The regulatory authority referred to in Chapter VIII may, on a case-by-case basis, decide on the exemption referred to in paragraphs 1 and 2.

4. Where the infrastructure in question is located in the territory of more than one Member State, the [Agency for the Cooperation of Energy Regulators] may submit an advisory opinion to the regulatory authorities of the Member States concerned, which may be used as a basis for their decision, within two months from the date on which the request for exemption was received by the last of those regulatory authorities.

Where all the regulatory authorities concerned agree on the request for exemption within six months of the date on which it was received by the last of the regulatory authorities, they shall inform the Agency of their decision.

The Agency shall exercise the tasks conferred on the regulatory authorities of the Member States concerned by the present Article:

- (a) where all regulatory authorities concerned have not been able to reach an agreement within a period of six months from the date on which the request for exemption was received by the last of those regulatory authorities; or
- (b) upon a joint request from the regulatory authorities concerned.

All regulatory authorities concerned may, jointly, request that the period referred to in point (a) of the third subparagraph is extended by up to three months.

5. Before taking a decision, the Agency shall consult the relevant regulatory authorities and the applicants.

6. An exemption may cover all or part of the capacity of the new infrastructure, or of the existing infrastructure with significantly increased capacity.

In deciding to grant an exemption, consideration shall be given, on a case-by-case basis, to the need to impose conditions regarding the duration of the exemption and non-discriminatory access to the infrastructure. When deciding on those conditions, account shall, in particular, be taken of the additional capacity to be built or the modification of existing capacity, the time horizon of the project and national circumstances.

Before granting an exemption, the regulatory authority shall decide upon the rules and mechanisms for management and allocation of capacity. The rules shall require that all potential users of the infrastructure are invited to indicate their interest in contracting capacity before capacity allocation in the new infrastructure, including for own use, takes place. The regulatory authority shall require congestion management rules to include the obligation to offer unused capacity on the market, and shall require users of the infrastructure to be entitled to trade their contracted capacities on the secondary market. In its assessment of the criteria referred to in points (a), (b) and (e) of paragraph 1, the regulatory authority shall take into account the results of that capacity allocation procedure.

The exemption decision, including any conditions referred to in the second subparagraph of this paragraph, shall be duly reasoned and published.

7. Notwithstanding paragraph 3, Member States may provide that their regulatory authority or the Agency, as the case may be, shall submit, for the purposes of the formal decision, to the relevant body in the Member State its opinion on the request for an exemption. That opinion shall be published together with the decision.

8. The regulatory authority shall transmit to the Commission, without delay, a copy of every request for exemption as of its receipt. The decision shall be notified, without delay, by the competent authority to the Commission, together with all the relevant information with respect to the decision. That information may be submitted to the Commission in aggregate form, enabling the Commission to reach a well-founded decision. In particular, the information shall contain:

- (a) the detailed reasons on the basis of which the regulatory authority, or Member State, granted or refused the exemption together with a reference to paragraph 1 including the relevant point or points of that paragraph on which such decision is based, including the financial information justifying the need for the exemption;
- (b) the analysis undertaken of the effect on competition and the effective functioning of the internal market in natural gas resulting from the grant of the exemption;
- (c) the reasons for the time period and the share of the total capacity of the gas infrastructure in question for which the exemption is granted;
- (d) in case the exemption relates to an interconnector, the result of the consultation with the regulatory authorities concerned; and
- (e) the contribution of the infrastructure to the diversification of gas supply.

9. Within a period of two months from the day following the receipt of a notification, the Commission may take a decision requiring the regulatory authority to amend or withdraw the decision to grant an exemption. That two-month period may be extended by an additional period of two months where further information is sought by the Commission. That additional period shall begin on the day following the receipt of the complete information. The initial two-month period may also be extended with the consent of both the Commission and the regulatory authority.

Where the requested information is not provided within the period set out in the request, the notification shall be deemed to be withdrawn unless, before the expiry of that period, either the period has been extended with the consent of both the Commission and the regulatory authority, or the regulatory authority, in a duly reasoned statement, has informed the Commission that it considers the notification to be complete.

The regulatory authority shall comply with the Commission decision to amend or withdraw the exemption decision within a period of one month and shall inform the Commission accordingly.

The Commission shall preserve the confidentiality of commercially sensitive information.

The Commission's approval of an exemption decision shall lose its effect two years from its adoption in the event that construction of the infrastructure has not yet started, and five years from its adoption in the event that the infrastructure has not become operational unless the Commission decides that any delay is due to major obstacles beyond control of the person to whom the exemption has been granted.

10. The Commission may adopt Guidelines for the application of the conditions laid down in paragraph 1 of this Article and to set out the procedure to be followed for the application of paragraphs 3, 6, 8 and 9 of this Article. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 51(3).'

- 4 By virtue of Article 53 of Directive 2009/73, Directive 2003/55 was repealed with effect from 3 March 2011, and from that date references to Directive 2003/55 are to be construed as references to Directive 2009/73 and to be read in accordance with the correlation table in Annex II to that directive. In accordance with that table, Article 22 of Directive 2003/55 corresponds to Article 36 of Directive 2009/73.

Facts of the dispute

- 5 On 14 April 2009 Moravia Gas Storage a.s. ('MGS'), formerly Globula a.s., applied to the Czech Ministry of Industry and Trade ('the Ministry') for authorisation to construct an underground gas storage facility in Dambořice (Czech Republic) ('the UGS facility'). In that application it sought a temporary exemption from the obligation to provide negotiated third-party access to the UGS facility, covering the entire new capacity of the facility.
- 6 By decision of 26 October 2010, the Ministry authorised construction of the UGS facility and granted MGS a temporary exemption from the obligation to provide negotiated third-party access, for 90% of the capacity of the facility, for 15 years from the effective date of authorisation of use.
- 7 By letter of 11 February 2011, received on 18 February 2011, the Commission was notified of the decision.
- 8 By letter of 15 April 2011, the Commission asked the Ministry for further information, stating that if the Commission were to request it to amend or withdraw the decision of 26 October 2010, it would do so by 18 June 2011. The Ministry replied on 29 April 2011, within the period specified by the Commission.
- 9 By letter of 13 May 2011, the Commission sent the Ministry a second request for further information, again stating that if the Commission were to request it to amend or withdraw the decision, it would do so by 18 June 2011. The Ministry replied on 20 May 2011, within the period specified by the Commission.

- 10 By letter of 23 June 2011, signed by the Commissioner responsible for energy, the Commission informed the Ministry that it would adopt a formal decision by 29 June 2011.
- 11 By the contested decision, which was notified to the Czech Republic on 28 June 2011, the Commission ordered the Czech Republic to withdraw the decision of 26 October 2010.

Procedure before the General Court and the judgment under appeal

- 12 By application lodged at the Registry of the General Court on 26 August 2011, MGS brought an action for annulment of the contested decision and for the Commission to be ordered to pay the costs.
- 13 In support of its action, MGS relied on three pleas in law, alleging, first, errors in the determination of the applicable law, secondly, infringement of the principle of the protection of legitimate expectations and, thirdly, manifest error in the assessment of the facts.
- 14 By the judgment under appeal, the General Court accepted MGS's first plea in law and annulled the contested decision on the ground that it should have been adopted on the basis not of Directive 2009/73 but of Directive 2003/55. The General Court thus did not consider the second and third pleas in law relied on by MGS in support of its action.

Forms of order sought by the parties

- 15 By its appeal, the Commission claims that the Court should:
- set aside the judgment under appeal;
 - rule that the first plea at first instance is not well founded and refer the case back to the General Court for consideration of the second and third pleas at first instance; and
 - reserve the costs of the proceedings at first instance and on appeal.
- 16 MGS contends that the Court should:
- dismiss the appeal in its entirety; and
 - order the Commission to pay the costs in relation to the appeal proceedings.
- 17 The Czech Republic contends that the Court should:
- dismiss the appeal as unfounded; and
 - order the Commission to pay the costs incurred at first instance and on appeal.

The appeal

Arguments of the parties

- 18 In support of its appeal, the Commission raises a single ground of appeal, arguing essentially that, by holding that the provisions of Directive 2003/55 were applicable to the case before it, the General Court infringed Articles 288 TFEU and 297(1) TFEU.

- 19 In its view, as long as the period available to it for requiring a national exemption decision to be amended or withdrawn has not expired, notification of such a decision under Article 22 of Directive 2003/55 and Article 36 of Directive 2009/73 does not constitute a situation that has become definitive but a stage in the ongoing exemption process.
- 20 In the present case, according to the Commission, that process had not been completed on the date of repeal of Directive 2003/55, 3 March 2011, so that on that date there was no situation that had become definitive, and from that date the provisions of Directive 2009/73 were applicable.
- 21 The Commission submits, moreover, that, by finding that the judgment in *Meridionale Industria Salumi and Others* (212/80 to 217/80, EU:C:1981:270) could be applied to the present case and by holding that the procedural and substantive changes introduced by Article 36 of Directive 2009/73 formed an indivisible whole, the General Court erred in law.
- 22 It submits, in particular, that the exception laid down by that judgment concerning the temporal application of new rules of law must be interpreted strictly, and that it does not apply where a new directive amends existing EU legislation.
- 23 In particular, the Commission argues that it does not follow from the fact that Directive 2009/73 made changes, in this case procedural ones, that the procedural and substantive rules of that directive form an indivisible whole and cannot be considered in isolation as regards their temporal effect.
- 24 According to MGS, the General Court did not err in law by holding that the Commission should have applied the provisions of Directive 2003/55.
- 25 MGS submits that the adoption of the national exemption decision and its communication to the Commission constitute an existing situation, as a result of which it acquired rights, and to which new rules of law may not be applied.
- 26 MGS argues, moreover, that any other approach would lead to an infringement of the principles of legal certainty and the protection of legitimate expectations.
- 27 MGS argues that the exception in the judgment in *Meridionale Industria Salumi and Others* (212/80 to 217/80, EU:C:1981:270) can be applied to a situation in which an EU directive replaces a previous one, and that the General Court applied that exception correctly in the present case.
- 28 The Czech Republic submits that in so far as, in the exemption procedure provided for by Directives 2003/55 and 2009/73, the Commission examines the correctness of a decision previously taken by the authorities of a Member State, that is, its compliance with the conditions applicable at the date when it was taken, that examination logically cannot be carried out with regard to rules adopted after that date.
- 29 According to the Czech Republic, by virtue of the principle of legal certainty, notification of the national exemption decision determines the course of the other stages of the procedure, inter alia as regards the law applicable to the examination of that decision, since the decision establishes an 'existing' situation.
- 30 The Czech Republic further submits that the Commission's interpretation would allow it to assess differently national exemption decisions notified on the same date, since the choice of applicable provisions would in fact depend on the date on which the Commission took steps in relation to those decisions, and would thus be left to its free discretion. That would lead to different treatment of those decisions, which would be contrary to the principles of equality and fairness.

- 31 Finally, the Czech Republic observes that those considerations are borne out by the fact that Directive 2009/73 does not contain any provisions on the handling of procedures ongoing on the date of its entry into force.

Findings of the Court

- 32 A new rule of law applies from the entry into force of the act introducing it, and, while it does not apply to legal situations that have arisen and become definitive under the old law, it does apply to their future effects, and to new legal situations. It is otherwise, subject to the principle of the non-retroactivity of legal acts, only if the new rule is accompanied by special provisions which specifically lay down its conditions of temporal application (judgment in *Gemeinde Altrip and Others*, C-72/12, EU:C:2013:712, paragraph 22 and the case-law cited).
- 33 In particular, according to settled case-law, procedural rules are generally taken to apply from the date on which they enter into force (judgment in *Commission v Spain*, C-610/10, EU:C:2012:781, paragraph 45 and the case-law cited), as opposed to substantive rules, which are usually interpreted as applying to situations existing before their entry into force only in so far as it clearly follows from their terms, their objectives or their general scheme that such an effect must be given to them (see judgments in *Meridionale Industria Salumi and Others*, 212/80 to 217/80, EU:C:1981:270, paragraph 9; *Molenbergnatie*, C-201/04, EU:C:2006:136, paragraph 31; and *Commission v Freistaat Sachsen*, C-334/07 P, EU:C:2008:709, paragraph 44).
- 34 The Court has also held that the provision which forms the legal basis of an act and empowers an EU institution to adopt the act must be in force on the date on which the act is adopted (see judgment in *ThyssenKrupp v Commission*, C-352/09 P, EU:C:2011:191, paragraph 88).
- 35 In the present case, the General Court held that the procedural and substantive changes introduced by Article 36 of Directive 2009/73 formed an indivisible whole, so that, in accordance with the judgment in *Meridionale Industria Salumi and Others* (212/80 to 217/80, EU:C:1981:270), the entirety of those provisions could not be accorded retroactive effect, and it was consequently the rules of Directive 2003/55 that applied with respect both to the substance and to the procedure.
- 36 It should be recalled that, in paragraph 11 of that judgment, this Court, by way of exception to the rule of interpretation recalled in paragraph 33 above, held that EU legislation which was intended to establish a body of rules covering the post-clearance recovery of customs duties contained both procedural and substantive rules forming an indivisible whole, the individual provisions of which could not be considered in isolation with regard to their temporal effect. The reason for such an exception was the replacement of the existing national rules by new Community rules, with the aim of achieving a consistent and uniform application of the Community legislation thus established in the field of customs (see judgment in *Molenbergnatie*, C-201/04, EU:C:2006:136, paragraph 32).
- 37 On this point, it must be stated that the situation at issue in *Meridionale Industria Salumi and Others* (212/80 to 217/80, EU:C:1981:270) is not comparable to that at issue in the present case. Directive 2009/73 repeals and replaces previous EU legislation applicable in the same field, namely Directive 2003/55. Directive 2009/73 does not create a new set of rules but is a direct continuation of Directive 2003/55, and leaves unchanged the content of the substantive provisions of that directive, in particular the substantive provisions on the material conditions for the grant of an exemption in Article 22(1) and (2) of Directive 2003/55 and Article 36(1) and (2) of Directive 2009/73.
- 38 In those circumstances, as the Advocate General observes in points 48 and 49 of her Opinion, the fact that the procedural rules of Directive 2003/55 were amended by Directive 2009/73 is not in itself, contrary to the General Court's conclusion in paragraph 36 of the judgment under appeal, capable of

showing that the procedural and substantive provisions laid down in Article 36 of Directive 2009/73 are ‘indivisible’ within the meaning of the judgment in *Meridionale Industria Salumi and Others* (212/80 to 217/80, EU:C:1981:270).

- 39 Moreover, the fact that in those directives the same substantive provisions are accompanied by different procedural provisions tends to show that, in the circumstances of the present case, those substantive provisions can be separated from those procedural provisions.
- 40 Consequently, the exception referred to in paragraph 36 above cannot apply in the present case.
- 41 In those circumstances, since Directive 2003/55 was repealed with effect from 3 March 2011, on which date it was replaced by Directive 2009/73, the provisions in force on the date of adoption of the contested decision, 27 June 2011, were not those of Directive 2003/55 but those of Directive 2009/73.
- 42 It follows that the Commission did not retroactively apply the provisions of Directive 2009/73 but adopted the contested decision on the basis of the provision then in force.
- 43 In addition, it should be noted that, under Article 22 of Directive 2003/55 and Article 36 of Directive 2009/73, the Commission, after receiving notification of a national exemption decision, may require it to be amended or withdrawn.
- 44 Thus, contrary to MGS’s submissions and as the Advocate General observes in points 66, 70 and 71 of her Opinion, such a decision or notification cannot be regarded as creating a ‘situation that has arisen and become definitive’ or an ‘existing situation’ for the purposes of the case-law cited in paragraphs 32 and 33 above.
- 45 It follows that, in the absence of special provisions specifically determining the conditions of its temporal application, Directive 2009/73 was to apply to procedures that were ongoing on the date of its entry into force, 3 March 2011. The General Court therefore erred in law in considering that the Commission had been wrong to apply that directive when adopting the contested decision.
- 46 With respect, in this connection, to the alleged breach of the principle of the protection of legitimate expectations relied on by MGS and the Czech Republic, it suffices to recall that according to settled case-law that principle cannot be extended to the point of generally preventing a new rule from applying to the future effects of situations which arose under the earlier rule (see judgments in *Tomadini*, 84/78, EU:C:1979:129, paragraph 21; *Commission v Freistaat Sachsen*, C-334/07 P, EU:C:2008:709, paragraph 43; and *Stadt Papenburg*, C-226/08, EU:C:2010:10, paragraph 46).
- 47 With respect to the breach of the principles of equality and fairness alleged by the Czech Republic, it must be stated that, as the Advocate General observes in points 62 and 63 of her Opinion, in so far as the change of the applicable legal rules is founded on an objective factor, namely the date of entry into force of Directive 2009/73, the notification of the national exemption decision at issue in the present case took place, according to the findings of the General Court, only a few days before that date, and it has not been shown that the Commission arbitrarily and without objective reason accelerated or delayed, as the case may be, the treatment of national exemption decisions notified on the same date in order to complete some procedures before and some after the entry into force of that directive, it cannot be concluded that there was a breach of those principles in the present case.
- 48 Consequently, by holding that in the present case the rules of Directive 2003/55 were applicable as regards both the substance and the procedure, the General Court erred in law.
- 49 In those circumstances, the single ground of appeal raised by the Commission in support of its appeal must be upheld and the judgment under appeal must be set aside.

The action before the General Court

- 50 Under the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the appeal is well founded, the Court is to set aside the decision of the General Court. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.
- 51 In the present case, the Court considers that final judgment should be given on the first plea in law of MGS's action for annulment of the contested decision.
- 52 It suffices to state that, for the reasons set out in paragraphs 35 to 47 above, this plea must be rejected.
- 53 However, as the General Court did not examine the second and third pleas in law relied on by MGS in support of its action for annulment, the Court considers that the state of the proceedings does not permit judgment to be given.
- 54 Consequently, the case must be referred back to the General Court for judgment on the second and third pleas in law.

Costs

- 55 Since the case has been referred back to the General Court, the costs relating to the present appeal proceedings must be reserved.

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

- 1. Sets aside the judgment of the General Court of the European Union in *Globula v Commission* (T-465/11, EU:T:2013:406);**
- 2. Refers the case back to the General Court of the European Union;**
- 3. Reserves the costs.**

[Signatures]