Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

3 September 2015*

(Appeal — Regulation (EC) No 737/2010 — Regulation laying down detailed rules for the implementation of Regulation (EC) No 1007/2009 — Trade in seal products — Restrictions on the import and marketing of those products — Validity — Legal basis — Article 95 EC — Charter of Fundamental Rights of the European Union — Article 17 — United Nations Declaration on the Rights of Indigenous Peoples — Article 19)

In Case C-398/13 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 8 July 2013,

Inuit Tapiriit Kanatami, established in Ottawa (Canada),

Nattivak Hunters' and Trappers' Organisation, established in Qikiqtarjuaq (Canada),

Pangnirtung Hunters' and Trappers' Organisation, established in Pangnirtung (Canada),

Jaypootie Moesesie, residing in Qikiqtarjuaq,

Allen Kooneeliusie, residing in Qikiqtarjuaq,

Toomasie Newkingnak, residing in Qikiqtarjuaq,

David Kuptana, residing in Ulukhattok (Canada),

Karliin Aariak, residing in Iqaluit (Canada),

Canadian Seal Marketing Group, established in Quebec (Canada),

Ta Ma Su Seal Products Inc., established in Cap-aux-Meules (Canada),

Fur Institute of Canada, established in Ottawa,

NuTan Furs Inc., established in Catalina (Canada),

GC Rieber Skinn AS, established in Bergen (Norway),

Inuit Circumpolar Council Greenland (ICC-Greenland), established in Nuuk, Greenland (Denmark),

Johannes Egede, residing in Nuuk,

* Language of the case: English.

Kalaallit Nunaanni Aalisartut Piniartullu Kattuffiat (KNAPK), established in Nuuk,

William E. Scott & Son, established in Edinburgh (United Kingdom),

Association des chasseurs de phoques des Îles-de-la-Madeleine, established in Cap-aux-Meules,

Hatem Yavuz Deri Sanayi iç Ve Diş Ticaret Ltd Şirketi, established in Istanbul (Turkey),

Northeast Coast Sealers' Co-Operative Society Ltd, established in Fleur-de-Lys (Canada),

represented by H. Viaene, J. Bouckaert and D. Gillet, advocaten,

appellants,

the other parties to the proceedings being:

European Commission, represented by K. Mifsud-Bonnici and C. Hermes, acting as Agents,

defendant at first instance,

supported by:

European Parliament, represented by L. Visaggio and J. Rodrigues, acting as Agents,

Council of the European Union, represented by K. Michoel and M. Moore, acting as Agents,

interveners at first instance,

THE COURT (Fifth Chamber),

composed of T. von Danwitz (Rapporteur), President of the Chamber, C. Vajda, A. Rosas, E. Juhász and D. Šváby, Judges,

Advocate General: J. Kokott,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 9 February 2015,

after hearing the Opinion of the Advocate General at the sitting on 19 March 2015,

gives the following

Judgment

1 By their appeal, Inuit Tapiriit Kanatami, Nattivak Hunters' and Trappers' Organisation, Pangnirtung Hunters' and Trappers' Organisation, Mr Moesesie, Mr Kooneeliusie, Mr Newkingnak, Mr Kuptana, Mrs Aariak, Canadian Seal Marketing Group, Ta Ma Su Seal Products Inc., Fur Institute of Canada, NuTan Furs Inc., GC Rieber Skinn AS, Inuit Circumpolar Council Greenland (ICC-Greenland), Mr Egede, Kalaallit Nunaanni Aalisartut Piniartullu Kattuffiat (KNAPK), William E. Scott & Son, Association des chasseurs de phoques des Îles-de-la-Madeleine, Hatem Yavuz Deri Sanayi iç Ve Diş Ticaret Ltd Şirketi and Northeast Coast Sealers' Co-Operative Society Ltd ('the appellants') ask the Court to set aside the judgment of the General Court of the European Union of 25 April 2013 in

Inuit Tapiriit Kanatami and Others v *Commission* (T-526/10, EU:T:2013:215; the judgment under appeal') by which the General Court dismissed their action for annulment of Commission Regulation (EU) No 737/2010 of 10 August 2010 laying down detailed rules for the implementation of Regulation (EC) No 1007/2009 of the European Parliament and of the Council on trade in seal products (OJ 2010 L 216, p. 1; 'the regulation at issue') and for a declaration that Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products (OJ 2009 L 286, p. 36; 'the basic regulation') is inapplicable.

Legal context

International law

2 By resolution 61/295 of 13 September 2007, the United Nations General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples ('the UNDRIP'). Article 19 of that declaration is worded as follows:

'States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them'.

EU law

3 Recitals 4 to 7 and 14 in the preamble to the basic regulation state:

'(4) The hunting of seals has led to expressions of serious concerns by members of the public and governments sensitive to animal welfare considerations due to the pain, distress, fear and other forms of suffering which the killing and skinning of seals, as they are most frequently performed, cause to those animals.

(5) In response to concerns of citizens and consumers about the animal welfare aspects of the killing and skinning of seals and the possible presence on the market of products obtained from animals killed and skinned in a way that causes pain, distress, fear and other forms of suffering, several Member States have adopted or intend to adopt legislation regulating trade in seal products by prohibiting the import and production of such products, while no restrictions are placed on trade in these products in other Member States.

(6) There are therefore differences between national provisions governing the trade, import, production and marketing of seal products. Those differences adversely affect the operation of the internal market in products which contain or may contain seal products, and constitute barriers to trade in such products.

(7) The existence of such diverse provisions may further discourage consumers from buying products not made from seals, but which may not be easily distinguishable from similar goods made from seals, or products which may include elements or ingredients obtained from seals without this being clearly recognisable, such as furs, Omega-3 capsules and oils and leather goods.

…

(14) The fundamental economic and social interests of Inuit communities engaged in the hunting of seals as a means to ensure their subsistence should not be adversely affected. The hunt is an integral part of the culture and identity of the members of the Inuit society, and as such is recognised by the United Nations Declaration on the Rights of Indigenous Peoples. Therefore,

the placing on the market of seal products which result from hunts traditionally conducted by Inuit and other indigenous communities and which contribute to their subsistence should be allowed.'

4 Article 3 of the basic regulation, headed 'Conditions for placing on the market', provides in paragraphs 1 and 4:

'1. The placing on the market of seal products shall be allowed only where the seal products result from hunts traditionally conducted by Inuit and other indigenous communities and contribute to their subsistence. These conditions shall apply at the time or point of import for imported products.

...

4. Without prejudice to paragraph 3, measures for the implementation of this Article, 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 5(3).'

5 On the basis of Article 3(4) of the basic regulation, the European Commission adopted the regulation at issue. As provided in Article 1 thereof, the regulation at issue 'lays down detailed rules for the placing on the market of seal products pursuant to Article 3 of [the basic regulation]'.

Background to the dispute and the judgment under appeal

6 By application lodged at the Registry of the General Court on 11 January 2010, Inuit Tapiriit Kanatami and others brought an action for annulment of the basic regulation. By order in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council* (T-18/10, EU:T:2011:419), the General Court dismissed the action as inadmissible. The appeal against that order was dismissed by judgment of the Court of Justice in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council* (C-583/11 P, EU:C:2013:625).

7 On 10 August 2010 the Commission adopted the regulation at issue, which lays down detailed rules for the implementation of the basic regulation.

8 By application lodged at the Registry of the General Court on 9 November 2010, the appellants brought an action for annulment of the regulation at issue and for a declaration pursuant to Article 277 TFEU that the basic regulation is inapplicable.

9 By order of 13 April 2011, the President of the Seventh Chamber of the General Court granted the European Parliament and the Council of the European Union leave to intervene in support of the form of order sought by the Commission.

10 In support of their action, the appellants put forward two pleas in law, the first of which was a plea of illegality of the basic regulation depriving the regulation at issue of any legal basis, on the grounds of the wrong choice of Article 95 EC as the legal basis for adoption of the basic regulation, of breach of the principles of subsidiarity and proportionality, and of breach of fundamental rights. In their second plea, the appellants alleged that the Commission misused its powers when adopting the regulation at issue.

11 By the judgment under appeal, the General Court dismissed those two pleas and, therefore, the action in its entirety.

Forms of order sought

12 The appellants claim that the Court should:

— set aside the judgment under appeal, declare the basic regulation illegal and inapplicable pursuant to Article 277 TFEU and annul the regulation at issue pursuant to Article 263 TFEU;

— in the alternative, set aside the judgment under appeal and refer the case back to the General Court; and

— order the Commission to pay the costs.

13 The Commission contends that the Court should dismiss the appeal and order the appellants jointly and severally to pay the costs.

14 The Parliament contends that the Court should dismiss the appeal and order the appellants to pay the costs.

15 The Council contends that the Court should dismiss the appeal and order the appellants to pay the costs.

The appeal

16 In support of their appeal, the appellants put forward two grounds, alleging errors of law committed by the General Court in its assessment of the basic regulation's legality. The first ground of appeal is in two parts, and the second in three parts.

First part of the first ground of appeal

Arguments of the parties

17 The appellants contend that the General Court erred in law in finding, in paragraphs 28, 29, 37 to 40, 50 and 64 of the judgment under appeal, that the conditions for recourse to Article 95 EC were met on the date on which the basic regulation was adopted.

18 In the appellants' submission, those conditions had already to be met on the date on which the Commission submitted the proposal which resulted in the adoption of the basic regulation. The purpose of Article 95 EC is to remedy a situation in which divergences between the national rules directly affect the internal market, and not to cause the emergence of different national rules, thereby giving the EU legislature 'carte blanche' to legislate on any subject-matter. If the date of adoption of the intended measure were relevant for examining those conditions, the Commission could base its proposal on the mere prediction that such divergences would exist at the time of that measure's adoption, a position which would be contrary to the principle of conferral enshrined in Article 5(1) TEU.

19 In the alternative, the appellants contend that, even assuming that the relevant date for a review of the legality of the basic regulation in the light of Article 95 EC is the date of that regulation's adoption, the conditions permitting recourse to Article 95 EC were not met on that date. The particulars in the preamble to that regulation, containing only vague and general assertions as to the disparities between national rules and the risk of infringements of fundamental freedoms or of distortion of competition, are not sufficient to justify recourse to Article 95 EC. In particular, recital 5 in the preamble to the basic regulation does not name the Member States having adopted or intending to adopt a

prohibition on the import or production of seal products. The supplementary information provided by the Commission during the judicial proceedings cannot remedy that lack of sufficient particulars in the actual text of the basic regulation.

20 The Commission, the Parliament and the Council oppose the appellants' arguments.

Findings of the Court

21 In the first part of their first ground of appeal, the appellants put forward, in essence, two arguments, concerning, first, the relevant date for examining the conditions for recourse to Article 95 EC and, secondly, the conditions permitting recourse to that article in that the basic regulation is said not to contain sufficiently precise particulars regarding the risk of infringements of fundamental freedoms or of distortion of competition.

22 As regards the first argument, it is settled case-law that the legality of an EU measure must be assessed on the basis of the facts and the law as they stood at the time when the measure was adopted (judgments in *Agrana Zucker*, C-309/10, EU:C:2011:531, paragraphs 31 and 45 and the case-law cited, and *Schaible*, C-101/12, EU:C:2013:661, paragraph 50). In particular, the Court places itself at the time when the EU measure at issue was adopted in order to examine whether the conditions permitting recourse to Article 95 EC as a legal basis were met (see judgments in *Arnold André*, C-434/02, EU:C:2004:800, paragraph 38; *Swedish Match*, C-210/03, EU:C:2004:802, paragraph 37; *Germany* v *Parliament and Council*, C-380/03, EU:C:2006:772, paragraphs 45 to 51 and 55; and *Vodafone and Others*, C-58/08, EU:C:2010:321, paragraphs 39 and 41).

23 On the other hand, contrary to the appellants' submissions, the date of the Commission's proposal for a regulation cannot be relevant for that examination. In an action challenging a legislative measure, such as the basic regulation, it is not that proposal, liable to be amended during the legislative procedure, whose lawfulness is reviewed by the EU judicature, but the legislative measure as adopted at the end of that procedure by the EU legislature.

24 Furthermore, the number of Member States which had legislated or had the intention to legislate in the field concerned on the date of the Commission's proposal is not, in itself, decisive for assessing whether the EU legislature's recourse to Article 95 EC was lawful if the conditions for recourse to that article were met on the date on which the legislative measure at issue was adopted.

25 It follows that the appellants' first argument must be rejected as unfounded.

26 So far as concerns the second argument, it should be recalled that, according to settled case-law, the object of measures adopted on the basis of Article 95(1) EC must genuinely be to improve the conditions for the establishment and functioning of the internal market (judgments in *British American Tobacco (Investments) and Imperial Tobacco*, C-491/01, EU:C:2002:741, paragraph 60; *United Kingdom* v *Parliament and Council*, C-217/04, EU:C:2006:279, paragraph 42; and *United Kingdom* v *Parliament and Council*, C-270/12, EU:C:2014:18, paragraph 113). While a mere finding of disparities between national rules and of the abstract risk of infringements of fundamental freedoms or distortion of competition is not sufficient to justify the choice of Article 95 EC as a legal basis, the EU legislature may have recourse to it in particular where there are differences between national rules which are such as to obstruct the fundamental freedoms and thus have a direct effect on the functioning of the internal market or to cause significant distortions of competition (judgment in *Vodafone and Others*, C-58/08, EU:C:2010:321, paragraph 32 and the case-law cited).

27 Recourse to that provision is also possible if the aim is to prevent the emergence of such obstacles to trade resulting from the divergent development of national laws. However, the emergence of such obstacles must be likely and the measure in question must be designed to prevent them (judgments in *Germany* v *Parliament and Council*, C-380/03, EU:C:2006:772, paragraph 38 and the case-law cited, and *Vodafone and Others*, C-58/08, EU:C:2010:321, paragraph 33).

28 The appellants are wrong in maintaining that the considerations in the preamble to the basic regulation are not sufficient to justify recourse to Article 95 EC and that the General Court could not take into account the information provided by the Commission during the judicial proceedings.

29 As the statement of reasons for a measure of general application may be confined to indicating the general situation which led to its adoption and the general objectives which it is intended to achieve (see judgment in *AJD Tuna*, C-221/09, EU:C:2011:153, paragraph 59 and the case-law cited), the EU legislature cannot be criticised for having only set out generally, in recitals 4 to 7 in the preamble to the basic regulation, the divergences between the national rules governing the marketing of seal products and the resulting adverse effect on the operation of the internal market that justified recourse to Article 95 EC. In particular, the EU legislature, contrary to the appellants' submissions, was not required to specify in the very text of the preamble to the basic regulation the number and identity of the Member States whose national rules are the source of that measure.

30 Since the statement of reasons for the basic regulation is, in itself, sufficient, the General Court cannot be criticised for having taken into consideration during its examination, in paragraph 50 of the judgment under appeal, the supplementary information, submitted by the Commission during the judicial proceedings, relating to the situation regarding the legislation of the Member States that led to the adoption of that regulation, information which merely clarified the statement of reasons for the basic regulation, in accordance with the Court of Justice's case-law. In the context of examination of the choice of Article 95 EC as a legal basis, account is taken in that case-law of such clarification provided during the judicial proceedings of the statement of reasons for the act at issue (see, in particular, judgments in *British American Tobacco (Investments) and Imperial Tobacco*, C-491/01, EU:C:2002:741, paragraphs 68, 70 and 73; *United Kingdom* v *Parliament and Council*, C-217/04, EU:C:2006:279, paragraph 61, and *Germany* v *Parliament and Council*, C-380/03, EU:C:2006:772, paragraphs 46 and 47).

31 On the basis of the information resulting both from the statement of reasons for the basic regulation and from the clarification provided by the Commission, which the appellants have not contested before the Court, the General Court was able to find without erring in law, in paragraphs 36 to 40 and 50 of the judgment under appeal, that on the date on which the basic regulation was adopted there were differences between national provisions governing trade in seal products that were such as to impede the free movement of those products.

32 Accordingly, the General Court was correct in concluding, in paragraph 58 of the judgment under appeal, that those differences could justify the intervention of the EU legislature on the basis of Article 95 EC.

33 The first part of the first ground of appeal must therefore be rejected in its entirety.

Second part of the first ground of appeal

Arguments of the parties

34 The appellants contend that the General Court erred in law, in paragraph 56 of the judgment under appeal, in relying on the consideration that trade between the Member States concerning seal products and similar products is certainly not negligible. It may be doubted whether trade in seal

products and similar products between the Member States is not negligible. The appellants further submit that, according to the Court's case-law, the EU legislature may have recourse to Article 95 EC only if the trade in the products concerned is relatively sizeable, which is all the less so in the case of seal products.

35 The Commission and the European Parliament contend that the second part of the first ground of appeal is inadmissible and, in any event, unfounded.

Findings of the Court

– Admissibility

36 As the Commission and the Parliament have observed, the General Court's finding, in paragraph 56 of the judgment under appeal, relating to trade in seal products and similar products between the Member States not being negligible falls outside the jurisdiction of the Court of Justice in an appeal.

37 Under Article 256(1) TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, an appeal lies on points of law only. The General Court therefore has sole jurisdiction to establish and assess the relevant facts and to assess the evidence, save where such facts and evidence have been distorted (judgment in *Ryanair* v *Commission*, C-287/12 P, EU:C:2013:395, paragraph 78 and the case-law cited).

38 As the appellants do not plead any distortion, it follows that the second part of the first ground of appeal must be rejected as inadmissible in so far as it concerns the General Court's finding relating to the trade between Member States not being negligible.

– Substance

39 The wording of Article 95 EC does not reveal a requirement that the EU legislature may have recourse to that article only if the trade in the products concerned is relatively sizeable.

40 Furthermore, whilst in certain cases the Court has classified the trade on the markets concerned as relatively sizeable (see judgments in *Arnold André*, C-434/02, EU:C:2004:800, paragraph 39 and the case-law cited; *Swedish Match*, C-210/03, EU:C:2004:802, paragraph 38; and *Germany* v *Parliament and Council*, C-380/03, EU:C:2006:772, paragraph 53), it has not in any way established a legal criterion that measures taken on the basis of Article 95 EC are limited solely to markets for products in which trade is relatively sizeable.

41 In the present instance, the General Court stated, in paragraphs 39, 40 and 56 of the judgment under appeal, relying on considerations specific to the markets in seal products and other products that may be confused with those products, that the differences existing between the national rules relating to trade in seal products were such as to disturb the internal market in those products. Thus, the General Court could correctly conclude, in paragraph 58 of the judgment under appeal, without being required to establish whether the trade in the products concerned is relatively sizeable in order to justify recourse to Article 95 EC, that those differences enabled measures to be taken on the basis of that article.

42 Consequently, the second part of the first ground of appeal must be rejected as partly inadmissible and partly unfounded.

First part of the second ground of appeal

Arguments of the parties

43 The appellants complain that the General Court erred in law by stating, in paragraph 105 of the judgment under appeal, that it was appropriate to refer only to the provisions of the Charter of Fundamental Rights of the European Union ('the Charter') and not to those of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'). In the appellants' submission, it follows, in particular, from Article 6(3) TEU and Articles 52(3) and 53 of the Charter that due regard must be had to the rights guaranteed by the ECHR as general principles of law when applying the Treaties and that the provisions of the ECHR must prevail if they confer broader protection than those of the Charter.

44 The Commission, the Parliament and the Council oppose the appellants' arguments.

Findings of the Court

45 Whilst, as Article 6(3) TEU confirms, fundamental rights recognised by the ECHR constitute general principles of the European Union's law and whilst Article 52(3) of the Charter provides that the rights contained in the Charter which correspond to rights guaranteed by the ECHR are to have the same meaning and scope as those laid down by the ECHR, the latter does not constitute, as long as the European Union has not acceded to it, a legal instrument which has been formally incorporated into EU law (see, to this effect, judgments in *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 44; *Schindler Holding and Others* v *Commission*, C-501/11 P, EU:C:2013:522, paragraph 32; and *Telefónica and Telefónica de España* v *Commission*, C-295/12 P, EU:C:2014:2062, paragraph 41).

46 Thus, the General Court was correct in holding, in paragraph 105 of the judgment under appeal, that Articles 17, 7, 10 and 11 of the Charter secure in EU law the protection conferred by the provisions of the ECHR relied on by the appellants and that it is appropriate, in this instance, to base the examination of the validity of the basic regulation solely on the fundamental rights guaranteed by the Charter (see, to this effect, judgments in *Otis and Others*, C-199/11, EU:C:2012:684, paragraph 47, and *Ziegler* v *Commission*, C-439/11 P, EU:C:2013:513, paragraph 126 and the case-law cited).

47 In any event, in the first part of the second ground of appeal the appellants merely complain that the General Court referred only to the provisions of the Charter and not to those of the ECHR, without, however, specifying in what way the General Court actually committed an error of law vitiating its examination of the validity of the basic regulation in the light of fundamental rights that is capable of resulting in the judgment under appeal being set aside.

48 Consequently, the first part of the second ground of appeal must be rejected.

Second and third parts of the second ground of appeal

Arguments of the parties

49 By the second part of the second ground of appeal, the appellants contend that the General Court erred in law in holding that the right to property cannot be extended to protect mere commercial interests. The prohibition on marketing seal products in the European Union affects their right to exploit those products commercially. In that regard, the Court of Justice has already held that the prohibition of the marketing and placing on the EU market of food supplements is capable of restricting the freedom of manufacturers of those products to carry on their business activities. According to the case-law of the European Court of Human rights, in particular in the judgment in

Malik v. the United Kingdom (European Court of Human Rights, no. 23780/08, 3 March 2012) the economic interests connected with a business are 'possessions' within the meaning of Article 1 of Protocol No 1 to the ECHR and are therefore covered by the protection of the right to property.

50 By the third part of this ground of appeal, the appellants complain that the General Court held, in paragraph 112 of the judgment under appeal, that the UNDRIP does not have binding force and that it failed to examine whether the EU institutions obtained the appellants' prior consent in accordance with Article 19 of that declaration before the basic regulation was adopted. Although that declaration does not in itself have binding legal status, the European Union, in recital 14 in the preamble to the basic regulation, acknowledged the obligation to comply with the provisions of the UNDRIP in good faith. In accordance with the Court of Justice's case-law, the European Union cannot derogate from the rules it has laid down in applying that declaration (judgment in *NTN Toyo Bearing and Others* v *Council*, 113/77, EU:C:1979:91, paragraph 21). Furthermore, it is apparent from a resolution of the International Law Association published in 2012 that Article 19 of the UNDRIP lays down a rule of customary international law with which the European Union is required to comply in the exercise of its powers.

51 The Parliament contends that the third part of the second ground of appeal is inadmissible in its entirety on the ground that the appellants do not identify the General Court's error of law sufficiently precisely for the purposes of Article 169(2) of the Rules of Procedure of the Court of Justice. In particular, the appeal does not make it possible to determine whether the appellants criticise the examination or a lack of examination of the pleas put forward before the General Court or to determine the reasons why Article 19 of the UNDRIP should be accorded binding force. According to the Commission and the Parliament, the second and third parts of this ground of appeal are at least partially inadmissible, since the appellants did not plead before the General Court either any breach of the freedom to conduct a business or any breach of a rule of customary international law.

52 The Commission, the Parliament and the Council submit that the second and third parts of the second ground of appeal are, in any event, unfounded.

Findings of the Court

– Admissibility of the second and third parts of the second ground of appeal

53 So far as concerns the plea of inadmissibility put forward by the Parliament relating to the third part of the second ground of appeal in its entirety, it is apparent from the second subparagraph of Article 256(1) TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice and Articles 168(1)(d) and 169(2) of the Rules of Procedure that an appeal must identify precisely the contested points in the grounds of the judgment which the appellant seeks to have set aside and indicate precisely the legal arguments specifically advanced in support of the appeal, failing which the appeal or ground of appeal concerned is inadmissible (see, to this effect, judgments in *Schindler Holding and Others* v *Commission*, C-501/11 P, EU:C:2013:522, paragraph 43, and *Ezz and Others* v *Council*, C-220/14 P, EU:C:2015:147, paragraph 111 and the case-law cited).

54 In this instance, by the third part of the second ground of appeal, the appellants refer to a specific point in the judgment under appeal. According to the appellants, the error of law pleaded lies in the failure to have regard to the binding force of the requirement for consent referred to in Article 19 of the UNDRIP that results from both recital 14 in the preamble to the basic regulation and a rule of customary international law.

55 Accordingly, the Parliament's plea of inadmissibility relating to the third part of the second ground of appeal in its entirety must be dismissed.

56 So far as concerns the pleas of partial inadmissibility put forward by the Commission and the Parliament, it is apparent from the documents before the Court that the appellants did not plead before the General Court either any breach of the freedom to conduct a business laid down in Article 16 of the Charter or any breach of a rule of customary international law resulting from Article 19 of the UNDRIP.

57 According to settled case-law, to allow a party to put forward for the first time before the Court of Justice a plea in law which it has not raised before the General Court would in effect allow that party to bring before the Court of Justice, whose jurisdiction in appeal proceedings is limited, a wider case than that heard by the General Court (judgment in *Nexans and Nexans France* v *Commission*, C-37/13 P, EU:C:2014:2030, paragraph 45 and the case-law cited).

58 Therefore, the second part of the second ground of appeal must be rejected as inadmissible in so far as it relates to the freedom to conduct a business and its third part must be dismissed as inadmissible in so far as it relates to breach of a rule of customary international law.

– Substance of the second part of the second ground of appeal

59 The appellants contend, in essence, that the basic regulation infringes their right to property in that the prohibition on marketing seal products affects their right to exploit those products commercially in the European Union.

60 It should be pointed out that the protection of the right to property afforded by Article 17 of the Charter does not apply to mere commercial interests or opportunities, the uncertainties of which are part of the very essence of economic activity, but applies to rights with an asset value creating, under the legal system, an established legal position enabling the holder to exercise those rights autonomously and for his benefit (see judgment in *Sky Österreich*, C-283/11, EU:C:2013:28, paragraph 34 and the case-law cited).

61 Likewise, it is apparent from the case-law of the European Court of Human Rights relating to Article 1 of Protocol No 1 to the ECHR, which should be taken into consideration in accordance with Article 52(3) of the Charter, that future income cannot be considered to constitute 'possessions' that may enjoy the protection of that article unless it has already been earned, it is definitely payable or there are specific circumstances that can cause the person concerned to entertain a legitimate expectation of obtaining an asset (see, in particular, European Court of Human Rights, *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, §§ 64 and 65, ECHR 2007-I, and *Malik v. the United Kingdom*, § 93).

62 The appellants have pleaded before the EU judicature only the mere possibility of being able to market seal products in the European Union, and have not set out such circumstances.

63 Therefore, the second part of the second ground of appeal must be rejected as partly inadmissible and partly unfounded.

– Substance of the third part of the second ground of appeal

64 Since Article 19 of the UNDRIP does not, in itself, have binding legal force, as the appellants acknowledge, it need only be stated that recital 14 in the preamble to the basic regulation likewise does not confer binding effect on the obligation, referred to in that provision, to consult and cooperate in order to obtain the Inuit communities' consent.

65 According to that recital, in order not to affect adversely the fundamental economic and social interests of Inuit communities engaged in the hunting of seals as a means to ensure their subsistence, the placing on the market of seal products which result from hunts traditionally conducted by those communities and which contribute to their subsistence should be allowed.

66 As such authorisation is provided for in Article 3(1) of the basic regulation, it is apparent that, in referring to the recognition by the UNDRIP of that hunting as an integral part of the culture and identity of the members of the Inuit communities, recital 14 in the preamble to the basic regulation merely states the reason for that derogation from the prohibition pursuant to that regulation on placing seal products on the market.

67 On the other hand, it is not possible to infer from the wording of recital 14 in the preamble to the basic regulation a legally binding obligation to comply with Article 19 of the UNDRIP, a provision which indeed is not referred to by that recital.

68 Therefore, the third part of the second ground of appeal must be rejected as partly inadmissible and partly unfounded.

69 It follows from all the foregoing considerations that the appeal must be dismissed in its entirety as partly inadmissible and partly unfounded.

Costs

70 Under Article 184(2) of the Rules of Procedure, where the appeal is unfounded the Court is to make a decision as to the costs.

71 Under Article 138(1) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Where an intervener at first instance which has not himself brought the appeal participates in the proceedings before the Court, the Court may decide, under Article 184(4), that he is to bear his own costs. Pursuant to Article 140(1) of the Rules of Procedure, also applicable to appeal proceedings by virtue of Article 184(1) thereof, the Member States and institutions which have intervened in the proceedings are to bear their own costs.

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

73 The Parliament and the Council, as interveners before the General Court, are each to bear their own costs.

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

1. **Dismisses the appeal;**

2. **Orders Inuit Tapiriit Kanatami, Nattivak Hunters' and Trappers' Organisation, Pangnirtung Hunters' and Trappers' Organisation, Mr Jaypootie Moesesie, Mr Allen Kooneeliusie, Mr Toomasie Newkingnak, Mr David Kuptana, Mrs Karliin Aariak, Canadian Seal Marketing Group, Ta Ma Su Seal Products Inc., Fur Institute of Canada, NuTan Furs Inc., GC Rieber Skinn AS, Inuit Circumpolar Council Greenland (ICC-Greenland), Mr Johannes Egede, Kalaallit Nunaanni Aalisartut Piniartullu Kattuffiat (KNAPK), William E. Scott & Son, Association des chasseurs de phoques des Îles-de-la-Madeleine, Hatem Yavuz Deri Sanayi iç Ve Diş Ticaret Ltd Şirketi and Northeast Coast Sealers' Co-Operative Society Ltd to bear their own costs and to pay those incurred by the European Commission;**

3. Orders the European Parliament and the Council of the European Union to bear their own costs.

[Signatures]