



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

21 December 2016*

(Appeal — External relations — Agreement between the European Union and the Kingdom of Morocco concerning liberalisation measures on agricultural and fishery products — Decision approving the conclusion of an international agreement — Action for annulment — Admissibility — Locus standi — Territorial scope of the agreement — Interpretation of the agreement — Principle of self-determination — Principle of the relative effect of treaties)

In Case C-104/16 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 19 February 2016,

Council of the European Union, represented by H. Legal, A. de Elera-San Miguel Hurtado and A. Westerhof Löfflerová, acting as Agents,

appellant,

supported by:

Kingdom of Belgium, represented by C. Pochet and J.-C. Halleux, acting as Agents,

Federal Republic of Germany, represented by T. Henze, acting as Agent,

Kingdom of Spain, represented by M. Sampol Pucurull and S. Centeno Huerta, acting as Agents,

French Republic, represented by F. Alabrune, G. de Bergues, D. Colas, F. Fize and B. Fodda, acting as Agents,

Portuguese Republic, represented by L. Inez Fernandes and M. Figueiredo, acting as Agents,

Confédération marocaine de l'agriculture et du développement rural (Comader), represented by J.-F. Bellis, M. Struys, A. Bailleux, L. Eskenazi and R. Hicheri, avocats,

interveners in the appeal,

the other parties to the proceedings being:

Front populaire pour la libération de la saguia-el-hamra et du rio de oro (Front Polisario), represented by G. Devers, avocat,

applicant at first instance,

* * Language of the case: French.

European Commission, represented by F. Castillo de la Torre, E. Paasivirta and B. Eggers, acting as Agents,

intervener at first instance,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, M. Ilešič and J.L. da Cruz Vilaça, Presidents of Chambers, J. Malenovský (Rapporteur), E. Levits, J.-C. Bonichot, A. Arabadjiev, C. Toader, C.G. Fernlund, C. Vajda, S. Rodin, F. Biltgen and K. Jürimäe, Judges,

Advocate General: M. Wathelet,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 19 July 2016,

after hearing the Opinion of the Advocate General at the sitting on 13 September 2016,

gives the following

Judgment

- 1 By its appeal the Council of the European Union is seeking to have set aside the judgment of the General Court of the European Union of 10 December 2015, *Front Polisario v Council* (T-512/12, ‘the judgment under appeal’, EU:T:2015:953), by which the General Court upheld the action brought by the Front populaire pour la libération de la sagaia-el-hamra et du rio de oro (Front Polisario) for the partial annulment of Council Decision 2012/497/EU of 8 March 2012 on the conclusion of an Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco concerning reciprocal liberalisation measures on agricultural products, processed agricultural products, fish and fishery products, the replacement of Protocols 1, 2 and 3 and their Annexes and amendments to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part (OJ 2012 L 241, p. 2) (‘the decision at issue’).

Legal context

International law

The Charter of the United Nations

- 2 Article 1 of the Charter of the United Nations, signed at San Francisco on 26 June 1945, states:

‘The Purposes of the United Nations are:

...

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

...'

- 3 Chapter XI of the Charter of the United Nations, entitled 'Declaration Regarding Non-Self-Governing Territories', includes Article 73 thereof, which states:

'Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognise the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories ...

...'

The Vienna Convention on the Law of Treaties

- 4 Under the final paragraph of the preamble to the Vienna Convention on the Law of Treaties, concluded in Vienna on 23 May 1969 (*United Nations Treaty Series*, Vol. 1155, p. 331; 'the Vienna Convention'), the parties to that convention 'affirm that the rules of customary international law will continue to govern questions not regulated by the provisions of [that] convention'.

- 5 Article 3 of the Vienna Convention, which is entitled 'International agreements not within the scope of the present Convention', provides:

'The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect:

...

(b) the application to [such agreements] of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;

...'

- 6 According to Article 26 of that convention, entitled '*Pacta sunt servanda*':

'Every treaty in force is binding upon the parties to it and must be performed by them in good faith.'

- 7 Article 29 of the Convention, entitled 'Territorial scope of treaties', provides:

'Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.'

- 8 Article 30 of the Vienna Convention, entitled 'Application of successive treaties to the same subject-matter', provides in paragraph 2 thereof:

'When a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.'

- 9 Under Article 31 of the Vienna Convention, entitled 'General rule of interpretation':

'1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.'

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

- (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
- (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

- (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
- (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
- (c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.'

10 Article 34 of the Vienna Convention, entitled 'General rule regarding third States', provides:

'A treaty does not create either obligations or rights for a third State without its consent.'

EU law

The Association Agreement

11 The Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, was signed in Brussels on 26 February 1996 (OJ 2000 L 70, p. 2; 'the Association Agreement') and approved on behalf of the Communities by Council and Commission Decision 2000/204/EC, ECSC of 24 January 2000 (OJ 2000 L 70, p. 1). Pursuant to Article 96 of the Agreement, it entered into force on 1 March 2000, as is apparent from the information published in the *Official Journal of the European Communities* (OJ 2000 L 70, p. 228).

12 Article 1(1) of the Association Agreement provides:

'An association is hereby established between the Community and its Member States, of the one part, and Morocco, of the other part.'

13 Title II of that agreement, entitled 'Free Movement of Goods', includes Articles 6 to 30 thereof.

14 Article 16 of the Association Agreement provides:

'The Community and Morocco shall gradually implement greater liberalisation of their reciprocal trade in agricultural and fishery products.'

15 Article 17(1) of that agreement provided in its initial version:

'Agricultural and fishery products originating in Morocco shall benefit on import into the Community from the provisions set out in Protocols 1 and 2 respectively.'

- 16 Title VIII of the Association Agreement, entitled 'Institutional, General and Final Provisions', includes in particular Article 94 thereof, which states:

'This Agreement shall apply, on the one hand, to the territories in which the Treaties establishing the European Community and the European Coal And Steel Community are applied and under the conditions laid down in those Treaties and, on the other hand, to the territory of the Kingdom of Morocco.'

The Liberalisation Agreement

- 17 The Agreement in the form of an Exchange of Letters between the European Union and the Kingdom of Morocco concerning reciprocal liberalisation measures on agricultural products, processed agricultural products, fish and fishery products, the replacement of Protocols No 1, 2 and 3 and their Annexes and amendments to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the Kingdom of Morocco, of the other part, was signed in Brussels on 13 December 2010 (OJ 2012 L 241, p. 4, 'the Liberalisation Agreement'), before being approved on behalf of the European Union by the decision at issue. In accordance with the terms thereof, it entered into force on 1 October 2012, as is apparent from the notice published in the *Official Journal of the European Union* (OJ 2012 L 255, p. 1).

- 18 As is apparent from the Liberalisation Agreement and recitals 1 to 3 of the decision at issue, the purpose of that agreement is to implement the progressive liberalisation of trade in agricultural and fishery products provided for in Article 16 of the Association Agreement, by way of the amendment of some of the stipulations of the Association Agreement as well as of some of the accompanying protocols.

- 19 To that end, the Liberalisation Agreement in particular amended Article 17(1) of the Association Agreement, which now provides that:

'Agricultural products, processed agricultural products, fish and fishery products originating in Morocco listed in Protocol No 1 shall be subject to the arrangements set out in that Protocol on importation into the European Union.

...'

- 20 The Liberalisation Agreement also amended Protocol No 1 of the Association Agreement, which now provides, in essence, that *ad valorem* and specific customs duties applicable to agricultural products, processed agricultural products, fish and fishery products originating in Morocco and covered by those two agreements are eliminated or reduced to specified levels.

Background to the dispute

- 21 According to Article 1 of its constituting document, the Front Polisario is 'a national liberation movement, the fruit of the long resistance of the Sahrawi people against the various forms of foreign occupation', created on 10 May 1973.

- 22 The historical and international context in which it was created and subsequent developments in the situation in Western Sahara, as they emerge in essence from paragraphs 1 to 16 of the judgment under appeal, may be summarised as follows.

- 23 Western Sahara is a territory in north-west Africa which was colonised by the Kingdom of Spain at the end of the 19th century before becoming a province of Spain; it was then added by the United Nations (UN) to the list of non-self-governing territories for the purposes of Article 73 of the United Nations Charter, on which it still appears to this day.
- 24 On 14 December 1960, the General Assembly of the UN adopted Resolution 1514 (XV), entitled ‘Declaration on the granting of independence to colonial countries and peoples’ (‘Resolution 1514 (XV) of the General Assembly of the UN’), which states, inter alia, that ‘all peoples have the right to self-determination[,] by virtue of [which] they freely determine their political status’, that ‘immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire’, and that ‘all States shall observe faithfully and strictly the provisions of the Charter of the United Nations ... on the basis of respect for the sovereign rights of all peoples and their territorial integrity’.
- 25 On 20 December 1966, the General Assembly of the UN adopted Resolution 2229 (XXI) on the question of Ifni and Spanish Sahara, in which it ‘reaffirm[ed] the inalienable right of the peopl[e] ... of Spanish Sahara to self-determination’ and invited the Kingdom of Spain, in its capacity as administering Power, to determine at the earliest possible date, ‘the procedures for the holding of a referendum under [UN] auspices with a view to enabling the indigenous population of the Territory to exercise freely its right to self-determination’.
- 26 On 24 October 1970, the General Assembly of the UN adopted Resolution 2625 (XXV), entitled ‘Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations’, by which it approved that declaration, the wording of which is appended to that resolution. That declaration states in particular that ‘every State has the duty to promote [the right to self-determination of peoples] in accordance with the provisions of the Charter’ and that ‘the territory of a colony or other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right of self-determination in accordance with the Charter, and particularly its purposes and principles’.
- 27 On 20 August 1974, the Kingdom of Spain informed the UN that it proposed to organise a referendum in Western Sahara under the auspices of the UN.
- 28 On 16 October 1975, the International Court of Justice, in its capacity as the principal legal body of the UN, and following an application submitted by the General Assembly of the UN as part of its work on the decolonisation of the Western Sahara, handed down an Advisory Opinion (Western Sahara, Advisory Opinion, ICJ Reports 1975, p. 12; ‘the Advisory Opinion on Western Sahara’), in paragraph 162 of which it found as follows:

‘The materials and information presented to the Court show the existence, at the time of Spanish colonisation, of legal ties of allegiance between the Sultan of Morocco and some of the tribes living in the territory of Western Sahara. They equally show the existence of rights, including some rights relating to the land, which constituted legal ties between the Mauritanian entity, as understood by the Court, and the territory of Western Sahara. On the other hand, the Court’s conclusion is that the materials and information presented to it do not establish any tie of territorial sovereignty between the territory of Western Sahara and the Kingdom of Morocco or the Mauritanian entity. Thus the Court has not found legal ties of such a nature as might affect the application of resolution 1514 (XV) [of the UN General Assembly] in the decolonisation of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory. ...’

29 At the conclusion of its assessment, the International Court of Justice answered as follows, in that advisory opinion, the questions which had been put to it by the General Assembly of the UN:

‘The Court decides,

...

that Western Sahara (Rio de Oro and Sakiet El Hamra) at the time of colonisation by Spain was not a territory belonging to no-one (*terra nullius*).

...

that there were legal ties between this territory and the Kingdom of Morocco of the kinds indicated in paragraph 162 of this Opinion;

...’

- 30 In a speech delivered on the day of the publication of the Advisory Opinion, the King of Morocco took the view that ‘the whole world [had] recognised that [Western] Sahara belonged’ to the Kingdom of Morocco and that it only remained for the Kingdom ‘to peacefully occupy that territory’; he called, to that end, for the organisation of a march, in which 350 000 persons took part.
- 31 On 6 November 1975, the UN Security Council adopted Resolution 380 (1975) on the Western Sahara, in which it ‘deplor[ed] the holding of the [announced] march’ and ‘call[ed] upon [the Kingdom of] Morocco immediately to withdraw from the territory of Western Sahara all the participants in [that] march’.
- 32 On 26 February 1976, the Kingdom of Spain informed the UN Secretary-General that as of that date it was withdrawing its presence from Western Sahara and considered itself exempt from any responsibility of any international nature in connection with the administration of that territory.
- 33 In the meantime, an armed conflict had begun in the region between the Kingdom of Morocco, the Islamic Republic of Mauritania and the Front Polisario.
- 34 On 10 August 1979, the Islamic Republic of Mauritania concluded a peace agreement with the Front Polisario under which it renounced any territorial claim to Western Sahara.
- 35 On 21 November 1979, the General Assembly of the UN adopted Resolution 34/37 on the question of Western Sahara, in which it ‘reaffirm[ed] the inalienable right of all peoples of the people of Western Sahara to self-determination and independence, in accordance with the Charter of the [UN] ... and the objectives of [its] resolution 1514 (XV)’, ‘deeply deplore[d] the aggravation of the situation resulting from the continued occupation of Western Sahara by Morocco’, ‘urge[d] Morocco to join in the peace process and to terminate the occupation of the Territory of Western Sahara’ and ‘recommend[ed] to that end that the [Front Polisario], the representative of the people of Western Sahara, should participate fully in any search for a just, lasting and definitive political solution of the question of Western Sahara, in accordance with the resolutions and declarations of the [UN]’.
- 36 The conflict between the Kingdom of Morocco and the Front Polisario continued until, on 30 August 1988, the parties accepted, in principle, the proposals for settlement put forward, in particular, by the UN Secretary-General and providing, in particular, for the proclamation of a ceasefire and the organisation of a referendum on self-determination under UN supervision.

37 To the present day, that referendum has still not been held and the Kingdom of Morocco controls the majority of the territory of Western Sahara, which a wall of sand constructed and guarded by the Moroccan army separates from the rest of the territory, controlled by the Front Polisario.

The procedure before the General Court and the judgment under appeal

38 By application lodged at the Registry of the General Court on 19 November 2012, the Front Polisario brought an action for annulment of the decision at issue.

39 In support of its action, the Front Polisario relied on 11 pleas in law.

40 In defence, the Council contended that the action should be dismissed as inadmissible or, in the alternative, as unfounded, and that the Front Polisario should be ordered to pay the costs.

41 By order of the President of the Eighth Chamber of the General Court of 6 November 2013, the European Commission was granted leave to intervene in support of the form of order sought by the Council.

42 In the judgment under appeal, the General Court examined, first, the arguments put forward by the Council and the Commission claiming that the action was inadmissible on the ground that, on the one hand, the Front Polisario had not proved the existence of its legal personality or its capacity to institute proceedings and, on the other, that the decision at issue was of neither direct nor individual concern to it. The General Court rejected those two pleas of inadmissibility in paragraphs 34 to 60 and 61 to 114 of the judgment under appeal respectively.

43 As regards the standing of the Front Polisario, the General Court noted, in paragraphs 73 to 103 of the judgment under appeal, that the purpose of the decision at issue was to approve the conclusion of the Liberalisation Agreement, before holding that that agreement ‘also appl[ied]’ to Western Sahara. Then, by ‘taking account of that finding’, as stated in paragraph 104 of that judgment, it held, in paragraphs 105 to 110 and 111 to 114 respectively of that judgment, that the Front Polisario was to be regarded as being concerned both directly and individually by that decision.

44 Secondly, the General Court commenced its assessment of the 11 pleas for annulment relied on by the Front Polisario in support of its heads of claim by setting out the following, in paragraphs 116 and 117 of the judgment under appeal:

‘116 As a preliminary point, it is clear from the arguments put forward by the Front Polisario in support of all of its pleas that its action seeks the annulment of the decision [at issue] in so far as it approves the application to Western Sahara of the agreement to which it refers. As appears from the finding set out above, concerning the fact that the Front Polisario is directly and individually concerned by the decision [at issue], it is precisely [because of] the fact that that agreement also applies to Western Sahara that the Front Polisario is directly and individually concerned by the decision [at issue].

117 It must also be stated that the Front Polisario relies on several pleas, among which the first two concern the external legality of the decision [at issue], while the others concern its internal legality. In substance the applicant relies on the unlawfulness of the decision [at issue] on the ground that it infringes European Union and international law. In reality, all the pleas in law in the application concern the question as to whether there is an absolute prohibition against concluding an international agreement on behalf of the European Union which may be applied to a territory in fact controlled by a non-member State, without the sovereignty of that State over

that territory being recognised by the European Union and its Member States or, more generally, by all other States (“the disputed territory”) and, where relevant, the existence of discretion of the EU institutions in that regard, the limits of that discretion and the conditions for its exercise.’

- 45 The General Court then examined and rejected each of those pleas, noting in particular that none of them made it possible to establish the existence of an absolute prohibition for the European Union to conclude an agreement with a third State capable of being applied to a ‘disputed territory’.
- 46 In that context, however, the General Court reserved a number of arguments relating, in its view, to the subsidiary question of the conditions under which the institutions of the European Union may approve the conclusion of such an agreement.
- 47 Lastly, the General Court examined that question in paragraphs 223 to 247 of the judgment under appeal. In that regard, it held, in essence, that, whilst enjoying a wide discretion in connection with the conduct of the European Union’s external relations, the Council had an obligation, where it intended to approve an agreement which was applicable to a ‘disputed territory’ such as Western Sahara and sought to facilitate the export to the European Union of products originating in that territory, to examine in advance all the relevant facts of the individual case, and in particular to ensure that the production of those products was not carried out in a manner detrimental to the population of that territory and did not entail infringements of fundamental rights of the persons concerned. The General Court also held that in the present case the Council had failed to fulfil that obligation.
- 48 On the basis of those considerations, the General Court held in paragraph 247 of the judgment under appeal that ‘the Council [had] failed to fulfil its obligation to examine all the elements of the case before the adoption of the decision [at issue]’ and, accordingly, that the decision should be annulled ‘in so far as it approves the application of the [Liberalisation Agreement] to Western Sahara’.

Procedure before the Court and forms of order sought

- 49 By separate document submitted at the Court Registry at the time when its appeal was lodged, the Council requested that the case be dealt with under the expedited procedure provided for in Articles 133 to 136 of the Rules of Procedure of the Court of Justice.
- 50 By order of 7 April 2016, the Court granted that application.
- 51 By decisions of 2, 13, 18 and 24 May 2016, the President of the Court respectively granted the Kingdom of Spain, the Portuguese Republic, the French Republic, the Federal Republic of Germany and the Kingdom of Belgium leave to intervene in the dispute in support of the form of order sought by the Council. However, the Federal Republic of Germany did not subsequently take part in any phase of the present proceedings, while the Kingdom of Belgium did not take part in the oral phase of the proceedings.
- 52 By order of 9 June 2016, the President of the Court of Justice granted the Moroccan Confederation for Agriculture and Rural Development (Comader) leave to intervene in the dispute in support of the form of order sought by the Council.
- 53 The Council claims that the Court should:
- set aside the judgment under appeal;
 - give final judgment in the dispute by dismissing the action; and

— order the Front Polisario to pay the costs incurred by the Council both at first instance and on appeal.

54 The Front Polisario contends that the Court should:

- primarily, dismiss the appeal as inadmissible;
- in the alternative, dismiss the appeal as unfounded;
- in the further alternative, should the Court grant the form of order sought by the Council and set aside the judgment under appeal, give final judgment in the dispute by annulling the decision at issue on the basis of the pleas in law rejected at first instance; and
- order the Council to pay the costs incurred by the Front Polisario both at first instance and on appeal.

55 The Commission contends that the Court should grant the appeal.

56 The Kingdom of Belgium, the Kingdom of Spain, the French Republic, the Portuguese Republic and Comader also contend that the Court should grant the appeal.

The requests to have the oral procedure reopened

57 In accordance with Article 82(2) of the Rules of Procedure, the oral part of the procedure was closed following the delivery of the Opinion of the Advocate General on 13 September 2016.

58 By a document lodged at the Registry of the Court of Justice on 15 September 2016, the Council indicated to the Court that that Opinion, in its view, addressed a question of law which had not been raised in its appeal or raised by any other party, namely that of the application of the Liberalisation Agreement to Western Sahara. It also proposed that the Court order the reopening of the oral phase of the procedure in the event that the case should be decided on the basis of that question.

59 By a document lodged at the Court Registry on 22 September 2016, Comader applied to have the oral phase of the procedure reopened on grounds analogous to those invoked by the Council.

60 In that regard, it follows from the second paragraph of Article 252 TFEU that it is the duty of the Advocate General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which require his involvement. The Court is not bound either by the Advocate General's Opinion or by the reasoning on which it is based (see judgments of 18 July 2013, *Commission and Others v Kadi*, C-584/10 P, C-593/10 P and C-595/10 P, EU:C:2013:518, paragraph 57, and of 6 October 2015, *Commission v Andersen*, C-303/13 P, EU:C:2015:647, paragraph 33).

61 Consequently, a party's disagreement with the Opinion of the Advocate General, irrespective of the questions examined in that Opinion, cannot in itself constitute grounds justifying the reopening of the oral procedure (see judgments of 22 November 2012, *E.ON Energie v Commission*, C-89/11 P, EU:C:2012:738, paragraph 62, and of 17 September 2015, *Mory and Others v Commission*, C-33/14 P, EU:C:2015:609, paragraph 26).

62 That said, Article 83 of the Rules of Procedure allows the Court at any time, after hearing the Advocate General, to order the reopening of the oral part of the procedure, in particular where the case is to be decided on the basis of an argument which has not been debated between the parties.

63 In the present case, however, it should be noted that the legal arguments to which the Council and Comader refer were raised by the Commission in its defence, in support of the ground of appeal in which the Council and the Commission challenge the General Court's assessment of the Front Polisario's standing.

64 Moreover, those legal arguments were raised at the hearing and extensively debated by all parties.

65 In those circumstances, the Court, after hearing the Advocate General, considers that there is no need to order that the oral part of the procedure be reopened.

The appeal

Admissibility

Arguments of the parties

66 The Front Polisario submits that the appeal is inadmissible on the ground that the European Union lacks the required competence to conclude an international agreement that is legally applicable to Western Sahara and that a challenge to the judgment under appeal, which merely annuls the decision at issue 'in so far as it approves the application of the [Liberalisation Agreement] to Western Sahara', is therefore of no interest to the Council.

67 The Council and the Commission dispute the merits of that plea of inadmissibility by stating, principally, that an institution of the European Union such as the Council may lodge an appeal without having to demonstrate an interest in bringing proceedings. In the alternative, they maintain that that requirement is in any event fulfilled in the present case since the Council has an interest in having the judgment under appeal set aside in so far as that judgment constitutes a partial annulment by the General Court of the decision at issue.

Findings of the Court

68 Under the second paragraph of Article 56 of the Statute of the Court of Justice of the European Union, an appeal may be brought before the Court by any party which has been unsuccessful, in whole or in part, in its submissions before the General Court.

69 Moreover, it is apparent from the third paragraph of Article 56 of that statute that, in order to bring an appeal against a judgment of the General Court, in a case not relating to a dispute between the European Union and its servants, Member States and EU institutions do not have to show any interest (see judgments of 22 February 2005, *Commission v max.mobil*, C-141/02 P, EU:C:2005:98, paragraph 48, and of 21 December 2011, *France v People's Mojahedin Organization of Iran*, C-27/09 P, EU:C:2011:853, paragraph 45).

70 In the present case, it follows that the Council, which was unsuccessful in its submissions before the General Court, does not have to show any interest in order to be able to bring the present appeal.

71 Accordingly, the plea of inadmissibility raised by the Front Polisario in respect of that appeal must be rejected.

Substance

- 72 In support of its appeal, the Council, supported by the Commission, relies on six grounds, the first and second of which allege an error of law on the part of the General Court in the analysis of the Front Polisario's capacity to institute proceedings and of its standing. The third ground of appeal alleges that the General Court misconstrued the extent to which it was able judicially to review the Council's discretion in the field of the European Union's external economic relations and the conditions under which it could exercise that discretion. The fourth ground of appeal alleges infringement of the principle *ne ultra petita*. The fifth ground of appeal relates to the misinterpretation and incorrect application of the Charter of Fundamental Rights of the European Union and of certain rules of international law. Finally, the sixth ground of appeal relates to the breach of the requirements applicable to the partial annulment of an act of the European Union.
- 73 It is necessary to examine, at the outset, the second ground of appeal, which calls into question the General Court's analysis of the Front Polisario's standing, and more particularly, within that ground of appeal, the Council and Commission's arguments relating to the reasoning that the General Court devoted, in paragraphs 73 to 103 of the judgment under appeal, to the preliminary question of whether or not the Liberalisation Agreement applied to Western Sahara.

The judgment under appeal

- 74 In that regard, the General Court first stated, in essence, in paragraphs 72 and 73 of the judgment under appeal that, in view of the arguments put forward by the Front Polisario in order to establish its standing, the assessment of that standing required a preliminary determination of whether or not the Liberalisation Agreement applied to Western Sahara.
- 75 Next, the General Court held, in paragraphs 74 to 88 of the judgment under appeal, that that question itself entailed, in the light of the arguments of the Council, the Commission and the Front Polisario in that regard, an interpretation of that agreement. It also held, in paragraphs 89 to 94 and 98 of the judgment under appeal, that such an interpretation had to be carried out in accordance with the rules of general international customary law recalled in Article 31 of the Vienna Convention. By contrast, the General Court essentially held, in paragraphs 95 to 98 of the judgment under appeal, that the general international law principle of the relative effect of treaties, of which Article 34 of the Vienna Convention is a particular expression, was not relevant for the purposes of the interpretation of the Liberalisation Agreement, having regard to the particular circumstances of the action before it, in contrast to what the Court had held in the judgment of 25 February 2010 in *Brita* (C-386/08, EU:C:2010:91).
- 76 Finally, in paragraphs 99 to 102 of the judgment under appeal, the General Court interpreted the territorial scope of the Liberalisation Agreement as follows:
- '99 In accordance with [A]rticle [31 of the Vienna Convention], account must be taken in particular of the context in which an international treaty appears, such as the [Liberalisation Agreement]. All the factors mentioned in paragraphs 77 to 87 above are part of that context and show that the EU institutions were aware that the Moroccan authorities also applied the provisions of the Association Agreement with Morocco to the part of Western Sahara it controlled and did not oppose that application. To the contrary, the Commission cooperated to a certain extent with the Moroccan authorities with a view to that application and recognised the results of its application, by including undertakings established in Western Sahara among those included on the list mentioned in paragraph 74 above.

100 It must also be recalled that there is a divergence between the respective views of the European Union and the Kingdom of Morocco as to the international status of Western Sahara. If the European Union's view is adequately and correctly summarised by the Council and the Commission (see paragraphs 74 and 75 above), it is common ground that the Kingdom of Morocco has a totally different view. In its opinion, Western Sahara is an integral part of its territory.

101 Thus, in Article 94 of the Association Agreement ..., the reference to the territory of the Kingdom of Morocco may have been understood by the Moroccan authorities as including Western Sahara or, at least, the larger part controlled by it. Although, as stated, the EU institutions were aware that the Kingdom of Morocco took that view, the Association Agreement ... does not include any interpretation clause and no other provision which would have the result of excluding the territory of Western Sahara from its scope.

102 Account should also be taken of the fact that the [Liberalisation Agreement] was concluded 12 years after the approval of the Association Agreement ... and although the latter agreement had been implemented for the whole of that period. If the EU institutions wished to oppose the application to Western Sahara of the Association Agreement, as amended by the decision [at issue], they could have insisted on including a clause excluding such application into the text of the [Liberalisation Agreement]. Their failure to do so shows that they accept, at least implicitly, the interpretation of the Association Agreement ... and the [Liberalisation Agreement], according to which those agreements also apply to the part of Western Sahara controlled by the Kingdom of Morocco.'

77 In the light of that interpretation, the General Court held, in paragraph 103 of the judgment under appeal, that the Liberalisation Agreement, when placed in context, should be interpreted as meaning that it 'also appl[ied] to Western Sahara'.

Arguments of the parties

78 The Council criticises the General Court for having assumed, in paragraph 73 of the judgment under appeal, that, if the Liberalisation Agreement applied to Western Sahara, the Front Polisario may automatically be directly and individually concerned by the decision at issue. Such a presumption, the Council submits, is erroneous in law. As the General Court itself previously held in the order of 3 July 2007, *Commune de Champagne and Others v Council and Commission* (T-212/02, EU:T:2007:194, paragraphs 90 to 94), a Council decision relating to the conclusion of an international agreement between the European Union and a third State has no legal effect in the territory of the other party to that agreement. Thus, the situation of such a territory is governed solely by the provisions adopted by that other party in the exercise of its sovereign powers. Moreover, the sole cause of the effects which that agreement produces on that territory is the fact that, in deciding to ratify that agreement, that other party has agreed to be bound by it and has undertaken to take the steps necessary to ensure the fulfilment of the obligations arising from it. Accordingly, allowing that an action for annulment of the Council decision on the conclusion of an international agreement is admissible in so far as that action concerns the effects of the international agreement on the territory of the other party would lead the Court of the European Union to exceed its jurisdiction by ruling on the legality, under EU law, of the rights or obligations resulting, for a third State, from an agreement to which the latter has subscribed freely and at its absolute discretion. That, the Council submits, is precisely what the General Court did in the present case, by making the application of the Liberalisation Agreement to Western Sahara a prerequisite for the Front Polisario's standing. Finally, the Council notes that the fact that Western Sahara is a 'disputed territory' in international law has no bearing on the reasoning of the General Court in that order, to which it subscribes in its entirety.

- 79 The Commission submits that the fact, referred to in, *inter alia*, paragraph 87 of the judgment under appeal, that the Liberalisation Agreement is applied '*de facto*', in certain cases, to Western Sahara cannot be regarded either as a contextual element or as a subsequent practice within the meaning of Article 31(2) and (3)(b) of the Vienna Convention, justifying the interpretation of Article 94 of the Association Agreement as meaning that those two agreements apply to that non-self-governing territory. Moreover, although no clause expressly excluding Western Sahara from their scope had been inserted into that agreement, in view of the disagreement between the European Union and the Kingdom of Morocco as to the status of that non-self-governing territory, referred to by the General Court in paragraph 100 of the judgment under appeal, that fact does not justify the view that those agreements apply to that territory, taking account of Article 31(3)(c) of the Vienna Convention, of the principle of the relative effect of treaties codified in Article 34 of that convention and recalled by the Court in the judgment of 25 February 2010, *Brita* (C-386/08, EU:C:2010:91), of the right to self-determination of the people of Western Sahara, repeatedly recalled by the European Union in its positions on the subject, as well as of the relevant international practice in respect of the territorial application of treaties.
- 80 In response, the Front Polisario notes that the General Court examined the question of the application of the Liberalisation Agreement to Western Sahara, not with the aim of deriving from it any presumption regarding the admissibility of the action, but in order to ascertain the factual and legal context in which its standing to bring proceedings should be addressed. The Council and the Commission argued at length that that agreement was not applicable to that territory, before acknowledging, in reply to the written questions put by the General Court and subsequently at the hearing before the General Court, that the tariff preferences contained in it were in fact applied in certain cases to the products originating in that territory. That element fundamentally distinguishes that agreement from the two comparable agreements concluded by the Kingdom of Morocco with the United States of America and the European Free Trade Association (EFTA).

Findings of the Court

- 81 As is apparent from paragraphs 73, 88 and 98 to 102 of the judgment under appeal, the conclusion of the General Court in paragraph 103 of that judgment that the Liberalisation Agreement 'also applies to the territory of Western Sahara' is based, not on a finding of fact, but on a legal interpretation of that agreement made by the General Court on the basis of Article 31 of the Vienna Convention.
- 82 The positions of the Council and the Commission before the Court on that point ultimately converge, in so far as the General Court's conclusion lies at the very heart of the respective arguments of those two institutions. The Commission argues that the Liberalisation Agreement could not be interpreted as meaning that it was legally applicable to the territory of Western Sahara. The Council, for its part, submits that the General Court erred in law in ruling on the lawfulness of the rights or obligations resulting, for the other party, from that agreement to which it subscribed freely and at its absolute discretion. The analysis of that alleged error of law entails, in any event, a preliminary examination of the merits of the conclusion reached by the General Court, in paragraph 103 of the judgment under appeal, as to the application of the Liberalisation Agreement to the territory of Western Sahara. Failing that, any rights and obligations of the other party to that agreement in respect of that territory are not likely to have been affected.
- 83 It is therefore necessary to verify the merits of the reasoning by which the General Court, after describing in paragraphs 99 and 100 of the judgment under appeal the context in which the Liberalisation Agreement had been concluded, successively determined the scope of that agreement in the light of the terms of the Association Agreement in paragraph 101 of that judgment, and then examined the Liberalisation Agreement itself in paragraph 102 of that judgment, before reaching the conclusion expressed in paragraph 103 thereof.

- 84 In that respect, as regards, first, paragraph 101 of the judgment under appeal, it must be held that the General Court interpreted the territorial scope of the Liberalisation Agreement in the light of Article 94 of the Association Agreement, under which that agreement applies ‘to the territory of the Kingdom of Morocco’. More specifically, the General Court stated that the reference to the territory of the Kingdom of Morocco may have been understood by the Moroccan authorities as including Western Sahara and that, although the Council and the Commission were aware of that position, the Association Agreement did not include any interpretation clause or any other provision which would have the consequence of excluding that territory from its scope.
- 85 In so doing, the General Court took the view that, having regard, first, to the position of the Kingdom of Morocco that Western Sahara was an integral part of its territory, secondly, to the fact that the Council and the Commission were aware of that position at the time of the conclusion of the Association Agreement, and thirdly, to the absence of any stipulation excluding Western Sahara from the territorial scope of that agreement, the parties to the Association Agreement had to be regarded as having tacitly agreed to interpret the words ‘territory of the Kingdom of Morocco’ in Article 94 thereof as meaning that that article also included the territory of Western Sahara.
- 86 It must be pointed out that, in order to be able to draw correct legal conclusions from the absence of a stipulation excluding Western Sahara from the territorial scope of the Association Agreement, in interpreting that agreement, the General Court was bound not only to observe the rules of good faith interpretation laid down in Article 31(1) of the Vienna Convention but also that laid down in Article 31(3)(c) of that convention, pursuant to which the interpretation of a treaty must be carried out by taking account of any relevant rules of international law applicable in the relations between the parties (judgment of 25 February 2010, *Brita*, C-386/08, EU:C:2010:91, paragraph 43; see also, to that effect, judgment of 3 September 2008, *Kadi and Al Barakaat International Foundation v Council and Commission*, C-402/05 P and C-415/05 P, EU:C:2008:461, paragraph 291 and the case-law cited).
- 87 Although the scope of the various relevant rules of international law applicable in the present case — namely the principle of self-determination, the rule codified in Article 29 of the Vienna Convention and the principle of the relative effect of treaties — overlap in part, each of those rules has its autonomy, with the result that it is necessary to examine them all in succession.
- 88 In that regard, it should be noted, first of all, that the customary principle of self-determination referred to in particular in Article 1 of the Charter of the United Nations is, as the International Court of Justice stated in paragraphs 54 to 56 of its Advisory Opinion on Western Sahara, a principle of international law applicable to all non-self-governing territories and to all peoples who have not yet achieved independence. It is, moreover, a legally enforceable right *erga omnes* and one of the essential principles of international law (East Timor, (*Portugal v Australia*), judgment, *ICJ Reports 1995*, p. 90, paragraph 29 and the case-law cited).
- 89 As such, that principle forms part of the rules of international law applicable to relations between the European Union and the Kingdom of Morocco, which the General Court was obliged to take into account.
- 90 In accordance with that principle, as specified by United Nations General Assembly Resolution 2625 (XXV), referred to in paragraph 26 of the present judgment, ‘the territory of a colony or other Non-Self-Governing Territory has, under the [UN] Charter, a ... separate and distinct [status]’.
- 91 In particular, the UN General Assembly, in its various resolutions on Western Sahara, repeatedly expressed its concern in respect of ‘enabling the indigenous population of the Territory to exercise freely its right to self-determination’, as the International Court of Justice noted in paragraphs 62, 64 and 68 of its Advisory Opinion on Western Sahara.

- 92 In view of the separate and distinct status accorded to the territory of Western Sahara by virtue of the principle of self-determination, in relation to that of any State, including the Kingdom of Morocco, the words ‘territory of the Kingdom of Morocco’ set out in Article 94 of the Association Agreement cannot, as the Commission maintains and as the Advocate General essentially pointed out in points 71 and 75 of his Opinion, be interpreted in such a way that Western Sahara is included within the territorial scope of that agreement.
- 93 In the present case, although the General Court found, in paragraph 3 of the judgment under appeal, that Western Sahara had been included since 1963 on the list of non-self-governing territories within the meaning of Article 73 of the UN Charter, it did not, however, draw the consequences of the status of Western Sahara under international law as regards the inapplicability of the Association Agreement to that territory.
- 94 Next, it should be pointed out that the customary rule codified in Article 29 of the Vienna Convention provides that, unless a different intention appears from the treaty or is otherwise established, that treaty is binding upon each party in respect of its entire ‘territory’.
- 95 It thus follows from that rule, placed in the context of the interpretation of Article 94 of the Association Agreement, that a treaty is generally binding on a State in the ordinary meaning to be given to the term ‘territory’, combined with the possessive adjective ‘its’ preceding it, in respect of the geographical space over which that State exercises the fullness of the powers granted to sovereign entities by international law, to the exclusion of any other territory, such as a territory likely to be under the sole jurisdiction or the sole international responsibility of that State.
- 96 In that regard, and as the Commission correctly argues, it follows from international practice that, where a treaty is intended to apply not only to the territory of a State but also beyond that territory, that treaty expressly provides for it, whether it is a territory ‘under [the] jurisdiction’ of that State, as set out, for example, in Article 2(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concluded in New York on 10 December 1984, or in any territory ‘for whose international relations [that State] is responsible’, as stipulated for example by Article 56(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950.
- 97 The customary rule codified in Article 29 of the Vienna Convention thus also, a priori, precluded Western Sahara from being regarded as coming within the territorial scope of the Association Agreement.
- 98 However, it also follows from that customary rule that a treaty may, by way of derogation from the general rule set out in paragraph 94 of the present judgment, bind a State in respect of another territory if such an intention is apparent from that treaty or is otherwise established.
- 99 In the present case, the General Court incorrectly assumed that, in so far as the Council and the Commission were aware of the position of the Kingdom of Morocco that the Association Agreement might apply to Western Sahara, those institutions had tacitly accepted that position, as has been explained in paragraph 85 of the present judgment.
- 100 Finally, under the general international-law principle of the relative effect of treaties, of which the rule contained in Article 34 of the Vienna Convention is a specific expression, treaties do not impose any obligations, or confer any rights, on third States without their consent (see judgment of 25 February 2010, *Brita*, C-386/08, EU:C:2010:91, paragraphs 44 and 52).

- 101 In the present case, as has been noted in paragraph 75 of the present judgment, the General Court essentially held, in paragraphs 95 to 97 of the judgment under appeal, that that principle was not relevant for the purposes of assessing the action before it, in contrast to what the Court held in the judgment of 25 February 2010, *Brita* (C-386/08, EU:C:2010:91), because the circumstances specific to that action differed from those in the case which had given rise to the judgment in *Brita*.
- 102 In particular, the General Court noted, in paragraphs 96 and 97 of the judgment under appeal, that the European Union had not concluded any Association Agreement relating to products originating in Western Sahara other than with the Kingdom of Morocco, whereas in the case giving rise to the judgment of 25 February 2010, *Brita* (C-386/08, EU:C:2010:91), the European Union had concluded an Association Agreement not only with the State of Israel, but also with the Palestine Liberation Organisation (PLO) acting in the name and on behalf of the Palestinian Authority of the West Bank and the Gaza Strip.
- 103 However, contrary to what the General Court held, the principle of the relative effect of treaties had to be taken into account in the context of such an interpretation, since the application to Western Sahara of the Association Agreement, concluded between the European Union and the Kingdom of Morocco, would have led to that agreement affecting a ‘third party’.
- 104 It should be recalled that in its Advisory Opinion on Western Sahara, to which the General Court itself referred in paragraph 8 of the judgment under appeal, the International Court of Justice considered that, on the one hand, Western Sahara ‘at the time of colonisation by [the Kingdom of] Spain was not a territory belonging to no-one (*terra nullius*)’, and, on the other, that the elements and information brought to its knowledge ‘[did] not establish any tie of territorial sovereignty’ between that territory and the Kingdom of Morocco.
- 105 More specifically, in that regard, the International Court of Justice noted, in its Advisory Opinion on Western Sahara, that the population of that territory enjoyed the right to self-determination under general international law, as set out in paragraphs 90 and 91 of the present judgment, it being understood that the General Assembly of the UN, in paragraph 7 of its Resolution 34/37 on the question of Western Sahara, cited in paragraph 35 of the present judgment, recommended that the Front Polisario, ‘the representative of the people of Western Sahara, should participate fully in any search for a just, lasting and definitive political solution of the question of Western Sahara’, as noted by the General Court in paragraph 14 of the judgment under appeal and recalled by the Commission before the Court.
- 106 In the light of that information, the people of Western Sahara must be regarded as a ‘third party’ within the meaning of the principle of the relative effect of treaties, as stated in substance by the Advocate General in point 105 of his Opinion. As such, that third party may be affected by the implementation of the Association Agreement in the event that the territory of Western Sahara comes within the scope of that agreement, without it being necessary to determine whether such implementation is likely to harm it or, on the contrary, to benefit it. It is sufficient to point out that, in either case, that implementation must receive the consent of such a third party. In the present case, however, the judgment under appeal does not show that the people of Western Sahara have expressed any such consent.
- 107 In those circumstances, it is contrary to the principle of international law of the relative effect of treaties to take the view that the territory of Western Sahara comes within the scope of the Association Agreement, which is applicable to relations between the European Union and the Kingdom of Morocco.

- 108 In the light of the foregoing, the General Court erred in law in holding, in paragraphs 101 and 103 of the judgment under appeal, that the European Union and the Kingdom of Morocco should be regarded as having tacitly agreed to interpret the words ‘territory of the Kingdom of Morocco’ in Article 94 of the Association Agreement as meaning that they included the territory of Western Sahara.
- 109 As regards, secondly, paragraph 102 of the judgment under appeal, it should be noted that the General Court held that, if the Council and the Commission had wished to oppose the application of the Liberalisation Agreement to the territory of Western Sahara, they could have asked for a clause excluding its application to be inserted into the agreement, before adding that their ‘omission’ on that point showed that they had implicitly accepted that that agreement, like the Association Agreement, was applicable to that territory.
- 110 In that regard, Article 30(2) of the Vienna Convention codifies the rule that, when a treaty specifies that it is subject to, or that it is not to be considered as incompatible with, an earlier or later treaty, the provisions of that other treaty prevail.
- 111 The Liberalisation Agreement, as is apparent from paragraphs 18, 20 and 21 of the judgment under appeal, is an agreement designed to amend an earlier agreement between the European Union and the Kingdom of Morocco, namely the Association Agreement, and more specifically, the provisions of that previous agreement on the liberalisation of trade in agricultural and fisheries products. To that end, as is apparent from those same paragraphs of the judgment under appeal, the Liberalisation Agreement amended 4 of the 96 articles of the Association Agreement, which do not include Article 94 thereof, and replaced 3 of the 5 protocols accompanying that agreement. Those amendments are exhaustive, as is confirmed by the exchange of letters between the European Union and the Kingdom of Morocco in the form of which the Liberalisation Agreement took effect.
- 112 It follows that the Association Agreement and the Liberalisation Agreement constitute successive treaties concluded between the same parties and that the Liberalisation Agreement, as a later treaty relating to specific and limited aspects of a subject already governed in large part by an earlier agreement, must be regarded as subordinate to the latter.
- 113 In the light of such a special connection, which is not called into question before the Court, it must be held, in accordance with the rule codified in Article 30(2) of the Vienna Convention, that the provisions of the Association Agreement which have not been explicitly amended by the Liberalisation Agreement must prevail for the purpose of applying the latter agreement, in order to prevent any incompatibility between them.
- 114 It follows that the Liberalisation Agreement could not be understood at the time of its conclusion as meaning that its territorial scope included the territory of Western Sahara, and that there was no need to include therein a clause expressly excluding that territory from that scope.
- 115 The General Court therefore erred in law in holding that the Council and the Commission had to be regarded as having accepted that the Association Agreement and the Liberalisation Agreement apply to the territory of Western Sahara on the ground that they had omitted to include in the latter agreement a clause precluding such an application.
- 116 In the light of the foregoing, the General Court erred in holding, in paragraph 103 of the judgment under appeal, that the Liberalisation Agreement was to be interpreted as applying to the territory of Western Sahara, and more specifically to that part of the territory controlled by the Kingdom of Morocco, since such an interpretation could not be justified either by the wording of the Association Agreement or by that of the Liberalisation Agreement, nor, finally, by the circumstances surrounding the conclusion of those two agreements, as set out in paragraphs 101 and 102 of the judgment under appeal.

- 117 That assessment is not called into question by the analysis carried out by the General Court in paragraph 99 of the judgment under appeal, on the basis of the facts set out in paragraphs 77 to 87 of that judgment.
- 118 The findings and assessments made by the General Court in those paragraphs show, first of all, that the Council and the Commission were aware, when the Liberalisation Agreement was concluded, that the Moroccan authorities had been applying the provisions of the Association Agreement to Western Sahara for many years. Next, those two institutions never opposed the application of that agreement, and the Commission to some extent cooperated therein. Finally, the system of tariff preferences introduced by the Association Agreement and amended by the Liberalisation Agreement is, in some cases, applied *'de facto'* to products originating in Western Sahara since the conclusion of the second of those agreements, as the Council and the Commission pointed out in their pleadings and at the hearing.
- 119 As is also apparent from paragraph 102 of the judgment under appeal, the General Court held that that practice subsequent to the conclusion of the Association Agreement justified an interpretation of that agreement and the Liberalisation Agreement as meaning that the territory of Western Sahara came within the scope of those agreements.
- 120 In that regard, it should be noted that, under Article 31(3)(b) of the Vienna Convention, for the purposes of the interpretation of a treaty, account must be taken, inter alia and together with the context thereof, of any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.
- 121 In the present case, as is apparent from paragraphs 77, 83 and 87 of the judgment under appeal, the Council and the Commission had pointed out, like the Front Polisario, that although the system of tariff preferences provided for in the Association and Liberalisation Agreements was applied in some cases to products originating in Western Sahara, that application had occurred *'de facto'*.
- 122 It must be held that, contrary to the requirements of Article 31(3)(b) of the Vienna Convention, the General Court did not pursue the question whether, in certain cases, that application reflected the existence of an agreement between the parties to amend the interpretation of Article 94 of the Association Agreement.
- 123 Moreover, the purported intention of the European Union, reflected in subsequent practice and consisting in considering the Association and Liberalisation Agreements to be legally applicable to the territory of Western Sahara, would necessarily have entailed conceding that the European Union intended to implement those agreements in a manner incompatible with the principles of self-determination and of the relative effect of treaties, even though the European Union repeatedly reiterated the need to comply with those principles, as the Commission points out.
- 124 Such implementation would necessarily be incompatible with the principle that Treaty obligations must be performed in good faith, which nevertheless constitutes a binding principle of general international law applicable to subjects of that law who are contracting parties to a treaty (see, to that effect, judgments of 16 June 1998, *Racke*, C-162/96, EU:C:1998:293, paragraph 49, and of 23 January 2014, *Manzi and Compagnia Naviera Orchestra*, C-537/11, EU:C:2014:19, paragraph 38).
- 125 It follows that the General Court also erred in law in holding that the subsequent practice referred to in paragraphs 99 and 102 of the judgment under appeal justified an interpretation of those agreements as meaning that they were legally applicable to the territory of Western Sahara.

126 Since the General Court therefore incorrectly held that the Liberalisation Agreement had to be interpreted as applying to the territory of Western Sahara, before taking that conclusion as a starting point for its analysis of the standing of the Front Polisario, as has been pointed out in paragraphs 43, 44 and 74 of the present judgment, the appeal must be allowed, without it being necessary to examine in addition the other pleas and arguments of the Council and the Commission.

127 Accordingly, the judgment under appeal must be set aside.

The action

128 The first paragraph of Article 61 of the Statute of the Court of Justice of the European Union provides that if the appeal is well founded and the Court of Justice quashes 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.

129 In the present case, it is appropriate for the Court to give a final ruling on the dispute, as the state of proceedings so permits.

130 In that regard, the fourth paragraph of Article 263 TFEU provides for two situations in which natural or legal persons are accorded standing to institute proceedings against an act which is not addressed to them. First, such proceedings may be instituted if the act is of direct and individual concern to those persons. Secondly, they may bring proceedings against a regulatory act not entailing implementing measures if that act is of direct concern to them.

131 In the present case, it must be stated at the outset that the line of argument put forward by the Front Polisario in order to establish that it has standing to seek the annulment of the decision at issue is based on the assertion that the Liberalisation Agreement, the conclusion of which was approved by that decision, is applied in practice, in certain cases, to Western Sahara even though the latter is not part of the territory of the Kingdom of Morocco.

132 As is apparent from the grounds set out in paragraphs 83 to 125 of the present judgment, the Liberalisation Agreement must, however, be interpreted, in accordance with the relevant rules of international law applicable to relations between the European Union and the Kingdom of Morocco, as meaning that it does not apply to the territory of Western Sahara.

133 Therefore, without it being necessary to examine the remainder of the argument by which the Council and the Commission dispute the admissibility of the action, it must be held that the Front Polisario cannot, in any event, be regarded, in the light of the arguments on which it relies, as having standing to seek annulment of the decision at issue.

134 Consequently, the action must be dismissed as inadmissible.

Costs

135 Under Article 184(2) of the Rules of Procedure, where the appeal is well founded and the Court itself gives final judgment in the case, it is to make a decision as to costs.

136 Article 138(1) of those rules, applicable to appeal proceedings pursuant to Article 184(1) thereof, provides that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

- 137 In the present case, since the Council has applied for costs and the Front Polisario has been unsuccessful, the Front Polisario must be ordered to pay the costs incurred by the Council.
- 138 Under Article 140(1) of the Rules of Procedure, which is also applicable to appeal proceedings by virtue of Article 184(1) thereof, the Member States and institutions which intervene in the proceedings are to bear their own costs.
- 139 In the present case, the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Portuguese Republic and the Commission, which was an intervener at first instance, shall bear their own costs.
- 140 Finally, Article 140(3) of the Rules of Procedure, which is also applicable to appeal proceedings by virtue of Article 184(1) of the Rules of Procedure, provides in particular that the Court may order interveners other than Member States or institutions to bear their own costs.
- 141 In the present case, it is appropriate to decide that Comader shall bear its own costs.

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

1. **Sets aside the judgment of the General Court of the European Union of 10 December 2015, *Front Polisario v Council* (T-512/12, EU:T:2015:953);**
2. **Dismisses the action brought by the Front populaire pour la libération de la saguia-el-hamra et du rio de oro (Front Polisario) as inadmissible;**
3. **Orders the Front populaire pour la libération de la saguia-el-hamra et du rio de oro (Front Polisario) to bear its own costs and to pay those incurred by the Council of the European Union;**
4. **Orders the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Portuguese Republic, the European Commission and the Confédération marocaine de l'agriculture et du développement rural (Comader) to bear their own respective costs.**

[Signatures]