Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber)

6 October 2015 *

(Competition — Agreements, decisions and concerted practices — Sodium chlorate market in the EEA — Amending decision reducing the determined duration of participation in the cartel — Calculation of the amount of the fine — Whether time-barred — Article 25 of Regulation No 1/2003)

In Case T-250/12,

Corporación Empresarial de Materiales de Construcción, SA, formerly Uralita, SA, established in Madrid (Spain), represented by K. Struckmann, lawyer, and G. Forwood, Barrister,

applicant,

v

European Commission, represented initially by N. von Lingen, R. Sauer and J. Bourke, and subsequently by M. Sauer and J. Norris-Usher, acting as Agents,

defendant,

APPLICATION for annulment of Article 1(2) and of Article 2 of Commission Decision C(2012) 1965 final of 27 March 2012 amending Decision C(2008) 2626 final of 11 June 2008 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/38.695 — Sodium Chlorate),

THE GENERAL COURT (Second Chamber),

composed of M.E. Martins Ribeiro, President, S. Gervasoni and L. Madise (Rapporteur), Judges,

Registrar: C. Kristensen, Administrator,

having regard to the written procedure and further to the hearing on 7 November 2014,

gives the following

* Language of the case: English.

Judgment

Background to the dispute

1 The applicant, Corporación Empresarial de Materiales de Construcción, SA, formerly Uralita, SA, is a public limited company incorporated under Spanish law. In 1992 it created Aragonesas Industrias y Energía, SA. Until 1994, it held 100% of the shares of Aragonesas Industrias y Energía, SA. In December 1994, it transferred the entire chemical business of Aragonesas Industrias y Energía, SA to a holding company called Energía y Industrias Aragonesas EIA, SA ('EIA'), which it had previously created. In 2003, following a merger, it absorbed EIA and again held 100% of the shares in that public limited company. On 2 June 2005, it transferred the company at issue, which has now become Aragonesas Industrias y Energía, SAU ('Aragonesas') to Ercros Industrial SAU ('Ercros').

2 On 28 March 2003, representatives of EKA Chemicals AB ('EKA'), a company established in Sweden, made an application for immunity from fines or, alternatively, reduction of fines, under the Commission Notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3, 'the 2002 Leniency Notice') with regard to the existence of a cartel in the sodium chlorate industry.

3 On 30 September 2003, the Commission of the European Communities adopted a decision granting EKA conditional immunity from fines in accordance with paragraph 15 of the 2002 Leniency Notice.

4 On 10 September 2004, the Commission sent requests for information pursuant to Article 18(2) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] (OJ 2003 L 1, p. 1), to several companies and in particular to Aragonesas. On 3 and 9 December 2004, Aragonesas responded to those requests for information.

5 Between 13 November 2006 and 11 April 2008, the Commission sent requests for information pursuant to Article 18(2) of Regulation No 1/2003 to a number of companies and in particular to Aragonesas on 13 November 2006, 8 February 2007, 12 March 2007 and 11 April 2008, and to the applicant on 8 February 2007, 20 April 2007 and 11 April 2008.

6 On 27 July 2007, the Commission adopted a statement of objections, the addressees of which included Aragonesas and the applicant. Within the prescribed period, Aragonesas and the applicant sent the Commission their observations on that statement.

7 On 20 November 2007, the applicant exercised its right to be heard orally by the Commission.

8 On 11 June 2008, the Commission adopted Decision C(2008) 2626 final relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/38.695 — Sodium Chlorate) ('the 2008 decision'). In that decision, the Commission held that Aragonesas had participated in the anti-competitive practices at issue between 16 December 1996 and 9 February 2000.

9 First, as regards the applicant, the Commission took the view, in essence, in recitals 416 to 426 and 455 to 468 of the 2008 decision, that the applicant had exercised influence over Aragonesas' strategic orientation and general trading policy directly and also indirectly via EIA. Second, the Commission concluded that, in the light of, (i), the presumption that EIA exercised decisive influence over Aragonesas since it held all of its share capital at the time of the infringement, and, (ii), the other factors set out in the 2008 decision, EIA had, at the very least, exercised decisive influence over Aragonesas' conduct with the result that, as an entity which, together with Aragonesas, formed part of the undertaking which committed the infringement, EIA was liable for the unlawful conduct of that undertaking. Consequently, since EIA was absorbed by the applicant in 2003 and the latter had

become its successor, both in legal and economic terms, the Commission considered that, with that absorption, EIA's liability for the unlawful conduct of the undertaking at issue had been transferred to the applicant.

10 Therefore, in recitals 469 and 487 to 489 to the 2008 decision, the Commission held Aragonesas and the applicant jointly and severally liable for the infringement committed by the former between 16 December 1996 and 9 February 2000.

11 The Commission therefore concluded, in Article 1(g) and (h) of the 2008 decision, that, respectively, Aragonesas and the applicant had infringed Article 101 TFEU and Article 53 of the EEA Agreement, by participating, from 16 December 1996 to 9 February 2000, in a complex of agreements and concerted practices.

12 In Article 2(f) of the 2008 decision, the Commission imposed a fine of EUR 9 900 000 on Aragonesas and the applicant, jointly and severally.

13 In Article 4 of the 2008 decision, the Commission listed the addressees of that decision, among them Aragonesas and the applicant.

14 By application lodged at the Court Registry on 26 August 2008, Aragonesas brought an action for annulment against the 2008 decision, in so far as it concerned Aragonesas. That action was registered as Case T-348/08. In essence, Aragonesas denied that it had participated in the anti-competitive practices at issue between 16 December 1996 and 9 February 2000, and therefore challenged the total amount of the fine that had been imposed on it.

15 By application lodged at the Court Registry on 26 August 2008, the applicant brought an action for annulment against the 2008 decision, in so far as it concerned the applicant. That action was registered as Case T-349/08. In essence, the applicant challenged the Commission's decision to attribute to it the unlawful conduct of which Aragonesas was accused, and to impose a fine on it jointly and severally with Aragonesas.

16 On 16 September 2008, the applicant paid, on a provisional basis, the amount of the fine which had been imposed on it, jointly and severally with Aragonesas, in the 2008 decision.

17 By judgment of 25 October 2011 in *Aragonesas Industrias y Energía* v *Commission* (T-348/08, ECR, 'the judgment in *Aragonesas*', EU:T:2011:621), the Court thereby:

'(1) Annul[led] Article 1(g) of Commission Decision C(2008) 2626 final of 11 June 2008 relating to a proceeding under Article [101 TFEU] and Article 53 of the EEA Agreement (Case COMP/38.695 — Sodium chlorate) in so far as the Commission of the European Communities found therein an infringement by [Aragonesas], from 16 December 1996 to 27 January 1998 and from 1 January 1999 to 9 February 2000;

(2) Annul[led] Article 2(f) of Decision C(2008) 2626 final in so far as it sets the amount of the fine at EUR 9 900 000;

(3) Dismiss[ed] the action as to the remainder;

...'.

18 In paragraph 247 of the judgment in *Aragonesas*, cited in paragraph 17 above, (EU:T:2011:621), the Court decided that 'the first part of the first plead in law must be upheld as being founded in part, in that the Commission [had] erred in concluding, [in the 2008 decision], that [Aragonesas] participated in the infringement at issue from 16 December 1996 to 27 January 1998 and from 1 January 1999 to 9 February 2000.'

19 In paragraph 258 of the judgment in *Aragonesas*, cited in paragraph 17 above, (EU:T:2011:621), the Court decided, in the light of the conclusions drawn in paragraph 247 of that judgment, to '[uphold] as founded the second part of the second plea, alleging that the Commission committed an error of assessment in calculating the duration of the applicant's participation in the infringement.'

20 In paragraph 302 of the judgment in *Aragonesas*, cited in paragraph 17 above, (EU:T:2011:621), the Court concluded, as regards the second plea, that it 'must be upheld in part, in so far the duration of the infringement committed by the applicant, as determined by the Commission for the purpose of calculating the fine to be imposed on it, [was] erroneous.'

21 In paragraph 303 of the judgment in *Aragonesas*, cited in paragraph 17 above, (EU:T:2011:621), the Court concluded that 'the application for the annulment of the [2008 decision] must be upheld in part in so far as (i) the Commission found in Article 1 thereof that [Argonesas] participated in the infringement from 16 December 1996 to 27 January 1998 and from 1 January 1999 to 9 February 2000, and (ii) it set the applicant's fine, in Article 2 of the contested decision, at EUR 9 900 000.'

22 Finally, in paragraph 307 of the judgment in *Aragonesas*, cited in paragraph 17 above (EU:T:2011:621), the Court in particular noted that the Commission was required to give due effect to the conclusions drawn in paragraph 303 of that judgment.

23 By judgment of 25 October 2011 in *Uralita* v *Commission*, (T-349/08, 'the judgment in *Uralita*', EU:T:2011:622), the Court dismissed the applicant's action as unfounded in its entirety.

24 By letter of 5 December 2011, the Commission informed the applicant and Aragonesas of the inferences which it intended to draw from the judgment in *Aragonesas*, cited in paragraph 17 above (EU:T:2011:621). On that basis, with regard to Aragonesas, it indicated that it planned to propose that the Council of Commissioners impose a fine of a new amount, in accordance with Article 23(2) of Regulation No 1/2003 in relation to the infringement period confirmed in the judgement in *Aragonesas*, cited in paragraph 17 above (EU:T:2011:621). As regards the applicant, it indicated that, although, in the judgment in *Uralita*, cited in paragraph 23 above (EU:T:2011:622), the Court had rejected the action in its entirety, so that the fine which had been imposed on it in the 2008 decision was maintained in so far as that decision concerned it, the Commission intended to propose to the College of Commissioners, (i), that the duration of the infringement in which it had participated be amended, so that it would match that used against Aragonesas and, (ii), in turn, that the amount of the fine imposed on the applicant jointly and severally with Aragonesas be reduced. Concurrently with the letter of 5 December 2011, the Commission sent to the applicant and to Aragonesas respectively a request for information in order to finalise its proposal to the College of Commissioners.

25 By letter of 19 December 2011, in response to the letter of 5 December 2011, Aragonesas and the applicant informed the Commission that, despite not sharing its views with regard to the inferences to be drawn, in respect of the letter of 5 December 2011, from the judgment in *Aragonesas*, cited in paragraph 17 above (EU:T:2011:621), they had, in order to obtain repayment of at least a part of the fine which had been imposed on them jointly and severally in the 2008 decision, responded to a request for information. They specified that their response did not affect their legal position.

26 By letter of 23 January 2012, first, the applicant informed the Commission that, following its merger with Ercros, Aragonesas had ceased to exist from 31 May 2010. Second, it stated that, although Aragonesas remains jointly and severally liable for the infringement at issue, for the period not

annulled by the Court in the judgment in *Aragonesas*, cited in paragraph 17 above (EU:T:2011:621), in accordance with the share purchase agreement which it had signed with Ercros, it would assume sole financial liability for payment of any fine imposed under an amending decision following that judgment and the judgment in *Uralita*, cited in paragraph 23 above (EU:T:2011:622). In that letter it stated, in particular, the following:

'… Uralita therefore unreservedly accepts its responsibility for the infringement for the period from 28 January 1998 until 31 December 1998 as regards the Commission procedure in Case 38.695 — Sodium Chlorate.

In light of the above, and given Uralita's interest in having an amendment decision adopted and obtaining a partial reimbursement of the provisionally paid fine as soon as possible, Uralita accepts that … Uralita will be solely held liable for any fine determined in such a decision for the infringement period established in [the judgment in *Aragonesas*, cited in paragraph 17 above (EU:T:2011:621)], namely from 28 January 1998 until 31 December 1998; and … any amendment decision may be addressed solely to Uralita, without any procedural steps additional to the letter of 5 December 2011 containing a factual summary being necessary.'

27 On 27 March 2012, the Commission adopted Decision C(2012)1965 final amending Decision C(2008) 2626 final of 11 June 2008 relating to a proceeding under Article 101 TFEU and Article 53 of the EEA Agreement (Case COMP/38.695 — Sodium chlorate) ('the contested decision'). Under that contested decision, the Commission, setting out the background to the dispute and pointing out in particular that, in the judgment in *Uralita*, cited in paragraph 23 above (EU:T:2011:622), the Court dismissed in its entirety the action brought by the applicant against the 2008 decision, noted that that Court maintained the EUR 9 900 000 fine which had been imposed on the applicant. Nevertheless, in recitals 8 and 9 to the contested decision, the Commission stated the following:

'(8) Although the General Court dismissed Uralita's action for annulment against the [2008 decision], the Commission nevertheless finds it appropriate, in the light of the *Aragonesas* judgment [cited in paragraph 17 above (EU:T:2001:621)], to reduce the infringement period for Uralita to the period established in that judgment, namely from 28 January 1998 until 31 December 1998.

(9) Moreover, in view of the particular circumstances of this case, including Uralita's declarations as contained in its letter of 23 January 2012 … and the fact that Uralita has already provisionally paid to the Commission within the deadline as set in the [2008 decision] the full amount of the fine for which Aragonesas and Uralita were held jointly and severally liable, the Decision should be amended to the extent that it was addressed to Uralita, as follows:

(i) the duration of Uralita's participation in the infringement should be reduced to the period from 28 January 1998 until 31 December 1998; and

(ii) the fine imposed under Article 23(2) of Regulation (EC) No 1/2003 should correspond to the revised infringement period for which Uralita is to be held liable.'

28 In respect of the calculation of the new amount of the fine imposed on the applicant, the Commission applied the same parameters as those which had been used in the 2008 decision, with the exception of the multiplier for duration, which it set at 0.91, in order to reflect the shorter infringement period.

29 With respect to the interest accrued on the amount of the fine of EUR 9 900 000, imposed in the 2008 decision, since it was provisionally paid by the applicant, the Commission, in recital 11 to the contested decision, stated that 'since the General Court has confirmed [the applicant's] participation in the infringement for the period from 28 January 1998 until 31 December 1998, the interest on the amount of the fine … pursuant to this Decision … has accrued to the benefit of the Commission and should therefore be retained by the Commission.'

30 The operative part of the contested decision reads as follows:

‘Article 1

The [2008] decision is amended as follows:

(1) In Article 1, point (h) is replaced by the following:

“(h) Uralita SA, from 28 January 1998 until 31 December 1998.”

(2) In the first paragraph of Article 2, point (f) is replaced by the following:

“(f) Uralita SA : EUR 4 231 000.”

Article 2

The interest which has accrued on the sum of EUR 4 231 000 since it was provisionally paid on 16 September 2008 has accrued to the benefit of the Commission and shall be retained by it.

Article 3

This Decision is addressed to:

Uralita …’

31 On 3 April 2012, the Commission repaid the applicant the sum of EUR 5 981 569. That amount was calculated on the basis of the difference between the fine of EUR 9 900 000, imposed in the 2008 decision (‘the initial fine’), and the fine of EUR 4 231 000, imposed in the contested decision, with interest applicable to that difference from the payment, provisionally, of the initial fine.

Procedure and forms of order sought

32 By application lodged at the Court Registry on 5 June 2012, the applicant brought the present action.

33 The applicant claims that the Court should:

— annul Article 1(2) of the contested decision in so far as it imposes a fine of EUR 4 231 000 on the applicant;

— annul Article 2 of the contested decision;

— order the Commission to pay the costs.

34 The Commission contends that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

Law

35 In support of its action, the applicant raises two pleas in law. The first alleges infringement of Article 25(1)(b) of Regulation No 1/2003. The second alleges infringement of Article 266 TFEU.

36 The Commission contends that the applicant's two pleas are unfounded. First of all, in essence, it argues that the action, in that it is based on the first plea, is inadmissible, on the ground that the applicant has no interest in obtaining annulment of the contested decision.

Admissibility

37 The Commission disputes the admissibility 'of the [applicant's] application as regards the first plea'. On that basis, in essence, in the first place, it argues that, first, in the case which gave rise to the judgment in *Uralita*, cited in paragraph 23 above (EU:T:2011:622), the applicant had neither raised a plea alleging infringement of Article 25(1)(b) of Regulation No 1/2003 nor disputed the duration of Aragonesas' participation in the infringement at issue and, second, following the judgment in *Uralita*, cited in paragraph 23 above (EU:T:2011:622), in the absence of an appeal brought against that judgment, the 2008 decision became definitive with regard to the applicant, in that it imposed a fine of EUR 9 900 000 on it. The Commission adds that, following the case-law, it was not required to provide the applicant with the benefit of the partial annulment of the 2008 decision, imposed in the judgment in *Aragonesas*, cited in paragraph 17 above (EU:T:2011:621). Therefore, in so far as the contested decision does not replace but only amends the 2008 decision, (i), the plea alleging infringement of Article 25(1)(b) of Regulation No 1/2003 is out of time and therefore inadmissible, and (ii), even assuming that the contested decision were to be set aside, the applicant would derive no benefit from its annulment, since the 2008 decision would be revived, so that the applicant would be subject to a higher fine than that which was imposed on it in the contested decision. Accordingly, the applicant has no interest in taking action against the contested decision.

38 In the second place, the Commission argues that, first, by the letter of 19 December 2011, the applicant explicitly expressed, (i), its agreement with the fact of being held solely liable for payment of the fine likely to be imposed on it in respect of the period between 28 January and 31 December 1998 and, (ii), its interest that a decision amending the 2008 decision be adopted as soon as possible, and, second, that the applicant has not alleged infringement of Article 25(1)(b) of Regulation No 1/2003 during the administrative procedure relating to the contested decision. Consequently, the applicant could not now legitimately claim an interest in having the amending decision annulled.

39 The applicant claims that, in essence, with regard to, first, the purpose of its action, namely an application for partial annulment of the contested decision, in that, under Article 1(2), it imposes a fine of EUR 4 231 000 on the applicant, and, second, the legal effects in relation to it in respect of the judgment in *Aragonesas*, cited in paragraph 17 above (EU:T:2011:621), it has an interest to act against that contested decision. That interest cannot be called into question in the light of its declarations in the letter of 23 January 2012.

40 At the outset, it should be noted that in response to a question raised by the Court at the hearing, requesting the Commission to clarify the scope of the head of inadmissibility raised, the Commission stated that that head concerned the first plea in law. It is in the light of that clarification that the head of inadmissibility raised by the Commission should be examined.

41 In that context, as regards the admissibility of an action for annulment, in accordance with settled case-law, such an action brought by a natural or legal person is admissible only in so far as that person has an interest in the annulment of the contested measure. In order for such an interest to be present, the annulment of that measure must be liable, if successful, to procure an advantage to the party who has brought that action (see, to that effect, judgment of 13 July 2000 in *Parliament* v

Richard, C-174/99 P, ECR, EU:C:2000:412, paragraph 33; of 10 September 2009 in *Akzo Nobel and Others* v *Commission*, C-97/08 P, ECR, EU:C:2009:536, paragraph 33 and the case-law cited, and of 28 September 2004 in *MCI* v *Commission*, T-310/00, ECR, EU:T:2004:275, paragraph 44 and the case-law cited).

42 In the present case, the Commission contends, in essence, that the applicant has no interest in obtaining the annulment of Article 1(2) of the contested decision, on the basis of the first plea, alleging infringement of Article 25(1)(b) of Regulation No 1/2003. Therefore, it is appropriate to examine the head of inadmissibility raised by the Commission against the first plea in the light of the case-law referred to above.

43 Principally, first, it should be noted that, by adopting the contested decision, the Commission decided, as is clear from recitals 8 and 9 to the contested decision, to amend the 2008 decision to benefit the applicant with the effects of the judgment in *Aragonesas*, cited in paragraph 17 above (EU:T:2011:621). On that basis, it has decided to reduce, (i), in Article 1(1) of the contested decision, the infringement period imputed to the applicant in the 2008 decision, in order, as is apparent from recital 8 to the contested decision, to match that used in the judgment in *Aragonesas*, cited in paragraph 17 above (EU:T:2011:621) and, (ii), in Article 1(2) of the contested decision, the amount of the fine imposed on the applicant in the 2008 decision, in order, as is apparent from recital 9(b) to the contested decision, for it to correspond to the duration of the new infringement period.

44 Second, it follows from the finding in paragraph 43 above that the contested decision, which is addressed to the applicant, adversely affects the applicant in that it, (i), is alleged to have participated, during a new period, in the infringement at issue in the 2008 decision and, (ii), has a fine of a new amount in relation to that applied in the 2008 decision imposed on it. Under the first plea, the applicant seeks annulment of Article 1(2) of the contested decision, in that the Commission imposed a fine on it after the expiry of the limitation period set by Article 25(1)(b) of Regulation No 1/2003. In any event, the applicant does not challenge the legality of Article 1(1) of the contested decision, in that that decision determines the duration of the infringement period in which the applicant is now alleged to have participated.

45 Third, it is common ground that the infringement at issue in the present case was a single and continuous infringement. Accordingly, pursuant to the second sentence of Article 25(2) of Regulation No 1/2003, the limitation period laid down by Article 25(1)(b) of that regulation began to run on the day on which the infringement ceased. In the present case, although the duration of the infringement in which the applicant is alleged to have participated according to the 2008 decision had ended on 9 February 2000, it follows from the contested decision that the new infringement period in which the applicant is alleged to have participated according to that contested decision ended on an earlier date, as the parties have acknowledged in response to a question from the Court at the hearing on 31 December 1998.

46 Accordingly, since, by amending the duration of the initial infringement in which the applicant is alleged to have participated according to the 2008 decision, the Commission fixed a new date from which the limitation period laid down in Article 25(1)(b) of Regulation No 1/2003 begins to run, it is wrong of the Commission to complain that the applicant raised, in support of its action for annulment, the first plea, alleging infringement of Article 25(1)(b), whereas the applicant had not raised it in the case which gave rise to the judgment in *Uralita*, cited in paragraph 23 above (EU:T:2011:622).

47 Fourth, this Court cannot accept the Commission's argument that, if the contested decision were annulled, that would mean that, since the 2008 decision has become final with regard to the applicant, Article 2(f) thereof, in that it imposes a fine of EUR 9 900 000, would remain in force, so that the applicant would not obtain a benefit from such annulment. Without it being necessary to rule on whether the Commission was required to give the applicant the benefit of the effects of the judgment

in *Aragonesas*, cited paragraph 17 above (EU:T:2011:621), as has been stated in paragraph 43 above, it appears from the reasons in the contested decision that the Commission decided, in the 2008 decision, to reduce the duration of the infringement period in which the applicant is alleged to have participated.

48 Therefore, assuming that the Court upholds the action, on the basis of the first plea, since that plea is directed solely against Article 1(2) of the contested decision, the contested decision would therefore be annulled in part, only in that it fixes the new amount of the fine imposed on the applicant in the 2008 decision, and not in that it fixes the new infringement period in which the applicant is alleged to have participated, a period in respect of which the limitation in time of the Commission's power to impose a fine must be assessed. Consequently, it should not be presumed, for the purpose of determining whether the first plea is admissible, that a judgment annulling in part the contested decision, based on that decision, would have the effect of reviving the amount of the fine imposed on the applicant in the 2008 decision, having regard to the Commission's obligation to take the necessary measures to comply with the present judgment in accordance with Article 266 TFEU, in particular as regards its power to impose a fine on the applicant in relation to the new infringement period specified in Article 1(1) of the contested decision (see judgment in *CAS Succhi di Frutta* v *Commission*, T-191/96 and T-106/97, ECR, EU:T:1999:256, paragraph 62 and the case-law cited).

49 It follows that annulment in part of the contested decision, on the basis of the first plea, would procure the applicant with an advantage, within the meaning of the case-law cited in paragraph 41 above. The first plea should therefore be regarded as admissible.

50 That conclusion cannot be altered in the light of the Commission's argument that, by the letter of 19 December 2011, the applicant explicitly agreed to be held solely responsible for the settlement of the fine likely to be imposed on it, in a decision amending the 2008 decision, under the new accepted infringement period. Contrary to what the Commission maintains, it is not apparent from the wording of the letter of 19 December 2011 that the applicant has made such an agreement. In that letter, the applicant makes observations about the inferences which the Commission intended to draw, following the judgments in *Aragonesas*, cited in paragraph 17 above (EU:T:2011:621) and in *Uralita*, cited in paragraph 23 above (EU:T:2011:622), particularly as regards the repayment of at least part of the amount of the original fine which was intended to be paid to it.

51 In contrast, in the letter of 23 January 2012, the applicant informed the Commission that it would assume sole economic liability for payment of any fine which would be imposed on it under a decision amending the 2008 decision, following, first, the judgment in *Aragonesas*, cited in paragraph 17 above (EU:T:2011:621) and, second, the judgment in *Uralita*, cited in paragraph 23 above (EU:T:2011:622).

52 However, according to the case-law, although an undertaking's express or implicit acknowledgement of matters of fact or of law during the administrative procedure before the Commission may constitute additional evidence when determining whether an action is well founded, it cannot restrict the actual exercise of a natural or legal person's right to bring proceedings before the [Court] under the fourth paragraph of Article 263 TFEU. In the absence of a specific legal basis, such a restriction is contrary to the fundamental principles of the rule of law and of respect for the rights of the defence. Moreover, the rights to an effective remedy and of access to an impartial tribunal are guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union which, under the first subparagraph of Article 6(1) TEU, has the same legal value as the Treaties. Under Article 52(1) of that charter, any limitation on the exercise of the rights and freedoms recognised by the charter must be provided for by law (judgment of 1 July 2010 in *Knauf Gips* v *Commission*, C-407/08 P, ECR, EU:C:2010:389, paragraphs 90 and 91).

53 Moreover, it should be noted that the fact that the applicant has, in the letter of 23 January 2012, informed the Commission that it would assume sole economic liability for payment of any fine that might be imposed on it in relation to the infringement at issue cannot be interpreted as meaning that

the applicant had waived the benefit of the provisions of Article 25(1)(b) of Regulation No 1/2003 as regards the possible limitation in time of the Commission's power to impose such a fine on it. It is apparent solely from the wording of that letter that the applicant had agreed to assume sole liability to pay any fine imposed by the Commission.

54 Furthermore, it is clear that, in the letter of 19 December 2011, the applicant had specifically stated that that letter did not affect its legal position.

55 Therefore, neither the wording of the letter of 19 December 2011 nor that of the letter of 23 January 2012 can be used against the applicant to challenge the admissibility of the first plea.

56 In view of all the foregoing considerations, this Court must dismiss the head of inadmissibility raised by the Commission against the first plea as being unfounded and, therefore, continue examining the substance of the present case.

Substance

57 In the context of the first plea, the applicant complains that the Commission, first, has infringed Article 25(1)(b) of Regulation No 1/2003 by imposing a new fine on it after expiry of the limitation period set out in that article and, second, has erred in law by deciding, in Article 2 of the contested decision, to retain the interest accrued, since provisional payment of the initial fine, by the part of the initial fine equal to the new amount of the fine fixed in Article 1(2) of that decision.

58 More precisely, first, the applicant claims that, pursuant to Article 1(1) of the contested decision, the Commission has reduced the infringement period with respect to Uralita, so that that period corresponds to the duration set by the Court in the judgment in *Aragonesas*, cited in paragraph 17 above (EU:T:2011:621), namely from 28 January to 31 December 1998.

59 First of all, in accordance with Article 25(2) of Regulation No 1/2003, since the infringement at issue has been classified as a continuous infringement, the five-year limitation period for the applicant began to run on 31 December 1998.

60 Next, EKA's leniency application of 28 March 2003 and the Commission's decision of 30 September 2003 to grant EKA, pursuant to paragraph 15 of the 2002 Leniency Notice, conditional immunity do not constitute events capable of interrupting the limitation period, in accordance with Article 25(3) of Regulation No 1/2003. Moreover, the applicant observes that it is apparent from the Commission's decision-making practice, under that Notice, that it uses, as an action interrupting the limitation period, the first request for information. Accordingly, in recital 492 to the preamble of the 2008 decision, the Commission should have used the first request for information, which occurred on 10 September 2004, as an event capable of interrupting the period of the case at issue. That decision-making practice should prevent the Commission now relying on another type of measure, such as a decision to grant conditional immunity, as an action interrupting the limitation period.

61 Finally, in the applicant's view, there being no other event to stop time running, the limitation period, fixed in Article 25(1)(b) of Regulation No 1/2003, expired on 31 December 2003.

62 Consequently, the applicant states that, by imposing on it, in Article 1(2) of the contested decision, a fine by virtue of the duration of the infringement referred to in Article 1(1) of that decision, the Commission infringed Article 25(1)(b) of Regulation No 1/2003.

63 Second, the applicant submits that, since the Commission was time-barred from imposing a new fine in the contested decision, it could not legally, in Article 2 of that decision, retain the interest accrued, since provisional payment of the initial fine, by the part of the initial fine equal to the new amount of the fine fixed in Article 1(2) of that decision, namely EUR 4 231 000.

64 Third, in the reply, first of all, the applicant claims that, in order to rule on the question whether the Commission was time-barred, under Article 25 of Regulation No 1/2003, from imposing a fine on it and, therefore, whether the Commission was entitled to retain the interest accrued, since provisional payment of the initial fine, by the part of the initial fine equal to the new amount of the fine fixed in Article 1(2) of the contested decision, it is necessary to determine whether the annulment in part of the 2008 decision in the judgment in *Aragonesas*, cited in paragraph 17 above (EU:T:2011:621), produced effects with regard to it. On that basis, the applicant claims that, in so far as it was held to be jointly and severally liable for the infringement at issue, which arises from the unlawful conduct of Aragonesas alone, solely because of the decisive influence which it exerted on Aragonesas and from its subrogation to the rights and obligations of the EIA, the partial annulment of the 2008 decision in the judgment in *Aragonesas*, cited in paragraph 17 above (EU:T:2011:621), produced effects with regard to it. Therefore, it should benefit from any limitation in time of the only fine imposed jointly and severally on it and on Aragonesas.

65 Next, the applicant submits that, since, in the judgment in *Aragonesas*, cited in paragraph 17 above (EU:T:2011: 621), the Court has annulled the entirety of the fine which had been imposed on it in the 2008 decision, jointly and severally with Aragonesas, the Commission has imposed on it, in the contested decision, a new fine. Therefore, the contested decision is subject to all the rules relating to limitation in time, as laid down in Article 25 of Regulation No 1/2003.

66 Finally, even if time had stopped running from the date on which the Commission adopted its decision of 30 September 2003 to grant conditional immunity to EKA, and even taking into account the suspension of the limitation period provided for in Article 25(6) of Regulation No 1/2003, the fine imposed in the contested decision was imposed after the expiry of the maximum limitation period of ten years, laid down in Article 25(5) of that regulation.

67 The Commission disputes all of the arguments made in support of the first plea.

68 As a preliminary point, the Court finds that the first plea is based on two heads, each based on an error of law. As regards the second head, it is apparent from the application that the applicant has not identified the rule of law, which, in its view, has been infringed by the Commission in that it decided, in Article 2 of the contested decision, to retain the interest accrued, since provisional payment of the initial fine, by the part of the initial fine equal to the new amount of the fine fixed in Article 1(2) of that decision.

69 Nevertheless, it should be noted at the outset that, in the context of the second plea, the applicant claims that the Commission has infringed Article 266 TFEU in that, in essence, by deciding, in Article 2 of the contested decision, to retain the amount of the new fine which it had imposed on the applicant as well as the interest accrued from that amount, since provisional payment of the initial fine, the Commission had not drawn all the inferences from the judgment in *Aragonesas*, cited in paragraph 17 above (EU:T:2011:621).

70 In response to a question raised by the Court at the hearing regarding the scope of the second plea, the applicant acknowledged, as has been recorded in the minutes of the hearing, that Article 2 of the contested decision concerned only the interest accrued by the new amount of the fine fixed in Article 1(2) of that decision. Accordingly, the applicant's second plea must be interpreted as disputing only the Commission's decision, in Article 2 of the contested decision, to retain the interest accrued, since provisional payment of the initial fine, by the part of the initial fine equal to the new amount of the fine fixed in Article 1(2) of that decision.

71 In view of the foregoing considerations, it is clear that the second head of the first plea is identical to the reasons given by the applicant in support of the second plea alleging infringement of Article 266 TFEU. Accordingly, first of all, it is appropriate to interpret the second head of the first plea in the light of the second plea and, on that basis, to consider that, in respect of that head, the applicant pleads infringement of Article 266 TFEU. Next, with regard to the identical purpose of the second head of the first plea and of the second plea, in that they both seek to establish an infringement of Article 266 TFEU, they should be considered together. Finally, in essence, it is clear from the wording of the first plea that the second part of that plea is based on the finding that its first part is well founded. It is only to the extent that, according to the applicant, the Commission was time-barred from imposing a fine on it for a new amount, that the interest accrued, since provisional payment of the initial fine, by the part of the initial fine equal to the new amount of the fine imposed in Article 1(2) of the contested decision, was illegally retained by the Commission. Consequently, the second plea and the second head of the first plea are both based, in the same way, on the previous finding, expressed by the Court, of the merits of the first part of the first plea.

72 As regards the first head of the first plea, alleging infringement of Article 25(1)(b) of Regulation No 1/2003, it should be noted that it seeks, in essence, a declaration by the Court that the Commission was time-barred from imposing a fine on the applicant.

73 In the first place, it should be noted that the first part of the first plea is based on a premiss that the Court ought, in the judgment in *Aragonesas*, cited in paragraph 17 above (EU:T:2011:621), to have annulled in its entirety Article 2(f) of the 2008 decision, so that, in the contested decision, the Commission would have adopted a new decision imposing a fine on the applicant.

74 That premiss proves to be incorrect. It is apparent specifically from the wording of paragraph 2 of the operative part of the judgment in *Aragonesas*, cited in paragraph 17 above (EU:T:2011:621), that the Court annulled Article 2(f) of the 2008 decision 'in so far as it sets the amount of the fine at EUR 9 900 000.' Therefore, the annulment of that article of the 2008 decision is, by the use of the expression 'in so far as', partial, since it is only limited to the amount of the fine fixed, and does not cover the Commission's decision to impose a fine.

75 That reading of Article 2(f) of the 2008 decision is supported by the grounds of the judgment in *Aragonesas*, cited in paragraph 17 above (EU:T:2011:621) which are included in paragraphs 247, 258, 302 and 303 of that judgment, as cited in paragraphs 18 to 21 above.

76 Consequently, it is clear both from the operative part and from the grounds of the judgment in *Aragonesas*, cited in paragraph 17 above (EU:T:2011:621), that the Court annulled Article 2(f) of the 2008 decision only in so far as the Commission had fixed the amount of the fine in that decision. In any event the Court did not annul that article in that the Commission had decided, on the basis of Article 23(2) of Regulation No 1/2003, to impose a fine jointly and severally on Aragonesas and the applicant.

77 Contrary to what the applicant claims, in the contested decision, the Commission has not adopted a new decision to impose a fine on the applicant. That decision had the purpose and effect of maintaining in part the fine initially imposed on the applicant in the 2008 decision, amounting to EUR 4 231 000, that is, the amount specified in Article 1(1)(f) of the contested decision. Therefore, in order to assess the merits of the first part of the first plea, alleging limitation in time of the Commission's power to impose a fine on the applicant, account should be taken of the date on which the Commission decided to impose the fine on the applicant, namely the date of the 2008 decision, that is, 11 June 2008, and not the date of the contested decision, which, as is apparent from the latter, was intended to give the applicant the benefit of the effects of the judgment in *Aragonesas*, cited in paragraph 17 above (EU:T:2011:621).

78 In the second place, as regards the limitation period fixed in Article 25(1)(b) of Regulation No 1/2003, it should be borne in mind that, according to that article, read in conjunction with Article 23(2)(a) of the same regulation, the power conferred on the Commission to impose fines on undertakings where, either intentionally or negligently, they infringe Article 101 TFEU, is subject to a limitation period of five years.

79 Under Article 25(2) of Regulation No 1/1003, time begins to run on the day on which the infringement is committed. That same provision states, however, that, in the case of continuing or repeated infringements, time is to begin to run on the day on which the infringement ceases.

80 Article 25(3)(a) of Regulation No 1/2003 provides that any action taken by the Commission or by the competition authority of a Member State for the purpose of the investigation or proceedings in respect of an infringement is to interrupt the limitation period, namely, inter alia, a written request for information from the Commission, the interruption taking effect from the date on which the action is notified to at least one undertaking or association of undertakings which has participated in the infringement.

81 Under Article 25(4) of Regulation No 1/2003, the interruption of the limitation period is to apply in respect of all the undertakings or associations of undertakings which have participated in the infringement (judgment of 27 June 2012 in *Bolloré* v *Commission*, T-372/10, ECR, EU:T:2012:325, paragraph 201).

82 As for the first sentence of Article 25(5) of Regulation No 1/2003, it provides, in particular, that each interruption is to start time running afresh.

83 In the present case, first, it is common ground between the parties that the infringement was a single and continuous infringement. Accordingly, pursuant to the second sentence of Article 25(2) of Regulation No 1/2003, the limitation period provided for in Article 25(1)(b) of the regulation began to run 'on the day on which the infringement ceased', that is, as has been stated in paragraph 45 above, on 31 December 1998. There being no other event to stop time running, the limitation period of five years, referred to in Article 25(1)(b) of Regulation No 1/2003, had, in principle, to expire on 31 December 2003.

84 Second, it is appropriate to examine whether, as argued by the Commission, the limitation period of five years, laid down in Article 25(1)(b) of Regulation No 1/2003 was interrupted before 31 December 2003 by action taken by the Commission within the meaning of Article 25(3) of Regulation No 1/2003.

85 In that regard, it should be borne in mind that, pursuant to the case-law, it follows from Article 25(3) and (4) of Regulation No 1/2003 that where an undertaking has participated in the infringement, that is to say, where that undertaking is identified as such in the contested decision, the interruption of the limitation period as a result of the notification of an action taken for the purposes of the investigation or the proceedings to at least one undertaking also identified as having participated in the infringement, (whether it be that undertaking or a different undertaking) takes effect as against that undertaking. Actions interrupting the limitation period thus produce effects erga omnes with regard to all the undertakings having participated in the infringement at issue (see, to that effect, judgment in *Bolloré* v *Commission*, cited in paragraph 81 above, EU:T:2012:325, paragraphs 201, 205 and 211).

86 In the present case, the applicant is identified in the contested decision as having participated in the infringement. Accordingly, assuming that an action interrupting the limitation period is found in the present case, it would be enforceable against the applicant.

87 Besides, it is necessary to consider whether, as the Commission argues, its decision of 30 September 2003 to grant EKA conditional immunity from fines, in accordance with paragraph 15 of the Leniency Notice, must be categorised as an action interrupting the limitation period within the meaning of Article 25(3) of Regulation No 1/2003.

88 In that regard, it should be borne in mind, first, that it is settled case-law that the list contained in Article 25(3) of Regulation No 1/2003 is prefaced by the adverb 'in particular' and is in no way exhaustive and that that provision does not therefore make the interruption of the limitation period dependent on a notified measure or a written authorisation to carry out investigations (see, by analogy, judgment of 15 October 2002 in *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, ECR, EU:C:2002:582, paragraphs 141 and 162) and, second, that since the interruption of the limitation period constitutes an exception in relation to the five-year limitation period, it must, as such, be interpreted narrowly (judgment of 19 March 2003 in *CMA CGM and Others* v *Commission*, T-213/00, ECR, EU:T:2003:76, paragraph 484).

89 Furthermore, it follows from the first sentence of Article 25(3) of Regulation No 1/2003 that, to interrupt the limitation period within the meaning of that regulation, the action taken by the Commission must in particular '[be] for the purpose of the investigation or proceedings in respect of an infringement.'

90 As regards the leniency policy implemented by the Commission, the Court has held that leniency programmes were useful tools if efforts to uncover infringements of competition rules and bring an end to them are to be effective and served, therefore, the objective of effective application of Articles 101 TFEU and 102 TFEU (judgment of 14 June 2011 in *Pfleiderer*, C-360/09, ECR, EU:C:2011:389, paragraph 25).

91 Similarly, according to the Court, '[t]he leniency programme thus pursues the objective of investigating, suppressing and deterring practices forming part of the most serious infringements of Article 101 TFEU' (judgment of 9 September 2011 in *Deltafina* v *Commission*, T-12/06, ECR, EU:T:2011:441, paragraph 107).

92 The Court has also held that the grant of conditional immunity therefore meant the creation of a special procedural status, during the administrative procedure, for the undertaking that satisfies the conditions set out at paragraph 8 of the 2002 Leniency Notice which produces certain legal effects (judgment in *Deltafina* v *Commission*, cited in paragraph 91 above, EU:T:2011:441, paragraph 114).

93 As is apparent from paragraphs 103 to 118 of the judgment in *Deltafina* v *Commission*, cited in paragraph 91 above (EU:T:2011:441), which concern the leniency programme implemented by the Commission, the grant of conditional immunity to an applicant for leniency contributes to the full effectiveness of that programme, in that it seeks to grant favourable treatment to undertakings which cooperate with it in its investigations into secret cartels relating to practices forming part of the most serious infringements of Article 101 TFEU (judgment in *Deltafina* v *Commission*, cited in paragraph 91 above, EU:T:2011:441, paragraphs 103 and 105). This is how, in return for their active and voluntary cooperation in the investigation by facilitating the Commission's task of establishing and suppressing infringements of the competition rules those undertakings may obtain favourable treatment as regards the fines that would otherwise have been imposed on them, provided that they meet the conditions laid down in the 2002 Leniency Notice (judgment in *Deltafina* v *Commission*, paragraph 91 above, EU:T:2011:441, paragraph 108).

94 Moreover, it should be borne in mind that paragraph 8 of the 2002 Leniency Notice provides:

'The Commission will grant an undertaking immunity from any fine which would otherwise have been imposed if:

(a) the undertaking is the first to submit evidence which in the Commission's view may enable it to adopt a decision to carry out an investigation in the sense of Article 14(3) of Regulation No 17 in connection with an alleged cartel affecting the Community; or

(b) the undertaking is the first to submit evidence which in the Commission's view may enable it to find an infringement of Article [101 TFEU] in connection with an alleged cartel affecting the Community.'

95 According to paragraph 11(a) to (c) of the 2002 Leniency Notice:

'In addition to the conditions set out in points 8(a) and 9 or in points 8(b) and 10, as appropriate, the following cumulative conditions must be met in any case to qualify for any immunity from a fine:

(a) the undertaking cooperates fully, on a continuous basis and expeditiously throughout the Commission's administrative procedure and provides the Commission with all evidence that comes into its possession or is available to it relating to the suspected infringement. In particular, it remains at the Commission's disposal to answer swiftly any request that may contribute to the establishment of the facts concerned;

(b) the undertaking ends its involvement in the suspected infringement no later than the time at which it submits evidence under points 8(a) or 8(b), as appropriate;

(c) the undertaking did not take steps to coerce other undertakings to participate in the infringement.'

96 In the light of the considerations set out in paragraphs 90 to 95 above, it should be noted that, first of all, the leniency programme contributes directly to the full effectiveness of the policy of pursuing infringements of the EU competition rules, for which the Commission is responsible. Next, the decision to grant conditional immunity to an applicant for leniency shows that its application satisfies the prerequisites so that it can, after the administrative procedure, under certain conditions, benefit from definitive immunity. Finally, that procedural status, granted to the applicant for leniency by the decision to grant it conditional immunity, requires the person concerned, in order to claim the benefit of definitive immunity, to follow, until the adoption by the Commission of the final decision, conduct which satisfies the requirements of paragraph 11(a) to (c) of the 2002 Leniency Notice. That conduct of the applicant for leniency is characterised by an obligation, first, to cooperate fully, on a continuous basis and expeditiously throughout the Commission's administrative procedure and, second, to provide the Commission with all evidence in its possession or available to it relating to the suspected infringement.

97 Consequently, a decision to grant conditional immunity to an applicant for leniency, in that it confers on that applicant such a procedural status, is fundamental in order to enable the Commission to investigate and initiate proceedings against the suspected infringement. Therefore, that procedural measure adopted by the Commission must be regarded as being for the purpose of the investigation or proceedings in respect of an infringement, within the meaning of the first sentence of Article 25(3) of Regulation No 1/2003, and may accordingly be described as an action interrupting the limitation period. As is noted in paragraph 85 above, such an interrupting action produces effects erga omnes with regard to all the undertakings having participated in the infringement at issue.

98 In the light of the conclusion reached in paragraph 97 above, in the present case, the time period, which had started to run, as regards the applicant, as of 31 December 1998, was interrupted four years and nine months later by the Commission's decision of 30 September 2003 to grant conditional immunity to EKA. The period of time, therefore, started to run from zero, from that decision, and, eleven months and ten days later, was again interrupted by the Commission's request for information of 10 September 2004 sent, inter alia, to Aragonesas. The period of time therefore started running again from zero, until the adoption, on 11 June 2008, that is, three years and nine months later, of the 2008 decision. Therefore, in the light of the conclusion made in paragraph 77 above, that it should take account of the date on which the Commission decided to impose the fine on the applicant, namely the date of the 2008 decision, that is, 11 June 2008, that decision, as partially maintained in relation to its effects, as regards the amount of the fine amounting to EUR 4 231 000 by the contested decision, was adopted within the five-year limitation period provided for in Article 25(1)(b) of Regulation No 1/2003.

99 That conclusion cannot be called into question by the argument put forward by the applicant that the Commission has identified, in recital 492 to the 2008 decision, the first request for information of 10 September 2004 as an action having interrupted the limitation period in the present case. The fact that the Commission has referred to that action in the 2008 decision cannot prevent the Commission relying now on a previous action, such as the decision of 30 September 2003, which it took the view as having also been able to interrupt that prescription. It is explicitly clear from the wording of that recital that the limitation period had, according to the Commission, been interrupted 'at the latest' on 10 September 2004. Accordingly, the Commission had in no way excluded the possibility that other actions prior to the request for information of 10 September 2004, such as the Commission decision of 30 September 2003 to grant conditional immunity to EKA, may also have been able to interrupt the limitation period.

100 Moreover, the applicant is wrong to rely on the decision-making practice which, in its view, prevailed until now in the Commission's decisions to support the argument that the Commission was obliged to regard as an action interrupting the limitation period the first request for information which it had sent on 10 September 2004 to one of the recipients of the 2008 decision. As is apparent from all the grounds set out in paragraphs 84 to 97 above, the fact of categorising an action of the Commission as an action interrupting the limitation period is based on the application of the legislative provisions relating to, in the present case, Article 25 of Regulation No 1/2003, as interpreted in the last instance by the EU Courts. Therefore, the Commission's previous practice, on which the applicant relies, cannot preclude it, subject to the review of the EU Courts, from regarding types of actions other than the first request for information as interrupting the prescription.

101 In the third place, as regards the plea raised by the applicant in the reply, alleging infringement of Article 25(5) of Regulation No 1/2003, it should be borne in mind that, under Article 76 of the Rules of Procedure of the Court, the application must inter alia contain a summary of the pleas in law on which it is based. In addition, in accordance with settled case-law, irrespective of any question of terminology, that summary must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the application, even without further information. It is necessary, for an action to be admissible, that the basic legal and factual particulars relied on be indicated, at least in summary form, coherently and intelligibly in the application itself, so as to guarantee legal certainty and sound administration of justice (see judgment of 27 September 2006 in *Roquette Frères* v *Commission*, T-322/01, ECR, EU:T:2006:267, paragraph 208 and the case-law cited). Still following settled case-law, any plea which is not adequately articulated in the application initiating the proceedings must be held inadmissible. Similar requirements apply where a submission is made in support of a plea in law. In the case of an absolute bar to proceeding, such inadmissibility may be raised by the Court of its own motion if need be (see judgment of 14 December 2005 in *Honeywell* v *Commission*, T-209/01, ECR, EU:T:2005:455, paragraphs 54 and 55 and the case-law cited).

102 In the present case, it is clear that in no way did the applicant, in the application, claim, even in substance, an infringement of Article 25(5) of Regulation No 1/2003 in that it fixes a maximum limitation period of ten years for the Commission to impose a fine. Therefore, as the Commission argues, the Court must dismiss the plea raised in the reply, alleging infringement of Article 25(5) of Regulation No 1/2003, as being inadmissible.

103 For the sake of completeness, it should be noted that, in any event, that plea is manifestly unfounded. The limitation period of ten years, fixed in Article 25(5) of Regulation No 1/2003, began to run on 31 December 1998 and would have expired, at the earliest, on 31 December 2008, on the assumption that it was not suspended in accordance with Article 25(6) of Regulation No 1/2003. Without it being necessary to calculate the duration of any such suspension, it is clear that the 2008 decision, as maintained — as is clear from paragraph 77 above, partly in its effects, of EUR 4 231 000, as regards the amount of the fine — by the contested decision, was adopted on 11 June 2008, that is, more than six months before the date of 31 December 2008.

104 It follows from all of the above considerations that the first head of the first plea must be dismissed as unfounded.

105 In the light of the considerations set out in paragraph 71 above, which concern the relationship between, on one hand, the first head of the first plea and, on the other, the second head of the first plea and the second plea, since the first head of the first plea must be dismissed as being unfounded, it is appropriate to dismiss the action in its entirety without it therefore being necessary to rule on the second head of the first plea or the second plea.

Costs

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

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Corporación Empresarial de Materiales de Construcción, SA, to bear its own costs and to pay the costs incurred by the European Commission.**

Martins Ribeiro Gervasoni Madise

Delivered in open court in Luxembourg on 6 October 2015.

[Signatures]