Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

28 April 2015 *

(Appeal — Action for annulment — Article 263, fourth paragraph, TFEU — Right to bring an action — Locus standi — Natural or legal persons — Regulatory act not entailing implementing measures — Act of individual concern to the appellants — Right to effective judicial protection — Exceptional measures relating to the release of out-of-quota sugar and isoglucose on the European Union market — Marketing year 2010/2011)

In Case C-456/13 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 9 August 2013,

T & L Sugars Ltd, established in London (United Kingdom),

Sidul Açúcares, Unipessoal Lda, established in Santa Iria de Azóia (Portugal),

represented by D. Waelbroeck, avocat, and D. Slater, Solicitor,

appellants,

the other parties to the proceedings being:

European Commission, represented by P. Ondrůšek and P. Rossi, acting as Agents,

defendant at first instance,

French Republic, represented by G. de Bergues, D. Colas and C. Candat, acting as Agents,

Council of the European Union, represented by É. Sitbon and A. Westerhof Löfflerová, acting as Agents,

interveners at first instance,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, A. Tizzano, L. Bay Larsen, T. von Danwitz, A. Ó Caoimh, J.-C. Bonichot and S. Rodin (Rapporteur), Presidents of Chambers, J. Malenovský, E. Levits, A. Arabadjiev, E. Jarašiūnas and C.G. Fernlund, Judges,

Advocate General: P. Cruz Villalón,

Registrar: L. Hewlett, Principal Administrator,

* Language of the case: English.

having regard to the written procedure and further to the hearing on 20 May 2014,

after hearing the Opinion of the Advocate General at the sitting on 14 October 2014

gives the following

Judgment

1 By their appeal, T & L Sugars Ltd and Sidul Açúcares, Unipessoal Lda ('T & L Sugars' and 'Sidul Açúcares', respectively) seek to have set aside the judgment of the General Court in *T&L Sugars and Sidul Açúcares* v *Commission* (T-279/11, EU:T:2013:299; 'the judgment under appeal'), by which that court dismissed their action for annulment of Commission Regulation (EU) No 222/2011 of 3 March 2011 laying down exceptional measures as regards the release of out-of-quota sugar and isoglucose on the Union market at reduced surplus levy during marketing year 2010/2011 (OJ 2011 L 60, p. 6), Commission Implementing Regulation (EU) No 293/2011 of 23 March 2011 fixing allocation coefficient, rejecting further applications and closing the period for submitting applications for available quantities of out-of-quota sugar to be sold on the Union market at reduced surplus levy (OJ 2011 L 79, p. 8), Commission Implementing Regulation (EU) No 302/2011 of 28 March 2011 opening an exceptional import tariff quota for certain quantities of sugar in the 2010/11 marketing year (OJ 2011 L 81, p. 8) and Commission Implementing Regulation (EU) No 393/2011 of 19 April 2011 fixing the allocation coefficient for the issuing of import licences applied for from 1 to 7 April 2011 for sugar products under certain tariff quotas and suspending submission of applications for such licences (OJ 2011 L 104, p. 39) (collectively, 'the contested regulations').

Background to the dispute and the contested regulations

2 The background to the dispute is set out as follows by the General Court in paragraphs 1 to 5 of the judgment under appeal:

> '1 The applicants, T & L Sugars ... and Sidul Açúcares ..., are cane sugar refiners established in the European Union. Their combined production capacity accounts for around half the traditional supply needs of the European Union cane sugar refining industry.
>
> 2 The supply of sugar on the European Union market includes sugar produced, first, by the processing of sugar beet grown within the European Union and, second, by the refining of raw cane sugar imported from non-member countries, the final product being chemically identical in each case. Raw cane sugar grown in the European Union, namely in the French Overseas Departments and in the Azores, represents less than 2% of European Union sugar production.
>
> 3 Between 3 March and 19 April 2011, the European Commission adopted certain measures designed to increase the supply of sugar on the European Union market, which was experiencing a shortage.
>
> 4 The purpose of those measures was, firstly, to permit European Union producers to market a limited quantity of sugar and isoglucose in excess of the domestic production quota and, secondly, to introduce a tariff quota allowing any economic operator concerned to import a limited quantity of sugar with import duties suspended.
>
> 5 Those measures were adopted in the following acts ...:
>
> — Regulation … No 222/2011 …;

— Implementing Regulation … No 293/2011 …;

— Implementing Regulation … No 302/2011 …;

— Implementing Regulation … No 393/2011 …’

3 The General Court describes the mechanism set up by the contested regulations in paragraphs 39 to 45 of the judgment under appeal:

‘39 Article 2(4) of Regulation No 222/2011 provides that, in order to benefit from that exceptional quantity [of sugar and isoglucose which may be marketed in excess of the production quotas], producers must apply for certificates to the competent national authorities in the Member State in which they are approved. Under Article 4 of that regulation, those authorities are to decide on the admissibility of applications in the light of the criteria set out in the same regulation and then notify the admissible applications to the Commission.

40 Articles 5 and 6 of Regulation No 222/2011 have the effect that, once the quantity provided for in respect of out-of-quota sugar has been exceeded, the Commission fixes an allocation coefficient in order to apportion the available quantity in a uniform manner, to reject applications not yet notified and to close the period for submitting the applications. Every week, the national authorities issue certificates granting a reduction of the levy in respect of the applications notified to the Commission the preceding week, according to the template of the certificate annexed to the regulation.

41 Under Article 1 of Implementing Regulation No 293/2011, the Commission defined the allocation coefficient, amounting to 67.106224%, to be applied by the national authorities to applications submitted between 14 and 18 March 2011 and notified to the Commission. Furthermore, it rejected subsequent applications and closed the period for submitting applications.

42 Secondly, as regards the exceptional import tariff quota, Implementing Regulation No 302/2011 provides that the import duties are to be suspended between 1 April 2011 and 30 September 2011, for a quantity of 300 000 tonnes of sugar.

43 As for the administration of that quota, Implementing Regulation No 302/2011 refers to Commission Regulation (EC) No 891/2009 of 25 September 2009 opening and providing for the administration of certain Community tariff quotas in the sugar sector (OJ 2009 L 254, p. 82), which in turn refers to Commission Regulation (EC) No 1301/2006 of 31 August 2006 laying down common rules for the administration of import tariff quotas for agricultural products managed by a system of import licences (OJ 2006 L 238, p. 13), and to Commission Regulation (EC) No 376/2008 of 23 April 2008 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products (Codified version) (OJ 2008 L 114, p. 3).

44 Under Articles 5 and 6 of Regulation No 1301/2006 and Article 12 of Regulation No 376/2008, in the course of administering the quotas, the national authorities receive the applications for import licences and ensure that the conditions for admissibility are satisfied. Thereafter, under Articles 7 and 11 of Regulation No 1301/2006 and Articles 8 and 9 of Regulation No 891/2009, they notify the Commission of the applications received, issue the import licences to the operators and inform the Commission of the quantities allocated.

45 Implementing Regulation No 393/2011 defines the allocation coefficient, amounting to 1.8053%, for applications for import licences lodged from 1 to 7 April 2011, for which the available quantity has been exceeded, and suspends the submission of further applications until the end of the marketing year 2010/11.’

Procedure before the General Court and the judgment under appeal

4 By application lodged at the Registry of the General Court on 30 May 2011, the appellants brought an action seeking annulment of the contested regulations and an order that the Commission compensate them for the loss which they suffered following adoption of the contested regulations. On 26 October 2011 the Commission lodged, in a separate document, an objection of inadmissibility.

5 The Commission, supported by the French Republic and the Council of the European Union, contended that, while the contested regulations were regulatory acts, they entailed implementing measures and were of neither individual nor direct concern to the appellants.

6 The appellants argued before the General Court that they had standing to bring an action against the contested regulations by reason of the fact that those regulations were regulatory acts of direct concern to them which did not entail implementing measures or, in the alternative, that those regulations were of direct and individual concern to them.

7 In the judgment under appeal, the General Court decided to rule on the plea of inadmissibility submitted by the Commission without going to the substance of the case. It dismissed the action as inadmissible in so far as it sought the annulment of the contested regulations.

8 On the plea of inadmissibility alleging that the contested regulations entailed implementing measures, the General Court held, in paragraphs 46 to 73 of the judgment under appeal, that those regulations, both those concerning the marketing of out-of-quota sugar and those relating to the tariff quota, could not produce their legal effects vis-à-vis the operators concerned without the intermediary step of measures first being taken by the national authorities. The General Court found that such measures constituted implementing measures within the meaning of the fourth paragraph of Article 263 TFEU and rejected the appellants' arguments that those measures were 'automatic and mandatory'.

9 In paragraph 60 of the judgment under appeal, the General Court observed that the appellants did not claim that they had to break the law in order to have access to justice, but merely pointed out that the possibility of bringing an action against the national measures adopted in the course of the implementation of the contested regulations still remained, for them, at least uncertain. In paragraphs 66 and 68 of the judgment, the General Court found, first, that the European Union secondary legislation does not expressly prescribe such a legal remedy at national level and, second, that the second subparagraph of Article 19(1) TEU provides that Member States are to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law. In paragraph 69 of the judgment under appeal, the General Court held that the application of the condition relating to the non-existence of implementing measures, as set out in the fourth paragraph of Article 263 TFEU, cannot be made conditional on the existence, within the legal systems of the Member States, of an effective legal remedy which makes it possible to call in question the legality of the contested European Union act. In paragraph 70 of the judgment, the General Court found that such an interpretation would require the Courts of the European Union, in each individual case, to examine and interpret national procedural law, which would go beyond their jurisdiction when reviewing the legality of European Union measures.

10 As regards the plea of inadmissibility alleging that the contested regulations were not of individual concern to the appellants, the General Court held, in paragraph 77 of the judgment under appeal, that those regulations produced legal effects with regard to certain categories of persons envisaged in a general and abstract way, given that they applied to all sugar producers in the European Union and to all sugar importers respectively, without distinguishing the appellants individually in any way whatsoever.

11 The appellants submitted that Implementing Regulation No 393/2011 was 'at the very least' of individual concern to them, arguing that it affected a closed class of operators since it established an allocation coefficient to permit the distribution of the tariff quota solely between the importers who submitted their applications between 1 and 7 April 2011. The General Court held, in paragraphs 84 and 89 of the judgment under appeal, that each of the appellants was affected by the contested regulation because of its objective position, as a producer which had submitted an application for a licence, and that, accordingly, membership of a limited class, which resulted from the very nature of the legislation at issue, could not distinguish the appellants individually.

12 In paragraph 97 of the judgment under appeal, the General Court held that, as the action for annulment was inadmissible, it followed that the plea of illegality raised against Article 186(a) and Article 187 of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1), must also be rejected.

Forms of order sought

13 T & L Sugars and Sidul Açúcares claim that the Court should:

— set aside the judgment under appeal;

— refer the case back to the General Court for judgment on the substance, and

— order the Commission to pay the costs.

14 The Commission contends that the appeal should be dismissed and T & L Sugars and Sidul Açúcares ordered to pay the costs.

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

The appeal

16 In support of their appeal, T & L Sugars and Sidul Açúcares rely on three grounds of appeal. By their first ground of appeal, they claim that the General Court misinterpreted the concept of an 'act not entailing implementing measures' within the meaning of the final limb of the fourth paragraph of Article 263 TFEU. By their second ground of appeal, the appellants submit that the General Court misinterpreted the fourth paragraph of Article 263 TFEU in holding that Implementing Regulation No 393/2011 was not of individual concern to them. By their third ground of appeal, the appellants submit that the General Court made an error of law in holding that, since their action for annulment was inadmissible, the plea of illegality raised in that action had to be rejected.

The first ground of appeal

Arguments of the parties

17 T & L Sugars and Sidul Açúcares submit, in support of their first ground of appeal, that the General Court made an error of law in holding that the measures taken by the national authorities under the contested regulations constituted implementing measures within the meaning of the fourth paragraph of Article 263 TFEU.

18 They consider that every detail of the contested regulations was determined by the Commission and the only role left to the Member States was to act merely as a 'mail box'. In those circumstances, the appellants could not challenge the contested regulations before the national courts because those courts had no jurisdiction to annul those regulations.

19 The error which the General Court is alleged to have made lies in its holding that any measure adopted by a Member State under a European Union regulation, even if automatic or merely ancillary, constitutes a decision 'implementing' that regulation.

20 The General Court made an error of law, it is submitted, in stating, in paragraph 53 of the judgment under appeal, that the degree of discretion enjoyed by Member States is irrelevant for the purposes of ascertaining whether a regulatory act 'entails implementing measures'. In order to determine whether a measure taken by a Member State in fact adds anything to the European Union act under which it was taken, the appellants consider that the existence of a discretion is a relevant criterion. The very definition of the term 'decision' implies an act requiring a choice from among several possibilities and not a mechanical implementation, the relaying of orders from a third party or a merely confirmatory act.

21 The appellants consider that, in paragraphs 58 to 60 of the judgment under appeal, the General Court gave a narrow interpretation of the final limb of the fourth paragraph of Article 263 TFEU. That provision, it is submitted, should be interpreted in the light of the right to effective judicial protection guaranteed by Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'). That provision should also be interpreted having regard to procedural efficiency and in such a way as to give the amendments made to the wording of the FEU Treaty a useful meaning. Those objectives require that individuals be able to refer a matter to the General Court where, in the absence of an effective remedy, they have no option but to break the law in order to challenge a European Union act before a court, which is, it is claimed, the position in the present case, as the Commission itself acknowledged.

22 The Commission takes the view that the final limb of Article 263 TFEU is intended to preserve a certain balance between the role of the national courts and that of the Courts of the European Union in the system of effective judicial review in the European Union, based on the existence of the acts that Member States adopt at national level to implement the rules in question, and on the availability of an initial judicial remedy against such acts before the national courts, with a further possible recourse to the Court of Justice in the context of a reference for a preliminary ruling, where such a reference is necessary, inter alia in order to assess the validity of an act adopted by the institutions, bodies, offices or agencies of the European Union and to guarantee a uniform interpretation and application of Union law by the national courts, in accordance with Article 267 TFEU.

23 The Commission contends that it is not possible to infer from the fact that a Member State has a limited discretion as to the manner in which it implements a regulatory act of the European Union that any invalidity of provisions in that implementing act necessarily arises from the presumed illegality of the European Union regulatory act itself.

24 The Commission considers that the General Court was right to hold that the national measures in the present case were important and necessary. Although the contested regulations are regulatory acts, they can only affect the operators concerned indirectly, inter alia, through the intermediary of essential national implementing measures. According to the Commission, it is undeniable that, without those measures, the contested regulations could not produce their legal effects vis-à-vis the operators concerned.

25 The competent national authorities, it is submitted, issue the certificates and import licences entitling the operators to place additional amounts of out-of-quota sugar on the market at a reduced levy or to import sugar at reduced customs duty after identifying the applicants, determining the veracity,

completeness and accuracy of their applications, ascertaining their status as genuine operators on the market, calling for the establishment of the appropriate securities, deciding on the acceptance or rejection of the applications and transmitting all the relevant data relating to the applications accepted to the Commission. Many of those activities entail the exercise of substantial discretion on the part of the Member States, whose role is also to prevent the occurrence of any irregularities or abuses.

26 If there is no means of redress, allowing the implementing measures to be challenged, it should, it is submitted, be borne in mind that in the judgment in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council* (C-583/11 P, EU:C:2013:625, paragraphs 97 and 103), the Court held that 'neither the FEU Treaty nor Article 19 TEU intended to create new remedies before the national courts to ensure the observance of EU law other than those already laid down by national law', and that Article 47 is not intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to the admissibility of direct actions brought before the Courts of the European Union.

27 The French Republic contends that the first ground of appeal must be rejected. First, the General Court was right to hold that the contested regulations entailed implementing measures. Second, that interpretation could not be called into question by the argument of the appellants that there is no remedy against national measures taken in the absence of any discretion. Third, that interpretation cannot be called into question by the argument of the appellants that, in certain Member States, they did not have an effective remedy against the contested regulations.

28 The Council supports the Commission's arguments.

Findings of the Court

29 The concept of 'regulatory act which … does not entail implementing measures' within the meaning of the final limb of the fourth paragraph of Article 263 TFEU must be interpreted in the light of the objective of that provision, which is, as is apparent from its drafting history, to ensure that individuals do not have to break the law in order to have access to a court. Where a regulatory act directly affects the legal situation of a natural or legal person without requiring implementing measures, that person could be denied effective judicial protection if he did not have a direct legal remedy before the European Union judicature for the purpose of challenging the legality of the regulatory act. In the absence of implementing measures, natural or legal persons, although directly concerned by the act in question, would be able to obtain a judicial review of that act only after having infringed its provisions, by pleading that those provisions are unlawful in proceedings initiated against them before the national courts (judgment in *Telefónica* v *Commission*, C-274/12 P, EU:C:2013:852, paragraph 27).

30 However, where a regulatory act entails implementing measures, judicial review of compliance with the European Union legal order is ensured irrespective of whether those measures were adopted by the European Union or the Member States. Natural or legal persons who are unable, because of the conditions governing admissibility laid down in the fourth paragraph of Article 263 TFEU, to challenge a regulatory act of the European Union directly before the European Union judicature are protected against the application to them of such an act by the ability to challenge the implementing measures which the act entails (judgment in *Telefónica* v *Commission*, C-274/12 P, EU:C:2013:852, paragraph 28).

31 Where responsibility for the implementation of such acts lies with the institutions, bodies, offices or agencies of the European Union, natural or legal persons are entitled to bring a direct action before the European Union judicature against the implementing acts under the conditions stated in the fourth paragraph of Article 263 TFEU, and to plead in support of that action, pursuant to Article 277 TFEU, the illegality of the basic act at issue. Where that implementation is a matter for the Member States, those persons may plead the invalidity of the basic act at issue before the national courts and

tribunals and cause the latter to request a preliminary ruling from the Court of Justice, pursuant to Article 267 TFEU (judgments in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 93, and *Telefónica* v *Commission*, C-274/12 P, EU:C:2013:852, paragraph 29).

32 As the Court has already held, whether a regulatory act entails implementing measures should be assessed by reference to the position of the person pleading the right to bring proceedings under the final limb of the fourth paragraph of Article 263 TFEU. It is therefore irrelevant whether the act in question entails implementing measures with regard to other persons (judgment in *Telefónica* v *Commission*, C-274/12 P, EU:C:2013:852, paragraph 30, and *Stichting Woonpunt and Others* v *Commission*, C-132/12 P, EU:C:2014:100, paragraph 50).

33 The first ground of appeal relied on by T & L Sugars and Sidul Açúcares must be examined in the light of those considerations.

34 As is apparent from Article 1 of Regulation No 222/2011, the purpose of that regulation is to fix, at EUR 0 per tonne, the amount of the surplus levy for the marketing year 2010/2011 for a maximum quantity of 500 000 tonnes of sugar and 26 000 tonnes of isoglucose, produced in excess of the quota fixed in Annex VI to Regulation No 1234/2007. According to Article 2(2) of Regulation No 222/2011, applications for certificates may be made only by undertakings producing beet and cane sugar or isoglucose, which are approved in accordance with Article 57 of Regulation No 1234/2007 and have been allocated a production quota for that marketing year. Pursuant to Article 6 of Regulation No 222/2011, in conjunction with Article 2(4) of that regulation, the national authorities are to issue certificates for the amounts of sugar and isoglucose conferring entitlement to that levy of 0 to the producers who apply for them within the limits of the maximum amount fixed.

35 For its part, Implementing Regulation No 302/2011 opens, for the same marketing year, an exceptional tariff quota for a quantity of 300 000 tonnes of sugar. Under Articles 4, 5 and 8 of Regulation No 891/2009, to which Article 1 of Implementing Regulation No 302/2011 refers, the national authorities are to issue, to importers who have made an application in that regard and within the limits of the maximum quantities set, the import licences relating to that tariff quota.

36 Since the amounts covered by the applications for certificates for the production of out-of-quota sugar submitted under Regulation No 222/2011 and by the applications for import licences submitted under Implementing Regulation No 302/2011 exceeded the amounts fixed in those acts from the very first week of their implementation, the Commission established, in Implementing Regulations No 293/2011 and No 393/2011, allocation coefficients to be applied to applications for certificates already submitted under Regulation No 222/2011 and Implementing Regulation No 302/2011.

37 It appears from the foregoing considerations that, as regards Regulation No 222/2011 and Implementing Regulation No 293/2011, since the appellants do not have the status of producers of sugar and their legal situation is not directly affected by those regulations, those regulations are not of direct concern to them within the meaning of the final limb of the fourth paragraph of Article 263 TFEU (see judgments in *Glencore Grain* v *Commission*, C-404/96 P, EU:C:1998:196, paragraph 41; *Front national* v *Parliament*, C-486/01 P, EU:C:2004:394, paragraph 34; *Commission* v *Ente per le Ville Vesuviane and Ente per le Ville Vesuviane* v *Commission*, C-445/07 P and C-455/07 P, EU:C:2009:529, paragraph 45; and *Stichting Woonpunt and Others* v *Commission*, C-132/12 P, EU:C:2014:100, paragraph 68).

38 It follows that, as the General Court did not examine whether the above regulations were of direct concern to the appellants and as it based its finding that the action was inadmissible on the fact that those regulations entailed implementing measures within the meaning of the final limb of the fourth paragraph of Article 263 TFEU, it made an error of law.

39 However, it must be observed that, given that, as held in paragraph 37 of the present judgment, Regulation No 222/2011 and Implementing Regulation No 293/2011 are not of direct concern to the appellants within the meaning of the final limb of the fourth paragraph of Article 263 TFEU, the error of law made by the General Court is not such as to entail the setting aside of the judgment under appeal as regards the inadmissibility of the action against those regulations.

40 However, Implementing Regulations No 302/2011 and No 393/2011 produce their legal effects vis-à-vis the appellants only through the intermediary of acts taken by the national authorities following the submission of applications for certificates on the basis of Implementing Regulation No 302/2011. The decisions of the national authorities granting such certificates, which apply the coefficients fixed by Implementing Regulation No 393/2011 to the operators concerned, and the decisions refusing such certificates in full or in part therefore constitute implementing measures within the meaning of the final limb of the fourth paragraph of Article 263 TFEU.

41 That conclusion is not called into question by the allegedly mechanical nature of the measures taken at national level.

42 As the General Court rightly held in paragraph 53 of the judgment under appeal, that question is irrelevant in ascertaining whether those regulations entail implementing measures within the meaning of the final limb of the fourth paragraph of Article 263 TFEU.

43 As regards the argument which the appellants derive from Article 47 of the Charter, it appears from settled case-law that that article is not intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to the admissibility of direct actions brought before the Courts of the European Union, as is apparent also from the Explanation on Article 47 of the Charter, which must, in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, be taken into consideration for the interpretation of the Charter (see judgments in *Sky Österreich*, C-283/11, EU:C:2013:28, paragraph 42; *Alemo-Herron and Others*, C-426/11, EU:C:2013:521, paragraph 32; and *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 97).

44 Accordingly, the conditions of admissibility laid down in the fourth paragraph of Article 263 TFEU must be interpreted in the light of the fundamental right to effective judicial protection, but such an interpretation cannot have the effect of setting aside those conditions, which are expressly laid down in that Treaty (see, to that effect, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 98 and the case-law cited).

45 However, judicial review of compliance with the European Union legal order is ensured, as can be seen from Article 19(1) TEU, not only by the Court of Justice but also by the courts and tribunals of the Member States. The FEU Treaty has, by Articles 263 TFEU and 277 TFEU, on the one hand, and Article 267 TFEU, on the other, established a complete system of legal remedies and procedures designed to ensure judicial review of the legality of acts of the institutions, and has entrusted such review to the European Union judicature (judgments in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraphs 90 and 92, and *Telefónica* v *Commission*, C-274/12 P, EU:C:2013:852, paragraph 57).

46 In that connection, it must be emphasised that, in proceedings before the national courts, individual parties have the right to challenge before the courts the legality of any decision or other national measure relative to the application to them of a European Union act of general application, by pleading the invalidity of such an act (see, to that effect, judgments in *E and F*, C-550/09, EU:C:2010:382, paragraph 45, and *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 94).

47 It follows that references on validity constitute, like actions for annulment, means for reviewing the legality of European Union acts (judgments in *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest*, C-143/88 and C-92/89, EU:C:1991:65, paragraph 18; *ABNA and Others*, C-453/03, C-11/04, C-12/04 and C-194/04, EU:C:2005:741, paragraph 103; and *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 95).

48 In that regard, it must be borne in mind that where a national court or tribunal considers that one or more arguments for invalidity of a European Union act, put forward by the parties or, as the case may be, raised by it of its own motion, are well founded, it is incumbent upon it to stay proceedings and to make a reference to the Court for a preliminary ruling on the act's validity, the Court alone having jurisdiction to declare a European Union act invalid (judgments in *IATA and ELFAA*, C-344/04, EU:C:2006:10, paragraphs 27 and 30 and the case law cited, and *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 96).

49 As regards persons who do not fulfil the requirements of the fourth paragraph of Article 263 TFEU for bringing an action before the Courts of the European Union, it is for the Member States to establish a system of legal remedies and procedures which ensure respect for the fundamental right to effective judicial protection (*Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 100 and the case-law cited).

50 That obligation on the Member States was reaffirmed by the second subparagraph of Article 19(1) TEU, which states that Member States 'shall provide remedies sufficient to ensure effective judicial protection in the fields covered by EU law' (see judgment in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 101). That obligation also follows from Article 47 of the Charter as regards measures taken by the Member States to implement Union law within the meaning of Article 51(1) of the Charter.

51 In the light of all of the foregoing, the first ground of appeal must be rejected.

The second ground of appeal

Arguments of the parties

52 T & L Sugars and Sidul Açúcares submit that the General Court made an error of law in finding that Implementing Regulation No 393/2011 was not of individual concern to them.

53 Implementing Regulation No 393/2011 did not, it is submitted, apply to sugar producers or traders in general, but applied specifically to operators who had chosen to apply for an import licence and made an individual application. It constituted a large number of individual decisions in response to individual applications.

54 According to the appellants, although the Treaty of Lisbon is intended to open up the conditions for admissibility of actions by individuals against regulations, the General Court adopted an even more restrictive interpretation of the concept of 'individual concern' than that originally upheld in the judgments in *Plaumann* v *Commission* (25/62, EU:C:1963:17) and *Toepfer and Getreide-Import Gesellschaft* v *Commission* (106/63 and 107/63, EU:C:1965:65).

55 According to the Commission, although, in the present case, the appellants seek to restrict their argument to Implementing Regulation No 393/2011 alone, it must be noted that that regulation is not an isolated act but constitutes the closing regulation for the 'system' established by Implementing Regulation No 302/2011.

56 The Commission points out that the judgment in *Plaumann* v *Commission* (25/62, EU:C:1963:17) postulates that persons other than the addressee of an act cannot claim that that act is of individual concern to them unless that act specifically took account of the situation of an applicant for the purposes of its adoption.

57 The systems provided for by Implementing Regulations No 302/2011 and No 393/2011, which, together with Regulations No 891/2009 and No 1301/2006, are, it is contended, measures of general application addressed to all sugar importers, including the sugar beet processors engaged in imports or any other traders, and as such, were not adopted taking into consideration any specific attributes or conditions of the full-time refiners, such as the appellants.

58 Finally, the Commission makes reference to the judgment in *Zuckerfabrik Watenstedt* v *Council* (6/68, EU:C:1968:43, 605), in which the Court of Justice held that an act does not lose its character as a regulation simply because it may be possible to ascertain with a greater or lesser degree of accuracy the number or even the identity of the persons to whom it applies at any given time as long as there is no doubt that it is applicable as the result of an objective situation of law or fact which it specifies and which is in harmony with its ultimate objective.

59 The French Republic considers that the General Court did not err in law in holding, in paragraph 93 of the contested judgment, that Regulation No 393/2011 cannot be considered to constitute a set of individual decisions, given that the Commission fixed the allocation coefficient solely in the light of the total quantity of sugar or isoglucose resulting from all the applications submitted to national authorities. Thus, fixing the allocation coefficient merely makes it possible to establish the proportions in which the national authorities will grant the applications submitted to them, according to an objective rule and independently of each operator's individual applications — with which, moreover, the Commission is not in any way acquainted. The sole aim of Regulation No 393/2011 is to bring the sum of the total quantities of sugar and isoglucose resulting from all the applications submitted to national authorities into line with the volume of the quota opened by Regulation No 302/2011, without reference to any circumstance specific to a given operator.

60 The Council supports the Commission's arguments.

Findings of the Court

61 It must be observed that, as is apparent from paragraph 38 of the present judgment, Implementing Regulation No 393/2011 entails implementing measures.

62 Under the fourth paragraph of Article 263 TFEU, natural or legal persons may institute proceedings against an act which is not addressed to them and entails implementing measures only if that act is of direct and individual concern to them.

63 As regards the second of those conditions, that is to say, being individually concerned by the act in question, it is settled case-law that persons other than those to whom a decision is addressed may claim to be individually concerned only if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person addressed (judgments in *Plaumann* v *Commission*, 25/62, EU:C:1963:17, 223; *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 72; and *Telefónica* v *Commission*, C-274/12 P, EU:C:2013:852, point 46).

64 It is also clear from settled case-law that the possibility of determining more or less precisely the number, or even the identity, of the persons to whom a measure applies by no means implies that it must be regarded as being of individual concern to them as long as that measure is applied by virtue

of an objective legal or factual situation defined by it (see, to this effect, judgments in *Antillean Rice Mills* v *Council* C-451/98, EU:C:2001:622, paragraph 52, and *Telefónica* v *Commission*, C-274/12 P, EU:C:2013:852, paragraph 47).

65 It must be held that such is the case of Implementing Regulation No 393/2011, which T & L Sugars and Sidul Açúcares are seeking to have annulled and in respect of which the appellants' standing to bring an action must be examined. Given that, in Article 1(1) that regulation refers to '[t]he quantities for which import licence applications have been lodged … from 1 to 7 April 2011', T & L Sugars and Sidul Açúcares cannot be considered to be individually distinguished by that provision.

66 Article 1(1) of Implementing Regulation No 393/2011 concerns all the applicants for import licences who lodged their application with the European Union between 1 and 7 April 2011. As the General Court rightly observed in paragraph 85 of the judgment under appeal, Article 7(2) of Regulation No 1301/2006 provides for an allocation coefficient calculated according to the available quantity and the requested quantity and does not take into account the content of individual applications or the specific situation of applicants. Thus, Implementing Regulation No 393/2011 was adopted, not taking account of particular qualities of the appellants but exclusively taking account of the fact that the quantities covered by the applications for import licences lodged with the competent authorities from 1 to 7 April 2011 exceed the available quantity, as is apparent from recital 1 in the preamble to that regulation. Neither the application for a licence, nor, more generally, the individual situation of T & L Sugars and Sidul Açúcares, was, therefore, taken into account when the regulation was adopted.

67 It follows that the General Court was right to hold, in paragraph 94 of the judgment under appeal, that Implementing Regulation No 393/2011 was not of individual concern to T & L Sugars and Sidul Açúcares within the meaning of the fourth paragraph of Article 263 TFEU.

68 It follows that the second ground of appeal must also be rejected.

The third ground of appeal

Arguments of the parties

69 By the third ground of appeal, the appellants challenge the conclusion of the General Court in paragraph 97 of the judgment under appeal that 'as the action for annulment is inadmissible, it follows that the plea of illegality raised in relation to that action must also be rejected'.

70 According to the appellants, in the event that the Court should uphold their arguments that the contested regulations did not entail implementing measures and were of individual concern to them, the reasons put forward by the General Court to justify rejection of the plea of illegality raised against Articles 186(a) and 187 of Council Regulation No 1234/2007 would be wholly without foundation.

71 The Commission observes that the appellants merely assert that the General Court made an error in rejecting that plea of illegality because of the errors they set out in their first and second grounds of appeal. Since the General Court did not make any error on that point, the third ground of appeal, it is contended, must be rejected.

72 The French Republic and the Council support the Commission's arguments.

Findings of the Court

73 The appellants submit, essentially, that, as the General Court made the errors of law relied on in their first and second grounds of appeal, it could not reject the plea of illegality.

74 It must be held that, as is apparent from paragraphs 51 and 68 of the present judgment, the General Court did not err in law in holding that the conditions for admissibility laid down by the fourth paragraph of Article 263 TFEU were not fulfilled for bringing an action against the contested regulations, which entailed implementing measures, and that Implementing Regulation No 393/2011 was not of individual concern to the appellants. Accordingly, as the action for annulment brought before the General Court was inadmissible, that court did not err in law in rejecting the plea of illegality raised by the appellants.

75 The third ground of appeal must therefore be rejected.

76 As all the grounds of appeal relied on by T & L Sugars and Sidul Açúcares in support of their appeal have been rejected, the appeal must be dismissed in its entirety.

Costs

77 In accordance with Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to the costs. Under Article 138(1) of those Rules, applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

78 Since the Commission has applied for an order that T & L Sugars and Sidul Açúcares pay the costs and the latter have been unsuccessful, they must be ordered to pay the costs

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

1. Dismisses the appeal;

2. Orders T & L Sugars Ltd and Sidul Açúcares, Unipessoal Lda to pay the costs.

[Signatures]