



Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

21 September 2017*

(Appeal — Agreements, decisions and concerted practices — Italian producers of reinforcing bars — Fixing of prices and limiting and controlling output and sales — Infringement of Article 65 CS — Annulment of the initial decision by the General Court of the European Union — Decision re-adopted on the basis of Regulation (EC) No 1/2003 — Failure to issue a new statement of objections — Lack of a hearing following the annulment of the initial decision — Time taken in the proceedings before the General Court)

In Case C-85/15 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 19 February 2015,

Feralpi Holding SpA, established in Brescia (Italy), represented by G.M. Roberti and I. Perego, avvocati,

appellant,

the other party to the proceedings being:

European Commission, represented by L. Malferrari and P. Rossi, acting as Agents, assisted by M. Moretto, avvocato, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (Ninth Chamber),

composed of E. Juhász, President of the Chamber, C. Vajda (Rapporteur) and C. Lycourgos, Judges,

Advocate General: N. Wahl,

Registrar: V. Giacobbo-Peyronnel, Administrator,

having regard to the written procedure and further to the hearing on 20 October 2016,

after hearing the Opinion of the Advocate General at the sitting on 8 December 2016,

gives the following

* Language of the case: Italian.

Judgment

- 1 By its appeal, Feralpi Holding SpA ('Feralpi') asks the Court to set aside the judgment of the General Court of 9 December 2014, *Feralpi v Commission* (T-70/10, not published, EU:T:2014:1031, 'the judgment under appeal') by which the latter dismissed its action for annulment of Commission Decision C(2009) 7492 final of 30 September 2009 relating to a breach of Article 65 CS (Case COMP/37.956 — Reinforcing bars, re-adoption, 'the decision of 30 September 2009'), as amended by Commission Decision C(2009) 9912 final of 8 December 2009 ('the amending decision') (the decision of 30 September 2009, as amended by the amending decision, 'the decision at issue').

Background to the dispute and the decision at issue

- 2 The background to the dispute is set out in paragraphs 16 to 21 of the judgment under appeal:
 - '16 From October to December 2000, the Commission carried out a number of verifications pursuant to Article 47 CS at the premises of certain Italian undertakings engaged in the manufacture of reinforcing bars and at the premises of an association of certain Italian steel undertakings [Federacciai]. It also sent to them requests to supply information pursuant to Article 47 CS ...
 - 17 On 26 March 2002, the Commission commenced the administrative procedure and adopted its objections under Article 36 CS ("the statement of objections") ... [Feralpi] submitted written comments on the statement of objections. A hearing took place on 13 June 2002 ...
 - 18 On 12 August 2002, the Commission adopted additional objections ("the supplementary statement of objections") addressed to the same addressees as the statement of objections ... In the supplementary statement of objections, based on Article 19(1) of Council Regulation No 17 [of 6 February 1962]: First Regulation implementing Articles [81 and 82 EC] (OJ, English Special Edition 1959-1962, p. 87), the Commission explained its position concerning the further proceedings following the expiry of the ECSC Treaty. The undertakings concerned were granted a period within which they could make comments and a second hearing in the presence of representatives of the Member States took place on 30 September 2002 ... [Feralpi] replied to the supplementary statement of objections on 13 September 2002.
 - 19 At the end of the procedure, the Commission adopted Decision C(2002) 5087 final of 17 December 2002 relating to a proceeding under Article 65 CS (Case COMP/37.956 — Reinforcing bars) ("the 2002 decision"), by which it found that, contrary to Article 65(1) CS, the undertakings to which it was addressed had implemented a single, complex and continuous restrictive practice on the Italian market for concrete reinforcing bars in bars and coils which had as its object or effect the fixing of prices, with a view to which the restriction or control of production and/or sales was also concerted ... In that decision the Commission imposed on [Feralpi] a fine in the amount of EUR 10.25 million.
 - 20 On 4 March 2003, [Feralpi] brought an action before the General Court challenging the 2002 decision. By judgment of 25 October 2007, *Feralpi Siderurgica v Commission* (T-77/03, not published, EU:T:2007:319), the General Court annulled the 2002 decision. The General Court held that, having regard, in particular, to the fact that the 2002 decision contained no reference to Article 3 or Article 15(2) of Regulation No 17, the decision was based on Article 65(4) and (5) CS alone ... Since those provisions had expired on 23 July 2002, the Commission could no longer derive competence from those provisions, which were no longer in force when it adopted the 2002 decision, in order to establish an infringement of Article 65(1) CS and to impose fines on the undertakings which had allegedly participated in the infringement ...

21 By letter of 30 June 2008, the Commission informed [Feralpi] and the other undertakings concerned of its intention to re-adopt the decision, changing the legal basis from that which it had chosen for the 2002 decision. It also explained that, given the limited scope of the judgment [of 25 October 2007,] *Feralpi Siderurgica v Commission* [(T-77/03, not published, EU:T:2007:319)] the re-adopted decision would be based on the evidence presented in the statement of objections and in the supplementary statement of objections. The undertakings concerned were given a deadline to submit their observations ... Feralpi replied to that letter on 31 July 2008. The letter of 30 June 2008 was followed by several requests for information, to which [Feralpi] replied.'

- 3 In the decision of 30 September 2009, the Commission considered, inter alia, that Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU] (OJ 2003 L 1, p. 1) was to be interpreted as empowering it to establish and sanction, after 23 July 2002, cartels in the sectors which fell within the scope of the ECSC Treaty *ratione materiae* and *ratione temporis*. It stated that the decision had been adopted in conformity with the procedural rules of the EC Treaty as well as the aforementioned regulation, and that the material provisions that were no longer in force at the date of adoption of an act could be applied under the principles governing the temporal succession of rules, subject to application of the principle *lex mitior*.
- 4 Article 1 of that decision provides, inter alia, that Feralpi had infringed Article 65(1) CS by taking part, from 6 December 1989 to 27 June 2000, in a continuous agreement and/or concerted practices in respect of concrete reinforcing bars and coils having as object and/or effect the fixing of prices and the restriction and/or control of production and sales in the common market. By Article 2 of that decision, the Commission imposed on Feralpi a fine of EUR 10.25 million.
- 5 By letters sent between 20 and 23 November 2009, eight of the eleven companies to which the decision of 30 September 2009 was addressed, including Feralpi, informed the Commission that the annex to that decision, as notified to its addressees, did not contain the tables illustrating the price variations.
- 6 On 8 December 2009, the Commission adopted the amending decision, which included in its annex the missing tables and corrected the numbered references to those tables in eight footnotes.

The procedure before the General Court and the judgment under appeal

- 7 By application lodged at the General Court Registry on 19 February 2010, Feralpi brought an action asking the General Court, first, to order the relevant measures to determine whether the principle of collective responsibility had been respected in the procedure for the adoption of the decision at issue, and, second, to annul that decision.
- 8 In support of its action, Feralpi raised seven pleas in law alleging: first, breach of the obligation to state reasons and the principle of collective responsibility, as well as an irregularity in the procedure for re-adoption of the 2002 decision; second, the inadequacy of the legal basis of the decision at issue; third, infringement of rights of defence and of the principles of sound administration, proportionality and equality of arms; fourth, a breach of the criteria for imputation, an incorrect assessment of the facts and lack of direction and grounds; fifth, an incorrect definition of the relevant market; sixth, an incorrect assessment of the facts, a breach of Article 65 CS, breach of the principle of non-discrimination and of Article 296 TFEU; and, seventh, incorrect determination of the amount of the fine.
- 9 By the judgment under appeal, the General Court dismissed Feralpi's action.

Forms of order sought by the parties before the Court of Justice

- 10 By its appeal, Feralpi claims that the Court should:
- set aside, in whole or in part, the judgment under appeal in so far as it dismissed the action brought by Feralpi in Case T-70/10 and, consequently:
 - annul the decision at issue, in whole or in part; and/or
 - cancel, or at least reduce, the fine imposed on Feralpi by the decision at issue;
 - in the alternative, set aside in whole or in part the judgment under appeal in so far as it dismissed the action brought by Feralpi in Case T-70/10 and refer the case back to the General Court for an adjudication on the merits in the light of the guidance with which the Court will provide it;
 - in any case, reduce the fine imposed on Feralpi by the decision at issue on account of the excessive duration of the proceedings before the General Court; and
 - order the Commission to pay the costs at first instance and on appeal.
- 11 The Commission contends that the Court should:
- dismiss the appeal; and
 - order Feralpi to pay the costs.

The request to have the oral procedure reopened

- 12 The oral procedure was closed on 8 December 2016 following delivery of the Advocate General's Opinion. By letter dated 27 January 2017, lodged at the Court Registry the same day, the Commission asked the Court to order the reopening of the oral part of the procedure and to include in the case file the facts presented in its request as well as the documents annexed to it.
- 13 In support of that request, the Commission stated, in essence, that the Court does not have sufficient information on the factual circumstances relating to the hearings of 13 June and 30 September 2002, on which the Advocate General based his Opinion, since those circumstances were not specifically debated between the parties.
- 14 Article 83 of the Rules of Procedure of the Court of Justice allows the Court to order the reopening of the oral part of the procedure at any time after hearing the Advocate General, in particular where the case is to be decided on the basis of an argument which has not been debated between the parties.
- 15 It should be noted, however, that the subject matter of the appeal is, in principle, defined in the grounds of appeal and the arguments raised by the parties. In the present case, the parties had the opportunity to sufficiently debate those grounds of appeal and arguments in their written pleadings and during the joint hearing of 20 October 2016 in cases C-85/15 P to C-89/15 P.
- 16 As a result, the Court, after hearing the Advocate General, considers that there is no need to order the reopening of the oral part of the procedure.

The appeal

- 17 In support of its appeal, Feralpi raises six grounds of appeal alleging: first, infringement of the principle of collective responsibility; second, infringement of the rights of defence, of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950, of Article 10 of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles [101 and 102 TFEU] (OJ 2004 L 123, p. 18), as well as a failure to state reasons; third, a breach of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter') on account of the excessive duration of the administrative procedure, as well as a failure to state reasons; fourth, infringement of Article 65(1) CS, of the principles governing burden of proof, of the principle of the presumption of innocence as well as distortion of the facts and failure to state reasons; fifth, infringement of Articles 23 and 31 of Regulation No 1/2003, of the Commission's guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and of Article 65(5) of the ECSC treaty (OJ 1998 C 9, p. 3), of the principles of equal treatment and of proportionality as well as a failure to state reasons; and, sixth, excessive duration of proceedings before the General Court.

The second ground of appeal

Arguments of the parties

- 18 By its second ground of appeal, which must be considered first of all, Feralpi claims that, by taking the view that it was not necessary to issue a new statement of objections before adopting the decision at issue, the General Court violated its rights of defence guaranteed by Article 10 of Regulation No 773/2004. Since the undertakings concerned had the right to be heard, as the Commission's letter of 30 June 2008 inviting them to submit their comments confirmed, the Commission should have implemented all the procedural steps provided for by Regulation No 773/2004 — namely, notification of a new statement of objections and the opportunity for the undertakings to exercise their right of access to the case file, as well as their right to an oral hearing upon request.
- 19 The Commission contends that the General Court was correct to hold that, as the defect rendering the 2002 decision unlawful occurred on the date that decision was adopted, the validity of the preparatory acts was not affected, such that the annulment of that decision did not require a new statement of objections to be issued before adoption of the decision at issue. The Commission contends that the change to the legal basis as regards its power to impose fines had no effect on Feralpi's position, and that the latter had the opportunity, in response to the supplementary statement of objections, to make its views known both on the upper limit of the fine the Commission could impose and on the legal basis authorising the Commission to do so.
- 20 As regards the letter of 30 June 2008, the General Court recognised, in paragraph 140 of the judgment under appeal, that it stated that the Commission considered it unnecessary to adopt a new statement of objections. It cannot be considered, however, that that letter served as the statement of objections in the strict sense. According to the Commission, the General Court correctly found that, since the annulment of the 2002 decision did not affect the validity of the statement of objections and supplementary statement of objections, on which the undertakings concerned had already had the opportunity to express their opinion, the Commission could simply inform them, in the aforementioned letter, of its intention to re-adopt that decision on a new legal basis.
- 21 Moreover, the judgment of 15 October 2002, *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, EU:C:2002:582), cited by the General Court, is relevant in the present case since the case giving rise

to that judgment concerned the discovery of a procedural irregularity which occurred at the stage of adoption of the decision concerned, and which did not result in the procedural documents being invalidated.

- 22 The Commission also defends the validity of the supplementary statement of objections. As the General Court held in paragraph 135 of the judgment under appeal, that judgment was based on the relevant procedural rules of the EC Treaty in force at the time, such that its validity was not affected by the annulment of the 2002 decision.

Findings of the Court

- 23 Feralpi criticises the General Court, in essence, for not having found that the Commission had breached its obligation to respect all the procedural steps provided for by Regulation No 773/2004, including notifying a new statement of objections to the undertakings concerned, in accordance with Article 10 of that regulation, and giving Feralpi the opportunity to exercise its right to an oral hearing with the participation of the competition authorities of the Member States, before adopting the decision at issue.
- 24 In this connection it must be noted that, in the context of the procedure leading to the adoption of the 2002 decision, the Commission did, on 26 March 2002, address the statement of objections to the undertakings concerned, including Feralpi, in accordance with Article 36 CS. The oral hearing relating to that statement of objections took place on 13 June 2002. After expiry of the ECSC Treaty, on 12 August 2002 the Commission sent the undertakings the supplementary statement of objections based on Article 19(1) of Regulation No 17, in which it explained its position regarding the change in the legal framework and invited them to make known their own points of view on the supplementary statement of objections. An oral hearing took place on 30 September 2002 in the presence of representatives of the Member States.
- 25 Following the annulment of the 2002 decision, the Commission, by letter dated 30 June 2008, informed Feralpi and the other undertakings concerned of its intention to re-adopt that decision on the legal basis of Regulation No 1/2003, in accordance with the procedural rules laid down in that regulation.
- 26 Having regard to the course of that procedure, it is necessary to consider whether, contrary to the General Court's conclusion in paragraph 142 of the judgment under appeal, the Commission was obligated to reopen the proceedings and adopt a new statement of objections as well as to organise a new hearing, following the annulment of the 2002 decision.
- 27 It is established case-law that procedural rules are generally held to apply from the date on which they enter into force (judgments of 29 March 2011, *ArcelorMittal Luxembourg v Commission* and *Commission v ArcelorMittal Luxembourg and Others*, C-201/09 P and C-216/09 P, EU:C:2011:190, paragraph 75 and the case-law cited; of 29 March 2011, *ThyssenKrupp Nirosta v Commission*, C-352/09 P, EU:C:2011:191, paragraph 88; and of 11 December 2012, *Commission v Spain*, C-610/10, EU:C:2012:781, paragraph 45), even in a procedure that was initiated before that date, but is still pending after that date (see, to that effect, judgment of 11 December 2012, *Commission v Spain*, C-610/10, EU:C:2012:781, paragraph 47).
- 28 In this case, as the decision at issue was adopted on the basis of Article 7(1) and Article 23(2) of Regulation No 1/2003, the procedure leading to that decision had to be conducted in accordance with that regulation and Regulation No 773/2004, the legal basis of which is Regulation No 1/2003 (see, to that effect, judgment of 29 March 2011, *ThyssenKrupp Nirosta v Commission*, C-352/09 P, EU:C:2011:191, paragraph 90), despite the fact that the procedure had been initiated before Regulation No 1/2003 came into force.

- 29 Article 10(1) and (2) of Regulation No 773/2004, read in the light of Article 27(1) of Regulation No 1/2003, which it implements, provides that before adopting a decision under, inter alia, Article 7 of the latter regulation, the Commission is to notify a statement of objections to the parties concerned, giving them the opportunity to make their opinions on it known within a period determined by the Commission.
- 30 As the General Court stated, in essence, in paragraphs 136 to 137 of the judgment under appeal, in this case the Commission had already sent the undertakings concerned the statement of objections and the supplementary statement of objections, and, in relation to those statements, the decision at issue did not take new facts into account against Feralpi nor materially alter the evidence for the alleged offences. Moreover, as the Advocate General observed in point 53 of his Opinion, there is no major difference, in respect of content, between a statement of objections adopted under the ECSC rules and one adopted in accordance with Regulations No 17 and 1/2003. It was therefore not necessary to send a new statement.
- 31 In this connection, the General Court was entitled to refer to paragraph 73 of the judgment of 15 October 2002, *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, EU:C:2002:582), in which it is noted that the annulment of an EU measure does not necessarily affect the preparatory acts, and the procedure for replacing such a measure may, in principle, be resumed at the very point at which the illegality occurred.
- 32 As the General Court noted in paragraph 134 of the judgment under appeal, the 2002 decision was annulled on the ground that the Commission did not have power to adopt it on the basis of the ECSC Treaty, which was no longer in force at the date of adoption of the decision, such that it was on that exact date that the illegality occurred. As a result, that annulment did not affect the statement of objections or the supplementary statement of objections.
- 33 Contrary to Feralpi's claim, the case-law cited in paragraph 31 of the present judgment is not rendered inapplicable in the present case on account of the change of legal basis on which the fines were adopted, in so far as the impact of that change of legal basis had already been anticipated in the preparatory acts. Indeed, as is apparent from paragraphs 18 and 138 of the judgment under appeal, the Commission informed Feralpi in the supplementary statement of objections, based on Article 19(1) of Regulation No 17, of its view of the consequences of the expiry of the ECSC Treaty and Feralpi had the opportunity to express its views on the matter.
- 34 In addition, it is common ground that those consequences in no way changed on account of the repeal of Regulation No 17 and the entry into force of Regulation No 1/2003, certain provisions of which form the legal basis of the decision at issue. In any case, as the Advocate General noted in point 50 of his Opinion, Article 34(2) of Regulation No 1/2003 and Article 19 of Regulation No 773/2004 provide, in the way of transitional provisions, that procedural steps and measures taken, respectively, under Regulation No 17 and Commission Regulation (EC) No 2842/98 of 22 December 1998 on the hearing of parties in certain proceedings under Articles [81] and [82] of the EC Treaty (OJ 1998 L 354, p. 18), are to continue to have effect for the purposes of applying the first regulations.
- 35 It is also necessary to reject Feralpi's argument that annulment of the 2002 decision on account of the legal basis on which it was founded necessarily affected the setting out, in the statement of objections, of the legal basis on which the Commission intended to adopt that decision. It is sufficient to point out that the 2002 decision was based solely on Article 65(4) and (5) CS, while the statement was based on Regulation No 17.
- 36 As a result, the General Court did not make an error of law in concluding, in paragraph 142 of the judgment under appeal, that the Commission was not obligated to adopt a new statement of objections.

- 37 However, as the Advocate General noted in point 55 of his Opinion, according to Article 12 of Regulation No 773/2004, the Commission must give the parties to whom it addressed a statement of objections the opportunity to develop their arguments at an oral hearing, if they so request in their written comments. Therefore, given that, as is clear from paragraph 32 of the present judgment, the statement of objections and the supplementary statement of objections were not affected by the annulment of the 2002 decision, it is necessary to assess whether the Commission gave the parties the opportunity to develop their arguments at an oral hearing conducted in accordance with the procedural requirements of Regulations No 1/2003 and 773/2004, as it was required to do.
- 38 In this respect, it is important to note that, under the procedural rules established by Regulation No 1/2003, as made explicit in Regulation No 773/2004, it is laid down in Article 14(3) of that regulation that the competition authorities of the Member States are to be invited to participate in the oral hearing which, upon the request of the addressees of the statement of objections, is to follow the issuing of the that statement.
- 39 In respect of the oral hearings that took place during 2002, the representatives of the Member States did not participate in that of 13 June 2002, since such participation was not provided for in the ECSC Treaty, which was in force at the time. It is common ground that that hearing concerned the substance of the case, namely the conduct in respect of which the Commission accused the addressees of the statement of objections. This is apparent, in particular, from paragraphs 379 to 382 of the decision at issue and is confirmed in paragraph 148 of the judgments of 9 December 2014, *Alfa Acciai v Commission* (T-85/10, not published, EU:T:2014:1037), and of 9 December 2014, *Ferriera Valsabbia and Valsabbia Investimenti v Commission* (T-92/10, not published, EU:T:2014:1032).
- 40 However, the hearing of 30 September 2002 — to which the representatives of the Member States were invited in accordance with the rules of the EC Treaty, which by that point was applicable, in particular in accordance with Article 11(2) of Regulation No 2842/98 — concerned the subject matter of the supplementary statement of objections, namely the legal consequences of the expiry of the ECSC Treaty for the continuation of the proceedings. This is clear, first, from that statement, which expressly invited its addressees to make their point of view on those supplementary objections known. Second, the Commission stated, in paragraph 382 of the decision at issue, that it did not consider it necessary to repeat the oral hearing of 13 June 2002, in application of the provisions of Regulations No 17 and 1/2003, since that hearing, in which the Member State representatives did not participate, had been conducted in conformity with the rules of the ECSC Treaty, which was applicable at the time. Furthermore, at the joint hearing in Cases C-85/15 P to C-89/15 P, the Commission confirmed, in its reply to a question from the Court, that the supplementary statement of objections re-examined neither the facts nor the evidence forming the subject matter of the proceedings.
- 41 It follows from this that, in the present case, the representatives of the Member States did not participate in a hearing concerning the substance of the case, but participated only in the one concerning the legal consequences resulting from the expiry of the ECSC Treaty.
- 42 Yet, according to the case-law noted in paragraphs 27 and 28 of the present judgment, when a decision is adopted on the basis of Regulation No 1/2003, the procedure resulting in that decision must conform to the procedural rules laid down by that regulation, even if the procedure began before that regulation came into force.
- 43 It follows that, before adopting the decision at issue, the Commission was required, in application of Articles 12 and 14 of Regulation No 773/2004, to give the parties the opportunity to develop their arguments during a hearing to which the competition authorities of the Member States were invited. Therefore, it cannot be held that the hearing of 13 June 2002, concerning the substance of the case, fulfilled the procedural requirements in relation to the adoption of a decision on the basis of Regulation No 1/2003.

- 44 As a result, the General Court made an error in law in holding, in paragraph 142 of the judgment under appeal, that the Commission was not obligated to organise a new hearing before adopting the decision at issue, on the ground that the undertakings concerned had already had the opportunity to be heard orally at the hearings of 13 June and 30 September 2002.
- 45 As the Advocate General pointed out in points 56 and 57 of his Opinion, having regard to the importance, in the context of a procedure provided for by Regulations No 1/2003 and 773/2004, of holding an oral hearing to which the competition authorities of the Member States are invited, in accordance with Article 14(3) of the latter regulation, failure to hold such a hearing constitutes infringement of an essential procedural requirement.
- 46 In so far as the right to such a hearing, provided for by Regulation No 773/2004, was not respected, it is not necessary for the undertaking, the rights of which have been infringed in this way, to demonstrate that such infringement might have influenced the course of the proceedings and the content of the decision at issue to its detriment.
- 47 Accordingly, the procedure is necessarily vitiated, regardless of any possible detrimental consequences for Feralpi that could result from such an infringement (see, to that effect, judgments of 6 November 2012, *Commission v Éditions Odile Jacob*, C-553/10 P and C-554/10 P, EU:C:2012:682, paragraphs 46 to 52, and of 9 June 2016, *CEPSA v Commission*, C-608/13 P, EU:C:2016:414, paragraph 36).
- 48 It follows from the above that the second ground of appeal put forward by Feralpi must be upheld and, accordingly, the judgment under appeal must be set aside, without the Court needing to examine the first and third to fifth grounds of appeal.

The sixth ground of appeal

Arguments of the parties

- 49 By its sixth ground of appeal, Feralpi claims that the General Court infringed its right to be heard within a reasonable time, as enshrined in Article 47 of the Charter, in so far as the duration of the proceedings was four years and 10 months, including three years and four months between the end of the written procedure and the hearing being held.
- 50 Regarding the complexity of the case, Feralpi claims that the General Court was already aware of the questions posed by the case giving rise to the judgment under appeal, especially taking into account the fact that the Judge-Rapporteur was the same as that in the case giving rise to the judgment of 25 October 2007, *Feralpi Siderurgica v Commission* (T-77/03, not published, EU:T:2007:319); that the grounds of appeal raised by Feralpi did not present any particular degree of difficulty; that the nine actions against the decision at issue were based on overlapping pleas, and, that the General Court had adopted a single measure of organisation of procedure by asking the Commission a question concerning an aspect of the dispute.
- 51 The conduct of the parties had no effect on the length of the procedure, Feralpi and the Commission obtaining extensions of only one month and fifteen days respectively to submit their written statements.
- 52 Having regard to the fact that more than fourteen years elapsed between the verifications being carried out by the Commission during the year 2000 and the delivery of the judgment under appeal, Feralpi asks that, for the sake of judicial efficiency and despite the approach taken by the Court in the judgment of 26 November 2013, *Gascogne Sack Deutschland v Commission* (C-40/12 P, EU:C:2013:768), it be awarded a compensatory remedy by the Court at the judgment stage for the harm caused by the failure to observe the reasonable time requirement. In the alternative, Feralpi asks

the Court to declare that the General Court misinterpreted the second paragraph of Article 47 of the Charter, which constituted a sufficiently serious breach of a rule of law intended to confer rights on individuals.

53 The Commission contends that the Court should reject that ground of appeal.

Findings of the Court

54 In respect of Feralpi's request to the Court to grant it a compensatory remedy for harm allegedly caused by a breach, on the part of the General Court, of the second paragraph of Article 47 of the Charter, or to declare such a breach, it should be recalled that a breach by a Court of the European Union of its obligation under that provision to adjudicate on the cases before it within a reasonable time must be sanctioned in an action for damages brought before the General Court, since such an action constitutes an effective remedy. Accordingly, a claim for compensation for the damage caused by the failure on the part of the General Court to adjudicate within a reasonable time may not be made directly to the Court of Justice in the context of an appeal, but must be brought before the General Court itself. The General Court, which has jurisdiction under Article 256(1) TFEU, hearing a claim for damages, is required to rule on such a claim sitting in a different composition from that which heard the dispute which gave rise to the procedure whose duration is criticised (judgment of 9 June 2016, *Repsol Lubricantes y Especialidades and Others v Commission*, C-617/13 P, EU:C:2016:416, paragraphs 98 and 99 and the case-law cited).

55 As a result, the sixth ground of appeal raised by Feralpi must be rejected.

The action before the General Court

56 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, if the appeal is well founded, the Court of Justice is to quash the decision of the General Court. It may then itself give final judgment in the matter, where the state of the proceedings so permits.

57 In the present case, the Court has the necessary information to give final judgment on the action for annulment of the decision at issue brought by Feralpi before the General Court.

58 In this respect, it is sufficient to note that, for the reasons set out in paragraphs 23 to 47 of the present judgment, the decision at issue must be annulled to the extent that it concerns Feralpi, for infringement of essential procedural requirements.

Costs

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

60 Article 138(1) of those rules, applicable to appeal proceedings by virtue of Article 184(1) of the same rules, provides that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since Feralpi has been successful on appeal, and the action before the General Court was upheld, the Commission must be ordered to bear its own costs and to pay those incurred by Feralpi both at first instance and on appeal, in accordance with the form of order sought by Feralpi.

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

- 1. Sets aside the judgment of the General Court of the European Union of 9 December 2014, *Feralpi v Commission* (T-70/10, not published, EU:T:2014:1031);**
- 2. Annuls Commission Decision C(2009) 7492 final of 30 September 2009 relating to a proceeding under Article 65 CS (Case COMP/37.956 — Reinforcing bars, re-adoption), as amended by Commission Decision C(2009) 9912 final of 8 December 2009, in so far as it concerns Feralpi Holding SpA;**
- 3. Orders the Commission to bear its own costs and to pay those incurred by Feralpi Holding SpA both at first instance and in the present appeal.**

[Signatures]