

SUMMARY ANALYSIS JUDGMENT COURT OF JUSTICE IN CASE C-583/11 P

Today, the Court of Justice has dismissed the appeal lodged against the General Court's ruling of 6 September 2011, which declared the application for annulment of the Basic Regulation inadmissible.

The Court of Justice dismissed all four grounds of appeal.

As to the **first part of the first ground of appeal**, the Court first declares this part admissible as it is not a mere repetition of the arguments raised before the General Court, but was directed against an essential part of the reasons stated in the order of the General Court.

It, however, declared the first part unfounded as it follows the narrow interpretation that can be given to the modified article 263, fourth paragraph. Whereas we argued that all acts of general application can benefit from the lower threshold of admissibility, the Court considers that only acts of general application other than legislative acts are covered by the treaty modification. This means that only for acts of general application other than legislative acts the applicants have to demonstrate that they are directly concerned only. For legislative acts, such as the Basic Regulation, the old – and more stringent – conditions of direct AND individual concern have to be met. The Court in this follows the reasoning of the Advocate General, which relied heavily on the preparatory works for the Constitutional Treaty and a comparison of several treaty provisions.

For the **second part of the first ground of appeal**, the Court simply comes to the conclusion that none of the appellants are individually concerned by the Basic Regulation as they are not distinguished individually by the regulation. The prohibition on the placing of seal products on the market laid down in the contested regulation is worded in general terms and applies indiscriminately to any trader falling within its scope. Therefore, the issue of direct concern does not have to be investigated as individual and direct concern are cumulative conditions.

For the **second ground of appeal**, whereby the applicants claimed that “individual concern” must be interpreted widely in order to ensure effective judicial protection, the Court concurred with the General Court that the principle of effective judicial protection does not allow the courts of the Union apply a treaty provision in clear contradiction with the literal wording of such provision. Therefore, the provisions on admissibility cannot be interpreted in the way proposed by the appellants.

For the **third ground of appeal**, based on Article 47 of the Charter and Articles 6 and 13 of the European Convention of Human Rights, the Court of Justice considers that the entire setup of legal protection under the European Union Treaties, combined with the national judicial systems, provides for an adequate level of judicial protection, either by allowing direct action against a Union measure before the Union Courts or via indirect challenges to Union measures before national judges.

For the **fourth ground of appeal**, claiming distortion by the General Court of a number of the appellants' arguments, the Court of Justice simply stated that – even if this were the case – the identified distortions had not affected the operative part of the judgment. Therefore, such distortions cannot be the basis for annulling the General Court's Order.

Consequently, the appeal is rejected and the appellants are ordered to pay the European Parliament's and the Council of the European Union's costs. In practice, this at most will imply the lodging expenses for both institutions' agents at the hearing.