

JUDGMENT OF THE COURT (Grand Chamber)

18 March 2014

(Action for annulment — Choice of legal basis — Articles 290 TFEU and 291 TFEU — Delegated act and implementing act — Regulation (EU) No 528/2012 — Article 80(1) — Biocidal products — European Chemicals Agency — Setting of fees by the Commission)

In Case C-427/12,

ACTION for annulment under Article 263 TFEU, brought on 19 September 2012,

European Commission, represented by B. Smulders, C. Zadra and E. Manhaeve, acting as Agents, with an address for service in Luxembourg,

applicant,

v

European Parliament, represented by L. Visaggio and A. Troupiotis, acting as Agents, with an address for service in Luxembourg,

Council of the European Union, represented by M. Moore and I. Šulce, acting as Agents,

defendants,

supported by:

Czech Republic, represented by M. Smolek, E. Ruffer and D. Hadroušek, acting as Agents,

Kingdom of Denmark, represented by V. Pasternak Jørgensen and C. Thorning, acting as Agents,

French Republic, represented by G. de Bergues, D. Colas and N. Rouam, acting as Agents,

Kingdom of the Netherlands, represented by M. Bulterman and M. Noort, acting as Agents,

Republic of Finland, represented by H. Leppo and J. Leppo, acting as Agents,

United Kingdom of Great Britain and Northern Ireland, represented by C. Murrell and M. Holt, acting as Agents, and by B. Kennelly, Barrister,

interveners,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts (Rapporteur), Vice-President, A. Tizzano, R. Silva de Lapuerta, T. von Danwitz, E. Juhász and M. Safjan, Presidents of Chambers, A. Rosas, E. Levits, A. Ó Caoimh, J.-C. Bonichot, A. Arabadžiev, C. Toader, D. Šváby and S. Rodin, Judges,

Advocate General: P. Cruz Villalón,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 1 October 2013,

after hearing the Opinion of the Advocate General at the sitting on 19 December 2013,
gives the following

Judgment

- 1 By its application, the European Commission seeks the annulment of Article 80(1) of Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ 2012 L 167, p. 1), in so far as Article 80(1) provides for the adoption of measures setting the fees payable to the European Chemicals Agency ('the Agency') by an act based on Article 291(2) TFEU ('implementing act'), and not by an act adopted under Article 290(1) TFEU ('delegated act').

Legal context

Regulation No 528/2012

- 2 Regulation No 528/2012, which harmonises certain rules concerning the making available on the market and use of biocidal products, assigns to the Agency, as is apparent from recital 17 in the preamble thereto, 'specified tasks with regard to the evaluation of active substances as well as the Union authorisation of certain categories of biocidal products ...'.
- 3 Recital 64 in the preamble to that regulation states:

'The costs of the procedures associated with the operation of this Regulation need to be recovered from those making biocidal products available on the market and those seeking to do so in addition to those supporting the approval of active substances. To promote the smooth operation of the internal market, it is appropriate to establish certain common principles applicable both to fees payable to the Agency and to Member States' competent authorities, including the need to take into account, as appropriate, the specific needs of SMEs [small and medium-sized enterprises].'
- 4 In accordance with the first subparagraph of Article 7(2), the second subparagraph of Article 13(3), the first subparagraph of Article 43(2), Article 45(1) and (3), the second subparagraph of Article 50(2), Article 54(1) and (3) and Article 80(1)(a) of Regulation No 528/2012, a fee is payable to the Agency for its action in the respective procedures for (i) the approval of an active substance or making subsequent amendments to the conditions of approval of an active substance, (ii) renewal of such an approval, (iii) European Union ('EU') authorisation for biocidal products, (iv) renewal and amendment of such an authorisation, and (v) establishing technical equivalence of active substances. In accordance with the third subparagraph of Article 77(1) of that regulation, '[f]ees may be payable ... by the person bringing an appeal [against a decision of the Agency]'.

As regards the time-limits for payment of the fees payable to the Agency, the first subparagraph of Article 7(2), the second subparagraph of Article 13(3), the first subparagraph of Article 43(2), the second subparagraph of Article 45(3) and Article 54(3) of that regulation provide that '[t]he Agency shall inform the applicant of the fees payable under Article 80(1) and shall reject the application if the applicant fails to pay the fees within 30 days'.
- 6 Article 78(1) of Regulation No 528/2012, dealing with the budget of the Agency, provides:

'For the purposes of this Regulation, the revenues of the Agency shall consist of:

- (a) a subsidy from the Union, entered in the general budget of the European Union (Commission Section);
- (b) the fees paid to the Agency in accordance with this Regulation;
- (c) any charges paid to the Agency for services that it provides under this Regulation;
- (d) any voluntary contributions from Member States.²

7 Article 80 of Regulation No 528/2012, entitled 'Fees and charges', provides:

1. The Commission shall adopt, on the basis of the principles set out in paragraph 3, an implementing Regulation specifying:

- (a) the fees payable to the Agency, including an annual fee for products granted a Union authorisation in accordance with Chapter VIII and a fee for applications for mutual recognition in accordance with Chapter VII;
- (b) the rules defining conditions for reduced fees, fee waivers and the reimbursement of the member of the Biocidal Products Committee who acts as a rapporteur; and
- (c) conditions of payment.

That implementing Regulation shall be adopted in accordance with the examination procedure referred to in Article 82(3). It shall apply only with respect to fees paid to the Agency.

The Agency may collect charges for other services it provides.

The fees payable to the Agency shall be set at such a level as to ensure that the revenue derived from the fees, when combined with other sources of the Agency's revenue pursuant to this Regulation, is sufficient to cover the cost of the services delivered. The fees payable shall be published by the Agency.

2. Member States shall directly charge applicants fees for services that they provide with respect to the procedures under this Regulation, including the services undertaken by Member States' competent authorities when acting as evaluating competent authority.

Based on the principles set out in paragraph 3, the Commission shall issue guidance concerning a harmonised structure of fees.

Member States may levy annual fees with respect to biocidal products made available on their markets.

Member States may collect charges for other services they provide.

Member States shall set and publish the amount of fees payable to their competent authorities.

3. Both the implementing Regulation referred to in paragraph 1 and Member States' own rules concerning fees shall respect the following principles:

- (a) fees shall be set at such a level as to ensure that the revenue derived from the fees is, in principle, sufficient to cover the cost of the services delivered and shall not exceed what is necessary to cover those costs;
- (b) partial reimbursement of the fee if the applicant fails to submit the information requested within the specified time-limit;

- (c) the specific needs of SMEs shall be taken into account, as appropriate, including the possibility of splitting payments into several instalments and phases;
- (d) the structure and amount of fees shall take into account whether information has been submitted jointly or separately;
- (e) in duly justified circumstances, and where it is accepted by the Agency or the competent authority, the whole fee or a part of it may be waived; and
- (f) the deadlines for the payment of fees shall be fixed taking due account of the deadlines of the procedures provided for in this Regulation.⁹

8 In accordance with the second paragraph of Article 97 of Regulation No 528/2012, that regulation is applicable from 1 September 2013.

Procedure before the Court and forms of order sought by the parties

9 By decisions of the President of the Court of 15 January and 5 February 2013, respectively, the Czech Republic, the French Republic, the Kingdom of the Netherlands, the Republic of Finland and the United Kingdom of Great Britain and Northern Ireland were granted leave to intervene in support of the form of order sought by the European Parliament and the Council of the European Union. By decision of the President of the Court of 5 February 2013, the Kingdom of Denmark was granted leave to intervene in support of the form of order sought by the Council.

10 The Commission claims that the Court should:

- annul Article 80(1) of Regulation No 528/2012, in so far as it provides for the adoption of measures setting the fees payable to the Agency by an implementing act pursuant to Article 291 TFEU, and not by a delegated act adopted on the basis of Article 290 TFEU;
- maintain the effects of the provision annulled, and of all acts adopted on the basis thereof, until the entry into force, within a reasonable period, of a new provision intended to replace it;
- order the Parliament and the Council to pay the costs.

11 In the alternative, in the event that the Court should take the view that that application for partial annulment of Regulation No 528/2012 is not admissible, the Commission asks the Court to annul that regulation in its entirety, with its effects in time being maintained.

12 The Parliament and the Council contend that the Court should:

- dismiss the action; and
- order the Commission to pay the costs.

13 In the alternative, the Parliament also asks that, in the event that the action is successful, the effects of Article 80(1) of Regulation No 528/2012 and of any acts adopted on the basis thereof be maintained until the entry into force, within a reasonable time, of a new provision intended to replace the provision annulled.

Admissibility

Arguments of the parties

- 14 The Council, supported by the Kingdom of the Netherlands and the United Kingdom, argues that the application for partial annulment of Regulation No 528/2012 is inadmissible on the ground that Article 80(1) of that regulation, the annulment of which is sought by the Commission, cannot be severed from the other provisions of that regulation. In support of that conclusion, the Council and those Member States refer to the fact that the participation of the Agency throughout the entire process of approval of a biocidal product is dependent on payment of the fee.
- 15 By contrast, the Parliament, the Commission and the Republic of Finland contend that the annulment of Article 80(1) of Regulation No 528/2012 alone would not affect the substance of that regulation. The application for partial annulment is therefore, in their view, admissible.

Findings of the Court

- 16 According to settled case-law of the Court, partial annulment of an EU act is possible only if the elements the annulment of which is sought may be severed from the remainder of the act (see, inter alia, *Commission v Council*, C-29/99, EU:C:2002:734, paragraph 45, and *Germany v Council*, C-239/01, EU:C:2003:514, paragraph 33). The Court has repeatedly ruled that that requirement of severability is not satisfied where the partial annulment of an act would have the effect of altering its substance (*Commission v Poland*, C-504/09 P, EU:C:2012:178, paragraph 98 and the case-law cited).
- 17 In the present case, it should be noted that Regulation No 528/2012 establishes harmonised rules concerning the making available on the market and the use of biocidal products. Within the framework of that regulation, the Agency carries out tasks with regard to the evaluation of active substances as well as to the EU authorisation of certain categories of biocidal products.
- 18 As the Advocate General has observed in point 19 of his Opinion, Article 80(1) of Regulation No 528/2012 does no more than confer on the Commission the necessary powers to adopt an implementing regulation specifying the fees payable to the Agency for the tasks carried out in implementation of that regulation as well as the conditions governing payment of those fees.
- 19 It follows that Article 80(1) of Regulation No 528/2012 concerns a severable aspect of the regulatory framework established by that regulation and, consequently, the annulment of Article 80(1) would not affect the substance of Regulation No 528/2012.
- 20 The Commission's action for partial annulment of Regulation No 528/2012 is for that reason admissible.

Substance

Arguments of the parties

- 21 The Commission raises a single plea in law in support of its action, alleging a breach of the Treaty on the Functioning of the European Union consisting in a failure to comply with the system for attributing the powers which the EU legislature may confer on the Commission under Articles 290 TFEU and 291 TFEU.
- 22 As to the respective scopes of those articles, the Commission submits, in the first place, that the power conferred on it on the basis of Article 291 TFEU is purely implementing in nature, whereas it has quasi-legislative powers under Article 290 TFEU.

- 23 In the second place, the choice made by the EU legislature to confer on the Commission the power to adopt a delegated act or an implementing act must, it contends, be based on objective and clear factors that are amenable to judicial review. In that regard, the Commission submits, first, that the respective scopes of Articles 290 TFEU and 291 TFEU are different and mutually exclusive. Secondly, in the light of the actual wording of those articles, the only decisive criterion which makes it possible for a delegated act to be distinguished from an implementing act relates to the nature and purpose of the powers conferred on the Commission. If the purpose of those powers is to adopt non-essential rules of general application, having the legal function of completing the normative framework of the legislative act concerned, those rules supplement the legislative act in accordance with the first subparagraph of Article 290(1) TFEU. If, by contrast, those rules are intended merely to give effect to the rules already laid down in the basic act while ensuring uniform conditions of application within the European Union, they come under Article 291 TFEU. The exercise of implementing powers under Article 291 TFEU may in no way affect the content of the legislative act.
- 24 Neither the fact that the legislative provision conferring the power on the Commission is very detailed, nor the resulting discretion for the Commission or the question of whether the act to be adopted by it creates new rights and obligations may, if taken in isolation, be considered decisive for the purpose of distinguishing between delegated acts and implementing acts. It is the nature and purpose of the power conferred on the Commission which determine whether that power belongs to the domain of legislative delegation or to that of implementing power.
- 25 As to the lawfulness of Article 80(1) of Regulation No 528/2012, the Commission submits that, by that provision, the EU legislature incorrectly conferred on it an implementing power pursuant to Article 291 TFEU. An examination of the nature and purpose of the powers thereby conferred on the Commission shows that it will be led to adopt an act supplementing certain non-essential elements of the legislative act within the meaning of Article 290 TFEU.
- 26 The Commission states, in the first place, that, under Article 78 of Regulation No 528/2012, the revenues of the Agency are to consist not only of the fees paid to it, but also of a subsidy from the European Union, any charges paid to the Agency for services that it provides as well as any voluntary contributions from Member States. However, Article 80 of that regulation does not lay down criteria designed to ensure that the various methods of financing the Agency are coordinated and coherent.
- 27 In the second place, according to the Commission, it is apparent from paragraphs 1 and 3 of Article 80 of Regulation No 528/2012, read together, that, in accordance with the ‘principles’ on fees laid down by those provisions, the Commission has not simply the task of determining, for each authorisation procedure, the corresponding amount of the fee. Article 80(1)(a) and (3)(a) provides, first, that ‘in principle’ the fees must be proportionate to the services delivered and cover the costs thereof. Consequently, it falls to the Commission to define the exceptions to the principle on the basis of specific criteria and, therefore, to supplement the legislation. Secondly, as regards the rules defining conditions for reduced fees, fee waivers and reimbursement, referred to in Article 80(1)(b) and (3)(e), the EU legislature did not specify the circumstances justifying waiver of the fee in whole or in part. Those provisions thus give the Commission the power to supplement the legislation in this area by the addition of non-essential elements.
- 28 The same, it argues, applies to the ‘conditions of payment’ provided for in Article 80(1)(c) of Regulation No 528/2012, a concept the scope of which is not specified and which could therefore cover both mere payment methods the breach of which would have no impact on the authorisation procedure and conditions the breach of which could, in certain circumstances, be detrimental to the acceptance of an application for authorisation.
- 29 The Commission also relies on the fact that Article 80(3)(c) of Regulation No 528/2012 states that it must take into account the specific needs of small and medium-sized enterprises (SMEs) ‘as

appropriate', which allows it not only the choice as to the methods of 'implementation', but also the power to supplement the legislative framework by laying down general criteria in relation to fee reductions from which SMEs could benefit.

30 Lastly, the fact that Article 80(3) of Regulation No 528/2012 also sets out the principles which the Member States' rules concerning fees must respect has, the Commission submits, no bearing on the issue of whether the powers conferred on it belong to the domain of delegated acts under Article 290 TFEU or implementing acts adopted on the basis of Article 291 TFEU.

31 The Parliament, the Council and all of the Member States intervening in the present proceedings contend that Article 80(1) of Regulation No 528/2012 properly confers on the Commission an implementing power within the meaning of Article 291 TFEU. The system of fees established in Article 80 of Regulation No 528/2012 is, they submit, sufficiently detailed and defined in terms of legislation, with the result that the powers conferred on the Commission are of a purely implementing nature under Article 291 TFEU.

Findings of the Court

32 Article 80(1) of Regulation No 528/2012 confers on the Commission the power to adopt an implementing regulation, pursuant to Article 291(2) TFEU, concerning the fees payable to the Agency which are linked to its various actions in implementation of that regulation.

33 It should be noted that Article 291 TFEU does not provide a definition of the concept of an implementing act, but simply refers, in paragraph 2 thereof, to the need for such an act to be adopted by the Commission or, in certain specific cases, by the Council, in order to ensure that a legally binding EU act is implemented under uniform conditions in the European Union.

34 It is, moreover, apparent from Article 291(2) TFEU that it is only '[w]here uniform conditions for implementing legally binding Union acts are needed [that] those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 [TFEU] and 26 [TFEU], on the Council'.

35 Lastly, the concept of an implementing act within the meaning of Article 291 TFEU must be assessed in relation to the concept of a delegated act, as derived from Article 290 TFEU.

36 Before the entry into force of the Treaty of Lisbon, the expression 'implementing powers' in the third indent of Article 202 EC covered the power to implement, at EU level, an EU legislative act or certain EU provisions and also, in certain circumstances, the power to adopt normative acts which supplement or amend certain non-essential elements of a legislative act. The European Convention proposed making a distinction between those two types of power, which is found in Articles I-35 and I-36 of the Draft Treaty establishing a Constitution for Europe. That amendment was ultimately incorporated in the Treaty of Lisbon in Articles 290 TFEU and 291 TFEU.

37 In accordance with the first subparagraph of Article 290(1) TFEU '[a] legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act'.

38 When the EU legislature confers, in a legislative act, a delegated power on the Commission pursuant to Article 290(1) TFEU, the Commission is called on to adopt rules which supplement or amend certain non-essential elements of that act. In accordance with the second subparagraph of Article 290(1) TFEU, the objectives, content, scope and duration of the delegation of power must be explicitly defined in the legislative act granting such a delegation. That requirement implies that the purpose of granting a delegated power is to achieve the adoption of rules coming within the regulatory framework as defined by the basic legislative act.

- 39 By contrast, when the EU legislature confers an implementing power on the Commission on the basis of Article 291(2) TFEU, the Commission is called on to provide further detail in relation to the content of a legislative act, in order to ensure that it is implemented under uniform conditions in all Member States.
- 40 It must be noted that the EU legislature has discretion when it decides to confer a delegated power on the Commission pursuant to Article 290(1) TFEU or an implementing power pursuant to Article 291(2) TFEU. Consequently, judicial review is limited to manifest errors of assessment as to whether the EU legislature could reasonably have taken the view, first, that, in order to be implemented, the legal framework which it laid down regarding the system of fees referred to in Article 80(1) of Regulation No 528/2012 needs only the addition of further detail, without its non-essential elements having to be amended or supplemented and, secondly, that the provisions of Regulation No 528/2012 relating to that system require uniform conditions for implementation.
- 41 In the first place, Article 80(1) of Regulation No 528/2012 confers on the Commission the power to ‘specify’ the fees payable to the Agency, their conditions of payment and certain rules concerning reduced fees, fee waivers and reimbursement, ‘on the basis of the principles set out in paragraph 3 [of that article]’.
- 42 In that regard, it should be noted, first, that recital 64 in the preamble to Regulation No 528/2012 lays down the very principle of the payment of fees to the Agency and, secondly, that the final subparagraph of Article 80(1) of that regulation states that those fees ‘shall be set at such a level as to ensure that the revenue derived from the fees, when combined with other sources of the Agency’s revenue pursuant to this Regulation, is sufficient to cover the cost of the services delivered’.
- 43 Thus, the guiding principle of the system of fees provided for in Article 80(1) of Regulation No 528/2012 was laid down by the legislature itself when it decided that the fees should be used solely to cover the costs of the service, without any possibility that they could be used for any other purpose or set at a level that exceeds the costs of the services delivered by the Agency.
- 44 Contrary to the Commission’s claims, the fact that Regulation No 528/2012 does not establish the criteria for coordinating the various sources of financing for the Agency referred to in Article 78(1) of that regulation and the fact that, in accordance with Article 80(3)(a) thereof, the fees to be collected must ‘in principle’ cover the costs do not in any way support the contention that a delegated power has been conferred on the Commission.
- 45 It must be stated, in this regard, that setting the amount of the fees paid to the Agency at a level which is sufficient to cover the costs of the services which it delivers is by nature a forward-looking exercise subject to certain variables such as, inter alia, the number of applications submitted to the Agency. As the Council and the Parliament observe, the expression ‘in principle’ thus essentially expresses the difficulty of ensuring in all circumstances that the fees collected by the Agency will be sufficient to cover the costs of the corresponding services. It is, moreover, for that reason that Article 78(1) of Regulation No 528/2012 provides also for other sources of finance for the Agency, which, when combined with the fees, enable such coverage to be achieved.
- 46 It must also be noted that the exercise by the Commission of the power conferred on it by Article 80(1) of Regulation No 528/2012 is made subject to other conditions and criteria which have been laid down by the EU legislature itself in that legislative act. In that regard, Article 80(3) provides that (i) there is to be partial reimbursement of the fee if the applicant fails to submit the information requested within the specified time-limit (Article 80(3)(b)); (ii) the specific needs of SMEs are to be taken into account, as appropriate, including the possibility of splitting payments into several instalments and phases (Article 80(3)(c)); (iii) the structure and amount of fees are to take into account whether information has been submitted jointly or separately (Article 80(3)(d)); (iv) in duly justified circumstances, and where it is accepted by the Agency, the whole fee or a part

of it may be waived (Article 80(3)(e)); and, lastly, (v) the deadlines for the payment of fees are to be fixed taking due account of the deadlines of the procedures provided for in the regulation (Article 80(3)(f)).

- 47 The Commission contends, however, as regards the rules defining conditions for reduced fees, fee waivers and reimbursement, referred to in Article 80(1)(b) and (3)(e) of Regulation No 528/2012, that the EU legislature has not specified the circumstances which justify waiver of the fee in whole or in part and therefore, by implication, conferred on the Commission the power to supplement the legislative act. Likewise, the Commission contends, Article 80(1)(c) of Regulation No 528/2012 infringes Article 291 TFEU in conferring on the Commission the power to determine the 'conditions of payment' of the fees payable to the Agency.
- 48 That argument cannot be accepted. The EU legislature could reasonably take the view that Regulation No 528/2012 lays down a complete legal framework within the meaning of paragraph 40 above, as regards reductions, waivers and reimbursements of the fees payable to the Agency, in (i) prescribing in Articles 7(4), 43(4) and 80(3)(b) of that regulation the various situations in which partial reimbursement of fees must be authorised, (ii) stating in Article 80(3)(c) that 'the specific needs of SMEs shall be taken into account', and (iii) specifying in Article 80(3)(e) that the whole fee or a part of it may be waived 'in duly justified circumstances, and where it is accepted by the Agency'.
- 49 The same applies with regard to the power to set the 'conditions of payment' which is conferred on the Commission by Article 80(1)(c) of Regulation No 528/2012. The first subparagraph of Article 7(2), the second subparagraph of Article 13(3), the first subparagraph of Article 43(2), the second subparagraph of Article 45(3) and Article 54(3) of that regulation themselves set a period of 30 days for payment of the fee payable to the Agency for its various actions. Under Article 80(3)(f), the deadlines for payment of the fees payable in respect of the Agency's other actions 'shall be fixed taking due account of the deadlines of the procedures provided for in [the] Regulation'. As regards the other conditions of payment, Article 80(3)(c) refers to the 'possibility of splitting payments into several instalments and phases' in order to take into account the specific needs of SMEs. The Commission's exercise of the power conferred on it by Article 80(1)(c) therefore takes place within a normative framework laid down by the legislative act itself, the non-essential elements of which can neither be amended nor supplemented by the implementing act.
- 50 Lastly, the Commission relies, in support of its action, on the fact that Article 80(3)(c) of Regulation No 528/2012 states that it must take into account the specific needs of SMEs 'as appropriate', which, in the Commission's view, confers on it not only the choice as to the methods of 'implementation', but also the power to lay down general criteria providing for whether and to what extent the SMEs may benefit from reduced fees.
- 51 That argument cannot be accepted either. The use of the words 'as appropriate' shows that the Commission's implementing regulation does not have to provide, in all cases, for a reduced fee for SMEs. Such a reduction is necessary only when the specific features of those undertakings so require. Thus, the obligation on the Commission to take into account the specific needs of SMEs 'as appropriate' bears out the fact that the EU legislature itself considered it necessary to lay down a complete legal framework within the meaning of paragraph 40 above in relation to the system of fees provided for in Article 80(1) of Regulation No 528/2012. Consequently, in accordance with Article 80(3)(a) and (c) of that regulation, the fees must be set at a level which not only, in principle, ensures that the costs of the services delivered by the Agency are covered but, with regard to SMEs, also takes account of the specific features of those undertakings. As regards the conditions of payment, Article 80(3)(c) itself refers to the possibility for SMEs to split payments into several instalments and phases.
- 52 It follows from the foregoing that the EU legislature could reasonably take the view that Article 80(1) of Regulation No 528/2012 confers on the Commission the power, not to

supplement certain non-essential elements of that legislative act, but to provide further detail in relation to the normative content of that act, in accordance with Article 291(2) TFEU.

- 53 In the second place, since the system of fees referred to in Article 80(1) of Regulation No 528/2012 relates to fees payable to an EU agency, the conferral of an implementing power on the Commission under Article 291(2) TFEU may be considered reasonable for the purposes of ensuring uniform conditions for the implementation of that system within the European Union.
- 54 It follows from all of the foregoing that the single plea in law relied on by the Commission in support of its action is unfounded and that the action must therefore be dismissed.

Costs

- 55 Under Article 138(1) of the Rules of Procedure of the Court of Justice, 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 Parliament and the Council have applied for costs and the Commission has been unsuccessful, the latter must be ordered to pay the costs. The Czech Republic, the Kingdom of Denmark, the French Republic, the Kingdom of the Netherlands, the Republic of Finland and the United Kingdom, which have intervened in support of the form of order sought by the Parliament and the Council, are to bear their own respective costs, in accordance with Article 140(1) of the Rules of Procedure.

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

1. **Dismisses the action;**
2. **Orders the European Commission to pay the costs;**
3. **Orders the Czech Republic, the Kingdom of Denmark, the French Republic, the Kingdom of the Netherlands, the Republic of Finland and the United Kingdom of Great Britain and Northern Ireland to bear their own respective costs.**