JUDGMENT OF THE GENERAL COURT (Seventh Chamber)

14 June 2012 (*)

(Environment – Regulation (EC) No 1367/2006 – Maximum residue levels for pesticides – Request for internal review – Refusal – Measure of individual scope – Validity – Aarhus Convention)

In Case T•338/08,

Stichting Natuur en Milieu, established in Utrecht (Netherlands),

Pesticide Action Network Europe, established in London (United Kingdom),

represented by B. Kloostra and A. van den Biesen, lawyers,

applicants,

v

European Commission, represented initially by B. Burggraaf and S. Schønberg and subsequently by B. Burggraaf and P. Oliver, acting as Agents,

defendant,

supported by

Republic of Poland, represented initially by M. Dowgielewicz and subsequently by M. Szpunar, acting as Agents,

and by

Council of the European Union, represented by K. Michoel and B. Driessen, acting as Agents,

interveners,

APPLICATION for annulment of the decisions of the Commission of 1 July 2008 rejecting as inadmissible the requests made by the applicants for review by the Commission of Commission Regulation (EC) No 149/2008 of 29 January 2008 amending Regulation (EC) No 396/2005 of the European Parliament and of the Council by establishing Annexes II,

III and IV setting maximum residue levels for products covered by Annex I thereto (OJ 2008 L 58, p. 1),

THE GENERAL COURT (Seventh Chamber),

composed of A. Dittrich, President, I. Wiszniewska-Białecka (Rapporteur) and M. Prek, Judges,

Registrar: N. Rosner, Administrator,

having regard to the written procedure and further to the hearing on 13 September 2011,

gives the following

Judgment

Background to the dispute

1 The applicants are Stichting Natuur en Milieu, a foundation governed by Netherlands law, set up in 1978 and established in Utrecht (Netherlands), whose object is protection of the environment, and Pesticide Action Network Europe, a foundation governed by Netherlands law, set up in 2003 and established in London (United Kingdom), which campaigns against the use of chemical pesticides.

2 On 29 January 2008, the Commission of the European Communities adopted Regulation (EC) No 149/2008 amending Regulation (EC) No 396/2005 of the European Parliament and of the Council by establishing Annexes II, III and IV setting maximum residue levels for products covered by Annex I thereto (OJ 2008 L 58, p. 1). Annexes setting maximum residue levels (MRLs) for products covered by Annex I to Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC (OJ 2005 L 70, p. 1) were accordingly added to that regulation.

3 By letters of 7 and 10 April 2008, the applicants made requests to the Commission for an internal review of Regulation No 149/2008 under Article 10(1) of Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

4 By two decisions of 1 July 2008 ('the contested decisions'), the Commission rejected the applicants' requests for internal review. In each of the contested decisions, the Commission stated as follows:

'Your request for internal review has been lodged on the basis of Title IV of Regulation ... No 1367/2006. [That] Regulation ... provides that a request for internal review shall comply with certain conditions, including the nature of the administrative act, which has to fall under the definition given in Article 2(l)(g) of the same Regulation. This article restricts the scope of administrative acts to "any measure of individual scope under environmental law, taken by a Community institution or body, and having legally binding and external effect". In your letter, it is argued that Regulation ... No 149/2008 is an administrative act subject to internal review.

The Commission however cannot follow this interpretation.

Regulation ... No 149/2008 is based on Articles 5(1), 21(1) and 22(1) of Regulation ... No 396/2005 and determines EU [MRLs] for pesticides applicable to all food business operators. Therefore, Regulation ... No 149/2008 cannot be considered an act of individual scope nor, as it is claimed in your letter, a bundle of decisions. The Commission therefore considers your request for internal review of Regulation ... No 149/2008 to be inadmissible.

Should you not agree with the present reply, you may bring the matter before the Ombudsman or before the [General Court] if you have a complaint which falls within the conditions laid down in Articles 195 [EC] and 230 [EC] respectively.'

Procedure and forms of order sought

5 By application lodged at the Court Registry on 11 August 2008, the applicants brought the present action. On 29 August 2008 the applicants lodged submissions supplementary to the application initiating proceedings.

6 By document lodged at the Court Registry on 7 January 2009, the Republic of Poland applied for leave to intervene in the present proceedings in support of the form of order sought by the Commission. That application was granted by order of the President of the First Chamber of the General Court of 19 February 2009. The Republic of Poland lodged its statement in intervention on 3 April 2009. The applicants lodged their observations on that statement on 21 August 2009.

7 By document lodged at the Court Registry on 23 February 2009, the Council of the European Union applied for leave to intervene in the present proceedings in support of the form of order sought by the Commission. By order of 21 April 2009, the

President of the First Chamber of the General Court granted that application and gave the Council leave to submit its observations during the oral procedure, in accordance with Article 116(6) of the Rules of Procedure of the Court.

8 Following a change in the composition of the Chambers of the Court, the Judge•Rapporteur was assigned to the Seventh Chamber, to which the present case was accordingly allocated.

9 Upon hearing the report of the Judge-Rapporteur, the Court (Seventh Chamber) decided to open the oral procedure.

10 At the hearing on 13 September 2011, the parties presented oral argument and replied to oral questions put by the Court.

11 The applicants claim that the Court should:

– annul the contested decisions;

– order the Commission to examine the merits of the requests for internal review;

– order the Commission to pay the costs.

12 The Commission contends that the Court should:

– declare inadmissible the submissions supplementing the application initiating proceedings;

– dismiss the action as unfounded;

– order the applicants to pay the costs of the proceedings.

13 The Polish Republic contends that the Court should dismiss the action.

Law

Admissibility

Admissibility of the applicants' second head of claim

14 By their second head of claim, the applicants claim that the Court should direct

the Commission to examine the merits of the requests for internal review at issue. However, when exercising their jurisdiction to review legality, the Courts of the European Union have no jurisdiction to issue directions, even as regards the manner in which their judgments are to be complied with (order of 26 October 1995 in Joined Cases C•199/94 P and C•200/94 P *Pevasa and Inpesca* v *Commission* [1995] ECR I•3709, paragraph 24, and Case C•5/93 P *DSM* v *Commission* [1999] ECR I•4695, paragraph 36). It is for the institution concerned to adopt, under Article 266 TFEU, the measures necessary to implement a judgment given in proceedings for annulment (Case T•67/94 *Ladbroke Racing* v *Commission* [1998] ECR II•1, paragraph 200, and judgment of 29 September 2009 in Joined Cases T•225/07 and T•364/07 *Thomson Sales Europe* v *Commission* , not published in the ECR, paragraph 221).

15 That head of claim is therefore inadmissible.

Admissibility of the submissions supplementing the application initiating proceedings

16 The Commission challenges the admissibility of the submissions supplementing the application initiating proceedings, which were lodged by the applicants on 29 August 2008.

17 The fifth paragraph of Article 230 EC states that the proceedings provided for under that provision must be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the plaintiff. In accordance with Article 102(2) of the Rules of Procedure, that period is to be extended on account of distance by a single period of 10 days.

18 In the present case, it is common ground that the submissions supplementing the application initiating proceedings, which were lodged at the Court Registry on 29 August 2008, were submitted before the deadline for bringing proceedings, which fell on 4 September 2008. It must therefore be declared admissible.

19 That conclusion is not affected by the Commission's arguments.

20 As regards the argument that neither the Statute of the Court of Justice nor the Rules of Procedure of the General Court provide that submissions supplementing the application initiating proceedings may be submitted once the application has been lodged, it should be pointed out that, according to case-law, since the Community is a community based on the rule of law, in which the compatibility with the Treaty of acts

of the institutions is open to review, the procedural rules governing actions brought before the Community Courts must, so far as is possible, be interpreted in such a manner as to ensure that those rules are implemented in such a way as to contribute to the attainment of the objective of ensuring effective judicial protection of an individual's rights under Community law (Case C•521/06 P *Athinaïki Techniki* v *Commission* [2008] ECR I•5829, paragraph 45, and Case T•437/05 *Brink's Security Luxembourg* v *Commission* [2009] ECR II•3233, paragraph 75).

21 Accordingly, the mere fact that neither under the Statute of the Court of Justice nor under the Rules of Procedure is express provision made that submissions supplementing the application initiating proceedings may be submitted once the application has been lodged cannot be construed as excluding such a possibility where the submissions supplementing the application are lodged before the deadline for bringing proceedings.

22 As regards the Commission's argument based on Article 48(2) of the Rules of Procedure, under which no new plea in law may be introduced in the course of proceedings, it should be noted that, according to case-law, application of that provision means the inadmissibility of new pleas introduced in the course of proceedings (Case 18/57 *Nold* v *High Authority* [1959] ECR 41 and Case C•104/97 P *Atlanta* v *European Community* [1999] ECR I•6983, paragraph 29). However, that case-law – which is intended to penalise late submission of pleas – concerns pleas raised after the deadline for bringing proceedings. That is not the position in the present case.

23 Lastly, contrary to the assertions made by the Commission, the fact that in their submissions supplementing the application initiating proceedings the applicants put forward an alternative plea questioning the legality of Regulation No 1367/2006, whereas that plea does not appear in the application, does not constitute an infringement of Article 21 of the Statute of the Court of Justice or of Article 44(1)(c) of the Rules of Procedure.

24 In questioning the legality of Regulation No 1367/2006, the applicants are seeking to obtain the annulment of the contested decisions. Accordingly, the admissibility of the plea of illegality is not conditional upon a claim that Regulation No 1367/2006 is unlawful.

25 In the light of the foregoing, the submissions supplementing the application initiating proceedings, which were lodged by the applicants on 29 August 2008, thus before the deadline for bringing proceedings, must be declared admissible.

Substance

26 The applicants put forward two pleas. By the first plea, the applicants claim that, in finding that Regulation No 149/2008 could not be considered to be either an act of individual scope or a bundle of decisions, the Commission wrongly held that their requests for internal review of that regulation were inadmissible. This plea should be construed as alleging, in essence, infringement of Article 10(1) of Regulation No 1367/2006, read in conjunction with Article 2(1)(g) of that regulation. By the second plea, the applicants claim that Article 10(1) of Regulation No 1367/2006 contravenes Article 9(3) of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, signed at Aarhus on 25 June 1998 ('the Aarhus Convention'), in so far as it limits the concept of 'acts' for the purposes of Article 9(3) of the Aarhus Convention to 'administrative act[s]', which are defined in Article 2(1)(g) of Regulation No 1367/2006, moreover, as 'measure[s] of individual scope'.

The first plea: infringement of Article 10(1) of Regulation No 1367/2006, read in conjunction with Article 2(1)(g) of that regulation

27 The applicants submit that, by rejecting as inadmissible their requests for internal review of Regulation No 149/2008 on the ground that that regulation could not be considered to be either an act of individual scope or a bundle of decisions, the Commission infringed Article 10(1) of Regulation No 1367/2006, read in conjunction with Article 2(1)(g) of that regulation.

28 Under Article 10(1) of Regulation No 1367/2006, any non-governmental organisation which meets the criteria set out in Article 11 of that regulation is entitled to make a request for internal review to the European Union institution which has adopted an administrative act under environmental law. The term 'administrative act' as used in that provision is defined in Article 2(1)(g) of Regulation No 1367/2006 as referring to any measure of individual scope taken by a European Union institution under environmental law and having legally binding and external effects.

29 According to case-law, in order to determine the scope of a measure, the Courts of the European Union should not look merely at the official name of the measure but should first take account of its purpose and its content (see, to that effect, Joined Cases 16/62 and 17/62 *Confédération nationale des producteurs de fruits*

et légumes and Others v *Council* [1962] ECR 471).

30 A measure is regarded as being of general application if it applies to objectively determined situations and entails legal effects for categories of persons envisaged generally and in the abstract (Case C•244/88 *Usines coopératives de déshydratation du Vexin and Others* v *Commission* [1989] ECR 3811, paragraph 13; Case C•171/00 P *Libéros* v *Commission* [2002] ECR I•451, paragraph 28; and judgment of 1 July 2008 in Case T•37/04 *Região autónoma dos Açores* v *Council* , not published in ECR, paragraph 33).

31 Regulation No 149/2008 amends Regulation No 396/2005 by adding to it Annexes II, III and IV setting MRLs for products covered by Annex I thereto.

32 According to recital 1 in the preamble to Regulation No 149/2008, it was necessary to establish Annexes II, III and IV to Regulation No 396/2005, since their establishment was a condition for the application of Chapters II, III and V of that regulation.

33 Article 2 of Regulation No 396/2005 states that that regulation applies to products of plant and animal origin or parts thereof, covered by Annex I thereto, used as fresh, processed and/or composite food or feed in or on which pesticide residues may be present.

34 In accordance with Article 21(1) of Regulation No 396/2005, Annex II thereto sets out, for products covered by Annex I to that regulation, a list of MRLs applicable to those products which includes the MRLs set by Council Directive 86/362/EEC of 24 July 1986 on the fixing of maximum levels for pesticide residues in and on cereals (OJ 1986 L 221, p. 37), Council Directive 86/363/EEC of 24 July 1986 on the fixing of maximum levels for pesticide residues in and on foodstuffs of animal origin (OJ 1986 L 221, p. 43) and Council Directive 90/642/EEC of 27 November 1990 on the fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and vegetables (OJ 1990 L 350, p. 71).

35 In accordance with Article 22(1) of Regulation No 396/2005, Annex III thereto sets out a list of temporary MRLs for active substances in respect of which a decision on inclusion in Annex I to Directive 91/414 has not yet been taken. The MRLs in Annex II to Council Directive 76/895/EEC of 23 November 1976 relating to the fixing of

maximum levels for pesticide residues in and on fruit and vegetables (OJ 1976 L 340, p. 26), as well as national MRLs which have not yet been harmonised, must be taken into account for the establishment of those MRLs, which must meet certain requirements.

36 Under Article 16(1) of Regulation No 396/2005, Annex III to that regulation may also contain other temporary MRLs.

37 In accordance with Article 5(1) of Regulation No 396/2005, Annex IV to that regulation sets out the list of active substances of plant protection products evaluated under Directive 91/414 for which no MRLs are required.

38 Thus, in view of its purpose and content, Regulation No 149/2008 applies to objectively determined situations and entails legal effects for categories of persons envisaged generally and in the abstract, that is to say, economic operators who are manufacturers, growers, importers or producers of products covered by the annexes to Regulation No 396/2005 and holders of marketing authorisations for plant protection products containing substances covered by those annexes.

39 Consequently, it must be concluded that Regulation No 149/2008 constitutes a measure of general application. It cannot therefore be regarded as an administrative act for the purposes of Article 2(1)(g) of Regulation No 1367/2006.

40 That conclusion is not affected by the applicants' arguments.

41 First, as regards the applicants' argument that Regulation No 149/2008 constitutes a specific application of the general standards laid down in Regulation No 396/2005, it should be pointed out that, even if that were to be established, it would not affect the fact that Regulation No 149/2008 applies to objectively determined situations and entails legal effects for categories of persons envisaged generally and in the abstract.

42 Secondly, as regards the applicants' argument that, since Regulation No 149/2008 applies to specific activities, it must be regarded as a decision for the purposes of Article 6(1) of the Aarhus Convention and, in consequence, as an administrative act for the purposes of Article 2(1)(g) of Regulation No 1367/2006, it should be noted that the concept of 'administrative act' is defined in the latter provision, which was adopted in order to implement the Aarhus Convention. Being limited to 'measure[s] of individual scope', that concept cannot be construed as covering a measure of general application. Accordingly, that argument must also be rejected.

43 Thirdly, the applicants' arguments that Regulation No 149/2008 constitutes a bundle of individual decisions cannot succeed.

44 In the first place, contrary to the assertions made by the applicants, the fact that Regulation No 149/2008 applies to a clearly defined group of products and substances to which no other substance can be added at a later stage is not relevant for the purposes of identifying the scope of that regulation in the light of the case•law cited in paragraph 30 above.

45 In the second place, as regards the applicants' argument that a separate application for establishment or modification of each temporary MRL may be submitted to the Commission under Article 6(1) of Regulation No 396/2005, it should be noted that, according to case-law, a contested measure adopted in the guise of a measure of general application is deemed to constitute a bundle of individual decisions if it has been adopted in order to respond to individual claims, so that the contested measure affects the legal position of each claimant (Joined Cases 41/70 to 44/70 *International Fruit Company and Others* v *Commission* [1971] ECR 411, paragraphs 13 to 22; Case C•354/87 *Weddel* v *Commission* [1990] ECR I•3847, paragraphs 20 to 23; and order of 8 September 2005 in Case T•295/04 *ASAJA and Others* v *Council* [2005] ECR II•3151, paragraph 41). However, in the present case, the MRLs established by Regulation No 149/2008 were not adopted in response to individual claims. The applicants' argument must therefore be rejected.

46 Fourthly, as regards the applicants' argument that Regulation No 149/2008 is a measure of individual scope in so far as the establishment of an MRL is directly linked to an authorisation under Directive 91/414, which is a measure of individual scope, it need merely be stated that the establishment of MRLs by that regulation is not intended to amend individual marketing authorisations under that directive for specific plant protection products. Accordingly, that argument must also be rejected.

47 Fifthly, as regards the applicants' argument that, since Regulation No 149/2008 is of direct and individual concern to them, that regulation constitutes a decision for the purposes of Article 6(1) of the Aarhus Convention and, in consequence, an administrative act for the purposes of Article 10(1) of Regulation No 1367/2006, it need merely be stated that the fact that the applicants are directly and individually concerned is not relevant for the purposes of determining whether a measure is of general application or of individual scope.

48 In the light of all the foregoing, it must be concluded that, since Regulation

No 149/2008 cannot be regarded as a measure of individual scope, it cannot be categorised as an administrative act for the purposes of Article 2(1)(g) of Regulation No 1367/2006. Accordingly, Regulation No 149/2008 could not form the subject of a request for internal review under Article 10(1) of Regulation No 1367/2006. It follows that the Commission did not err in declaring inadmissible the applicants' requests under Regulation No 1367/2006 for internal review of Regulation No 149/2008.

49 Consequently, the first plea must be rejected.

The second plea: Article 10(1) of Regulation No 1367/2006 is unlawful, in so far as it limits the concept of 'acts' in Article 9(3) of the Aarhus Convention to 'administrative act[s]', defined in Article 2(1)(g) of Regulation No 1367/2006 as 'measure[s] of individual scope'

50 The applicants submit in essence that, by limiting the concept of 'acts' in Article 9(3) of the Aarhus Convention to 'administrative act[s]', which are defined in Article 2(1)(g) of Regulation No 1367/2006 moreover as 'measure[s] of individual scope', Article 10(1) of Regulation No 1367/2006 contravenes that provision of the Aarhus Convention. It must therefore be considered that the applicants are thereby raising a plea of illegality under Article 241 EC in respect of Article 10(1) of Regulation No 1367/2006, read in conjunction with Article 2(1)(g) of that regulation.

51 It is clear from Article 300(7) EC that the Community institutions are bound by agreements concluded by the Community and, consequently, that those agreements prevail over secondary Community legislation (see, to that effect, Case C•61/94 *Commission* v *Germany* [1996] ECR I•3989, paragraph 52, and Case C•311/04 *Algemene Scheeps Agentuur Dordrecht* [2006] ECR I•609, paragraph 25).

52 The Aarhus Convention was signed by the European Community and subsequently approved by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1). The institutions are accordingly bound by that convention, which prevails over secondary Community legislation. It follows that the validity of Regulation No 1367/2006 may be affected by the fact that it is incompatible with the Aarhus Convention.

53 According to case-law, the Courts of the European Union may examine the validity of a provision of a regulation in the light of an international treaty only where the nature and the broad logic of the latter do not preclude this and where, in addition, the provisions of that treaty appear, as regards their content, to be unconditional and sufficiently precise (Case C•308/06 *Intertanko and Others* [2008] ECR I•4057, paragraph 45, and Joined

Cases C•120/06 P and C•121/06 P *FIAMM and Others* v *Council and Commission* [2008] ECR I•6513, paragraph 110).

54 However, where the Community has intended to implement a particular obligation assumed under an international agreement, or where the measure makes an express *renvoi* to particular provisions of that agreement, it is for the Court to review the legality of the measure in question in the light of the rules laid down in that agreement (see, to that effect, with regard to the Agreement establishing the World Trade Organisation, Case C•149/96 *Portugal* v *Council* [1999] ECR I•8395, paragraph 49; Case C•93/02 P *Biret International* v *Council* [2003] ECR I•10497, paragraph 53; and Case C•377/02 *Van Parys* [2005] ECR I•1465, paragraph 40; see also, to that effect, with regard to the General Agreement on Tariffs and Trade (GATT), Case 70/87 *Fediol* v *Commission* [1989] ECR 1781, paragraphs 19 to 22, and Case C•69/89 *Nakajima* v *Council* [1991] ECR I•2069, paragraph 31). Accordingly, where a regulation is intended to implement an obligation imposed on the European Union institutions under an international treaty, the Courts of the European Union must be able to review the legality of that regulation in the light of the international treaty without first having to determine whether the conditions set out in paragraph 53 above are satisfied.

55 In *Nakajima* v *Council* , paragraph 28, the Court found that the applicant was not relying on the direct effect of the provisions of the GATT Anti-Dumping Code but was questioning the validity of a regulation indirectly, in accordance with Article 241 EC, by invoking one of the grounds for review of legality referred to in Article 230 EC, that is to say, infringement of the Treaty or of any rule of law relating to its application. The Court found that the regulation challenged by the applicant in that case had been adopted in order to meet international obligations incumbent on the Community, which – as the Court has consistently held – is accordingly under an obligation to ensure compliance with the GATT and its implementing measures (see *Nakajima* v *Council* , paragraph 31 and the case-law cited; see also, to that effect, Case C•352/96 *Italy* v *Council* [1998] ECR I•6937, paragraphs 20 and 21).

56 The case-law developed in the cases relating to the GATT and World Trade Organisation agreements was also applied in Case C•162/96 *Racke* [1998] ECR I•3655, in which the Court examined the validity of a regulation in the light of customary international law in so far as it found that ‘the individual concerned was invoking fundamental rules of customary international law against the disputed

regulation, which had been taken pursuant to those rules and deprived that individual of the rights to preferential treatment granted to it by the Cooperation Agreement' (*Racke* , paragraph 48).

57 In the present case, it should be noted that, as in the case which gave rise to the judgment in *Nakajima* v *Council* , paragraph 28, the applicants are questioning indirectly, in accordance with Article 241 EC, the validity in the light of the Aarhus Convention of a provision of Regulation No 1367/2006.

58 It should also be noted that Regulation No 1367/2006 was adopted to meet the European Union's international obligations under Article 9(3) of the Aarhus Convention. Article 1(1)(d) of Regulation No 1367/2006 states that the objective of that regulation is to contribute to the implementation of the obligations arising under the Aarhus Convention by granting, inter alia, 'access to justice in environmental matters at European Union level under the conditions laid down by this Regulation'. Also, recital 18 in the preamble to Regulation No 1367/2006 refers expressly to Article 9(3) of the Aarhus Convention. Moreover, it is apparent from the case-law of the Court of Justice that obligations arise under Article 9(3) of the Aarhus Convention and that Regulation No 1367/2006 is intended to implement that provision with respect to the institutions of the European Union (see, to that effect, Case C•240/09 *Lesoochranárske zoskupenie* [2011] ECR I•0000, paragraphs 39 and 41).

59 It is appropriate, therefore, to assess the validity of the provision which the applicants claim is unlawful in the light of Article 9(3) of the Aarhus Convention, which entails determining whether the concept of 'acts' in Article 9(3) of the Aarhus Convention can be construed as covering only 'measure[s] of individual scope'.

60 In that regard, it should be noted that Article 9(3) of the Aarhus Convention provides:

'In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment'.

61 It should first be noted that the Commission contends, in the defence and in the rejoinder, that Article 9(3) of the Aarhus Convention does not apply in the present case since, in adopting Regulation No 149/2008, the Commission acted in a legislative capacity.

62 It is true that acts of the institutions of the European Union which are adopted by those institutions in their legislative capacity fall outside the scope of Article 9(3) of the Aarhus Convention and Article 10 of Regulation No 1367/2006.

63 Article 9(3) of the Aarhus Convention relates to acts of public authorities and it is apparent from Article 2(2) of the Aarhus Convention that the term 'public authority', as used in Article 9(3) of that convention, does not cover bodies or institutions acting in a judicial or legislative capacity.

64 Moreover, the internal review provided for under Article 10 of Regulation No 1367/2006 is available only in respect of administrative acts as defined in Article 2(1)(g) of that regulation: 'measure[s] of individual scope under environmental law, taken by a [European Union] institution or body, and having legally binding and external effects'. Article 2(1)(c) of Regulation No 1367/2006 specifies that '[European Union] institution or body' means any public institution, body, office or agency established by, or on the basis of, the Treaty except when acting in a judicial or legislative capacity.

65 However, in the present case, the Commission did not, in adopting Regulation No 149/2008, act in a legislative capacity. It is clear from the provisions on the basis of which that regulation was adopted that the Commission acted in the exercise of its implementing powers.

66 Regulation No 149/2008 amended Regulation No 396/2005 by adding to it Annexes II, III and IV. Regulation No 149/2008 was adopted by the Commission on the basis of Articles 5(1), 16(1), 21(1) and 22(1) of Regulation No 396/2005, which laid down the relevant procedure for establishing those annexes.

67 It emerges from those provisions that Annexes II, III and IV to Regulation No 396/2005 had to be adopted in accordance with the procedure specified in Article 45(2) of that regulation. Article 45(2) of Regulation No 396/2005 refers to Articles 5 and 7 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23).

68 Moreover, the Aarhus Convention Implementation Guide, prepared for the Regional Environmental Centre for Central and Eastern Europe, supports the finding that, in adopting Regulation No 149/2008, the Commission was not acting in its legislative capacity. Admittedly, the Guide has no legal force, but there is no reason why the Court should not use it as a basis for construing Article 2(2) of the Aarhus Convention.

69 Thus, according to the Guide (page 34), '[t]he Commission should not be considered as acting in a "legislative capacity" within the meaning of Article 2(2) of the

Aarhus Convention. The Commission is therefore to be considered to be a public authority within the meaning of Article 9(3) of the Aarhus Convention.

70 It follows from the above that the Commission's argument that Article 9(3) of the Aarhus Convention is not applicable because the Commission acted in its legislative capacity in adopting Regulation No 149/2008 cannot succeed.

71 It is appropriate, therefore, to examine the validity of Article 10(1) of Regulation No 1367/2006 – which limits the concept of 'acts' to 'administrative act[s]', defined in Article 2(1)(g) of that regulation as 'measure[s] of individual scope' – in the light of the Aarhus Convention.

72 The term 'acts', as used in Article 9(3) of the Aarhus Convention, is not defined in that convention. According to well-established case-law, an international treaty must be construed by reference to the terms in which it is framed and in the light of its objectives. Article 31 of the Vienna Convention of 23 May 1969 on the Law of Treaties and Article 31 of the Vienna Convention of 21 March 1986 on the Law of Treaties between States and International Organisations or between International Organisations, which express to this effect general customary international law, state that a treaty is to be interpreted in good faith, in accordance with the ordinary meaning to be given to its terms in their context and in the light of its object and purpose (see Case C•344/04 *IATA and ELFAA* [2006] ECR I•403, paragraph 40 and the case-law cited.

73 It is appropriate first of all to recall the objectives of the Aarhus Convention.

74 Thus, it emerges from the sixth and eighth recitals in the preamble to the Aarhus Convention that the authors of that convention, '[r]ecognising that adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights, including the right to life itself', consider that, 'to be able to assert this right and observe this duty, citizens must have access to information, be entitled to participate in decision-making and have access to justice in environmental matters, ... acknowledging in this regard that citizens may need assistance in order to exercise their rights'. Moreover, the ninth recital to the Aarhus Convention states that 'in the field of the environment, improved access to information and public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns'.

75 In addition, Article 1 of the Aarhus Convention, which is entitled 'Objective', provides that '[i]n order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health

and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention'.

76 It must be held that an internal review procedure which covered only measures of individual scope would be very limited, since acts adopted in the field of the environment are mostly acts of general application. In the light of the objectives and purpose of the Aarhus Convention, such limitation is not justified.

77 Also, as regards the terms in which Article 9(3) of the Aarhus Convention is framed, it should be noted that, under those terms, the Parties to that Convention retain a certain measure of discretion with regard to the definition of the persons who have a right of recourse to administrative or judicial procedures and as to the nature of the procedures (whether administrative or judicial). Under Article 9(3) of the Aarhus Convention, only 'where they meet the criteria, if any, laid down in [the] national law, [may] members of the public have access to administrative or judicial procedures'. However, the terms of Article 9(3) of the Aarhus Convention do not offer the same discretion as regards the definition of the 'acts' which are open to challenge. Accordingly, there is no reason to construe the concept of 'acts' in Article 9(3) of the Aarhus Convention as covering only acts of individual scope.

78 Lastly, so far as the wording of the other provisions of the Aarhus Convention is concerned, it should be noted that, under Article 2(2) of that convention, the concept of 'public authority' does not cover 'bodies or institutions acting in a judicial or legislative capacity'. Accordingly, the possibility that measures adopted by an institution or body of the European Union acting in a judicial or legislative capacity may be covered by the term 'acts', as used in Article 9(3) of the Aarhus Convention, can be ruled out. That does not mean, however, that the term 'acts' as used in Article 9(3) of the Aarhus Convention can be limited to measures of individual scope. There is no correlation between measures of general application and measures taken by a public authority acting in a judicial or legislative capacity. Measures of general application are not necessarily measures taken by a public authority acting in a judicial or legislative capacity.

79 It follows that Article 9(3) of the Aarhus Convention cannot be construed as referring only to measures of individual scope.

80 That finding is not undermined by the argument, raised by the Council at the hearing, that limiting 'administrative acts' to measures of individual scope is justified in the light of the conditions laid down in Article 230 EC. In that regard, it should be noted that, under Article 12(1) of Regulation No 1367/2006, a non-governmental organisation which has made a request for internal review pursuant to Article 10 of Regulation No

1367/2006 may institute proceedings before the Court of Justice in accordance with the relevant provisions of the Treaty, hence in accordance with Article 230 EC. However, whatever the scope of the measure covered by an internal review as provided for in Article 10 of Regulation No 1367/2006, the conditions for admissibility laid down in Article 230 EC must always be satisfied if an action is brought before the Courts of the European Union.

81 Moreover, the conditions laid down in Article 230 EC – and, in particular, the condition that the contested act must be of direct and individual concern to the applicant – apply also to measures of individual scope which are not addressed to the applicant. A measure of individual scope will not necessarily be of direct and individual concern to a non-governmental organisation which meets the conditions laid down in Article 11 of Regulation No 1367/2006. Contrary to the assertions made by the Council, limiting the concept of 'acts' exclusively to measures of individual scope does not ensure that the condition laid down in Article 230 EC – that the contested act must be of direct and individual concern to the applicant – will be satisfied.

82 Accordingly, the Council's argument that limiting 'administrative acts' to measures of individual scope is justified in the light of the conditions laid down in Article 230 EC must be rejected.

83 It follows from the above that Article 9(3) of the Aarhus Convention cannot be construed as referring exclusively to measures of individual scope. Consequently, in so far as Article 10(1) of Regulation No 1367/2006 limits the concept of 'acts', as used in Article 9(3) of the Aarhus Convention, to 'administrative act[s]' defined in Article 2(1)(g) of Regulation No 1367/2006 as 'measure[s] of individual scope', it is not compatible with Article 9(3) of the Aarhus Convention.

84 It follows that the plea of illegality raised in respect of Article 10(1) of Regulation No 1367/2006, read in conjunction with Article 2(1)(g) of that regulation, must be upheld – as must, in consequence, the second plea in law. The contested decisions must therefore be annulled.

Costs

85 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the applicants.

86 Under the first subparagraph of Article 87(4) of the Rules of Procedure, Member States and institutions which have intervened in the proceedings are to bear their own

costs. Accordingly, the Polish Republic and the Council must bear their own costs.

On those grounds,

THE GENERAL COURT (Seventh Chamber)

hereby:

1. Annuls the decisions of the Commission of 1 July 2008 rejecting as inadmissible the requests made by Stichting Natuur en Milieu and Pesticide Action Network Europe for review by the Commission of Commission Regulation (EC) No 149/2008 of 29 January 2008 amending Regulation (EC) No 396/2005 of the European Parliament and of the Council by establishing Annexes II, III and IV setting maximum residue levels for products covered by Annex I thereto;

2. Orders the European Commission to bear, in addition to its own costs, the costs incurred by Stichting Natuur en Milieu and Pesticide Action Network Europe;

3. Orders the Polish Republic and the Council of the European Union to bear their own costs.

Dittrich Wiszniewska-Białecka Prek

Delivered in open court in Luxembourg on 14 June 2012.

[Signatures]

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*Language of the case: Dutch.