ECLI:EU:C:2016:893

JUDGMENT OF THE COURT (Sixth Chamber)

24 November 2016 (*)

(Appeal — Action for annulment — Fourth paragraph of Article 263 TFEU — Right to bring an action — Locus standi — Act of individual concern to natural or legal persons by reason of 'certain attributes which are peculiar to them' — Regulation (EU) No 511/2014 — Measures concerning compliance by users in the Union with the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation — Regulation (EC) No 2100/94 — Limitation of the effects of Community plant variety rights — Breeders' exemption)

In Joined Cases C-408/15 P and C-409/15 P,

TWO APPEALS under Article 56 of the Statute of the Court of Justice of the European Union, lodged on 24 July 2015,

Ackermann Saatzucht GmbH & Co. KG, established in Irlbach (Germany) (C-408/15 P),

Böhm-Nordkartoffel Agrarproduktion GmbH & Co. OHG, established in Hohenmocker (Germany) (C-408/15 P),

Deutsche Saatveredelung AG, established in Lippstadt (Germany) (C-408/15 P),

Ernst Benary, Samenzucht GmbH, established in Hannoversch Münden (Germany) (C-408/15 P),

Freiherr Von Moreau Saatzucht GmbH, established in Osterhofen (Germany) (C-408/15 P),

Hybro Saatzucht GmbH & Co. KG, established in Kleptow (Germany) (C-408/15 P),

Klemm + Sohn GmbH & Co. KG, established in Stuttgart (Germany) (C-408/15 P),

KWS Saat AG, established in Einbeck (Germany) (C-408/15 P),

Norddeutsche Pflanzenzucht Hans-Georg Lembke KG, established in Hohenlieth (Germany) (C-408/15 P),

Nordsaat Saatzuchts GmbH, established in Halberstadt (Germany) (C-408/15 P),

Peter Franck-Oberaspach, domiciled in Schwäbisch Hall (Germany) (C-408/15 P),

P. H. Petersen Saatzucht Lundsgaard GmbH, established in Grundhof (Germany) (C-408/15 P),

Saatzucht Streng — Engelen GmbH & Co. KG, established in Uffenheim (Germany) (C-408/15 P),

Saka Pflanzenzucht GmbH & Co. KG, established in Hamburg (Germany) (C-408/15 P),

Strube Research GmbH & Co. KG, established in Söllingen (Germany) (C-408/15 P),

Gartenbau und Spezialkulturen Westhoff GbR, established in Südlohn-Oeding (Germany) (C-408/15 P),

W. von Borries-Eckendorf GmbH & Co. KG, established in Leopoldshöhe (Germany) (C-408/15 P),

ABZ Aardbeien Uit Zaad Holding BV, established in Hoorn NH (Netherlands) (C-409/15 P),

Agriom BV, established in Aalsmeer (Netherlands) (C-409/15 P),

Agrisemen BV, established in Ellewoutsdijk (Netherlands) (C-409/15 P),

Anthura BV, established in Bleiswijk (Netherlands) (C-409/15 P),

Barenbrug Holding BV, established in Oosterhout (Netherlands) (C-409/15 P),

De Bolster BV, established in Epe (Netherlands) (C-409/15 P),

Evanthia BV, established in Hook of Holland (Netherlands) (C-409/15 P),

Gebr. Vletter & Den Haan VOF, established in Rijnsburg (Netherlands) (C-409/15 P),

Hilverda Kooij BV, established in Aalsmeer (Netherlands) (C-409/15 P),

Holland-Select BV, established in Andijk (Netherlands) (C-409/15 P),

Könst Breeding BV, established in Nieuwveen (Netherlands) (C-409/15 P),

Koninklijke Van Zanten BV, established in Hillegom (Netherlands) (C-409/15 P),

Kweek- en Researchbedrijf Agirco BV, established in Emmeloord (Netherlands) (C-409/15 P),

Kwekerij de Wester-Bouwing BV, established in Rossum (Netherlands) (C-409/15 P),

Limgroup BV, established in Horst aan de Maas (Netherlands) (C-409/15 P),

Ontwikkelingsmaatschappij Het Idee BV, established in Amsterdam (Netherlands) (C-409/15 P),

represented by P. de Jong, E. Bertolotto, K. Claeyé, P. Vlaemminck and B. Van Vooren, avocats,

appellants,

the other parties to the proceedings being:

European Parliament, represented by L. Visaggio, J. Rodrigues and R. van de Westelaken, acting as Agents,

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

defendants at first instance,

THE COURT (Sixth Chamber),

composed of A. Arabadjiev, acting as President of the Sixth Chamber, C. G. Fernlund (Rapporteur) and S. Rodin, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By their appeals, Ackermann Saatzucht GmbH & Co. KG, Böhm-Nordkartoffel Agrarproduktion GmbH & Co. OHG, Deutsche Saatveredelung AG, Ernst Benary, Samenzucht GmbH, Freiherr Von Moreau Saatzucht GmbH, Hybro Saatzucht GmbH & Co. KG, Klemm + Sohn GmbH & Co. KG, KWS Saat AG, Norddeutsche Pflanzenzucht Hans-Georg Lembke KG, Nordsaat Saatzuchts GmbH, Peter Franck-Oberaspach, P. H. Petersen Saatzucht Lundsgaard GmbH, Saatzucht Streng — Engelen GmbH & Co. KG, Saka Pflanzenzucht GmbH & Co. KG, Strube Research GmbH & Co. KG, Gartenbau und Spezialkulturen Westhoff GbR, W. von Borries-Eckendorf GmbH & Co. KG, on the one hand, and ABZ Aardbeien Uit Zaad Holding BV, Agriom BV, Agrisemen BV, Anthura BV, Barenbrug Holding BV, De Bolster BV, Evanthia BV, Gebr. Vletter & Den Haan VOF, Hilverda Kooij BV, Holland-Select BV, Könst Breeding BV, Koninklijke Van Zanten BV, Kweek- en Researchbedrijf Agirco BV, Kwekerij de Wester-Bouwing BV, Limgroup BV and Ontwikkelingsmaatschappij Het Idee BV, on the other hand, request the Court to set aside the order of the General Court of the European Union of 18 May 2015, *Ackermann Saatzucht and Others* v *Parliament and Council* (T-559/14, not published, EU:T:2015:315) and the order of the General Court of 18 May 2015, *ABZ Aardbeien Uit Zaad Holding and Others* v *Parliament and Council* (T-560/14, not published, EU:T:2015:314), respectively, (together 'the orders under appeal') by which the General Court dismissed the actions they had brought seeking annulment of Regulation (EU) No 511/2014 of the European Parliament and of the Council of 16 April 2014 on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation in the Union (OJ 2014 L 150, p. 59) ('the contested regulation').

Legal context

International law

2 The European Union is a contracting party to the International Convention for the Protection of New Varieties of Plants of 2 December 1961, as revised on 19 March 1991, ('the UPOV Convention'). According to Article 15 of that convention, entitled 'Exceptions to the Breeder's Right', the breeder's right is not to extend to acts done for the purpose of breeding other varieties.

EU law

Regulation (EC) No 2100/94

3 Recital 15 of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p 1), as amended by Council Regulation (EC) No 15/2008 of 20 December 2007 (OJ 2008 L 8, p 2) ('Regulation No 2100/94'), provides:

'Whereas in order to stimulate plant breeding, the system basically confirms the internationally accepted rule of free access to protected varieties for the development therefrom, and exploitation, of new varieties'.

4 In accordance with recital 29, the regulation takes into account, inter alia, the UPOV Convention.

5 Under Article 15 of that regulation, entitled 'Limitation of the effects of Community plant variety rights':

'The Community plant variety rights shall not extend to:

...

(c) acts done for the purpose of breeding, or discovering and developing other varieties;

...'

The contested Regulation

6 Article 1 of the contested regulation, headed 'Subject matter', provides:

'This Regulation establishes rules governing compliance with access and benefit-sharing for genetic resources and traditional knowledge associated with genetic resources in accordance with the provisions of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity ("the Nagoya Protocol"). The effective implementation of this Regulation will also contribute to the conservation of biological diversity and the sustainable use of its components, in accordance with the provisions of the Convention on Biological Diversity ("the Convention").'

7 Article 2 of that regulation, entitled 'Scope', provides in paragraph 1:

'This Regulation applies to genetic resources over which States exercise sovereign rights and to traditional knowledge associated with genetic resources that are accessed after the entry into force of the Nagoya Protocol for the Union. It also applies to the benefits

arising from the utilisation of such genetic resources and traditional knowledge associated with genetic resources.'

8 According to Article 3 of the regulation, headed 'Definitions':

'For the purposes of this Regulation, ... the following definitions apply:

…

(4) "user" means a natural or legal person that utilises genetic resources or traditional knowledge associated with genetic resources;

...'

9 Article 4 of the regulation, headed 'Obligations of users', provides:

'1. Users shall exercise due diligence to ascertain that genetic resources and traditional knowledge associated with genetic resources which they utilise have been accessed in accordance with applicable access and benefit-sharing legislation or regulatory requirements, and that benefits are fairly and equitably shared upon mutually agreed terms, in accordance with any applicable legislation or regulatory requirements.

2. Genetic resources and traditional knowledge associated with genetic resources shall only be transferred and utilised in accordance with mutually agreed terms if they are required by applicable legislation or regulatory requirements.

3. For the purposes of paragraph 1, users shall seek, keep and transfer to subsequent users:

(a) the internationally recognised certificate of compliance, as well as information on the content of the mutually agreed terms relevant for subsequent users; or

(b) where no internationally recognised certificate of compliance is available, information and relevant documents on:

(i) the date and place of access of genetic resources or of traditional knowledge associated with genetic resources;

(ii) the description of the genetic resources or of traditional knowledge associated with genetic resources utilised;

(iii) the source from which the genetic resources or traditional knowledge associated with genetic resources were directly obtained, as well as subsequent users of genetic resources or traditional knowledge associated with genetic resources;

(iv) the presence or absence of rights and obligations relating to access and benefit-sharing including rights and obligations regarding subsequent applications and commercialisation;

(v) access permits, where applicable;

(vi) mutually agreed terms, including benefit-sharing arrangements, where applicable.

...'

The procedure before the General Court and the orders under appeal

10 The appellants are, on the one hand, 17 German undertakings and one natural person of German nationality and, on the other hand, 16 Dutch undertakings, which are all active in the plant breeding sector. Plant breeding involves combining the genetic composition of different varieties, inter alia by crossing, and selecting the progeny displaying the best combination of traits in order to create new commercial varieties.

11 By two applications lodged at the Court Registry on 28 July 2014, the two groups of German and Dutch operators each brought an action for annulment of the contested regulation.

12 By separate documents lodged at the Court Registry on 30 and 31 October 2014 respectively, the Council and the Parliament raised objections to admissibility pursuant to Article 114 of the Rules of Procedure of the General Court.

13 By the orders under appeal, the General Court dismissed the actions as inadmissible, on the grounds that those operators were not individually concerned by the contested regulation, as that regulation could not, moreover, be classified as a regulatory act within the meaning of the fourth paragraph of Article 263 TFEU.

Procedure before the Court and forms of order sought

14 By their appeals, the appellants claim that the Court should:

– hold that the General Court, in the orders under appeal, erred in law when it held that the appellants were not individually concerned by the contested regulation;

– set aside in their entirety the orders under appeal, declare that the appellants are directly and individually concerned by the contested regulation, and therefore declare the applications for annulment admissible;

– refer the cases back to the General Court for judgment on the merits.

15 The Parliament and the Council contend that the Court should dismiss the appeals and order the appellants to pay the costs.

16 By order of the President of the Court of Justice of 22 September 2015, Cases C-408/15 P and C-409/15 P were joined for the purposes of the written procedure, the oral procedure and the judgment.

The appeals

Admissibility

Arguments of the parties

17 The Parliament argues that the grounds of appeal put forward by the appellants are wholly or partly inadmissible. It submits that, in so far as they are based on arguments which are neither clear nor arranged systematically, they should be declared inadmissible pursuant to Article 168(1)(d) and Article 169(2) of the Rules of Procedure of the Court of Justice. As regards in particular the argument concerning a breach of Article 13 of the Charter of Fundamental Rights of the European Union ('the Charter'), the Parliament argues that it is a new plea in law which may not be put forward for the first time at the stage of appeal, under Article 170(1) of those procedural rules. Furthermore, the Parliament maintains that the connection between the first two grounds of appeal is difficult to understand and that the appellants, in their second ground of appeal, merely observe that the General Court ought to have taken into account higher-ranking provisions, without explaining in what way those provisions require the EU institutions to take into account their particular situation.

18 The appellants dispute that line of argument.

Findings of the Court

19 According to settled case-law, it follows inter alia from Article 168(1)(d) and Article 169(2) of the Rules of Procedure of the Court of Justice that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal (judgment of 24 March 2011, *ISD Polska and Others* v *Commission,* C-369/09 P, EU:C:2011:175, paragraph 66 and the case-law cited).

20 In that regard, it suffices to note that, although certain parts of the argument put forward by the appellants in their grounds of appeal lack rigour, that argument does appear overall to be sufficiently clear for the purposes of identifying with the necessary precision the elements of the orders under appeal that are challenged and the legal arguments relied upon in support of the appeals and thus enables the Court to carry out its review of the lawfulness of those orders.

21 As to the argument alleging breach of Article 13 of the Charter, it suffices to note that it is not a new plea that should be declared inadmissible. That argument was put forward to support the argument expounded under the first and second grounds of appeal that the appellants are individually concerned by the contested regulation.

22 Consequently, the objections of inadmissibility put forward by the Parliament must be rejected.

Substance

The first and second grounds of appeal

23 In the light, in particular, of the explanations given by the appellants in their reply, the first and second grounds of appeal should be examined together.

– Arguments of the parties

24 By their first two grounds of appeal, the appellants submit in essence that the General Court erred in law in finding, in paragraphs 34 to 37 of the orders under appeal, that they are not individually concerned by the contested regulation. They maintain to the contrary that, on account of certain attributes peculiar to them, they are members of a legal class of persons individually concerned by that regulation.

25 First, that class of persons is defined by a 'particular legal attribute', namely, the breeders' exemption, which constitutes an earlier positive right of free access to commercial plant material, which appears not in the contested regulation itself but in another directly applicable regulation, namely, Regulation No 2100/94 which, moreover, does not require transposition at the national level. Secondly, the contested regulation runs counter to the effects of higher-ranking rules of law, in this case Article 13 of the Charter and the UPOV Convention which were implemented by means of Regulation No 2100/94. The contested regulation imposes a contractual relationship on the appellants in breach of those higher-ranking rules. Thirdly, that class of persons is closed and absolute, in the sense that the appellants are not individually affected in socio-economic terms but legally, since a single fundamental right, invariable and absolute for breeders, is affected but 'similar' rights are not. The appellants maintain that the General Court erred in not taking all those circumstances into account and they add that the assessment made by that court of individual concern is based on a misunderstanding of the breeders' exemption.

26 The Parliament and the Council dispute those arguments.

– Findings of the Court

27 By their first and second grounds of appeal, the appellants maintain, in essence, before the Court that, as holders of the breeders' exemption, they are individually concerned by the contested regulation which regulates the use of that exemption.

28 As a preliminary point, it must be observed that the breeders' exemption is an exception to the breeder's exclusive right, laid down in Article 15 of the UPOV Convention and Article 15 of Regulation No 2100/94. Under those provisions, the

protection of new varieties of plants does not extend to, inter alia, acts done for the purpose of breeding, or discovering and developing other varieties.

29 For the purposes of determining whether the General Court has erred in law by finding that the appellants, although holders of the breeders' exemption, are not individually concerned by the contested regulation, the Court's case-law concerning the concept of individual concern should be borne in mind.

30 In this regard, the Court has consistently held that a measure of general application such as a legislative act can be of individual concern to natural and legal persons only if it affects them by reason of certain attributes peculiar to them, or by reason of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as the addressee (see, to that effect, judgment of 15 July 1963, *Plaumann* v *Commission,* 25/62, EU:C:1963:17; order of 12 December 2003, *Bactria* v *Commission,* C-258/02 P, EU:C:2003:675, paragraph 34, and the judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council,* C-583/11 P, EU:C:2013:625, paragraphs 70 and 71).

31 It is also clear from the Court's case-law that where a measure affects a group of persons who were identified or identifiable when that measure was adopted by reason of criteria specific to the members of the group, those persons might be individually concerned by that measure inasmuch as they form part of a limited class of traders, particularly when that measure alters rights acquired by the individuals before it was adopted (see, to that effect, judgment of 13 March 2008, *Commission* v *Infront WM,* C-125/06 P, EU:C:2008:159, paragraphs 71 and 72 and the case-law cited).

32 It was on the basis of that case-law that the General Court held, in paragraphs 34 and 35 of the orders under appeal, that the appellants are not individually concerned by the contested regulation, given that it does not affect them other than in their objective capacity as users, within the meaning of Article 3 of that regulation, and that no particular quality or fact characterises them in relation to other persons falling within the scope of that regulation.

33 In paragraph 37 of the orders under appeal, the General Court added that the mere fact that those operators enjoyed the breeders' exemption does not establish that they are part of a limited category of operators, since any natural or legal person wishing to engage in the activities of discovering or developing new varieties would enjoy that exemption in the same manner as the appellants.

34 In paragraphs 38 and 39 of the orders under appeal, the General Court observed that, even if that exemption could be considered to be an acquired right, such a right would not individualise the appellants in relation to any other users who enjoyed the same right.

35 In their appeals, the appellants themselves accept that anyone can choose to breed and develop plants on the basis of commercial varieties and so become a holder of the breeders' exemption.

36 However, they maintain that natural or legal persons may be individually concerned because of 'certain attributes which are peculiar to them' without those attributes differentiating them from all other persons and thereby distinguishing them individually in the same way as the addressee of a decision. Accordingly, the numeric, socio-economic or factual interchangeability of plant breeders affected by the contested regulation does not prevent them being individually affected, since they are members of a legal class of persons by reason of the accumulation of the circumstances set out in paragraph 25 of the present judgment.

37 However, such a line of argument is based on an incorrect reading of the case-law on the fourth paragraph of Article 263 TFEU and on the concept of individual concern.

38 First, it is clear from that case-law that if a legislative act can individually concern natural or legal persons where it affects them by reason of certain attributes which are peculiar to them, it is only on condition that those attributes differentiate them from all other persons and by virtue of these factors distinguish them individually just as in the case of the person addressed (see, to that effect, judgment of 10 April 2003, *Commission* v *Nederlandse Antillen,* C-142/00 P, EU:C:2003:217, paragraphs 68 and 70).

39 Secondly, according to the case-law referred to in paragraph 31 of the present judgment, persons belonging to a group can be individually concerned by a legislative measure only where those persons were identified or identifiable when the measure was adopted. Thus, a limited group whose members could be individually concerned by an EU measure cannot be extended after the entry into force of that measure (see, to that effect, judgment of 26 June 1990, *Sofrimport* v *Commission,* C-152/88, EU:C:1990:259, paragraph 11), as is the case in respect of a measure capable of applying to an indeterminate number of addressees (see, by analogy, order of 12 December 2003, *Bactria* v *Commission,* C-258/02 P, EU:C:2003:675, paragraphs 34 to 37).

40 In the present case, the class of persons to which the appellants belong, namely, holders of the breeders' exemption, was not made up exclusively of persons identified or identifiable at the time when the contested regulation was adopted. As the appellants themselves admit, that class of persons could be extended after that regulation came into force. Therefore, the circumstances relied upon by the appellants, and set out in paragraph 25 of the present judgment, cannot distinguish them individually in the same way as an addressee within the meaning of the case-law on the fourth paragraph of Article 263 TFEU and on the concept of individual concern.

41 In their second ground of appeal, the appellants complain specifically that the General Court did not take into consideration the fact that the EU legislature should, in particular, have taken into account their situation in the light of the provisions of higher-

ranking rules of law, since the contested regulation imposes a contractual relationship on them that prejudices those rules.

42 In that regard, it should be noted, first, that, in paragraphs 36 and 38 of the orders under appeal, the General Court specifically assessed, and then rejected, the arguments put forward by the appellants that they are individually concerned by the contested regulation in so far as they form part of a legal class made up of undertakings able to rely upon a specific acquired right, as a result of the breeders' exemption, as defined, inter alia, in Article 15(1)(iii) of the UPOV Convention.

43 Secondly, in accordance with the Court's settled case-law, the General Court was not required to provide an account which follows exhaustively all the arguments put forward by the parties to the case. According to that case-law, the reasoning of the General Court may be implicit, on condition that it enables the persons concerned to know why the measures in question were taken and provides the competent court with sufficient material for it to exercise its power of review (judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council,* C-583/11 P, EU:C:2013:625, paragraph 82 and the case-law cited).

44 It follows from the foregoing that the General Court cannot be criticised for not having, in paragraphs 36 and 38 of the orders under appeal, expressly addressed all the points of the arguments put forward by the appellants.

45 In any event, it must be held that none of the provisions of higher-ranking law relied on by the appellants is capable of laying down an obligation on the part of the EU legislature to take account of the consequences for the situation of certain individuals of the act they are intending to adopt, within the meaning of the judgment of 10 April 2003, *Commission* v *Nederlandse Antillen* (C-142/00 P, EU:C:2003:217, paragraph 72).

46 In those circumstances, the General Court was fully entitled to find that the appellants were not individually concerned by the contested regulation. Consequently, the first and second grounds of appeal must be rejected as unfounded.

The third ground of appeal

– Arguments of the parties

47 By their third ground of appeal, the appellants maintain that the ruling that their action was inadmissible creates a lacuna in the system of EU judicial protection and therefore pejudices Article 47 of the EU Charter. According to the appellants, since the request for a preliminary ruling referred to in Article 267 TFEU does not afford a genuine opportunity to carry out a judicial review, the direct action as provided for in Article 263(4) TFEU is the appropriate, and only, procedural avenue for such review.

48 The Parliament and the Council dispute those arguments.

– Findings of the Court

49 As regards the protection conferred by Article 47 of the Charter, the Court has previously held that that article is not intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to the admissibility of direct actions brought before the Courts of the European Union (judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council,* C-583/11 P, EU:C:2013:625, paragraph 97 and the case-law cited).

50 Accordingly, the conditions of admissibility laid down in the fourth paragraph of Article 263 TFEU must be interpreted in the light of the fundamental right to effective judicial protection, but such an interpretation cannot have the effect of setting aside the conditions expressly laid down in that Treaty (judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council,* C-583/11 P, EU:C:2013:625, paragraph 98 and the case-law cited).

51 As regards the appellants' argument that the interpretation adopted by the General Court of the concept of 'individual concern', appearing in the fourth paragraph of Article 263 TFEU, is incompatible with the fundamental right to effective judicial protection in that its effect is that a directly applicable regulation is virtually immune from judicial review, it must be stated that the protection conferred by Article 47 of the Charter does not require an individual to be unconditionally entitled to bring an action for annulment of such an EU legislative act directly before the Courts of the European Union (see, to that effect, judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council,* C-583/11 P, EU:C:2013:625, paragraph 105).

52 Furthermore, as the Council observes, the application of Article 4 of the contested regulation presupposes the adoption of legislative or regulatory provisions by the Member States. Consequently, even though the appellants cannot, because of the conditions governing admissibility laid down in the fourth paragraph of Article 263 TFEU, challenge that regulation directly before the European Union judicature, they can in principle contend that it is invalid before the national courts and cause the latter to refer questions to the Court of Justice for a preliminary ruling, pursuant to Article 267 TFEU (see, by analogy, judgment of 19 December 2013, *Telefónica* v *Commission,* C-274/12 P, EU:C:2013:852, paragraph 59).

53 In view of the foregoing considerations, the third ground of appeal must be rejected as manifestly unfounded and, accordingly, the appeals must be dismissed in their entirety.

Costs

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

55 Since the Parliament and the Council have applied for an order that the appellants pay the costs and the latter have been unsuccessful, the appellants must be ordered to pay the costs.

On those grounds, the Court (Sixth Chamber) hereby

1. **Dismisses the appeals;**

2. **Orders Ackermann Saatzucht GmbH & Co. KG, Böhm-Nordkartoffel Agrarproduktion GmbH & Co. OHG, Deutsche Saatveredelung AG, Ernst Benary, Samenzucht GmbH, Freiherr Von Moreau Saatzucht GmbH, Hybro Saatzucht GmbH & Co. KG, Klemm + Sohn GmbH & Co. KG, KWS Saat AG, Norddeutsche Pflanzenzucht Hans-Georg Lembke KG, Nordsaat Saatzuchts GmbH, Peter Franck-Oberaspach, P. H. Petersen Saatzucht Lundsgaard GmbH, Saatzucht Streng — Engelen GmbH & Co. KG, Saka Pflanzenzucht GmbH & Co. KG, Strube Research GmbH & Co. KG, Gartenbau und Spezialkulturen Westhoff GbR, W. von Borries-Eckendorf GmbH & Co. KG, ABZ Aardbeien Uit Zaad Holding BV, Agriom BV, Agrisemen BV, Anthura BV, Barenbrug Holding BV, De Bolster BV, Evanthia BV, Gebr. Vletter & Den Haan VOF, Hilverda Kooij BV, Holland-Select BV, Könst Breeding BV, Koninklijke Van Zanten BV, Kweek- en Researchbedrijf Agirco BV, Kwekerij de Wester-Bouwing BV, Limgroup BV, Ontwikkelingsmaatschappij Het Idee BV to pay the costs.**

Arabadjiev Fernlund Rodin

Delivered in open court in Luxembourg on 24 November 2016.

A. Calot Escobar A. Arabadjiev

Registrar Acting as President of the Sixth Chamber

* Language of the case: English.