

**Joined Cases T-339/16, T-352/16 and T-391/16**

**Ville de Paris,  
Ville de Bruxelles  
and  
Ayuntamiento de Madrid**

v

**European Commission**

(Environment — Regulation (EU) 2016/646 — Pollutant emissions from light passenger and commercial vehicles (Euro 6) — Setting of the not-to-exceed (NTE) values for emissions of oxides of nitrogen during the real driving emission (RDE) tests — Action for annulment — Powers of a municipal authority in the field of environmental protection to limit the circulation of certain vehicles — Direct concern — Admissibility — Lack of competence on the part of the Commission — Compliance with higher-ranking legal rules — Temporal adjustment of the effects of an annulment — Non-contractual liability — Compensation for the alleged harm to image and reputation)

Summary — Judgment of the General Court (Ninth Chamber, Extended Composition), 13 December 2018

1. *Action for annulment — Natural or legal persons — Meaning of ‘regulatory act’ in Article 263, fourth paragraph, TFEU — Any act of general scope other than legislative acts*

*(Art. 263, fourth para. TFEU; Commission Regulation No 2016/646)*

2. *Action for annulment — Natural or legal persons — Regulatory acts not constituting implementing measures for the purposes of Article 263, fourth para., TFEU — Concept of implementing measures — Implementing decisions — Not included*

*(Art. 263, fourth para. TFEU; Commission Regulation No 2016/646)*

3. *Action for annulment — Natural or legal persons — Regulatory acts — Acts not comprising implementing measures and concerning the applicant directly — Concept of direct effect — Criteria — Commission Regulation on polluting emissions from light passenger and commercial vehicles — Action by a municipal authority concerning environmental protection — Limitation of the powers of that authority to restrict the circulation of certain vehicles — Admissibility*

*(Art. 263, fourth para. TFEU; European Parliament and Council Directive 2007/46, Art. 4(3), second para.; Commission Regulation No 2016/646)*

4. *EU law — Interpretation — Methods — Literal, systematic and teleological interpretation — Effectiveness*

5. *Acts of the institutions — Basic legislation and implementing legislation — Implementing legislation not capable of amending or supplementing the essential elements of the basic legislation — Classification of the essential elements — Amendment by an implementing measure of the limits on emissions of oxides of nitrogen laid down for the Euro 6 standard — Amendment amending an essential element of the basic*

*legislation — Lack of jurisdiction of the Commission*

*(European Parliament and Council Regulation No 715/2007, Arts 5(3), 14(3) and Annex I; Commission Regulation 2016/646)*

6. *Action for annulment — Judgment annulling a measure — Scope — Partial annulment of an EU legal act — Condition — Severability of the annullable elements from the contested act*

*(Commission Regulations No 692/2008, Art 3(10), third para. and Annex III A, and 2016/646, Art. 1(2) and (3), and Annex II)*

7. *Action for annulment — Judgment annulling a measure — Effects — Limitation by the Court — Risk of undermining the economic interests of the automotive sector, the interests of consumers and policies on the environment and public health — Maintenance of the effects of the contested measure until its replacement within a reasonable period*

*(Art. 264, second para. TFEU; Commission Regulation 2016/646)*

8. *Judicial proceedings — Objection of inadmissibility — Power of the General Court to dismiss an action on the merits without ruling on the objection of inadmissibility — Extent of its discretion*

9. *Non-contractual liability — Conditions — Real and certain damage caused by an illegal measure — Damage resulting from harm to reputation — Annulment of the contested measure providing adequate reparation for the harm suffered*

1. See the text of the decision.

(see para. 37)

2. In order to determine whether or not a regulatory act being challenged entails such measures for the purposes of assessing the admissibility of an action for annulment brought against that act on the basis of the third scenario provided for in the fourth paragraph of Article 263 TFEU, reference should be made to the position of the person bringing the action and the subject-matter of that action.

In that regard, basic implementing decisions in relation to other persons must not be confused with the implementing measures referred to in that provision. If all implementing decisions, in particular those which ‘impose penalties’ or are ‘negative’ and are intended to sanction the failure to comply with a regulatory act, were also to be regarded as being implementing measures, the introduction in the FEU Treaty of the third scenario provided for in the fourth paragraph of Article 263 TFEU would often be deprived of effect even though it was introduced specifically in response to the concern to prevent persons being required to trigger measures which ‘impose penalties’ on them or are ‘negative’ in relation to them in order to be able to obtain a review of the legality of that regulatory act by means of a preliminary ruling.

(see paras 39, 40)

3. The fact that an act of the European Union prevents a public legal person from exercising its own powers as it sees fit has a direct effect on its legal position and, therefore, that act is of direct concern to it. As regards an infra-State body, that is all the more relevant where an EU measure affects its own legislative powers and not just its power to adopt individual decisions within a pre-defined framework.

Concerning Regulation 2016/646 amending Regulation No 692/2008 as regards emissions from

light passenger and commercial vehicles (Euro 6), it follows from literal, teleological and contextual interpretations of Directive 2007/46 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive), and more specifically of the second subparagraph of Article 4(3) thereof, that that directive actually prevents the public authorities of the Member States, without affording them any discretion, from prohibiting, restricting or impeding the circulation on the road of vehicles on grounds related to aspects of their construction and functioning covered by the directive if they satisfy the requirements of the latter, which means that, on account of the adoption of the contested regulation, those public authorities may not actually limit, within the context of a targeted measure taking into account the pollutant emission levels of vehicles, the circulation of those vehicles which during the RDE tests do not comply with the emission limits for oxides of nitrogen laid down in the Euro 6 standard, but which do nevertheless comply during those tests with the NTE values for emissions of oxides of nitrogen defined in that regulation, which are higher than the emission limits. As regards the powers of infra-State public authority applicants to restrict the circulation of vehicles in order to protect air quality and the use which they make of those powers, it is established that the applicants' legal situation is affected by Regulation 2016/646 and that that regulation is therefore of direct concern to them, within the meaning of the fourth paragraph of Article 263 TFEU.

(see paras 50, 76, 80, 84)

4. See the text of the decision.

(see paras 57, 66)

5. The amendment of the limits on emissions of oxides of nitrogen laid down for the Euro 6 standard, contained in Annex I to Regulation No 715/2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information, constitutes the amendment of an essential element of that regulation, the Commission did not have the power to make such an amendment in the context of its implementing powers exercised as part of the comitology regulatory procedure with scrutiny, powers which it enjoys as a result of Article 5(3) and Article 14(3) of that regulation.

(see para. 130)

6. See the text of the decision.

(see paras 154-158)

7. The second paragraph of Article 264 TFEU allows, on grounds of legal certainty but also on grounds seeking to prevent a lack of continuity or a decline in the implementation of policies conducted or supported by the European Union, such as in the fields of environmental protection or public health, the effects of an act declared void to be maintained for a reasonable period.

Concerning the partial annulment of Regulation 2016/646 amending Regulation No 692/2008 as regards emissions from light passenger and commercial vehicles (Euro 6), it is necessary to apply that provision in so far as the absence of temporal adjustment of the annulment could undermine both the legitimate economic interests of the automotive industry which has complied with the applicable legislation, and as the case may be those of consumers who acquired vehicles which complied with that legislation, as well as the policies of the European Union on the environment and health.

(see paras 160, 163)

8. See the text of the decision.

(see para. 166)

9. See the text of the decision.

(see paras 167-169)