

JUDGMENT OF THE COURT (First Chamber)

3 October 2013 (*)

(Appeals – Integrated pollution prevention and control – Greenhouse gas emission allowance trading system – Allocation of allowances for the Republic of Latvia – Period from 2008 to 2012)

In Case C-267/11 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 30 May 2011,

European Commission, represented by I. Rubene and E. White, acting as Agents, with an address for service in Luxembourg,

appellant,

the other parties to the proceedings being:

Republic of Latvia, represented by I. Kalniņš, acting as Agent,

applicant at first instance,

supported by

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

intervener in the appeal,

Republic of Lithuania,

Slovak Republic,

United Kingdom of Great Britain and Northern Ireland,

interveners at first instance,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, M. Berger, A. Borg Barthet (Rapporteur), E. Levits and J.-J. Kasel, Judges,

Advocate General: J. Kokott,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 16 January 2013,

after hearing the Opinion of the Advocate General at the sitting on 31 January 2013,

gives the following

Judgment

- 1 By its appeal, the European Commission seeks to have set aside the judgment of the General Court of the European Union in Case T-369/07 *Republic of Latvia v Commission* [2011] ECR II-1039 ('the judgment under appeal'), by which it annulled Commission Decision C(2007) 3409 of 13 July 2007 on the amendment of the national plan for the allocation of greenhouse gas emission allowances notified by the Republic of Latvia for the period from 2008 to 2012 ('the contested decision'), under Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32), as amended by Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 (OJ 2004 L 338, p. 18 ; 'Directive 2003/87').

Legal context

- 2 Directive 2003/87 transposes the international conventions on combatting global warming, namely the United Nations Framework Convention on Climate Change adopted in New York on 9 May 1992, which was approved on behalf of the European Community by Council Decision 94/69/EC of 15 December 1993 concerning the conclusion of the United Nations Framework Convention on Climate Change (OJ 1994 L 33, p. 11), and the Kyoto Protocol to the United Nations Framework Convention on Climate Change, adopted on 11 December 1997, which was approved by Council Decision 2002/358/EC of 25 April 2002 (OJ 2002 L 130, p. 1).
- 3 Article 9 of Directive 2003/87 reads as follows:

'1. For each period referred to in Article 11(1) and (2), each Member State shall develop a national plan stating the total quantity of allowances that it intends to allocate for that period and how it proposes to allocate them. The plan shall be based on objective and transparent criteria, including those listed in Annex III, taking due account of comments from the public. The Commission shall, without prejudice to the Treaty, by 31 December 2003 at the latest develop guidance on the implementation of the criteria listed in Annex III.

For the period referred to in Article 11(1), the plan shall be published and notified to the Commission and to the other Member States by 31 March 2004 at the latest. For subsequent periods, the plan shall be published and notified to the Commission and to the other Member States at least 18 months before the beginning of the relevant period.

...

3. Within three months of notification of a national allocation plan by a Member State under paragraph 1, the Commission may reject that plan, or any aspect thereof, on the basis that it is incompatible with the criteria listed in Annex III or with Article 10. The Member State shall only take a decision under Article 11(1) or (2) if proposed amendments are accepted by the Commission. Reasons shall be given for any rejection decision by the Commission.'

- 4 Article 11(2) of Directive 2003/87 reads as follows:

'For the five-year period beginning 1 January 2008, and for each subsequent five-year period, each Member State shall decide upon the total quantity of allowances it will allocate for that period and initiate the process for the allocation of those allowances to the operator of each installation. This decision shall be taken at least 12 months before the beginning of the relevant period and be

based on the Member State's national allocation plan developed pursuant to Article 9 and in accordance with Article 10, taking due account of comments from the public.'

Background to the dispute

- 5 By letter of 16 August 2006, the Republic of Latvia notified the Commission, in accordance with Article 9(1) of Directive 2003/87, of its national allocation plan for the period from 2008 to 2012 ('the NAP'). According to the NAP, the Republic of Latvia intended to allocate an average annual total of 7.763883 million tonnes-equivalent of carbon dioxide ('MteCO₂') to its national industry covered by Annex I to the directive.
- 6 On 29 November 2006, the Commission adopted a first rejection decision.
- 7 By letter of 29 December 2006, the Republic of Latvia notified the Commission of a revised NAP to providing for a total annual average of 6.253146 MteCO₂.
- 8 By letter of 30 March 2007, written in English, the Commission found that some of the information in the revised NAP was incomplete and requested the Republic of Latvia to answer certain questions and to provide it with additional information.
- 9 By letter of 25 April 2007, the Republic of Latvia responded to that request for request for information.
- 10 On 13 July 2007, the Commission adopted the contested decision.

The procedure before the General Court and the judgment under appeal

- 11 By application lodged at the Registry of the General Court on 26 September 2007, the Republic of Latvia brought an action for annulment of the contested decision.
- 12 The Republic of Latvia puts forward four pleas in law in support of its action: first, disregard of the spheres of competence laid down by the Treaty as regards energy policy; second, infringement of the 'principle of non-discrimination'; third, disregard of the obligations under the Kyoto Protocol to the United Nations Framework Convention on Climate Change; and, fourth, non-compliance with the three-month time-limit provided for in Article 9(3) of Directive 2003/87.
- 13 By the judgment under appeal, the General Court decided to annul the contested decision on the ground of infringement of Article 9(3) of Directive 2003/87, taking the view that it was not necessary to rule on the admissibility and merits of the other pleas put forward by the Republic of Latvia.
- 14 The General Court considered it appropriate to ascertain, firstly, whether the fourth plea in law, alleging a failure to comply with the time-limit of three months laid down in Article 9(3) of Directive 2003/87, was well founded.
- 15 In that context, the General Court first examined, in paragraphs 45 to 49 of the judgment under appeal, the Commission's power of review under Article 9(3) of that directive. Taking the case-law as its basis, it noted that the review must be carried out within three months of the date on which the Member State notified the NAP (order in Case T-387/04 *EnBW Energie Baden-Württemberg v Commission* [2007] ECR II-1195, paragraph 104, and, Case T-374/04 *Germany v Commission* [2007] ECR II-4431, paragraph 116).
- 16 It observed that, if the Commission does not take such a rejection decision, the notified NAP

becomes definitive and there is a presumption of legality allowing the Member State to implement it. It added that that case-law does not indicate that the Commission must accept the amendments made to the NAP by way of formal decision. On the contrary, firstly, such an interpretation runs counter to the principle that the Commission does not have a general power to authorise NAPs and, secondly, it is inconsistent with the overall wording of the third sentence of Article 9(3) of Directive 2003/87, which contemplates only a rejection decision and not an authorisation decision.

17 The General Court next examined, in paragraphs 50 to 57 of the judgment under appeal, the concept of notification within the meaning of Article 9(3) of Directive 2003/87. Firstly, the General Court found that the contested decision was not delivered within three months from the notification of the revised NAP, that is to say on 29 December 2006, but only on 13 July 2007. Accordingly, the General Court took the view that it had to be determined whether the concept of notification of an NAP within the meaning of Article 9(3) of Directive 2003/87 covers both the initial notification of the NAP and that of the revised NAP, particularly following a rejection decision by the Commission.

18 The Court of First Instance found, in paragraphs 54 and 55 of the judgment under appeal:

‘54 ... From a teleological point of view, moreover, the purpose of the procedure under Article 9(3) of Directive 2003/87, apart from permitting the Commission to exercise a prior review, is to provide legal certainty for the Member States and, in particular, to permit them to be sure, within a short time, how they may allocate emission allowances and manage the allowance trading scheme on the basis of their NAP during the allocation period in question. Having regard to the limited duration of such a period, which is three or five years (Article 11 of Directive 2003/87), both the Commission and the Member States have a legitimate interest in resolving quickly any dispute concerning the contents of the NAP and in ensuring that, during the entire period of its validity, the NAP does not risk being contested by the Commission (order in *EnBW Energie Baden-Württemberg v Commission*, paragraph 117).

55 Those considerations apply to any NAP, irrespective of whether it is the version as initially notified or as revised and subsequently notified. Moreover, the requirement for the Commission to carry out a prompt and effective review following notification of a revised NAP is all the more important where that review has already been preceded by a first review stage of the initial NAP which led to a rejection decision and, subsequently, to amendments to that NAP. The Commission’s submission that it is allowed to review proposed amendments to an NAP, or a revised NAP, without having to comply with the three-month time-limit provided for in Article 9(3) of Directive 2003/87 is liable to undermine the objective of a prompt and effective review as well as the legal certainty to which a notifying Member State is entitled in order to be able to allocate emission allowances for installations located in its territory before the beginning of the exchange period pursuant to Article 11 of that directive.’

19 The General Court next concluded, in paragraph 57 of the judgment under appeal, that ‘the concept of notification within the meaning of Article 9(3) of Directive 2003/87 [encompassed] both initial notifications and subsequent notifications of different versions of an NAP, with the result that each of those notifications [triggered] a new three-month time-limit’.

20 In those circumstances, the General Court found, in paragraph 58 of the judgment under appeal, that, in that case, the notification of the revised NAP on 29 December 2006 triggered a new three-month time-limit within the meaning of Article 9(3) of Directive 2003/87 and held, in paragraph 59 of the judgment under appeal:

‘Given that the three-month time-limit within the meaning of Article 9(3) of Directive 2003/87 expired on 29 March 2007, the Commission’s request for information, addressed to the Republic of Latvia on 30 March 2007, was out of time. It is therefore unnecessary to determine whether such a

request, had it been made within the time-limit, would have been liable to interrupt or suspend that period and, even less so, whether it would have had such an interruptive or suspensory effect even though that letter was written in English and not in Latvian.'

21 In paragraph 61 of the judgment under appeal, the General Court found that, 'given the particularities of the review procedure under Article 9(3) of Directive 2003/87, if, at the end of that procedure, there is no decision by the Commission by the three-month time-limit, the NAP [became] definitive and [was] presumed to be lawful' and held, finally, in paragraph 62 of that judgment, that 'the contested decision [had to] be annulled on the ground of infringement of Article 9(3) of Directive 2003/87, without its [having] being necessary to rule on the admissibility and merits of the other pleas put forward by the Republic of Latvia'.

The forms of order sought by the parties to the appeal

22 The Commission claims that the Court of Justice should set aside the judgment under appeal and order the Republic of Latvia to pay the costs.

23 The Republic of Latvia contends that the Court should dismiss the appeal.

24 By order of the President of the Court of 29 September 2011, the Czech Republic was granted leave to intervene in support of the form of order sought by the Republic of Latvia.

The appeal

25 In support of its appeal, the Commission raises a single ground of appeal alleging that the General Court erred in law as regards the interpretation which it gave to Article 9(3) of Directive 2003/87.

Arguments of the parties

26 According to the Commission, the General Court's reasoning rests on an incorrect interpretation of Article 9(3) of Directive 2003/87 in the order in *EnBW Energie Baden Württemberg v Commission*. The Commission submits that, in that order, the General Court treated the first and second sentences of Article 9(3) as one, such that the second sentence was, ultimately, deprived of all meaning.

27 In the view of the Commission, the General Court considered, wrongly, that the submission of the amendments provided for in that second sentence constituted merely part of the initial examination procedure of the notified NAP, which did not necessarily have to be closed by a formal decision, particularly where, during that procedure, the Member State makes all the amendments requested. Thus, the General Court also considered that when the Member State does not amend its NAP, the Commission may adopt a rejection decision before the three-month time-limit has expired.

28 In the Commission's submission, the General Court's approach, consisting of examining the amendments notified as if it were the notification of a new NAP and, in consequence, of applying once again the three-month time-limit provided for in the first sentence of Article 9(3) of Directive 2003/87, is incorrect. It submits that that approach runs counter to the introductory part of Article 9(3) of that directive, which provides that the time-limit is to begin to run on the date of notification of the NAP referred to in paragraph 1 of that article, that is to say, the day of the first notification made by that Member State, and that part does not relate to the examination of the amendments provided for in the second sentence of Article 9(3) of Directive 2003/87.

29 In addition, the Commission states, contrary to the General Court's view, that that Court's

interpretation of Article 9(3) of Directive 2003/87 is not consistent with a teleological interpretation of that paragraph. Quite the opposite: by eliminating the procedure provided for in the second sentence of Article 9(3) of that directive and by requiring a new procedure to be opened pursuant to the provisions of the first sentence of that paragraph where the Commission rejects the NAP or part thereof, the Commission argues that the General Court undermines the protection of legitimate expectations and is likely to hinder the implementation of the NAP.

- 30 Finally, the Commission submits that the wording of Article 9(3) of Directive 2003/87 and, in particular, of the second sentence of that paragraph, must be interpreted as meaning that that stage of the procedure does not cover the entirety of the plan as such, but exclusively the amendments to the NAP. It argues that, if the General Court's approach were to be followed, it would be necessary to assess the entirety of the NAP afresh, which would be to run the risk of obtaining a totally different result. Moreover, if such repeated assessments led each time to a rejection by the Commission, that process could be recommenced indefinitely.
- 31 The Commission concludes that, if the legislature entrusted the Commission with the task of accepting amendments to NAPs (and did not merely permit it not to object to them), that is because Directive 2003/87 seeks to create a certain and foreseeable framework enabling operators to programme their emissions reductions in conditions of maximum certainty. An NAP creates legal rights and legitimate expectations, so that any amendment to such a plan must be based not on inaction but on a positive and transparent legislative act of the European Union.
- 32 The Republic of Latvia points out, firstly, that, in compliance with the objective of Article 9(3) of Directive 2003/87, the NAP coordination procedure ought to be such as to ensure the effective and rapid adoption of that plan, which is necessary to achieve the objective laid down in Article 1 of that directive, namely 'to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner'.
- 33 The Republic of Latvia disputes the interpretation suggested by the Commission and submits that such an interpretation runs counter to the objectives pursued by Directive 2003/87. In its view, the interpretation suggested by the Commission means that the adoption of amendments to NAPs depends solely on the Commission's discretionary powers which, furthermore, ought not to be limited in time. If, in accordance with Article 9(3) of Directive 2003/87, a formal decision remained necessary to accept the amendments to an NAP, the procedure for acceptance of the entirety of the NAP would be more complicated and formalised. Furthermore, in that case, the Member States would no longer be able to rely on the fact that the Commission makes its objections within a set period. Consequently, respect of the principles of legal certainty and foreseeability would not be guaranteed.
- 34 The Republic of Latvia submits that to follow the Commission's interpretation and hold that the second sentence of Article 9(3) of Directive 2003/87, separately, creates a situation in which the Commission has a wider power in the procedure for approving the amendments than that which it has in the procedure for accepting or rejecting the NAP initially submitted. The interpretation proposed by the Commission would lead to a situation in which the approval of amendments to NAPs, unlike its initial approval, would not be subject to a time factor while, at the same time, that procedure would still be subject to a time factor. Such an interpretation cannot be regarded as consistent with Article 9(3) of Directive 2003/87 or with the objectives of the emission trading schemes in general.
- 35 That Member State argues that the European Union legislature conferred on the Commission a wide discretion by giving it the power not only to object to NAPs initially submitted, but also to examine whether its objections are taken into account. In addition, if the Commission is of the opinion that the amendments made are not acceptable, the legislature gave it the right to take a

negative decision. In the view of that Member State, it is reasonable to take the view, as in the assessment procedure for initial NAPs, that that right is temporally and substantively limited.

- 36 In that context, the Republic of Latvia recalls that the principle of proportionality, which is one of the general principles of European Union law, requires, in particular, that measures adopted by the European Union institutions do not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question. In that case, it is of the opinion that, although the Commission's right to assess the amendments is not disputed, it cannot be regarded as absolute and unlimited. The interpretation of Article 9(3) of Directive 2003/87 suggested in paragraphs 6 to 9 of the Commission's appeal would lead to a result which is disproportionate for the Member State and would undermine the legitimate expectations and legal certainty.
- 37 In the view of the Republic of Latvia, a systemic interpretation of the second sentence of Article 9(3) of Directive 2003/87, in the light of the first sentence, which authorises the Commission positively and impliedly to accept an NAP, that is to say, without adopting a formal decision, must give the result that the approval of the amendments must be subject to an acceptance procedure which is as extensive as that applicable to the NAP initially submitted. That result also follows by implication from the third sentence of Article 9(3) of that directive, which contains a requirement to state reasons not where the Commission accepts those amendments but in the event that it rejects them. It is also possible for the Commission to express its intention tacitly over a period of three months.
- 38 According to the Republic of Latvia, it follows from a systematic and teleological interpretation that the three-month time-limit laid down in Article 9(3) of Directive 2003/87 applies not only to the notified NAP but also to the amendments made to that plan.
- 39 That Member State submits that an efficient and rapid notification procedure for NAPs is necessary having regard to the fact that, in accordance with Article 11 of Directive 2003/87, subsequent measures cannot be adopted until the NAP or the amendments have been approved. Thus, conversely, if the Commission, as it claims, had an unlimited period in which to examine the amendments, it would be impossible to achieve that efficient and rapid result 'with the least possible diminution of economic development'. The lack of foreseeability of the time-limit (and of the entry into force) would not bring about legal certainty or the protection of legitimate expectations as regards the operators, the Member States or any other actor in the internal market of the European Union.
- 40 The Republic of Latvia adds that the time-limit laid down in Article 9(3) of Directive 2003/87 for the examination of the initial plan must be regarded as being mandatory in nature. Although that directive does not expressly apply the three-month time-limit to the examination of the amendments, that time-limit would be rendered meaningless if the Commission were initially subject to a particular time-limit but no such restriction applied to the examination of the amendments. The coordination procedure would therefore lose transparency, foreseeability and efficiency. Consequently, even if the three-month time-limit could not be applied directly in every case to the amendments, a longer time-limit could not be regarded as a 'reasonable period'.
- 41 By its intervention, the Czech Republic supports the arguments put forward by the Republic of Latvia, which claim that the interpretation given by the General Court in the judgment under appeal is well founded.
- 42 That Member State submits that it follows from the provisions of Articles 9 to 11 of Directive 2003/87 that the trading period is preceded by a number of preparatory stages, for which that directive lays down a restrictive timetable. In the view of the Czech Republic, it follows from an

analysis of that timetable in that directive that, for the purposes of the 'acceptance' of the NAP notified by a Member State, the European Union legislature fixed a restricted period of six months.

- 43 Since, within the framework of six months, the Commission has a three-month time-limit within which potentially to reject an NAP initially notified, it is clear, in the view of that Member State, that, for the purposes of the 'acceptance' of the amendments proposed by the Member State following such a rejection by the Commission, only three more months remain of that period.
- 44 Thus, that is why, in the view of the Czech Republic, since the Commission refers in its appeal to a 'reasonable period', there is no doubt that such a time-limit cannot be longer than three months, given the restrictive timetable referred to above, and that it should even be shorter given that, following a rejection decision, the Member State also needs a certain amount of time to prepare the necessary amendments, having regard to the fact that it is bound by the principle of loyal cooperation.

Findings of the Court

- 45 The question posed in the present appeal concerns the interpretation of Article 9(3) of Directive 2003/87. That paragraph contains three rules. Under the first sentence of Article 9(3) of Directive 2003/87, within three months of notification of an NAP by a Member State, the Commission may reject that NAP, or any aspect thereof, on the basis that it is incompatible with the criteria listed in Annex III or with the provisions of Article 10 thereof. Under the second sentence of the same provision, the Member State is to take a decision under Article 11(1) or (2) of that directive only if the proposed amendments are accepted by the Commission.
- 46 Firstly, it must be pointed out that, at the end of the procedure under Article 9 of Directive 2003/87, an NAP notified by a Member State to the Commission enjoys a presumption of legality, since, after the three-month time-limit laid down in Article 9(3) has expired, it is regarded as definitive where the Commission makes no observations, so that the Member State concerned may adopt it.
- 47 Secondly, it must be borne in mind, as the General Court rightly pointed out in paragraph 46 of the judgment under appeal, that the Commission's power to consider and reject NAPs under Article 9(3) of the directive is severely limited, both in substantive and temporal terms. On the one hand, its review is limited to considering whether the NAP is compatible with the criteria laid down in Annex III to Directive 2003/87 and the provisions of Article 10 thereof and, on the other, the review must be carried out within three months of the date on which the Member State notified the NAP.
- 48 However, it is clear that Article 9(3) of Directive 2003/87 does not lay down any restriction as regards the amendments likely to be made to an NAP, apart from the need for them to be accepted. Thus, the amendments made to an NAP may stem from a request from the Commission, just as they may be the initiative of the Member State itself.
- 49 In that context, the Commission disputes the interpretation of Article 9(3) of Directive 2003/87 which emerges from the judgment under appeal and more particularly the theory according to which, where the Commission fails, within a three-month time-limit, to reject an NAP which has been amended at its request after it had rejected an initial version, the amended NAP is regarded as definitive and can be adopted by the Member State which notified it.
- 50 In particular, the Commission submits that the second sentence of that Article 9(3) applies not only to an NAP which is subject to amendment on the initiative of the Member State alone after it has been accepted by the Commission, but also to any later amendment to an NAP amended after a decision to reject an initial version, so that its adoption first requires a positive compliance decision from the Commission.

- 51 That interpretation cannot succeed.
- 52 Firstly, the Commission is bound by a three-month time-limit in which to reject a notified NAP. The need for that time-limit follows from the timetable laid down in Articles 9(1) and 11(2) of Directive 2003/87. Under that timetable, the plans must be notified to the Commission at least 18 months before the start of the period concerned and implemented at the latest 12 months before the start of that period by an allocation of emission allowances. When an amended NAP is notified after rejection by the Commission of its initial version, compliance with that three-month time-limit is all the more necessary since the period remaining before the implementation of the plan is considerably shorter than when the NAP was first notified.
- 53 In that regard, the Commission cannot argue that the interpretation of Article 9(3) of Directive 2003/87 which emerges from the judgment under appeal could have the effect, in certain circumstances, of permitting a Member State to prolong the procedure for examination of an NAP in a dilatory manner, since it is of necessity in the interest of the Member States for the NAPs to be adopted within the time-limits laid down in the provisions referred to in the previous paragraph of the present judgment.
- 54 Furthermore, it is apparent from both Article 9(3) of Directive 2003/87 and the *travaux préparatoires* to that directive that the power granted to the Commission consists only a power to review the conformity of the NAPs with the criteria laid down in Annex III to Directive 2003/87 and not a power to substitute or to harmonise which would include the power to fix a maximum quantity of greenhouse gas emission allowances to be allocated (Case C-504/09 P *Commission v Poland* [2012] ECR, paragraph 80, and Case C-505/09 P *Commission v Estonia* [2012] ECR, paragraph 82). The Commission therefore has the power only to review that conformity and to reject NAPs if they are incompatible with those criteria and those provisions.
- 55 In that context, if the European Union legislature considered that a three-month time-limit was sufficient for the Commission to be able to exercise its power of review and to reject a notified NAP if it fails to comply with those criteria, that time-limit must be regarded as being all the more sufficient for the purposes of review of an amended version of that NAP since the Commission has already been able to make an initial examination of the data concerning the national industry covered by the NAP.
- 56 Such an interpretation does not deprive the second sentence of Article 9(3) of Directive 2003/87 of its effectiveness, contrary to the assertions of the Commission. That provision can apply where the Commission has not rejected an NAP notified by a Member State, which can accordingly implement it, and where the Member State concerned can take account of any amendments, after approval by the Commission.
- 57 Thirdly, it must be borne in mind that, under the third sentence of Article 9(3) of Directive 2003/87, the Commission must state the reasons for any rejection decision. Such a provision thus implies action on the part of the Commission which, having regard to the objectives of efficiency and performance stated in recital 5 in the preamble to Directive 2003/87, must be limited in time whatever the stage of the procedure to examine the conformity of an NAP.
- 58 Accordingly, the General Court did not err in law by holding that the Commission's power to reject the amended version of an NAP after an initial rejection decision of the NAP in its original version must be subject to the three-month time-limit laid down in the first sentence of Article 9(3) of Directive 2003/87.
- 59 Consequently, the Commission's sole ground of appeal must be dismissed. Accordingly, the appeal must also be dismissed.

Costs

- 60 Under the first paragraph of Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded the Court of Justice is to make a decision as to costs.
- 61 Under Article 138(1) of the Rules of Procedure, applicable to appeal proceedings by virtue of Article 184(1) thereof, 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 Republic of Latvia did not apply for an order that the Commission pay the costs, the Commission and the Republic of Latvia shall bear their own costs.
- 62 Under Article 140(1) of those rules, Member States and institutions intervening in the proceedings are to bear their own costs. Accordingly, the Czech Republic, which has intervened in the present proceedings, must be ordered to bear its own costs.

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

- 1. Dismisses the appeal.**
- 2. Orders the European Commission, the Republic of Latvia and the Czech Republic to bear their own costs.**

[Signatures]

* Language of the case: Latvian.