СЪД НА ЕВРОПЕЙСКИЯ СЪЮЗ
TRIBUNAL DE JUSTICIA DE LA UNIÓN EUROPEA
SOUDNÍ DVŮR EVROPSKÉ UNIE
DEN EUROPÆISKE UNIONS DOMSTOL
GERICHTSHOF DER EUROPÄISCHEN UNION
EUROOPA LIIDU KOHUS
ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ
COURT OF JUSTICE OF THE EUROPEAN UNION
COUR DE JUSTICE DE L'UNION EUROPÉENNE
CÚIRT BHREITHIÚNAIS AN AONTAIS EORPAIGH
SUD EUROPSKE UNIJE
CORTE DI GIUSTIZIA DELL'UNIONE EUROPEA

CVRIA
LUXEMBOURG

EIROPAS SAVIENĪBAS TIESA
EUROPOS SĄJUNGOS TEISINGUMO TEISMAS
AZ EURÓPAI UNIÓ BÍRÓSÁGA
IL-QORTI TAL-ĠUSTIZZJA TAL-UNJONI EWROPEA
HOF VAN JUSTITIE VAN DE EUROPESE UNIE
TRYBUNAŁ SPRAWIEDLIWOŚCI UNII EUROPEJSKIEJ
TRIBUNAL DE JUSTIÇA DA UNIÃO EUROPEIA
CURTEA DE JUSTIȚIE A UNIUNII EUROPENE
SÚDNY DVOR EURÓPSKEJ ÚNIE
SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN TUOMIOISTUIN
EUROPEISKA UNIONENS DOMSTOL

JUDGMENT OF THE COURT (Ninth Chamber)

11 May 2017 *

(Appeal — Directive 2010/30/EU — Indication of energy consumption by labelling and standard product information — Delegated Regulation (EU) No 665/2013 — Energy labelling of vacuum cleaners — Energy efficiency — Measurement method — Limits of delegated powers — Distortion of the evidence — Duty of the General Court to state reasons)

In Case C-44/16 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 25 January 2016,

Dyson Ltd, established in Malmesbury (United Kingdom), represented by E. Batchelor and M. Healy, Solicitors, F. Carlin, Barrister, and A. Patsa, Advocate,

applicant,

the other party to the proceedings being:

European Commission, represented by K. Herrmann and E. White, acting as Agents,

defendant at first instance,

THE COURT (Ninth Chamber),

composed of E. Juhász, President of the Chamber, C. Vajda and C. Lycourgos (Rapporteur), Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

* Language of the case: English.

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 its appeal Dyson Ltd seeks to have set aside the judgment of the General Court of the European Union of 11 November 2015, *Dyson* v *Commission* (T-544/13, 'the judgment under appeal', EU:T:2015:836), dismissing its claim for the annulment of Commission Delegated Regulation (EU) No 665/2013 of 3 May 2013 supplementing Directive 2010/30/EU of the European Parliament and of the Council with regard to energy labelling of vacuum cleaners (OJ 2013 L 192, p. 1, 'the regulation at issue').

Legal context

Directive 2010/30/EU

2 Recitals 5 and 8 of Directive 2010/30/EU of the European Parliament and of the Council of 19 May 2010 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (OJ 2010 L 153, p. 1) state:

'(5) The provision of accurate, relevant and comparable information on the specific energy consumption of energy-related products should influence the end-user's choice in favour of those products which consume or indirectly result in consuming less energy and other essential resources during use, thus prompting manufacturers to take steps to reduce the consumption of energy and other essential resources of the products which they manufacture. It should also, indirectly, encourage the efficient use of these products in order to contribute to the EU's 20% energy efficiency target. In the absence of this information, the operation of market forces alone will fail to promote the rational use of energy and other essential resources for these products.

…

(8) Information plays a key role in the operation of market forces and it is therefore necessary to introduce a uniform label for all products of the same type, to provide potential purchasers with supplementary standardised information on those products' costs in terms of energy and the consumption of other essential resources and to take measures to ensure that potential

end-users who do not see the product displayed, and thus have no opportunity to see the label, are also supplied with this information. In order to be efficient and successful, the label should be easily recognisable to end-users, simple and concise. To this end the existing layout of the label should be retained as the basis to inform end-users about the energy efficiency of products. Energy consumption of and other information concerning the products should be measured in accordance with harmonised standards and methods.'

3 In accordance with Article 1(1) and (2) of Directive 2010/30:

'1. This Directive establishes a framework for the harmonisation of national measures on end-user information, particularly by means of labelling and standard product information, on the consumption of energy and where relevant of other essential resources during use, and supplementary information concerning energy-related products, thereby allowing end-users to choose more efficient products.

2. This Directive shall apply to energy-related products which have a significant direct or indirect impact on the consumption of energy and, where relevant, on other essential resources during use.'

4 Under Article 5(a) and (b) of that directive, the Member States are to ensure that 'suppliers placing on the market or putting into service products covered by a delegated act supply a label and a fiche in accordance with this Directive and the delegated act' and that those suppliers 'produce technical documentation which is sufficient to enable the accuracy of the information contained in the label and the fiche to be assessed'.

5 Article 10 of the directive, 'Delegated acts', provides:

'1. The Commission shall lay down details relating to the label and the fiche by means of delegated acts in accordance with Articles 11 to 13, relating to each type of product in accordance with this Article.

Where a product meets the criteria listed in paragraph 2, it shall be covered by a delegated act in accordance with paragraph 4.

Provisions in delegated acts regarding information provided on the label and in the fiche on the consumption of energy and other essential resources during use shall enable end-users to make better informed purchasing decisions and shall enable market surveillance authorities to verify whether products comply with the information provided.

…

4. The delegated acts shall specify in particular:

…

i) the level of accuracy in the declarations on the label and fiches;

j) the date for the evaluation and possible revision of the delegated act, taking into account the speed of technological progress.'

6 Article 11 of the directive, 'Exercise of the delegation', provides in paragraph 1:

'The powers to adopt the delegated acts referred to in Article 10 shall be conferred on the Commission for a period of five years beginning on 19 June 2010 …'

The regulation at issue

7 In accordance with Article 1(1) of the regulation at issue, it 'establishes requirements for the labelling and the provision of supplementary product information for electric mains-operated vacuum cleaners, including hybrid vacuum cleaners'.

8 Article 3 of the regulation, 'Responsibilities of suppliers and timetable', provides:

'1. Suppliers shall ensure that from 1 September 2014:

(a) each vacuum cleaner is supplied with a printed label in the format and containing the information set out in Annex II;

(b) a product fiche, as set out in Annex III, is made available;

(c) the technical documentation as set out in Annex IV is made available on request to the authorities of the Member States and to the Commission;

(d) any advertisement for a specific model of vacuum cleaner contains the energy efficiency class, if the advertisement discloses energy-related or price information;

(e) any technical promotional material concerning a specific model of vacuum cleaner which describes its specific technical parameters includes the energy efficiency class of that model;

…

2. The format of the label set out in Annex II shall be applied according to the following timetable:

(a) for vacuum cleaners placed on the market from 1 September 2014 labels shall be in accordance with label 1 of Annex II;

(b) for vacuum cleaners placed on the market from 1 September 2017 labels shall be in accordance with label 2 of Annex II.'

9 Article 5 of the regulation, ‘Measurement methods’, states that ‘the information to be provided under Articles 3 and 4 shall be obtained by reliable, accurate and reproducible measurement and calculations methods, which take into account the recognised state-of-the-art measurement and calculation methods, as set out in Annex VI’.

10 Article 7 of the regulation, ‘Revision’, states:

‘The Commission shall review this Regulation in light of technological progress no later than five years after its entry into force. The review shall in particular assess the verification tolerances set out in Annex VII, whether full size battery operated vacuum cleaners should be included in the scope and whether it is feasible to use measurement methods for annual energy consumption, dust pick-up and dust re-emission that are based on a partly loaded rather than an empty receptacle.’

11 Annex I to the regulation indicates that a vacuum cleaner is classified according to its energy efficiency, determined in accordance with its annual energy consumption, its cleaning performance determined in accordance with its dust pick-up, and its dust re-emission.

12 Point 1 of Annex VI to the regulation provides:

‘For the purposes of compliance and verification of compliance with the requirements of this Regulation, measurements and calculations shall be made using a reliable, accurate and reproducible methods that take into account the generally recognised state-of-the-art measurement and calculation methods, including harmonised standards the reference numbers of which have been published for the purpose in the *Official Journal of the European Union*. They shall meet the technical definitions, conditions, equations and parameters set out this Annex.’

The action before the General Court and the judgment under appeal

13 By application lodged at the Registry of the General Court on 7 October 2013, Dyson brought an action for the annulment of the regulation at issue.

14 In support of its action, Dyson put forward three pleas in law, alleging, first, lack of competence on the part of the Commission, secondly, failure to provide a statement of reasons for the regulation at issue and, thirdly, infringement of the principle of equal treatment.

15 By the judgment under appeal, the General Court dismissed the action in its entirety.

Forms of order sought by the parties before the Court of Justice

16 Dyson claims that the Court should:

– set aside the judgment under appeal;

– annul the regulation at issue; and

– order the Commission to pay the costs of the proceedings before the Court and the General Court.

17 The Commission contends that the Court of Justice should:

– dismiss the appeal; and

– order Dyson to pay the costs.

The appeal

18 Dyson puts forward six grounds in support of its appeal. The first ground of appeal claims that the General Court mischaracterised the first plea in law put forward at first instance. The second ground claims that the General Court misinterpreted the scope of the power delegated to the Commission by Article 10 of Directive 2010/30. The third ground criticises the General Court for infringing Dyson's rights of defence. The fourth ground is that certain evidence was distorted and disregarded. The fifth ground claims that the judgment under appeal failed to state reasons. The sixth ground asserts that the General Court disregarded the principle of equal treatment.

The fourth ground of appeal and the fourth part of the fifth ground of appeal

Arguments of the parties

19 By its fourth ground of appeal, which should be considered first, Dyson complains that the General Court distorted or failed to take into account certain items of evidence that were intended to show the reproducibility of a method of measuring the energy performance of vacuum cleaners with dust-loaded receptacles.

20 In order to show that the energy performance of vacuum cleaners can be measured by means of a method other than that adopted by the regulation at issue, which was based on tests made with empty receptacles, Dyson states that it submitted before the General Court several items of evidence intended to show inter alia the reproducibility of a method of measuring the energy performance of vacuum cleaners by means of tests conducted with dust-loaded receptacles, namely the method in section 5.9 of harmonised standard EN 60312-1:(2013) adopted by the European Committee for Electrotechnical Standardization (Cenelec) ('the Cenelec method').

21 In the first part of its fourth ground of appeal, Dyson submits that, by stating in paragraph 51 of the judgment under appeal that Dyson had referred to a single laboratory test which made it possible to establish the reproducibility of that method, the General Court distorted the evidence produced by Dyson which showed that the method of measuring with a dust-loaded receptacle had been tested in several laboratories and was reproducible.

22 In the second part of its fourth ground of appeal, Dyson argues that the General Court did not address or take into account the evidence produced by Dyson showing that the Cenelec method was reproducible. In the fourth part of its fifth ground of appeal, Dyson criticises the General Court for failing to explain why the evidence Dyson produced to demonstrate the reproducibility of the Cenelec method was rejected.

23 The Commission submits, first, that Dyson may have referred before the General Court to tests in multiple laboratories, but did not claim that these were part of a comparative testing programme with the same model of vacuum cleaner (inter-laboratory/circular testing). According to the Commission, the General Court may not have used precise technical terminology, but it did not thereby distort the evidence before it. The General Court was able to conclude that there remained doubts as to the reproducibility of the dust-loaded receptacle calculation method, as no circular testing had been done for establishing the reproducibility of that method.

24 The Commission argues, next, that the allegation of 'disregarding' evidence relates solely to the General Court's appraisal and therefore does not constitute, unless the evidence has been distorted, a point of law which can be considered on appeal. The Commission also submits that the General Court is not required to consider every item of evidence presented to it. It is clear from paragraphs 49 to 53 of the judgment under appeal that the General Court weighed the evidence submitted by the parties.

25 Finally, the Commission submits that it is not obliged to use the standards drawn up by Cenelec.

Findings of the Court

26 In paragraph 49 of the judgment under appeal, the General Court found that, even though Dyson had put forward numerous arguments in an attempt to show the reliability and accuracy of the test conducted with a dust-loaded receptacle, there remained doubts as to whether that test was reproducible.

27 In paragraph 50 of the judgment, the General Court observed that the determination of whether the tests were reproducible in practice called for 'circular' tests between laboratories, those tests being aimed at ensuring that the results obtained through repeated testing in different laboratories using the same sample have been properly obtained.

28 In paragraph 51 of the judgment, the General Court stated, finally, that Dyson referred to a single laboratory test which, in its submission, made it possible to establish that it was reproducible, so that the possibility of reproducing a test conducted with a dust-loaded receptacle had not been made out sufficiently to make out proof of a manifest error of assessment on the part of the Commission.

29 In the first part of its fourth ground of appeal, Dyson essentially complains that in paragraph 51 of the judgment under appeal the General Court distorted the position Dyson had taken before it, namely that the Cenelec method had been the subject of several laboratory tests attesting its reproducibility, and the statement of its Head of Competitor Intelligence submitted in support of that assertion.

30 It must be borne in mind that, in an appeal, the Court of Justice has no jurisdiction to establish the facts or, in principle, to examine the evidence which the General Court accepted in support of those facts. Provided that the evidence has been properly obtained and the general principles of law and the rules of procedure in relation to the burden of proof and the taking of evidence have been observed, it is for the General Court alone to assess the value which should be attached to the evidence produced to it. Save where the evidence adduced before the General Court has been distorted, that assessment therefore does not constitute a point of law which is subject to review by the Court of Justice (judgment of 18 January 2017, *Toshiba* v *Commission*, C-623/15 P, not published, EU:C:2017:21, paragraph 39 and the case-law cited).

31 The jurisdiction of the Court of Justice to review the findings of fact by the General Court therefore extends, inter alia, to the substantive inaccuracy of those findings as apparent from the documents in the file, distortion of the evidence, the legal characterisation of the evidence, and whether the rules relating to the burden of proof and the taking of evidence have been observed (judgments of 25 January 2007, *Sumitomo Metal Industries and Nippon Steel* v *Commission*, C-403/04 P and C-405/04 P, EU:C:2007:52, paragraph 39, and of 19 December 2013, *Siemens and Others* v *Commission*, C-239/11 P, C-489/11 P and C-498/11 P, not published, EU:C:2013:866, paragraph 39).

32 In the present case, it may be seen from point 38 of Dyson's reply before the General Court that Dyson submitted that the Cenelec method had been rigorously tested both for reproducibility and for repeatability. In his statement annexed to that reply and referred to in point 39 of the reply, Dyson's Head of Competitor Intelligence also stated that the method had been the subject of several tests involving several laboratories allowing its reproducibility to be shown.

33 It follows that the General Court manifestly distorted the position taken by Dyson by finding, in paragraph 51 of the judgment under appeal, that Dyson had referred only to a single laboratory test making it possible to establish that the dust-loaded receptacle calculation method was reproducible. As Dyson correctly submits in its appeal, such a finding clearly contradicts the content of the procedural documents

it submitted to the General Court and the statement of its Head of Competitor Intelligence.

34 It must be observed, however, that, according to paragraph 50 of the judgment under appeal, for a measurement method to be reproducible, not only must several laboratory tests be carried out, those repeated tests must also be 'circular', that is, carried out using a single sample.

35 It follows that the mere fact that the General Court distorted Dyson's submissions as to the existence of a number of laboratory tests cannot in itself suffice to invalidate the conclusion that the Cenelec method was not reproducible.

36 However, in the second part of its fourth ground of appeal, Dyson further criticises the General Court for failing to take into account certain items of evidence in its pleadings which are said to have shown the reproducibility of the Cenelec method. In the fourth part of its fifth ground of appeal, Dyson also criticises the General Court for failing to state reasons for disregarding that evidence. These two complaints should be examined together.

37 It must be recalled, first, that, in the context of an appeal, the purpose of review by the Court of Justice is inter alia to consider whether the General Court addressed, to the requisite legal standard, all the arguments raised by the appellant and, secondly, that the plea alleging that the General Court failed to rule on arguments relied on at first instance amounts essentially to relying on a breach of the obligation to state reasons which derives from Article 36 of the Statute of the Court of Justice of the European Union, applicable to the General Court by virtue of the first paragraph of Article 53 of that statute, and from Article 117 of the Rules of Procedure of the General Court (see, to that effect, judgment of 20 May 2010, *Gogos* v *Commission*, C-583/08 P, EU:C:2010:287, paragraph 29, and order of 13 December 2012, *Alliance One International* v *Commission*, C-593/11 P, not published, EU:C:2012:804, paragraph 27).

38 It is settled case-law that the Court of Justice does not require the General Court to provide an account which follows exhaustively and one by one all the arguments put forward by the parties to the case, and that the General Court's reasoning may therefore be implicit, on condition that it enables the persons concerned to know why it has not upheld their arguments and provides the Court of Justice with sufficient material for it to exercise its power of review (order of 13 December 2012, *Alliance One International* v *Commission*, C-593/11 P, not published, EU:C:2012:804, paragraph 28, and judgment of 26 October 2016, *PT Musim Mas* v *Council*, C-468/15 P, EU:C:2016:803, paragraph 71).

39 In the present case, first, the non-reproducibility of the Cenelec method was a decisive factor in the assessment by the General Court which led it to find that the Commission's approach of preferring a method of measuring the energy performance of vacuum cleaners based on tests with empty receptacles was not manifestly unreasonable.

40 Secondly, in paragraph 49 of the judgment under appeal, the General Court found that there remained doubts as to whether the Cenelec test was reproducible and, in paragraph 50 of that judgment, it stated that, for a measurement method to be reproducible, circular tests between laboratories had to be done, those tests being aimed at ensuring that the results obtained through repeated testing in different laboratories using the same sample had been properly obtained.

41 However, in its pleadings before the General Court, Dyson sought to show that, despite not being based on 'circular' tests, the Cenelec method was reproducible. In points 7, 8 and 39 of its reply, Dyson argued that Cenelec's task was to ensure that all published standards were consistent, clear and accurate and took full account of the state of the art. It also produced a report from an accredited European vacuum cleaner testing laboratory stating that that method produced reproducible results, and a statement to the same effect by its Head of Competitor Intelligence, who had been involved in the process of developing that method.

42 Consequently, the General Court could not regard it as established, as it did in paragraph 49 of the judgment under appeal, that 'there remain doubts as to whether [the Cenelec method] is reproducible' without explaining why Dyson's challenge to that assertion by means of the elements mentioned in the preceding paragraph had to be rejected. More particularly, the General Court could not state that for a method of measurement to be reproducible 'circular' tests had to be performed, without explaining why the contrary arguments put forward by Dyson in its pleadings were not capable of disproving that statement. While the Commission did indeed contest the reproducibility of the Cenelec method before the General Court, it is clear that Dyson argued to the contrary in its pleadings, so that it was for the General Court to rule on the point. By failing to reply to the arguments thus put forward by Dyson, the General Court infringed its obligation to state reasons under the first paragraph of Article 53 of the Statute of the Court of Justice and Article 117 of the Rules of Procedure of the General Court.

43 Dyson's fourth ground of appeal and the fourth part of its fifth ground of appeal must therefore be declared well founded.

The first ground of appeal

Arguments of the parties

44 Dyson criticises the General Court for considering in paragraphs 36, 37 and 43 of the judgment under appeal that the first plea in law put forward before it alleged manifest error of assessment, whereas in fact it alleged disregard by the Commission of the limits of its powers. Dyson states that by that plea it submitted that the Commission had exceeded the limits of the powers delegated to it by Article 10 of Directive 2010/30. According to Dyson, the General Court was obliged to determine whether the Commission had amended essential elements of the enabling act by choosing a method of calculating the energy performance of vacuum cleaners with empty receptacles.

45 The Commission submits that Dyson is criticising only the General Court's response to the first part of its first plea seeking annulment, not the reasoning which led to the rejection of the second part of that plea.

46 In the Commission's view, the first ground of appeal should moreover be regarded as unfounded. Before the General Court, Dyson did not challenge the Commission's competence to adopt the regulation at issue, but challenged the exercise of that competence as regards the choice of measurement method. The Commission submits that Dyson's first plea in law before the General Court required the assessment of highly complex technical facts for determining the measurement method, which justified judicial review being limited to manifest error of assessment.

Findings of the Court

47 By its first ground of appeal, Dyson complains that the General Court mischaracterised the first plea of its application for annulment, in which it essentially argued that the Commission had failed to comply with Article 10 of Directive 2010/30, which requires the method of calculating the energy performance of vacuum cleaners to take account of their performance during use, in order to provide consumers with accurate information, encourage manufacturers to improve the energy efficiency of their products, and attain the objective of reducing energy consumption, such a requirement being, in Dyson's view, an essential element of that directive.

48 It must be noted, as a preliminary point, that, as the Commission observes, the first ground of appeal in fact aims only to contest the assessment on the basis of which the General Court rejected the first part of the first plea at first instance, not the General Court's reasoning which led to the rejection of the second part of that plea, by which Dyson criticised the regulation at issue for not imposing an obligation to provide information on dust bags and filters, those being essential resources consumed during the use of vacuum cleaners.

49 It must also be pointed out that, in paragraph 36 of the judgment under appeal, the General Court considered that it was clear from Dyson's pleadings before it that, by its first plea, Dyson was not alleging lack of competence per se on the part of the Commission to adopt the regulation at issue, but was rather in essence challenging the exercise of that competence. In paragraph 37 of the judgment, it found that Dyson's first plea should thus be regarded as alleging a manifest error of assessment on the part of the Commission in adopting that regulation.

50 However, it is clear beyond dispute from Dyson's application to the General Court that its first plea in law in support of annulment alleged that the Commission was not competent to adopt the regulation at issue. More particularly, Dyson essentially complained that in adopting the regulation the Commission had disregarded an essential element of the enabling act by taking as the method of calculating the energy performance of vacuum cleaners a method based on tests

with an empty receptacle, whereas Article 10 of Directive 2010/30 required the method to reflect normal conditions of use.

51 It follows that the General Court did not address the plea alleging that the regulation at issue infringed an essential element of the enabling act, but another plea, manifest error of assessment on the part of the Commission, which Dyson had not put forward.

52 It cannot be maintained that by so doing the General Court impliedly examined the plea of lack of competence of the Commission, as formulated by Dyson. The extent of the discretion conferred by the enabling act is a different point of law from the question of compliance with the limits of the power conferred by the enabling act. Furthermore, review of compliance with those two requirements is subject to different standards.

53 So, while, as the General Court correctly observed in paragraph 38 of the judgment under appeal, in the exercise of the powers conferred on them the EU authorities have broad discretion in particular where they are called on to undertake complex assessments and evaluations, it must first be determined whether they are indeed acting within the limits of the powers given to them and, more particularly, in a case such as the present one concerning a delegated power under Article 290 TFEU, it must be ascertained whether the EU authorities have exceeded the powers conferred on them by the enabling act, bearing in mind in particular that such a delegated power must in any event comply with the essential elements of the enabling act and come within the regulatory framework as defined by the basic legislative act (see, to that effect, judgment of 17 March 2016, *Parliament* v *Commission*, C-286/14, EU:C:2016:183, paragraph 30 and the case-law cited).

54 It follows from the above that, by failing to rule on one of Dyson's pleas in law, the General Court erred in law.

55 It should be recalled, however, that, according to settled case-law of the Court, if the grounds of a decision of the General Court disclose an infringement of EU law but its operative part is shown to be well founded on other legal grounds, such an infringement is not capable of bringing about the annulment of that decision, and a substitution of grounds must be made (judgment of 22 September 2016, *Pensa Pharma* v *EUIPO*, C-442/15 P, not published, EU:C:2016:720, paragraph 51 and the case-law cited).

56 It must therefore be determined whether, by using a method of calculating energy performance based on tests with an empty receptacle, the Commission complied with the limits of its delegated power, in which case the first part of Dyson's first plea in the application for annulment would have to be declared unfounded. As this is a point of law, the Court of Justice can remedy the General Court's omission.

57 According to settled case-law of the Court, the lawfulness of an EU measure must be assessed on the basis of the facts and the law as they stood at the time when the measure was adopted (judgment of 3 September 2015, *Inuit Tapariit Kanatami and Others* v *Commission*, C-398/13 P, EU:C:2015:535, paragraph 22 and the case-law cited). The lawfulness of the regulation at issue must therefore be assessed by reference to the facts and law as they were on 3 May 2013.

58 It must be recalled, first, that the possibility of delegating powers provided for in Article 290 TFEU aims to enable the legislature to concentrate on the essential elements of a piece of legislation and on the non-essential elements in respect of which it finds it appropriate to legislate, while entrusting the Commission with the task of 'supplementing' certain non-essential elements of the legislative act adopted or 'amending' such elements within the framework of the power delegated to it (judgment of 17 March 2016, *Parliament* v *Commission*, C-286/14, EU:C:2016:183, paragraph 54).

59 It follows that the essential rules on the matter in question must be laid down in the basic legislation and cannot be delegated (see, to that effect, judgments of 5 September 2012, *Parliament* v *Council*, C-355/10, EU:C:2012:516, paragraph 64, and of 10 September 2015, *Parliament* v *Council*, C-363/14, EU:C:2015:579, paragraph 46).

60 It must be determined, secondly, whether the requirement that the information supplied to consumers must reflect energy consumption while the machine is in use, as follows from Article 1 and the third subparagraph of Article 10(1) of Directive 2010/30, is an essential element of the directive.

61 The essential elements of basic legislation are those which, in order to be adopted, require political choices falling within the responsibilities of the EU legislature (judgment of 5 September 2012, *Parliament* v *Council*, C-355/10, EU:C:2012:516, paragraph 65).

62 Identifying the elements of a matter which must be categorised as essential must be based on objective factors amenable to judicial review, and requires account to be taken of the characteristics and particular features of the field concerned (judgment of 22 June 2016, *DK Recycling und Roheisen* v *Commission*, C-540/14 P, EU:C:2016:469, paragraph 48 and the case-law cited).

63 In view of the general scheme of Directive 2010/30, it must be considered that the requirement mentioned in paragraph 60 above is an essential element of the directive.

64 It follows from recitals 5 and 8 of Directive 2010/30 that the 'provision of accurate, relevant and comparable information on the … energy consumption' of products 'plays a key role in the operation of market forces' and hence in the guiding of consumption towards products which 'consume … less energy … during use'. Similarly, Article 1(1) of the directive provides that its aim is to harmonise national measures on information for end users on energy consumption

'during use', so that they can choose 'more efficient' products. Information for consumers on the energy efficiency of products during use is therefore the essential objective of the directive, and reflects a political choice falling within the responsibilities of the EU legislature.

65 It follows that the question whether, as its wording appears to indicate, the regulation at issue seeks only to supplement and not to amend Directive 2010/30 is not relevant in the present case. As pointed out in paragraph 58 above, in any event neither of those two categories of delegated powers authorises the Commission to disregard an essential element of the enabling act.

66 Moreover, contrary to what the General Court stated in paragraph 59 of the judgment under appeal, to understand the expression 'during use' in the third subparagraph of Article 10(1) of Directive 2010/30 as referring to the actual conditions of use is not an 'excessively broad' interpretation of Article 10 of the directive, but the very meaning of that specification.

67 That conclusion is not called in question, contrary to the Commission's arguments, by the mere fact that that specification may also and consequentially be designed to exclude the taking into account of energy consumption during the manufacture, distribution and disposal of the vacuum cleaner.

68 In the light of the forgoing, the Commission was thus obliged, in order not to disregard an essential element of Directive 2010/30, to adopt in the regulation at issue a method of calculation which makes it possible to measure the energy performance of vacuum cleaners in conditions as close as possible to actual conditions of use, requiring the vacuum cleaner's receptacle to be filled to a certain level, having regard nevertheless to the requirements concerning the scientific validity of the results obtained and to the accuracy of the information supplied to consumers, as mentioned in particular in recital 5 and Article 5(b) of the directive.

69 In paragraph 46 of the judgment under appeal, however, the General Court accepted that tests with an empty receptacle may not reflect the usual conditions of use of vacuum cleaners, in that such tests do not take account of the accumulation of dust in the receptacles of some types of vacuum cleaner, as the Commission did not indeed contest, as may be seen from paragraphs 98 and 99 of the judgment under appeal.

70 It is true that in paragraphs 47 to 54 of the judgment under appeal the General Court countered that finding by stating that no calculation method based on tests with dust-loaded receptacles was reproducible. The Commission puts forward the same argument before the Court of Justice. However, it follows from paragraphs 34 to 43 above that, to reach that conclusion, the General Court distorted the facts and failed to comply with its duty to give reasons, so that the Court of Justice cannot, in order to make a substitution of grounds, base itself on that assessment of fact, which was not validly made by the General Court.

71 The first ground of appeal must therefore be declared well founded.

The sixth ground of appeal

Arguments of the parties

72 Dyson submits that the General Court disregarded the requirement of proportionality which is inherent in the review of compliance with the principle of equal treatment, by considering that the regulation at issue could apply uniform treatment to vacuum cleaners using different technologies on the ground that the tests advocated by Dyson did not simultaneously fulfil the criteria for reliability, accuracy and reproducibility.

73 According to the Commission, Dyson does not explain in what way the development of a test with a loaded receptacle would have been more proportionate. The Commission submits that it was not obliged to show that no better test method could be developed, and that it was on the contrary for Dyson to prove that a more appropriate test method existed, which in the view of the General Court it failed to do.

Findings of the Court

74 By its sixth ground of appeal, Dyson essentially criticises the General Court for disregarding the principle of equal treatment, in paragraph 110 of the judgment under appeal, by finding that the regulation at issue could apply uniform treatment to vacuum cleaners using different technologies, on the ground that the methods of calculating the energy performance of vacuum cleaners based on tests with dust-loaded receptacles were not reproducible.

75 In paragraph 109 of the judgment under appeal, the General Court observed that it had previously noted that 'the tests conducted with a partly loaded receptacle were not in turn tested through "circular" tests between laboratories, so that their reproducibility could be questioned'.

76 In paragraph 110 of the judgment under appeal, the General Court deduced that 'the fact that the tests advocated by the applicant do not simultaneously fulfil the criteria for reliability, accuracy and reproducibility constitutes an objective reason justifying uniform treatment of vacuum cleaners using different technologies, namely bagged vacuum cleaners and bagless vacuum cleaners'. No other justification was put forward by the General Court for confirming the uniform treatment contested by Dyson.

77 It follows that the only justification put forward by the General Court for the uniform treatment applied by the regulation at issue to bagged and bagless vacuum cleaners was based on a finding of fact which was not validly established by the General Court, for the reasons set out in paragraphs 34 to 43 above.

78 Consequently, the sixth ground of appeal must be declared well founded.

The second and third grounds of appeal and the first three parts of the fifth ground of appeal

79 By its second and third grounds of appeal, Dyson complains that the General Court misinterpreted the extent of the Commission's delegated power in paragraphs 58 and 59 of the judgment under appeal and infringed its rights of defence, having regard to what was stated in paragraphs 50 and 51 of the judgment under appeal. By the first three parts of its fifth ground of appeal, Dyson criticises the General Court for not giving sufficient reasons for its findings in paragraphs 36, 37, 52 and 67 of the judgment under appeal.

80 However, since an examination of the second and third grounds of appeal and the first three parts of the fifth ground of appeal cannot lead to setting aside the judgment under appeal more extensively than follows from the acceptance of the first, fourth and sixth grounds of appeal, there is no need to consider them.

81 Since the first, fourth and sixth grounds of appeal and the fourth part of the fifth ground of appeal are well founded, the judgment under appeal must be set aside in so far as, by that judgment, the General Court rejected the first part of the first plea in law and the third plea in law put forward at first instance.

The action before the General Court

82 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice, if the Court of Justice sets aside the judgment of the General Court, it may either itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.

83 In the present case, the Court considers that it is not in a position to give judgment on the substance of the first part of the first plea in law or the third plea in law put forward at first instance. Consideration of that part and that plea involves assessments of fact relating primarily to whether or not the Cenelec method is reproducible, which was not correctly assessed by the General Court and has not been fully argued before the Court of Justice.

84 Accordingly, the case must be referred back to the General Court for it to give judgment on the first part of the first plea in law and the third plea in law put forward at first instance, and the costs must be reserved.

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

1. Sets aside the judgment of the General Court of the European Union of 11 November 2015, *Dyson* v *Commission* (T-544/13, EU:T:2015:836), in

so far as it rejected the first part of the first plea in law and the third plea in law put forward at first instance;

2. Refers the case back to the General Court of the European Union for it to give judgment on the first part of the first plea in law and the third plea in law put forward at first instance;

3. Reserves the costs.

[Signatures]