

## JUDGMENT OF THE GENERAL COURT (Fifth Chamber)

8 November 2018 (\*)

(Directive 2010/30/EU — Indication by labelling and standard product information of the consumption of energy and other resources by energy-related products — Commission delegated regulation supplementing the directive — Energy labelling of vacuum cleaners — Essential element of an enabling act)

In Case T-544/13 RENV,

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

applicant,

v

**European Commission**, represented by L. Flynn, K. Herrmann and K. Talabér-Ritz, acting as Agents,

defendant,

APPLICATION pursuant to Article 263 TFEU seeking 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 GENERAL COURT (Fifth Chamber),

composed of D. Gratsias, President, I. Labucka (Rapporteur) and I. Ulloa Rubio, Judges,

Registrar: N. Schall, Administrator,

having regard to the written part of the procedure and further to the hearing on 13 March 2018,

gives the following

### Judgment

- 1 By its application, the applicant, Dyson Ltd, a company incorporated under the law of England and Wales that employs 4 400 people worldwide and designs, manufactures and markets bagless vacuum cleaners in over 60 countries, seeks 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 contested regulation').

#### Legal context

- 2 The contested regulation was adopted by the European Commission in order to supplement 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), with respect to energy labelling of vacuum cleaners.

***Directive 2010/30***

3 According to Article 1(1) and (2) thereof, Directive 2010/30 ‘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’, with the directive applying ‘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 Article 5(a) of Directive 2010/30 provides that 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 [that directive] and the delegated act’.

5 Article 10 of Directive 2010/30, entitled ‘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.

Where a delegated act lays down provisions with respect to both energy efficiency and consumption of essential resources of a product, the design and content of the label shall emphasise the energy efficiency of the product.

2. The criteria referred to in paragraph 1 are the following:

- (a) according to most recently available figures and considering the quantities placed on the Union market, the products shall have a significant potential for saving energy and, where relevant, other essential resources;
- (b) products with equivalent functionality available on the market shall have a wide disparity in the relevant performance levels;
- (c) the Commission shall take into account relevant Union legislation and self-regulation, such as voluntary agreements, which are expected to achieve the policy objectives more quickly or at lesser expense than mandatory requirements.

3. In preparing a draft delegated act, the Commission shall:

- (a) take into account those environmental parameters set out in Annex I, Part 1, to Directive 2009/125/EC which are identified as significant in the relevant implementing measure adopted under Directive 2009/125/EC and which are relevant for the end-user during use;
- (b) assess the impact of the act on the environment, end-users and manufacturers, including small and medium-sized enterprises (SMEs), in terms of competitiveness including on markets outside the Union, innovation, market access and costs and benefits;
- (c) carry out appropriate consultation with stakeholders;

- (d) set implementing date(s), any staged or transitional measures or periods, taking into account in particular possible impacts on SMEs or on specific product groups manufactured primarily by SMEs.

4. The delegated acts shall specify in particular:

- (a) the exact definition of the type of products to be included;
- (b) the measurement standards and methods to be used in obtaining the information referred to in Article 1(1);
- (c) the details of the technical documentation required pursuant to Article 5;
- (d) the design and content of the label referred to in Article 4, which as far as possible shall have uniform design characteristics across product groups and shall in all cases be clearly visible and legible. The format of the label shall retain as a basis the classification using letters from A to G; the steps of the classification shall correspond to significant energy and cost savings from the end-user perspective.

Three additional classes may be added to the classification if required by technological progress. Those additional classes will be A+, A++, and A+++ for the most efficient class. In principle the total number of classes will be limited to seven, unless more classes are still populated.

The colour scale shall consist of no more than seven different colours from dark green to red. The colour code of only the highest class shall always be dark green. If there are more than seven classes, only the red colour can be duplicated.

The classification shall be reviewed in particular when a significant proportion of products on the internal market achieves the two highest energy efficiency classes and when additional savings may be achieved by further differentiating products.

Detailed criteria for a possible reclassification of products are, where appropriate, to be determined on a case-by-case basis in the relevant delegated act;

- (e) ...
- (f) the content and, where appropriate, the format and other details concerning the fiche or further information specified in Article 4 and Article 5(c). The information on the label shall also be included on the fiche;
- (g) the specific content of the label for advertising, including, as appropriate, the energy class and other relevant performance level(s) of the given product in a legible and visible form;
- (h) the duration of label classification(s), where appropriate, in accordance with [subparagraph] (d);
- (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 Directive 2010/30, entitled 'Exercise of the delegation', states as follows:

'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 Commission shall make a report in respect of the delegated powers not later than six months before the end of the five-year period. The delegation of powers shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 12.

2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

...’

### ***Contested regulation***

7 In order to supplement Directive 2010/30 with respect to energy labelling of vacuum cleaners, the Commission adopted the contested regulation on 3 May 2013.

8 Article 1(1) of the contested regulation states that it ‘establishes requirements for the labelling and the provision of supplementary product information for electric mains-operated vacuum cleaners, including hybrid vacuum cleaners’.

9 Article 3 of the contested regulation, entitled ‘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.’

10 Article 5 of the contested regulation, entitled ‘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’.

11 Article 7 of the contested regulation, entitled ‘Revision’, provides:

‘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.’

12 Point 1 of Annex VI to the contested regulation states:

‘For the purposes of compliance and verification of compliance with the requirements of this Regulation, measurements and calculations shall be made using ... 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.’

13 The contested regulation was published in the *Official Journal of the European Union* of 13 July 2013.

### **Proceedings before the General Court and the Court of Justice**

14 By application lodged at the General Court Registry on 7 October 2013, the applicant claimed that the General Court should annul the contested regulation.

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

16 The Commission lodged a defence at the General Court Registry on 18 November 2013 whereby it requested the General Court to dismiss the action and order the applicant to bear the costs.

17 By judgment of 11 November 2015, *Dyson v Commission* (T-544/13, ‘the initial judgment’, EU:T:2015:836), the General Court dismissed the action and ordered the applicant to pay the costs.

18 By application lodged at the Registry of the Court of Justice on 25 January 2016, the applicant brought an appeal against the initial judgment.

19 By judgment of 11 May 2017, *Dyson v Commission* (C-44/16 P, ‘the judgment on appeal’, EU:C:2017:357), the Court of Justice set aside the initial judgment, in so far as it had rejected the first part of the first plea in law and the third plea in law put forward at first instance, referred the case 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 reserved the costs.

### **Procedure and forms of order sought after referral back**

20 After delivery of the judgment on appeal and in accordance with Article 215 of the Rules of Procedure of the General Court, the present case was assigned to the Fifth Chamber of the General Court.

21 In accordance with Article 217(1) of the Rules of Procedure, the applicant and the Commission lodged within the prescribed time limits their written observations on the conclusions to be drawn from the judgment on appeal for the outcome of the proceedings.

22 In accordance with Article 217(3) of the Rules of Procedure, the applicant submitted a request that it be allowed to lodge a supplementary statement on the Commission’s written observations.

23 By decision of the President of the Fifth Chamber of the Court of 9 August 2017, the Court refused the applicant’s request.

24 In accordance with Article 67(2) of the Rules of Procedure, the applicant requested that the Court give priority to the present proceedings.

25 By decision of the President of the Fifth Chamber of the Court of 9 August 2017, the Court decided to give priority to the present case.

- 26 In accordance with Article 106(2) of the Rules of Procedure, the applicant and the Commission submitted a request, on 29 and 30 August 2017 respectively, to be heard at an oral hearing.
- 27 By letter of 21 February 2018, the applicant requested the use of technical means at the hearing in order to incorporate a PowerPoint presentation into its oral submissions.
- 28 By decision of the President of the Fifth Chamber of the Court of 26 February 2018, the Court authorised the applicant to use the technical means requested.
- 29 Without formally objecting to the use of technical means at the hearing, the Commission requested that the applicant be ordered to identify clearly in its PowerPoint presentation the places in the case file which were being referred to, on pain of inadmissibility.
- 30 In addition, the Commission requested that the applicant be ordered to provide a copy of the PowerPoint presentation two working days before the hearing.
- 31 By a measure of organisation of procedure dated 7 March 2018, the Court (Fifth Chamber) requested the applicant to produce a hard copy of the Powerpoint presentation in advance of the hearing.
- 32 On 12 March 2018, the applicant forwarded to the Court Registry a hard copy of its PowerPoint presentation.
- 33 The parties presented oral argument on 13 March 2018.
- 34 At the hearing, the Commission argued that the diagrams relating to the third plea in law in the action, included in the PowerPoint presentation, did not correspond with the case file in Case T-544/13 or in the present case and requested the Court to declare them inadmissible.
- 35 The applicant claims that the Court should:
- annul the contested regulation;
  - order the Commission to pay all of the costs.
- 36 The Commission contends that the Court should:
- dismiss the action;
  - order the applicant to pay the costs.

## **Law**

### ***Scope of the action after referral back***

- 37 In support of its action at first instance, the applicant puts forward three pleas in law. The first alleges lack of competence on the part of the Commission, the second a failure to provide a statement of reasons for the contested regulation, and the third an infringement of the principle of equal treatment.
- 38 By the judgment on appeal, the Court of Justice, first, set aside the initial judgment in so far as the General Court had rejected the first part of the first plea in law and the third plea in law put forward at first instance and, secondly, referred the case back to the General Court for it to rule again on the first part of the first plea in law and the third plea in law put forward at first instance (judgment on appeal, points 1 and 2 of the operative part).

39 As regards the first plea in law in the action, the extent to which the initial judgment is set aside is limited to the first part of that plea.

40 According to the Court of Justice, the appeal lodged by the applicant did not aim to contest the General Court's reasoning which led to the rejection of the second part of that plea (judgment on appeal, paragraph 48).

41 Consequently, in the present case the General Court must only examine the legality of the contested regulation in the light of the first part of the first plea in law and the third plea in law.

***The first plea in law in the action, alleging lack of competence on the part of the Commission***

*The characterisation of the first plea in law in the action*

42 By the judgment on appeal, the Court of Justice held that the General Court had erred in law by failing to rule on one of the pleas in law in the application (judgment on appeal, paragraph 54).

43 That error of law stems, according to the Court of Justice, from the General Court's mischaracterisation of the first plea in law in the action, in that the General Court considered that the applicant was not alleging lack of competence per se on the part of the Commission to adopt the contested regulation, but rather was in essence challenging the exercise of that competence. The General Court had, therefore, found that the first plea in law in the action essentially alleged a manifest error of assessment (judgment on appeal, paragraph 51).

44 However, according to the Court of Justice, it is clear beyond dispute from the application that the first plea in law in support of annulment alleges that the Commission is not competent to adopt the contested regulation (judgment on appeal, paragraph 50).

45 More particularly, in the view of the Court of Justice, the applicant essentially complains that in adopting the contested 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 requires that method to reflect normal conditions of use (judgment on appeal, paragraph 50).

46 The Court of Justice adds that 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 (judgment on appeal, paragraph 52).

47 Consequently, in accordance with the judgment on appeal, the first plea in law in the action must be regarded as alleging that the Commission had disregarded an essential element of the enabling act comprised by Directive 2010/30, and not as alleging a manifest error of assessment by the Commission in the adoption of the contested regulation.

*The first part of the first plea in the action, alleging a failure by the Commission to take account of an essential element of the enabling act comprised by Directive 2010/30*

48 By the first part of the first plea in the action, the applicant submits that the contested regulation will mislead consumers as to the energy efficiency of vacuum cleaners, because the cleaning performance is measured with tests where the vacuum cleaner's receptacle is empty and, therefore, not 'during use', as a result of which the contested regulation infringes the terms, the objectives and the general scheme of Directive 2010/30, regarding the energy efficiency of vacuum cleaners.

49 In order to argue a lack of competence on the part of the Commission, the applicant, first of all, observes that the objective of Directive 2010/30 is to promote energy efficiency by providing end-users with accurate information relating to the consumption of energy and other essential resources 'during use'.

- 50 The purpose of Directive 2010/30 is, therefore, first, to allow end-users to choose more efficient products and, secondly, to encourage vacuum cleaner manufacturers to take steps to reduce energy consumption.
- 51 Next, the applicant submits that the contested regulation does not satisfy the terms, the objectives or the general scheme of Directive 2010/30.
- 52 According to the applicant, the contested regulation does not allow consumers to be provided with accurate information on energy efficiency since, first, the tests for taking account of a vacuum cleaner's energy performance provided for by the contested regulation lead to incorrect results, in the sense that those tests are carried out with an empty receptacle, not a dust-loaded one, and, secondly, the tests carried out with an empty receptacle cannot duly take into account a vacuum cleaner's energy performance since those tests are not carried out during actual usage conditions.
- 53 In addition, the contested regulation does not encourage manufacturers to opt for the best design choice since there is no incentive for them to invest in order to work around the loss of suction and, thereby, reduce the increase in energy consumption stemming from a dust-loaded receptacle.
- 54 Lastly, the applicant submits that the contested regulation could lead to an increase in energy consumption, whereas the objective of Directive 2010/30 is to reduce energy consumption.
- 55 In its observations on the judgment on appeal, the applicant interprets the latter as meaning that the General Court must determine whether the Commission can demonstrate that, at the time of adoption of the contested regulation, no scientifically valid method of determining the energy performance of a vacuum cleaner with a dust-loaded receptacle could have been used; if the Commission cannot, it acted '*ultra vires*'.
- 56 The applicant further submits that the Commission acknowledges that a test carried out with a dust-loaded receptacle is sufficiently accurate, reliable and reproducible, that that method has been the subject of 'inter-laboratory testing', confirming its reproducible nature, that national authorities and national courts have accepted that the tests with a dust-loaded receptacle were scientifically valid and that the Commission should have persevered in the development of a method of calculation based on dust-loaded tests.
- 57 In its observations on the judgment on appeal, the Commission interprets the latter to the effect that the General Court must assess whether the method adopted in the contested regulation was as close as possible to actual conditions of use and was so at the moment when the contested regulation was adopted.
- 58 The Commission maintains that it acted within the limits of its powers with regard to an essential element of Directive 2010/30, which is to adopt a test method which is as close as possible to actual conditions of use.
- 59 According to the Commission, that follows from the mandate issued to the European Committee for Electrotechnical Standardisation (Cenelec), from the grant agreement concluded with the latter and from subsequent research, in so far as, with no particular method imposed in advance, studies performed by Cenelec all lead to the conclusion that only a test with an empty receptacle can present scientifically comparable results between several laboratories.
- 60 That conclusion cannot be called into question, according to the Commission, by the fact that it allows a dust-loaded test in the durability study for vacuum cleaner motors, required by Commission Regulation (EU) No 666/2013 of 8 July 2013 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for vacuum cleaners (OJ 2013 L 192, p. 24).
- 61 Consequently, in the context of the first plea in law in so far as it alleges a lack of competence on the part of the Commission, the applicant submits, in the first part of that plea, that the Commission infringed the delegated power it derived from Article 10(1) of Directive 2010/30.



- 62 The Court must, therefore, ascertain, first, whether the contested regulation failed to have regard to essential elements of Directive 2010/30, in the light of its terms, and if so determine, secondly, the effect of such a failure.
- 63 In the first place, it must be noted that in the judgment on appeal the Court of Justice held precisely that information for consumers on the energy efficiency of products during use, as stemmed from Article 1 and the third subparagraph of Article 10(1) of Directive 2010/30, was an essential objective of that directive, and reflected a political choice falling within the responsibilities of the EU legislature (judgment on appeal, paragraph 64).
- 64 It follows, first, 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’ (judgment on appeal, paragraph 64).
- 65 Secondly, Article 1(1) of Directive 2010/30 provides that the aim of that directive is to harmonise national measures on information for end-users on energy consumption ‘during use’, so that they can choose ‘more efficient’ products (judgment on appeal, paragraph 64).
- 66 In addition, as is apparent from the judgment on appeal, the interpretation of 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 that directive, but the very meaning of that specification (judgment on appeal, paragraph 66).
- 67 That statement cannot be called into question, according to the judgment on appeal, by the fact that the contested regulation seeks only to supplement the directive, not to amend it (judgment on appeal, paragraph 65).
- 68 Consequently, according to the Court of Justice, it is apparent from the foregoing that the Commission was obliged, in order not to disregard an essential element of Directive 2010/30, to adopt in the contested regulation a method of calculation which made 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 the accuracy of the information supplied to consumers, as mentioned in particular in recital 5 and Article 5(b) of that directive (judgment on appeal, paragraph 68).
- 69 In that regard, it is apparent from paragraph 68 of the judgment on appeal that, in order for the method adopted by the Commission to accord with the essential elements of Directive 2010/30, two cumulative conditions must be met.
- 70 First, in order to measure the energy performance of vacuum cleaners in conditions as close as possible to actual conditions of use, a vacuum cleaner’s receptacle must be filled to a certain level.
- 71 Secondly, the method adopted must satisfy certain requirements concerning the scientific validity of the results obtained and the accuracy of the information supplied to consumers.
- 72 In the present case, it is apparent from both Article 7 of the contested regulation and the whole of the file in the present case that the Commission adopted a method for calculating the energy performance of vacuum cleaners based on an empty receptacle.
- 73 It must, therefore, be found that the first condition laid down by the enabling act as interpreted by the judgment on appeal is not met.
- 74 That finding is sufficient to conclude that the Commission failed to have regard to an essential element of the enabling act.

- 75 Indeed, since the method adopted by the Commission does not meet the first condition, there is no need to adjudicate on whether that method meets the second condition laid down by the enabling act comprised by Directive 2010/30.
- 76 In addition, if no method of calculation carried out with a receptacle filled to a certain level met the requirements concerning the scientific validity of the results obtained and the accuracy of the information supplied to consumers, it remained open to the Commission to exercise its right of legislative initiative, in accordance with Article 289(1) TFEU, in order to propose an amendment of the enabling act to the EU legislature.
- 77 Consequently, the first part of the first plea in law must be upheld.
- 78 In the second place, according to the case-law, the General Court may not, merely because it considers a plea relied on by the appellant in support of its action for annulment to be well founded, automatically annul the challenged act in its entirety. Annulment of the act in its entirety is not acceptable where it is obvious that that plea, directed only at a specific part of the challenged act, is such as to provide a basis only for partial annulment (judgment of 11 December 2008, *Commission v Département du Loiret*, C-295/07 P, EU:C:2008:707, paragraph 104).
- 79 It is settled case-law that partial annulment of an EU act is possible only if the elements the annulment of which is sought may be severed from the remainder of the act. That requirement of severability is not satisfied in the case where the partial annulment of an act would have the effect of altering its substance (see judgment of 11 December 2008, *Commission v Département du Loiret*, C-295/07 P, EU:C:2008:707, paragraphs 105 and 106 and the case-law cited).
- 80 In the present case, it must be found that a partial annulment of the contested regulation, that is only in so far as by that regulation the Commission adopted a calculation method based on an empty receptacle, cannot be accepted.
- 81 The latter element cannot be severed from the remainder of the act, since the entirety of the information which the energy labelling of vacuum cleaners must cover is meant to be collected on the basis of such a calculation method.
- 82 The contested regulation must, therefore, be annulled in its entirety, and there is no need to adjudicate on either the third plea in law in the action or the claims that the diagrams presented at the hearing, which relate to the third plea, are inadmissible.

### Costs

- 83 Pursuant to Article 219 of the Rules of Procedure, in decisions of the General Court given after its decision has been set aside and the case referred back to it, it is to decide on the costs relating to the proceedings instituted before it and to the proceedings on the appeal before the Court of Justice.
- 84 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has been unsuccessful, it must be ordered to bear its own costs and to pay those incurred by the applicant, in accordance with the form of order sought by the latter, including the costs relating to the proceedings on appeal before the Court of Justice.

On those grounds,

THE GENERAL COURT (Fifth Chamber)

hereby:

- 1. Annuls 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;**
  
- 2. Orders the European Commission to pay the costs, including those relating to the proceedings on appeal before the Court of Justice.**

Gratsias

Labucka

Ulloa Rubio

Delivered in open court in Luxembourg on 8 November 2018.

E. Coulon

D. Gratsias

Registrar

President

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\* Language of the case: English.