Reports of Cases

OPINION OF ADVOCATE GENERAL
SAUGMANDSGAARD ØE
delivered on 21 December 2016[1]

Case C-696/15 P

Czech Republic
v

European Commission

(Appeal — Transport — Directive 2010/40/EU — Deployment of intelligent transport systems in the field of road transport — Delegation of power to the European Commission — Delegated Regulation (EU) No 885/2013 — Provision of information services for safe and secure parking places for trucks and commercial vehicles — Delegated Regulation (EU) No 886/2013 — Data and procedures for the provision of road safety-related minimum universal traffic information free of charge to users — Claim that the Commission exceeded the limits of the delegation of power)

I – Introduction

1. By its appeal, the Czech Republic asks the Court set aside the judgment of the General Court of the European Union of 8 October 2015, *Czech Republic* v *Commission*,[2] by which the General Court dismissed its two actions for annulment of Delegated Regulations (EU) No 885/2013[3] and (EU) No 886/2013[4] ('the contested regulations') adopted by the European Commission in order to supplement Directive 2010/40/EU[5] on intelligent transport systems ('ITS') in the field of road transport.

2. I propose that the Court should dismiss this appeal for the reasons set out below.

1 Original language: French.

2 T-659/13 and T-660/13, not published, 'the judgment under appeal', EU:T:2015:771.

3 Commission Regulation of 15 May 2013 supplementing ITS Directive 2010/40 with regard to the provision of information services for safe and secure parking places for trucks and commercial vehicles (OJ 2013 L 247, p. 1).

4 Commission Regulation of 15 May 2013 supplementing Directive 2010/40 with regard to data and procedures for the provision, where possible, of road safety-related minimum universal traffic information free of charge to users (OJ 2013 L 247, p. 6).

5 Directive of the European Parliament and of the Council of 7 July 2010 on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport (OJ 2010 L 207, p. 1).

II – Legal framework

A – Directive 2010/40

3. Recitals 3, 7 and 18 of Directive 2010/40 state:

‘(3) [ITS] are advanced applications which without embodying intelligence as such aim to provide innovative services relating to different modes of transport and traffic management and enable various users to be better informed and make safer, more coordinated and “smarter” use of transport networks.

(7) To ensure a coordinated and effective deployment of ITS within the Union as a whole, specifications, including, where appropriate, standards, defining further detailed provisions and procedures should be introduced. Before adopting any specifications, the Commission should assess their compliance with certain defined principles set out in Annex II. Priority should be given in the first instance to the four main areas of ITS development and deployment. …

(18) Major stakeholders such as ITS service providers, associations of ITS users, transport and facilities operators, representatives of the manufacturing industry, social partners, professional associations and local authorities should have the possibility to advise the Commission on the commercial and technical aspects of the deployment of ITS within the Union. For this purpose the Commission, ensuring close cooperation with stakeholders and Member States, should set up an ITS advisory group. … ’

4. Article 4 of Directive 2010/40 contains the following definitions in points (1) and (17):

‘1. [ITS] means systems in which information and communication technologies are applied in the field of road transport, including infrastructure, vehicles and users, and in traffic management and mobility management, as well as for interfaces with other modes of transport;

17. “specification” means a binding measure laying down provisions containing requirements, procedures or any other relevant rules.’

5. Article 5 of that directive, entitled ‘Deployment of ITS’, provides:

‘1. Member States shall take the necessary measures to ensure that the specifications adopted by the Commission in accordance with Article 6 are applied to ITS applications and services, when these are deployed, in accordance with the principles in Annex II. This is without prejudice to the right of each Member State to decide on its deployment of such applications and services on its territory. This right is without prejudice to any legislative act adopted under the second subparagraph of Article 6(2).

… ’

6. Article 6 of Directive 2010/40, headed ‘Specifications’, states:

‘1. The Commission shall first adopt the specifications necessary to ensure the compatibility, interoperability and continuity for the deployment and operational use of ITS for the priority actions.

2. The Commission shall aim at adopting specifications for one or more of the priority actions by 27 February 2013.

At the latest 12 months after the adoption of the necessary specifications for a priority action, the Commission shall, where appropriate, after conducting an impact assessment including a cost-benefit analysis, present a proposal to the European Parliament and the Council in accordance with Article 294 of the TFEU on the deployment of that priority action.

3. Once the necessary specifications for the priority actions have been adopted, the Commission shall adopt specifications ensuring compatibility, interoperability and continuity for the deployment and operational use of ITS for other actions in the priority areas.

4. Where relevant, and depending on the area covered by the specification, the specification shall include one or more of the following types of provisions:

(a) functional provisions that describe the roles of the various stakeholders and the information flow between them;

(b) technical provisions that provide for the technical means to fulfil the functional provisions;

(c) organisational provisions that describe the procedural obligations of the various stakeholders;

(d) service provisions that describe the various levels of services and their content for ITS applications and services.

5. Without prejudice to the procedures under Directive 98/34/EC the specifications shall, where appropriate, stipulate the conditions in which Member States may, after notification to the Commission, establish additional rules for the provision of ITS services on all or part of their territory, provided that those rules do not hinder interoperability.

6. The specifications shall, where appropriate, be based on any standards referred to in Article 8.

The specifications shall, as appropriate, provide for conformity assessment in accordance with Decision No 768/2008/EC.

The specifications shall comply with the principles set out in Annex II.

7. The Commission shall conduct an impact assessment including a cost-benefit analysis prior to the adoption of the specifications.'

7. Article 7 of Directive 2010/40, entitled 'Delegated acts', provides:

'1. The Commission may adopt delegated acts in accordance with Article 290 of the TFEU as regards specifications. When adopting such delegated acts the Commission shall act in accordance with the relevant provisions of this Directive, in particular Article 6 and Annex II.

2. A separate delegated act shall be adopted for each of the priority actions.

…'

B – Delegated Regulation No 885/2013

8. Under Article 1, Delegated Regulation No 885/2013 'establishes the specifications necessary to ensure compatibility, interoperability and continuity for the deployment and operational use of information services for safe and secure parking places for trucks and commercial vehicles on a Union level in accordance with Directive [2010/40]'.

9. Article 3 of Delegated Regulation No 885/2013, on requirements for the provision of information services, provides:

‘1. Member States shall designate areas where traffic and security conditions require the deployment of information services on the safe and secure parking places.

They shall also define priority zones where dynamic information will be provided.

2. The provision of information services shall fulfil the requirements set out in Articles 4 to 7.’

10. Article 8 of Delegated Regulation No 885/2013, entitled ‘Assessment of compliance with the requirements’, provides:

‘1. Member States shall designate a national body competent to assess whether the requirements set out in Articles 4 to 7 are fulfilled by service providers, parking operators and road operators. This body shall be impartial and independent from the latter.

Two or more Member States may designate a common regional body competent to assess compliance with those requirements on their territories.

Member States shall notify the nominated body to the Commission.

2. All services providers shall submit a declaration to the designated bodies on their compliance with the requirements set out in Articles 4 to 7.

…

3. Designated bodies shall randomly inspect the correctness of the declarations of a number of public and private service providers and parking operators, and request a demonstration of compliance with the requirements set out in Articles 4 to 7.

The quality of the service may also be assessed using user-generated comment.

Every year, the designated bodies shall report to the relevant national authorities on the declarations submitted, as well as on the results of their random inspections.’

C – Delegated Regulation No 886/2013

11. Under Article 1, Delegated Regulation No 886/2013 ‘establishes the specifications necessary to ensure compatibility, interoperability and continuity for the deployment and operational use of data and procedures for the provision, where possible, of road safety-related minimum universal traffic information free of charge to users on a Union level in accordance with Directive [2010/40]’.

12. Article 5 of Delegated Regulation No 886/2013, on the provision of the information service, provides:

‘1. Member States shall designate sections of the trans-European road network where traffic and safety conditions require the deployment of the road safety-related minimum universal traffic information service.

They shall communicate these sections of roads to the Commission.

2. The provision of the information service shall fulfil the requirements set out in Articles 6 to 8.’

13. Article 9 of Delegated Regulation No 886/2013, headed ‘Assessment of compliance with requirements’, states:

‘1. Member States shall designate an impartial and independent national body competent to assess whether the requirements set out in Articles 3 to 8 are fulfilled by public and private road operators and service providers and broadcasters dedicated to traffic information. Two or more Member States may designate a common body competent to assess compliance with these requirements on their territories.

Member States shall notify the national bodies to the Commission.

2. Public and private road operators, service providers and broadcasters dedicated to traffic information shall provide the designated national bodies with their identification details and a description of the information service they provide, and submit a declaration of compliance with the requirements set out in Articles 3 to 8.

…

3. The designated national bodies shall randomly inspect the correctness of the declarations of a number of public and private road operators, service providers and broadcasters dedicated to traffic information, and shall request proof of compliance with the requirements set out in Articles 3 to 8

Every year, the designated national bodies shall report to the national authorities on the declarations submitted and on the results of their random inspections.’

III – Judgment under appeal

14. By applications lodged at the Registry of the General Court on 12 December 2013, the Czech Republic brought two actions for annulment of the contested regulations.

15. In support of its actions for annulment, the Czech Republic raised three pleas. The first plea alleged infringement of Article 7(1) of Directive 2010/40, read in conjunction with Article 5(1) and Article 6 thereof, in that the Commission, by adopting the contested regulations, had exceeded the limits of the authority laid down in that provision. The second plea alleged infringement of Article 290 TFEU in that the Commission, by adopting the contested regulations, had exceeded the limits of its power to adopt non-legislative delegated acts pursuant to that article. The third plea alleged infringement of Article 13(2) TEU in that the Commission, by adopting the contested regulations, had exceeded the limits of the powers conferred on it in the Treaties.

16. In the judgment under appeal, the General Court rejected each of these pleas and, therefore, dismissed both actions in their entirety.

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

17. Principally, the Czech Republic claims that the Court should:

– set aside the judgment under appeal;

– annul the contested regulations in their entirety; and

– order the Commission to pay the costs.

18. In the alternative, the Czech Republic claims that the Court should:

– set aside the judgment under appeal;

– annul Article 3(1), Article 8 and Article 9(1)(a) of Delegated Regulation No 885/2013 and Article 5(1), Article 9 and Article 10(1)(a) of Delegated Regulation No 886/2013; and

– order the Commission to pay the costs.

19. The Commission contends that the Court should:

– dismiss the appeal; and

– order the Czech Republic to pay the costs.

V – Analysis

20. In support of its appeal, the Czech Republic relies on three grounds of appeal which I will examine in turn below.

A – First ground of appeal alleging infringement of the principle of legal certainty

21. By its first ground of appeal, the Czech Republic argues that the General Court infringed the principle of legal certainty by finding, in paragraphs 39 to 43 of the judgment under appeal, that the contested regulations do not impose an obligation on Member States to deploy ITS applications and services on their territory.

22. These paragraphs of the judgment under appeal concern the General Court's examination of the first part of the first plea for annulment relied on by the Czech Republic. The Czech Republic claimed that the Commission had exceeded the limits of the authority conferred by Directive 2010/40 by imposing an obligation in the contested regulations to deploy ITS applications and services, while Article 5(1) of that directive gave Member States the power to decide on such deployment. The General Court rejected that part of the first plea for annulment on the ground that the contested regulations imposed no such deployment obligation, in contrast to the arguments put forward by the Czech Republic.

23. The Czech Republic draws attention to the case-law of the Court, according to which the principle of legal certainty requires that rules of EU law be clear, precise and predictable in their effect, so that interested parties can ascertain their position in situations and legal relationships governed by EU law. [6]

24. It puts forward three arguments to demonstrate that this principle was infringed in paragraphs 39 to 43 of the judgment under appeal.

25. In the first place, according to the Czech Republic, it is apparent from the contested regulations that they must be applied in all Member States, in contrast to the finding made by the General Court. In particular, the regulations in question contain the traditional provision stating that they are binding in their entirety and directly applicable in all Member States. Furthermore, the explanatory memoranda of the Commission concerning those regulations [7] show that the Commission sought to impose an

6 Judgment of 12 February 2015, *Parliament* v *Council* (C-48/14, EU:C:2015:91, paragraph 45 and the case-law cited).

7 Explanatory memorandum of the Commission of 15 May 2013 concerning Delegated Regulation No 885/2013, C(2013) 2549 final, and explanatory memorandum of the Commission of 15 May 2013 concerning Delegated Regulation No 886/2013, C(2013) 2550 final.

obligation to deploy ITS applications and services in all Member States. Consequently, the General Court's finding that the contested regulations do not apply in Member States which have not proceeded with such deployment is at odds with the wording of those regulations and with the Commission's intention when it adopted them.

26. I am of the view that this argument must be rejected as unfounded. First, as the Commission pointed out, the contested regulations do not contain any provisions expressly imposing such a deployment obligation.

27. Secondly, it can be inferred from Article 1 of each of the regulations and from Article 5(1) of Directive 2010/40 that those instruments apply in a Member State only where the Member State has decided to deploy ITS applications or services.

28. Article 1 of each regulation states that the regulation establishes certain specifications 'in accordance with Directive [2010/40]'. Article 5(1) of that directive provides that the obligation on Member States to take the necessary measures to apply the specifications adopted by the Commission is 'without prejudice to the right of each Member State to decide on its deployment of [ITS] applications and services on its territory'.

29. It is apparent from a combined reading of these provisions that the contested regulations establish a number of specifications without undermining the right of each Member State to decide on the deployment of ITS applications and services on its territory. I should again state that these regulations supplement Directive 2010/40, as the General Court found in paragraph 40 of the judgment under appeal, and do not contain any provisions altering the scope of Article 5(1) of that directive, as the General Court also correctly pointed out in paragraph 41 of its judgment.

30. I do not think it is necessary to examine the explanatory memoranda concerning the contested regulations, since the meaning of the abovementioned provisions is patently clear from their wording.

31. In the alternative, I nonetheless note that the explanatory memoranda in question compare various options involving the deployment of ITS applications and services in some or in all Member States. In each memorandum, the Commission concludes, after conducting a comparative analysis of the costs and benefits of those options, that deployment in all Member States is preferable. However, there is nothing to suggest that this is the option which was actually implemented in the draft regulations presented by the Commission. The explanatory memorandum for Delegated Regulation No 886/2013 states that 'Directive [2010/40] identified six priority actions for the adoption of specifications and, *if appropriate*, their mandatory deployment'.[8] That detail seems to me to show that the Commission did not intend to impose a deployment obligation when it adopted the regulation.

32. Accordingly, I do not think it is possible to infer from the explanatory memoranda concerning the contested regulations that the Commission intended, by adopting those regulations, to impose a deployment obligation on Member States.

33. It follows from the foregoing that the General Court did not err in law by holding, in paragraphs 39 to 43 of the judgment under appeal, that the contested regulations do not impose an obligation on Member States to deploy ITS applications or services.

8 Explanatory memorandum of the Commission of 15/05/2013 concerning Delegated Regulation No 886/2013, C(2013) 2550 final, p. 3 (emphasis added).

34. In the second place, the Czech Republic criticises paragraph 40 of the judgment under appeal, claiming that the General Court wrongly found that the inapplicability of the contested regulations in some Member States did not have to be expressly mentioned in those regulations because such inapplicability stems from Directive 2010/40. In doing so, the General Court ruled that the inapplicability of delegated acts must be inferred not from their wording but from the interpretation of the basic legislative act.

35. The Czech Republic also states that the express wording of a delegated act which is contrary to the basic legislative act cannot be corrected by interpreting the former in a way consistent with the latter. This kind of consistent interpretation is possible only where it is not *contra legem*, that is to say where the lower-ranking legal instrument permits such an interpretation.

36. I consider that the General Court did not err in law in paragraph 40 of the judgment under appeal by finding that the contested regulations must be read in the light of the basic act in the form of Directive 2010/40. In my view, this method of interpretation stems from the relationship between the basic legislative act, which lays down, in particular, the essential elements of the legislative framework, and the delegated act, by which the Commission may supplement or amend certain non-essential elements of that legislative act pursuant to Article 290 TFEU. The Court has already had occasion to make clear that the purpose of granting a delegated power is to achieve the adoption of rules coming within the regulatory framework as defined by the basic legislative act.[9] By way of example, in this case, it is self-evident that the concept of 'specification' used in the contested regulations must be interpreted in the light of the definition given to it in Article 4(17) of Directive 2010/40.[10]

37. Furthermore, the General Court did not interpret the contested regulations *contra legem*, since it cannot be inferred from any of their respective provisions that those regulations impose an obligation on Member States to deploy ITS applications or services.[11]

38. In the third place, the Czech Republic submits that the judgment under appeal places Member States in an uncertain legal position when they apply a delegated act, since they cannot rely on the express provisions of that act in order to ascertain the provisions which apply to them and the obligations stemming from those provisions. In practical terms, Member States are thus forced to bring an action for annulment within the time limit stipulated in Article 263 TFEU if it is apparent from the provisions of the delegated act that the act's scope exceeds the limits laid down in the basic legislative act. If they do not, Member States forfeit the possibility of challenging the lawfulness of the delegated act in infringement proceedings brought by the Commission under Article 258 TFEU.[12]

39. This argument must be rejected because it is again based on the incorrect premiss that the provisions of the contested regulations impose a deployment obligation on Member States, which is at odds with Article 5(1) of Directive 2010/40.[13]

40. I should add that it is for Member States to determine whether the scope of a delegated act exceeds the limits laid down in the basic legislative act and, where appropriate, to decide whether to bring an action for annulment within the time limit stipulated in Article 263 TFEU. This constraint, which is the result of how legal remedies are organised before the EU courts, cannot be regarded as an infringement of the principle of legal certainty as interpreted by the Court.[14]

9 Judgment of 17 March 2016, *Parliament* v *Commission* (C-286/14, EU:C:2016:183, paragraph 30 and the case-law cited).

10 An example of an interpretation by the Court in the light of the basic act can be found in its judgment of 3 April 2014, *Rätzke* (C-319/13, EU:C:2014:210, paragraphs 33 and 34).

11 Se points 26 to 29 of this Opinion.

12 Judgment of 18 October 2012, *Commission* v *Czech Republic*, C-37/11, EU:C:2012:640, paragraphs 46 to 48.

13 See points 26 to 29 of this Opinion.

14 See point 23 of this Opinion.

41. Since the Czech Republic does not put forward any other arguments to show that the principle of legal certainty was infringed, the first ground of appeal must be rejected as unfounded.

B – Second ground of appeal alleging infringement of Article 13(2) TEU, read in conjunction with Article 290 TFEU

42. By its second ground of appeal, the Czech Republic claims that the General Court infringed Article 13(2) TEU and Article 290 TFEU by holding, in paragraph 63 of the judgment under appeal, that when the Commission adopts delegated acts it is not limited by the express scope of the authority laid down in the basic legislative act.

43. This alleged error of law vitiates the examination of the second part of the first ground for annulment in paragraphs 45 to 63 of the judgment under appeal, in which the General Court found that the Commission had not exceeded the powers conferred on it by Directive 2010/40 by requiring Member States to designate an impartial and independent supervising body responsible for ensuring compliance with the requirements imposed by the contested regulations.

44. According to the Czech Republic, the authority conferred on the Commission by Article 290 TFEU to adopt non-legislative acts of general application is an exception to the general rule set out in Article 13(2) TEU and should therefore be interpreted strictly. The Commission contends that the ability to grant it a delegated power is not an exception to be interpreted strictly but a constitutional right afforded to the legislature by Article 290 TFEU.

45. It is nonetheless necessary to decide on this theoretical question in order to reject the five arguments put forward by the Czech Republic in support of the second ground of appeal.

46. In the first place, the Czech Republic claims that the General Court wrongly held, in paragraph 58 of the judgment under appeal, that the authority conferred on the Commission to adopt delegated acts is not limited to the matters expressly set out in Article 6 of Directive 2010/40 but can also cover the implementation of any of the directive's other provisions. It submits that the authority provided for in Article 6(1) of Directive 2010/40 should be interpreted strictly as meaning that it is limited to the types of provisions listed in Article 6(4) thereof.

47. I note that the authority conferred on the Commission has its basis not in Article 6 but in Article 7 of Directive 2010/40. Under Article 7, the Commission is to adopt delegated acts 'in accordance with the relevant provisions of this Directive, in particular Article 6 and Annex II'. Therefore, the General Court was right to hold that the authority granted to the Commission is not limited to the matters expressly set out in Article 6 of that directive.

48. I should add, in any event, that Article 6(4)(c) of Directive 2010/40 provides the Commission with a sufficient legal basis to make provision for the designation by Member States of a supervising body, for the reasons given in points 58 to 65 of this Opinion. Consequently, the hypothetical error of law committed by the General Court is irrelevant as the Commission has the power to provide for the designation of a national supervising body even where the authority has to be limited to the matters expressly set out in Article 6(4) of Directive 2010/40. [15]

15 In accordance with settled case-law, an error of law is irrelevant where it relates to grounds which, if invalidated, could not result in the judgment under appeal being set aside. See, to that effect, judgments of 24 October 2002, *Aéroports de Paris* v *Commission* (C-82/01 P, EU:C:2002:617, paragraphs 41 and 67 and the case-law cited); 28 June 2005, *Dansk Rørindustri and Others* v *Commission* (C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraph 148 and the case-law cited); and 9 July 2015 in *InnoLux* v *Commission* (C-231/14 P, EU:C:2015:451, paragraph 83).

49. In the second place, the Czech Republic argues that the General Court wrongly held, in paragraph 63 of the judgment under appeal, that the Commission is able to adopt rules falling outside the scope of the authority if it deems it necessary to do so. According to the Czech Republic, the power granted to the Commission must be limited to what the EU legislature regarded as necessary when it set out the Commission's authority in the basic legislative act.

50. During the hearing, the parties also commented on the possibility that the General Court had wrongly held, in paragraph 63 of the judgment under appeal, that the requirement to designate national supervising bodies came within the Commission's 'subjective' discretion.

51. Consequently, I consider it appropriate to divide the examination of this second argument into two parts covering, first, the possible conferral of subjective discretion on the Commission and, secondly, the possible breach by the Commission of the limits on the delegation granted by Directive 2010/40.

52. First, I cannot endorse the proposition that the General Court, in paragraph 63 of the judgment under appeal, acknowledged the existence of subjective discretion on the part of the Commission.

53. It seems to me to be indisputable that the existence of a possible breach by the Commission of the limits on its delegated powers must be assessed objectively on the basis of the provisions enshrining the delegation of powers in the basic legislative act. The second sentence of Article 290(1) TFEU provides that the objectives, content, scope and duration of the delegation of power is to be explicitly defined in the legislative acts. In addition, the first sentence of Article 290(2) TFEU states that legislative acts are to lay down explicitly the conditions to which the delegation is subject. [16]

54. Thus, the Commission correctly pointed out that it enjoys, in the exercise of delegated powers, a greater or lesser breadth of discretion depending on what the legislature decides in that act, it being understood that the delegation can only cover non-essential elements of the basic legislative act. I consider that confirmation of this interpretation of Article 290 TFEU can be found in paragraph 32 of the judgment of 16 July 2015, *Commission* v *Parliament and Council*, in which the Court held that the lawfulness of the EU legislature's choice to confer a delegated power on the Commission depends not on the existence or breadth of the discretion granted to it, but solely on whether the acts the Commission is to adopt are of general application and whether they supplement or amend non-essential elements of the legislative act. [17]

55. It was precisely an objective assessment that the General Court conducted in paragraphs 50 to 60 of the judgment under appeal. Indeed, it was on the basis of an examination of the relevant provisions of Directive 2010/40, and more specifically of Article 4(17), Articles 5 to 7 and Annex II, that the General Court concluded, in paragraph 62 of that judgment, that the Commission had the power to establish a conformity assessment procedure in the contested regulations by requiring Member States, which are responsible for ensuring that the specifications are applied, to designate a body to supervise operators' compliance with them.

56. Moreover, the General Court did not err in finding, in paragraph 63 of the judgment under appeal, that express authority was not necessary and that it was sufficient for the Commission — with a discretion *deriving objectively from the abovementioned provisions of Directive 2010/40* — to consider that the designation of such a body was necessary to achieve the objectives of compatibility, interoperability and continuity. In other words, and as the Commission pointed out at the hearing, it made a choice between the various options available to it within the framework defined by Directive 2010/40 and, in particular, by the principles established in Annex II thereto.

16 See judgment of 17 March 2016, *Parliament* v *Commission* (C-286/14, EU:C:2016:183, paragraphs 30 and 31).
17 C-88/14, EU:C:2015:499.

57. Put another way, paragraph 63 of the judgment under appeal cannot be assessed in isolation as meaning that the General Court accorded the Commission subjective discretion. The discretion of the Commission to which the General Court refers is objective in nature, in that it stems from the provisions of Directive 2010/40 enshrining the delegation of power the scope of which is examined in paragraphs 50 to 62 of that judgment.

58. Secondly, I consider that the General Court was right to hold, in paragraphs 45 to 67 of the judgment under appeal, that the Commission did not exceed the limits of the delegation conferred by Directive 2010/40 by adopting Article 8(1) of Delegated Regulation No 885/2013 and Article 9(1) of Delegated Regulation No 886/2013, which provide for the designation of an impartial and independent supervising body.

59. In my view, Article 6(4)(c) of that directive, read in conjunction with the authority laid down in Article 7(1) thereof, provides the Commission with a sufficient legal basis to adopt these two provisions.

60. Under Article 6(4)(c) of Directive 2010/40, a specification is to include, where relevant and depending on the area covered by it, 'organisational provisions that describe the procedural obligations of the various stakeholders'.

61. Accordingly, it is necessary to determine whether Article 8(1) of Delegated Regulation No 885/2013 and Article 9(1) of Delegated Regulation No 886/2013 constitute 'organisational provisions' and also whether they 'describe the procedural obligations of the various stakeholders'.

62. It is hard to deny that the provisions laid down in these two articles are 'organisational' in nature since they organise a procedure intended to assess compliance with the requirements set out in each of the contested regulations.

63. It is equally hard to deny that these provisions impose obligations on stakeholders [18] in terms of procedure. Thus, Article 8(2) of Delegated Regulation No 885/2013 requires service providers to submit a declaration of compliance with the requirements set out in Articles 4 to 7 of that regulation to the designated bodies. Article 9(2) of Delegated Regulation No 886/2013 requires road operators, service providers and broadcasters dedicated to traffic information to forward their identification details and a description of the information service they provide to the designated bodies. These stakeholders are also required to submit a declaration of compliance with the requirements set out in Articles 3 to 8 of that regulation.

64. It is in the light of those circumstances that the obligation to designate an impartial and independent supervising body must be evaluated. The designation of such a body is an organisational element intrinsic to the proper working of the assessment procedures established by the abovementioned provisions. The responsibilities of these bodies include randomly inspecting the correctness of the declarations submitted by the stakeholders and requesting evidence of compliance with the requirements set out in the contested regulations, as well as reporting to the competent national authorities on the declarations submitted and on the results of their random inspections. [19] For the sake of completeness, I should add that the designation of such a body is, to my mind, in accordance with the principles established in Annex II to Directive 2010/40, particularly the principles of effectiveness and proportionality.

18 The concept of stakeholder is not defined in Directive 2010/40. However, recital 18 mentions ITS service providers and transport and facilities operators as being among the main stakeholders.

19 See Article 8(3) of Delegated Regulation No 885/2013 and Article 9(3) of Delegated Regulation No 886/2013.

65. Consequently, I consider that Article 8 of Delegated Regulation No 885/2013 and Article 9 of Delegated Regulation No 886/2013 lay down 'organisational provisions that describe the procedural obligations of the various stakeholders' within the meaning of Article 6(4)(c) of Directive 2010/40, including the obligation to designate an impartial and independent supervising body set out in paragraph (1) of those articles.

66. In the alternative, if Article 6(4)(c) of Directive 2010/40 had to be regarded as not providing the Commission with a sufficient legal basis to adopt the abovementioned provisions, I consider that Article 4(17) and Article 6(1) of that directive, read in conjunction with the authority laid down Article 7(1) thereof, afford such a legal basis.

67. Indeed, Article 4(17) of Directive 2010/40 defines the concept of specification in particularly broad terms as 'a binding measure laying down provisions containing requirements, procedures or *any other relevant rules*' (emphasis added). In addition, Article 6(1) of that directive provides that the Commission is required to adopt the specifications necessary to ensure compatibility, interoperability and continuity for the deployment and operational use of ITS in the priority actions. I should again point out that Article 6(4) of the directive does not seem to me to list exhaustively the types of specifications that can be adopted by the Commission.

68. In my opinion, it is apparent from a combined reading of Article 4(17), Article 6(1) and Article 7(1) of Directive 2010/40 that the Commission was empowered to provide for the designation of an impartial and independent supervising body and, therefore to adopt Article 8(1) of Delegated Regulation No 885/2013 and Article 9(1) of Delegated Regulation No 886/2013. [20]

69. It follows from the foregoing that the second argument put forward by the Czech Republic must be rejected as unfounded.

70. In the third place, the Czech Republic claims that the General Court's findings in paragraphs 47 to 49 of the judgment under appeal, relating to the broad discretion enjoyed by the Commission to supplement legislation under Article 290 TFEU, are not consistent with the judgment of 16 July 2015, *Commission* v *Parliament and Council*. [21]

71. I recall that, in paragraph 32 of the abovementioned judgment, the Court found that neither the existence nor the extent of the discretion conferred on the Commission is relevant for determining whether the act to be adopted by the Commission comes under Article 290 TFEU or Article 291 TFEU. [22]

72. In the light of this case-law, I consider that the General Court erred in law by suggesting, in paragraph 49 of the judgment under appeal, that the Commission enjoys broad discretion when supplementing legislation under Article 290 TFEU.

73. However, this error of law is irrelevant since it relates to grounds which, if invalidated, could not result in the judgment under appeal being set aside. [23] As stated in points 52 to 69 of this Opinion, in its examination of the second part of the first plea for annulment, the General Court conducted an objective assessment of the existence of a possible breach by the Commission of the limits on the authority laid down in Directive 2010/40. That objective assessment, which is without any error of law, was sufficient to reject that part of the first plea for annulment.

20 Under Article 5(1) of Directive 2010/40, Member States are required to take the necessary measures to ensure compliance with the specifications adopted by the Commission in accordance with Article 6 thereof. See point 76 of this Opinion.

21 C-88/14, EU:C:2015:499.

22 See point 54 of this Opinion.

23 See the case-law cited in footnote 15 above.

74. In the fourth place, the Czech Republic asserts that Article 5(1) of Directive 2010/40 left Member States, not the Commission, free to choose the means to be used to ensure application of the specifications. Thus, the authority conferred on the Commission to adopt delegated acts cannot be interpreted in such a way as to interfere with that power of the Member States. The Czech Republic also states that the EU legislature regarded that aspect as an essential element which, in consequence, cannot form the subject matter of a delegated act, under Article 290 TFEU.

75. I have doubts as to the admissibility of that argument because the Czech Republic does not identify precisely the points in the grounds of the judgment under appeal which are contested, as required by Article 169(2) of the Rules of Procedure of the Court of Justice.

76. In any event, the argument is unfounded. Article 5(1) of Directive 2010/40 simply requires Member States to take the necessary measures to ensure compliance with the specifications adopted by the Commission in accordance with Article 6 thereof. As explained in points 58 to 69 of this Opinion, the Commission has the power to adopt specifications of a procedural nature such as Article 8 of Delegated Regulation No 885/2013 and Article 9 of Delegated Regulation No 886/2013, including an obligation to designate an impartial and independent supervising body. Consequently, Member States are required, under Article 5(1) of Directive 2010/40, to take the necessary measures to comply with that specification.

77. In the fifth place, the Czech Republic submits that the General Court wrongly found, in paragraphs 60 and 61 of the judgment under appeal, that Article 5(1) and Article 6(6) of Directive 2010/40 supported the proposition that the Commission was empowered to provide for the designation of a national supervising body.

78. I consider the argument alleging infringement of Article 5(1) of Directive 2010/40 to be unfounded for the reasons set out in point 76 of this Opinion.

79. The Czech Republic also claims that Article 6(6) of that directive only covers conformity assessment under Decision No 768/2008/EC[24] and that none of the provisions of the contested regulations provide for such an assessment.

80. I am of the view that this argument is well founded. As Article 2 indicates, Decision No 768/2008 sets out a common framework of general principles and reference provisions for the drawing up of EU legislation harmonising the conditions for the marketing of products. However, the contested regulations do not concern the marketing of products. The General Court therefore erred in law in paragraph 61 of the judgment under appeal by suggesting that Article 6(6) of Directive 2010/40 supported the proposition that the Commission was empowered to require the designation of a national supervising body such as that mentioned in Article 8 of Delegated Regulation No 885/2013 and Article 9 of Delegated Regulation No 886/2013.

81. However, this error of law is irrelevant for the reasons set out in point 73 of this Opinion.

82. It follows from the foregoing that the second ground of appeal relied on by the Czech Republic must be rejected as unfounded.

C – Third ground of appeal alleging that the General Court committed breaches of procedure

83. By its third and last ground of appeal, the Czech Republic claims that the General Court committed breaches of procedure by distorting or disregarding some of the arguments raised by it.

24 Decision of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC (OJ 2008 L 218, p. 82).

84. In the first place, it alleges that the General Court wrongly found, in paragraph 39 of the judgment under appeal, that the Czech Republic and the Commission agreed that the provisions of the contested regulations do not apply unless a Member State has decided to deploy ITS applications and services on its territory. The Czech Republic submits that it stated in its replies lodged before the General Court that while such an interpretation of the contested regulations suited it, there was no support for it in those regulations.

85. As the Commission pointed out, this argument must be rejected in so far as it is based on a misreading of paragraph 39 of the judgment under appeal. The General Court found that the parties were in agreement on the interpretation of Directive 2010/40, according to which the contested regulations are not applicable in the absence of deployment, but not on the interpretation of the contested regulations themselves.

86. In addition, I note that the General Court carefully examined and rejected, in paragraphs 35 to 44 of the judgment under appeal, the Czech Republic's assertion that the contested regulations impose a deployment obligation. Accordingly, this argument is unfounded.

87. In the second place, the General Court allegedly disregarded the Czech Republic's argument that the Commission had expressly stated, in the explanatory memoranda concerning the contested regulations, its intention to impose an obligation to deploy ITS applications and services in all Member States.

88. In accordance with the Court's settled case-law, the General Court's duty under Article 36 and the first paragraph of Article 53 of the Statute of the Court of Justice to state reasons for its judgments does not require the General Court to provide an account that follows exhaustively and one by one all the arguments articulated by the parties to the case. The reasoning may therefore be implicit, on condition that it enables the persons concerned to know why the measures in question were taken and provides the Court of Justice with sufficient material for it to exercise its powers of review.[25]

89. In paragraphs 35 to 44 of the judgment under appeal, the General Court clearly set out the reasons which led it to find that the binding provisions of the contested regulations did not impose any deployment obligation on Member States, thereby discharging its duty to state reasons. Therefore, the General Court could legitimately take the view that it was not necessary to state the reasons why that finding also followed from the non-binding content of the explanatory memoranda.[26]

90. In the third place, the General Court allegedly disregarded, particularly in its assessment of the second ground for annulment in paragraphs 69 to 75 of the judgment under appeal, the Czech Republic's argument that organisation of the supervision activity at national level is, in principle, an essential element the regulation of which cannot, therefore, be entrusted to the Commission under Article 290 TFEU.

91. I consider that the General Court examined that argument in paragraphs 72 and 73 of the judgment under appeal by finding that the Commission, when it adopted Article 8(1) of Delegated Regulation No 885/2013 and Article 9(1) of Delegated Regulation No 886/201, did not exceed the authority conferred by Directive 2010/40 and did not supplement or amend an essential element of that directive.

92. It follows from the foregoing that the third ground of appeal relied on by the Czech Republic must be rejected as unfounded.

25 Judgment of 27 October 2011, *Austria* v *Scheucher-Fleisch and Others* (C-47/10 P, EU:C:2011:698, paragraph 104 and the case-law cited) and 8 March 2016, *Greece* v *Commission* (C-431/14 P, EU:C:2016:145, paragraph 38 and the case-law cited).

26 See points 31 and 32 of this Opinion.

93. Consequently, the appeal must be dismissed in its entirety as unfounded. In addition, since the Commission applied for costs, the Czech Republic must be ordered to pay such costs.

VI – Conclusion

94. In the light of the above considerations, I propose that the Court should:

– dismiss the appeal, and

– order the Czech Republic to pay the costs.