Reports of Cases

JUDGMENT OF THE GENERAL COURT (Third Chamber, Extended Composition)

24 September 2019 *

(Competition – Agreements, decisions and concerted practices – Market for stock/catalogue and special printed envelopes – Decision establishing an infringement of Article 101 TFEU – Annulment in part on the ground of infringement of the obligation to state reasons – Amending decision – Settlement procedure – Fines – Basic amount – Exceptional adjustment – Ceiling of 10% of total turnover – Article 23(2) of Regulation (EC) No 1/2003 – *Ne bis in idem* principle – Legal certainty – Legitimate expectations – Equal treatment – Cumulation of penalties – Proportionality – Fairness – Unlimited jurisdiction)

In Case T-466/17,

Printeos, SA, established in Alcalá de Henares (Spain),

Printeos Cartera Industrial, SL, established in Alcalá de Henares,

Tompla Scandinavia AB, established in Stockholm (Sweden),

Tompla France, established in Fleury-Mérogis (France),

Tompla Druckerzeugnisse Vertriebs GmbH, established in Leonberg (Germany),

represented by H. Brokelmann and P. Martínez-Lage Sobredo, lawyers,

applicants,

v

European Commission, represented by F. Castilla Contreras, F. Jimeno Fernández and C. Urraca Caviedes, acting as Agents,

defendant,

APPLICATION based on Article 263 TFEU and seeking annulment in part of Commission Decision C(2017) 4112 final of 16 June 2017 amending Commission Decision C(2014) 9295 final of 10 December 2014 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (AT.39780 – Envelopes) or, in the alternative, a reduction of the amount of the fine imposed on the applicants,

* Language of the case: Spanish.

THE GENERAL COURT (Third Chamber, Extended Composition),

composed of M. van der Woude, President, S. Frimodt Nielsen, V. Kreuschitz (Rapporteur), N. Półtorak and E. Perillo, Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written part of the procedure and further to the hearing on 3 April 2019,

gives the following

Judgment

I. Background to the dispute

A. Administrative procedure leading to the adoption of the original decision

1 By its Decision C(2014) 9295 final of 10 December 2014 relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (AT.39780 – Envelopes) ('the original decision'), the European Commission found, inter alia, that the applicants, Printeos SA, Tompla Sobre Exprés SL (now Printeos Cartera Industrial SL), Tompla Scandinavia AB, Tompla France and Tompla Druckerzeugnisse Vertriebs GmbH, had infringed Article 101 TFEU and Article 53 of the Agreement on the European Economic Area (EEA) by participating, from 8 October 2003 to 22 April 2008, in an agreement concluded and implemented on the European market for stock/catalogue and special printed envelopes covering, inter alia, Denmark, Germany, France, Sweden, the United Kingdom and Norway. The purpose of that agreement was to coordinate sale prices, allocate customers and exchange sensitive commercial information. In addition to the applicants, the Bong group ('Bong'), the GPV France SAS and Heritage Envelopes Ltd group ('GPV'), the Holdham SA group ('Hamelin') and the Mayer-Kuvert group ('Mayer-Kuvert'), to which the original decision was similarly addressed, also participated in the cartel.

2 The original decision was adopted in the context of a settlement procedure within the meaning of Article 10a of Commission Regulation (EC) No 773/2004 of 7 April 2004 relating to the conduct of proceedings by the Commission pursuant to Articles [101 and 102 TFEU] (OJ 2004 L 123, p. 18) and the Commission Notice on the conduct of settlement procedures in view of the adoption of decisions pursuant to Article 7 and Article 23 of Council Regulation (EC) No 1/2003 in cartel cases (OJ 2008 C 167, p. 1) ('the Settlement Notice').

3 Having regard to the infringement established (Article 1(5) of the original decision), the Commission imposed on the applicants, jointly and severally, a fine of EUR 4 729 000 (Article 2(1)(e) of the original decision).

4 The administrative procedure leading to the adoption of the original decision was instigated by the Commission of its own initiative, on the basis of information and documents provided by an anonymous informant. On 14 September 2010, the Commission carried out inspections pursuant to Article 20(4) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 and 102 TFEU] (OJ 2003

L 1, p. 1) at the premises of the applicants and of other companies involved in the cartel in Denmark, Spain, France and Sweden. On 1 October 2010 and 31 January 2011, further inspections took place in Germany (recital 16 of the original decision).

5 On 22 October 2010, the applicants submitted to the Commission an application for leniency under the Commission Notice on immunity from fines and reduction of fines in cartel cases (OJ 2006 C 298, p. 17) (the 'Leniency Notice') (recital 17 of the original decision) and submitted a similar application to the Comisión Nacional de la Competencia, subsequently renamed the Comisión Nacional de los Mercados y la Competencia (National Competition Authority, Spain) ('the CNC').

6 On 15 March 2011, the CNC instigated a procedure designed to investigate whether, among others, Tompla Sobre Exprés, including its Spanish subsidiaries, had infringed Article 101 TFEU and the analogous Spanish competition rules, but only in so far as concerned the Spanish paper envelope market (Case S/0316/10, Sobres de papel (paper envelopes)). In that regard, the Commission did not accede to a request from the applicants to use its powers, under Article 11(6) of Regulation No 1/2003, to initiate proceedings and to relieve the CNC of its competence to apply Article 101 TFEU. That procedure concluded with the adoption by the CNC, on 25 March 2013, of a decision imposing on those companies a fine totalling EUR 10 141 530, on account of their participation on the Spanish market, between 1977 and 2010, in agreements to fix prices, to allocate tenders in procedures launched by the Spanish authorities in connection with the supply of pre-printed envelopes for elections and referendums at European, national and regional level, to allocate the supply of pre-printed envelopes for commercial use for major customers, to fix the price of plain envelopes and to limit technology. Following an action brought by, inter alia, the first applicant, the Audiencia Nacional, Sala de lo Contencioso (National High Court, Contentious Proceedings Division, Spain), partially annulled that decision in so far as it had determined the amount of the fine imposed and referred the case back to the CNC to enable it to re-determine that amount in accordance with the applicable legal criteria.

7 As all the parties concerned expressed their willingness to take part in settlement discussions, on 10 December 2013 the Commission opened the procedure provided for in Article 10a of Regulation No 773/2004, under which it held bilateral meetings with each of the parties (recitals 19 and 20 of the original decision).

8 At a meeting held on 21 January 2014, the Commission presented to the applicants an overview of the cartel, including its analysis of the evidence in its possession.

9 On 24 February 2014, the applicants submitted an informal 'non paper' document in which they asked the Commission to take into account, for the purposes of determining the fine, (i) the fine imposed by the CNC, on the ground that that fine was equivalent in itself to 10% of their total turnover in 2012, (ii) the fact that they formed a 'mono-product' group, that is to say, a group involved in the production of a single product, and (iii) paragraph 37 of the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation No 1/2003 (OJ 2006 C 210, p. 2) ('the Guidelines'), which allows the Commission, in the light of the particularities of the case in question, to depart from the general methodology for setting the amount of fines or from the limits specified in paragraph 21 of those guidelines.

10 Instead of a second meeting, with the applicants' agreement, the Commission, by email of 17 June 2014, presented an overview of the essential criteria to be taken into consideration in determining the amount of the fine to be imposed, such as the value of the applicants' sales in 2007, namely EUR 143 316 000, their turnover in 2013, namely EUR 121 728 000, the duration of their participation in the infringement, and so forth. The applicants replied by email of 18 June 2014, confirming the value of the sales and turnover used by the Commission and stating that they did not have any substantive comments in that regard.

11 At a meeting on 24 October 2014, the Commission informed the applicants of the methods and criteria for calculating the amount of the fine, namely: (i) the proportion (15%) of the sales value (EUR 143 316 000 in 2007) used to determine the basic amount of the fine; (ii) the duration of the applicants' involvement in the infringement (four years and six months); (iii) the additional amount of 15%; (iv) the absence of any mitigating or aggravating circumstances; (v) the fact that a multiplication factor was not to be applied; (vi) the maximum authorised fine of EUR 12 171 800 (10% of the applicants' total turnover in 2013); (vii) a reduction of the amount of the fine by way of exception pursuant to paragraph 37 of the Guidelines, in view of the particular circumstances of the case, including the fact that the basic amount of the fine of all the parties participating in the cartel was above the 10% ceiling laid down in Article 23(2) of Regulation No 1/2003; (viii) an additional reduction on account of the 'mono-product' nature of the applicants' group; (ix) the fact that it was not possible to grant a reduction to reflect the existence of the fine imposed by the CNC, as the cartel investigated by the CNC was separate from that investigated by the Commission and had to be sanctioned independently and in accordance with the applicable rules, which differed from those applied by the Commission; (x) an envisaged reduction of 50% in line with paragraphs 24 and 25 of the Leniency Notice; (xi) an envisaged reduction of 10% in line with paragraph 32 of the Settlement Notice; and, finally, (xii) the potential range of the fine, from EUR 4 610 000 to EUR 4 848 000, and the fact that the applicants would be required to accept the maximum amount in their settlement submissions.

12 On 7 November 2014, the applicants submitted their settlement submissions, accepting the value of sales and turnover used by the Commission and the maximum amount of the fine of EUR 4 848 000.

13 The Commission adopted its statement of objections on 18 November 2014.

14 On 20 November 2014, the applicants confirmed, in accordance with paragraph 26 of the Settlement Notice, that the statement of objections corresponded to the contents of their settlement submissions and that they remained committed to following the settlement procedure.

15 As regards the calculation of the fines imposed, in the original decision the Commission determined the basic amount of each of the undertakings concerned (recitals 71 to 84 of the original decision) as summarised in the following table:

Undertaking	Value of sales (EUR)	Coefficient for seriousness	Duration	Additional amount	Basic amount (EUR)
Bong	140 000 000	15%	4.5	15%	115 500 000
GPV …	125 086 629	15%	4.5	15%	103 196 000
Hamelin	185 521 000	15%	4.416	15%	150 717 000
Mayer-Kuvert	70 023 181	15%	4.5	15%	57 769 000
Printeos …	143 316 000	15%	4.5	15%	118 235 000

16 Moreover, in recitals 85 to 87 of the original decision, the Commission stated that it was not necessary to adjust the basic amounts under paragraphs 28 and 29 of the Guidelines, with the exception of the case of Mayer-Kuvert, to which a 10% reduction was to be applied by reason of its limited involvement in the infringement.

17 Under the heading 'Adaptation of the basic amounts', the Commission stated that, as most of the sales of the parties concerned had been generated on a single market on which they had participated in a cartel for several years, in practice, all the fines could reach the maximum of 10% of total turnover, and that the application of that limit would be the rule rather than the exception (recital 88 of the original decision). In that regard, the Commission referred to the case-law of the General Court to the effect that such an approach could raise possible concerns in view of the principle that penalties must be specific to the offence and the offender, as it could lead, in certain circumstances, to a situation in which any distinction on the basis of gravity or mitigating circumstances would no longer have any impact on the amount of the fine (judgment of 16 June 2011, *Putters International* v *Commission*, T-211/08, EU:T:2011:289, paragraph 75). In view of the specific circumstances of the present case, the Commission deemed it appropriate to exercise its discretion and to apply paragraph 37 of the Guidelines, which allows it to depart from the methodology set out in the Guidelines (recitals 89 and 90 of the original decision).

18 Recitals 91 and 92 of the original decision are worded as follows:

'(91) In this case, the basic amount is adapted in a way that takes into account the proportion that the value of sales of the cartelised product represents of the total turnover, as well as differences between the parties in view of their individual participation in the infringement. Overall, the fines will be set at a level that is proportionate to the infringement and achieves a sufficiently deterrent effect.

(92) As a result, a reduction will be applied to the calculated fine of all parties. In the specific circumstances of the case, and in view of the fact that all parties were dealing to a different but important extent in stock/catalogue and special printed envelopes, it is proposed to apply a decrease of 98% of the fine to be imposed for the infringement of GPV group, of 90% for Tompla, of 88% for Bong and Mayer-Kuvert and of 85% for Hamelin.'

19 The result of that adjustment of the basic amounts may be summarised as follows (see also the table set out in recital 93 of the original decision):

Undertaking	Basic amount before adjustment (EUR)	Reduction %	Basic amount after adjustment (EUR)
Bong	115 500 500	88	13 860 000
GPV …	103 196 000	98	2 063 920
Hamelin	150 717 000	85	22 607 550
Mayer-Kuvert	57 769 000	88	6 932 280
Printeos …	118 235 000	90	11 823 500

20 Furthermore, the Commission reduced the applicants' fine by an additional 50% on the basis of the Leniency Notice and by an additional 10% pursuant to paragraph 32 of the Settlement Notice (recitals 99, 102 and 103 of the original decision). In accordance with the relevant corresponding rules, the fines to be imposed on both Hamelin and Mayer-Kuvert were reduced by 25% and 10%, respectively, (leniency) and by 10% (settlement) (recitals 100 to 103 of the original decision).

21 Lastly, it is apparent from recitals 104 to 108 of the original decision, which come under the heading 'Ability to pay', that, following substantiated requests submitted by Bong and Hamelin, the Commission, pursuant to paragraph 35 of the Guidelines, reduced their fines to EUR 3 118 000 and EUR 4 996 000, respectively. The applicants neither submitted a similar request to the Commission nor obtained a reduction under paragraph 35 of the Guidelines.

B. Judgment in Case T-95/15

22 Following an action brought by the applicants, based on Article 263 TFEU and seeking, primarily, the partial annulment of the original decision, the General Court, by judgment of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722), annulled Article 2(1)(e) of the original decision on the ground that it was vitiated by a failure to state adequate reasons for the purpose of the second paragraph of Article 296 TFEU (judgment of 13 December 2016, *Printeos and Others* v *Commission*, T-95/15, EU:T:2016:722, paragraphs 57 and 58 and paragraph 1 of the operative part).

23 The considerations in support of that annulment are set out in paragraphs 45 to 56 of the judgment of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722).

24 The judgment of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722), has become final.

C. Judgment in Case T-201/17

25 Following a new action brought by the first applicant, lodged at the Registry of the General Court on 31 March 2017, and seeking, primarily, pursuant to Article 268 TFEU, compensation for the damage allegedly sustained because of the Commission's refusal to pay to the applicant default interest on the principal amount of the fine reimbursed following the annulment of the original decision, the General Court, by judgment of 12 February 2019, *Printeos* v *Commission* (T-201/17,

under appeal, EU:T:2019:81), ordered the European Union, represented by the Commission, to make good the harm suffered by the first applicant by paying it EUR 184 592.95, plus default interest. The Commission lodged an appeal against that judgment, registered as Case C-301/19 P.

D. Reopening of the administrative procedure and adoption of the contested decision

26 Following the judgment of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722), the Commission sent a letter to the applicants on 29 March 2017 informing them of its intention to adopt a new decision imposing on them a fine of the same amount as that of the fine imposed in the original decision, and setting out the criteria taken into account in order to calculate the fines imposed on the undertakings concerned, in particular the methodology followed pursuant to paragraph 37 of the Guidelines. The Commission also invited the applicants to submit their comments within three weeks of receipt of that letter.

27 By letter of 17 April 2017, the applicants submitted their comments, arguing that the adoption of a new decision would infringe the *ne bis in idem* principle since the annulment of the original decision by the judgment of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722), was not of a purely procedural nature and since that decision also infringed their fundamental right to good administration, provided for in Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter'). Moreover, the applicants took the view that the proposed fine discriminated against them and that, in accordance with the judgment of 13 February 1969, *Wilhelm and Others* (14/68, EU:C:1969:4, paragraph 11), the Commission was required, for reasons of fairness, to take into account the fine imposed on them by the CNC in the latter's decision of 25 March 2013.

28 By Decision C(2017) 4112 final of 16 June 2017 amending the original decision ('the contested decision'), addressed solely to the applicants, the Commission imposed on them, jointly and severally, a fine of EUR 4 729 000 (Articles 1 and 3, and recitals 8 and 9 of that decision).

29 In the first place, recital 7 of the contested decision states that the partial annulment by the General Court of the original decision for failure to state adequate reasons was merely procedural in nature. Accordingly, the annulment of that decision could not be regarded as constituting an acquittal for the purpose of Article 50 of the Charter (judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraphs 59 to 63 and 693 to 695), and the Commission was entitled to resume the administrative procedure at the point at which the illegality had occurred (judgments of 9 December 2014, *Lucchini* v *Commission*, T-91/10, EU:T:2014:1033, paragraph 173, and of 9 December 2014, *SP* v *Commission*, T-472/09 and T-55/10, EU:T:2014:1040, paragraph 277).

30 In the second place, recital 8 of the contested decision states that that decision 'provides further information on the methodology that was applied and the facts that were taken into account by the Commission when adjusting and adapting the basic amounts of the fine, as set out in recitals (88) to (93) of the [original] decision'.

31 In the third place, in recitals 10 to 22 of the contested decision, the Commission explains the methodology and the reasons for the 'adaptations' of the basic amounts of the fines, pursuant to paragraph 37 of the Guidelines, which underlie recitals 88 to 95 of the original decision.

32 In recital 14 of the contested decision, the Commission notes that it had regard to the minimum reduction necessary to bring the basic amount of the fine to be imposed on each of the undertakings concerned below the 10% maximum while ensuring that the adjusted basic amount reflected their comparable involvement in the infringement. It is also stated therein that a uniform reduction for all the undertakings concerned would have led to a situation in which each of them would have unjustifiably benefitted from the minimum reduction necessary to bring the basic amount below the 10% maximum for the undertaking whose basic amount exceeds that maximum by the largest margin, namely GPV, which would have resulted in fines not reflecting the gravity of their infringement and not achieving a sufficiently deterrent effect.

33 In recital 15 of the contested decision, it is stated that the Commission first adjusted the basic amount for each undertaking concerned by taking into account the proportion of its total turnover represented by the value of sales of the cartelised product ('the product/turnover ratio'). The adjustments in the original decision were, however, also intended to ensure that the adjusted fines still reflected the overall gravity of the infringement and did not distort the relative weight of the respective basic amounts of the undertakings concerned, which reflected their comparable involvement in the cartel. Those elements of the methodology had an impact on the individual reductions granted to each of the undertakings concerned.

34 According to recital 16 of the contested decision, the original decision took into account the product/turnover ratios of each of the undertakings concerned, calculated as the ratio of the total worldwide value of sales of the envelopes to the total 2012 worldwide turnover. An undertaking with a higher product/turnover ratio received a product/turnover reduction greater than, or at least equal to, that applied to an undertaking with a lower product/turnover ratio. The ratios set out in Table A show that all undertakings, except Hamelin, had very high individual product/turnover ratios. However, following the disposal of its envelope production assets, Hamelin recorded no more sales of the cartelised product in 2012, which is why its product/turnover ratio was estimated by comparing its 2012 turnover with sales of the cartelised product by its former subsidiary.

35 In recital 17 of the contested decision, it is noted that the 98% reduction granted to GPV was needed to bring its turnover below the 10% maximum. Since GPV was the undertaking with the highest product/turnover ratio, the other undertakings received smaller reductions which were determined on an individual basis and reflected their respective product/turnover ratios as well as the relative weight of the basic amounts imposed on them.

36 In recital 18 of the contested decision, it is stated that a simple linear reduction based on individual product/turnover ratios would have led to an unjustified result and distorted the relative weight of the basic amounts. Under such an approach, for example, the adjusted basic amount for Mayer-Kuvert (product/turnover ratio of 76%) would have been higher than the applicants' adjusted basic amount (product/turnover ratio of 90%) in a situation where their pre-adjustment basic amount was more than twice that of Mayer-Kuvert. The methodology used in the original decision therefore sought, on equitable grounds, to restore the balance between the adjusted basic amounts by setting individual reductions reflecting not only the product/turnover ratios but also the comparable individual involvement of the undertakings concerned, as shown by the non-adjusted basic amounts.

37 In recital 19 of the contested decision, the Commission notes that it considered that, even though Hamelin had a considerably lower product/turnover ratio than the other undertakings, it was necessary also to reduce the fine to be imposed on Hamelin, in order to reflect the fact that its

role in the cartel was similar to that of those other undertakings. Given Hamelin's product/turnover ratio, the reduction of Hamelin's basic amount is the lowest compared with those received by all the other undertakings.

38 It is apparent from recital 20 of the contested decision that, if the Commission had not taken the second part of that methodology into account and had based the reductions only on the product/turnover ratio of the undertakings concerned, Hamelin would not have received a reduction and its basic amount would have been approximately 1 275% higher than the applicants' adjusted basic amount, whereas the value of Hamelin's sales was only approximately 30% higher than that of the applicants' sales.

39 In recital 21 of the contested decision, it is concluded that the chosen methodology and the reduction granted resulted in the basic amount of Hamelin's fine reflecting its comparable involvement in the cartel, as well as the gravity and duration of the infringement, and provided for sufficient deterrence.

40 Table A, set out in recital 22 of the contested decision, essentially corresponds to the table contained in paragraph 50 of the judgment of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722), while adding an additional column setting out the product/turnover ratios of the undertakings concerned for 2012 (see paragraph 34 above).

Undertaking	V[alue of sales (EUR)] in 2007	Coefficient for seriousness	Duration (years)	Additional amount	Basic amount (EUR)	Product/ turnover ratio	Adjustment /Reduction	Adjusted basic amount
GPV …	125 08-86 629	15%	4.5	15%	103 19-96 000	93%	0.98	2 063 920
[Printeos]	143 31-16 000	15%	4.5	15%	118 23-35 000	90%	0.90	11 823 5-500
Bong	140 00-00 000	15%	4.5	15%	115 50-00 000	80%	0.88	13 860 0-000
Mayer-Kuvert	70 023 -181	15%	4.5	15%	57 769 -000	76%	0.88	6 932 280
Hamelin	185 52-21 000	15%	4.416	15%	150 71-17 000	17%	0.85	22 607 5-550

41 According to recital 23 of the contested decision, the remaining steps of the fining methodology followed in the original decision are not affected by the judgment of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722), with the result that they are not further explained in the contested decision. However, in view of the request made by the applicants, in their letter of 17 April 2017, that account be taken of the fine imposed by the CNC, the Commission states that it would address that request in recitals 46 to 55 of the contested decision.

42 In the fourth place, in recitals 46 to 55 of the contested decision, the Commission thus sets out its reasons for rejecting that request, recalling that, during the procedure which led to the adoption of the original decision, it had already informed the applicants that it did not consider it to be necessary or appropriate to take into account the fine imposed by the CNC. In that regard, the Commission relies, in particular, on its own decision-making practice (Commission Decision

89/515/EEC of 2 August 1989 relating to a proceeding under Article 85 of the EEC Treaty (IV/31.553 – Welded steel mesh) (OJ 1989 L 260, p. 1) and the judgment of 13 February 1969, *Wilhelm and Others* (14/68, EU:C:1969:4).

43 In the fifth place, in recital 58 of the contested decision, with respect to the adjustment of the basic amounts of the fines under paragraph 37 of the Guidelines, the Commission rejects the applicants' argument, put forward in their letter of 17 April 2017, that, first, the reductions of the basic amounts discriminated against them and, secondly, they should have benefited from a reduction of 95.3671% in order properly to reflect their product/turnover ratio.

44 In recital 59 of the contested decision, in response to the applicants' argument that there are clear discrepancies as regards the ceiling of 10% of total turnover, the Commission points out, in essence, that the reductions were not intended to be set at a level that would ensure that the relationship between the adjusted basic amounts and the total turnover would be the same for all of the undertakings concerned. The Commission states that, according to well-established case-law, it is not contrary to the principles of equal treatment and proportionality that, through the application of the method of calculation of the basic amount of fines, an undertaking may receive a fine which represents a proportion of its total turnover that is greater than that represented by the fines imposed respectively on each of the other undertakings.

II. Procedure and forms of order sought

45 By application lodged at the Registry of the Court on 27 July 2017, the applicants brought the present action.

46 On a proposal from the Third Chamber, the Court decided, pursuant to Article 28 of its Rules of Procedure, to assign the case to a Chamber sitting in extended composition.

47 On a proposal from the Judge-Rapporteur, the Court (Third Chamber, Extended Composition) decided to open the oral part of the procedure and, by way of the measures of organisation of procedure provided for in Article 89 of its Rules of Procedure, put a written question to the Commission relating to the determination of GPV's product/turnover ratio. The Commission answered that question within the period prescribed.

48 The parties presented oral argument and replied to the Court's oral questions at the hearing on 3 April 2019.

49 The applicants claim that the Court should:

– annul the contested decision;

– in the alternative, reduce the amount of the fine imposed in Article 1 of the contested decision by granting, on the one hand, a reduction of the basic amount of the fine of 95.3671% under paragraph 37 of the Guidelines and, on the other hand, a further reduction of the amount of the fine, after deductions under the Leniency Notice and the Settlement Notice, of at least 33%;

– order the Commission to pay the costs.

50 The Commission contends that the Court should:

– dismiss the action as unfounded;

– order the applicants to pay the costs.

III. Law

A. The first plea in law, alleging infringement of the principles of legal certainty, protection of legitimate expectations and ne bis in idem

51 The applicants dispute the procedural nature of the partial annulment of the original decision by the judgment of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722), as in the situations in the cases giving rise to the judgments of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission* (C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582), or of 27 June 2012, *Bolloré* v *Commission* (T-372/10, EU:T:2012:325). The applicants argue that the illegalities vitiating that decision are so serious that they can be described only as substantial. Moreover, the failure to state the reasons for the original decision is so serious that it cannot be regarded as a mere formal defect. As is apparent from paragraphs 53 to 55 of the judgment of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722), the Court was compelled at the hearing in Case T-95/15 to recall its duty to examine of its own motion the adequacy of the statement of reasons, formal note of which was taken in the minutes of the hearing. Furthermore, the obligation to state reasons has been elevated to a fundamental right, guaranteed by Article 41(2)(c) of the Charter, with the result that, since the entry into force of the Charter, the previous case-law treating a failure to state adequate reasons as a mere formal defect has become outdated.

52 According to the applicants, the original decision is also vitiated by another error of substantive law, namely a misuse of powers, relied on in the reply in Case T-95/15, since the Commission knowingly put forward inaccurate facts to justify adjustments made to the basic amounts of the fines. Indeed, although it was stated in recital 92 of the original decision that 'all parties were dealing to a different but important extent in stock/catalogue and special printed envelopes', recital 16 of the contested decision accepted that Hamelin was not a 'mono-product' undertaking. Nevertheless, in Table A set out in recital 22 of the contested decision, Hamelin is assigned a 'mono-product' ratio of 17%, which was in fact 0% at the time of adoption of the original decision, on the ground that, by reason of the disposal of its envelope production assets in 2010, it made no sales of the cartelised product in 2012, that is to say, the relevant year for the purpose of determining the 'mono-product' ratio. That misuse of powers, it is argued, is confirmed, in particular, by paragraph 54 of the judgment of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722), which recognises that the reasoning set out in the original decision was inconsistent with the truth.

53 According to the applicants, the seriousness of those substantive illegalities vitiating the original decision, which cannot be remedied, precludes the Commission from again imposing the penalty already imposed in that decision. That approach is contrary to the finality of the original decision, the conclusion of which as to the existence of the infringement was not disputed, and infringes the *ne bis in idem* principle for the purpose of Article 50 of the Charter, as applicable to competition-law proceedings. The contested decision is additional to, but does not replace, the

original decision, which became final as regards that part of it which was not contested. The fact that the original decision has become final precludes the adoption, without a legal basis, of a new decision replacing, amending or supplementing a previous decision which has not been annulled, remains in force and is final.

54 The contested decision is also, the applicants argue, contrary to the principles of legal certainty and protection of legitimate expectations. Unlike, in particular, the situation in the case which gave rise to the judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission* (C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582), in which the first decision had been annulled in its entirety, the judgment of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722), merely annulled Article 2(1)(e) of the original decision, with the result that the other parts of that decision became final. However, given the absence in Regulation No 1/2003 of a relevant legal basis for that purpose, such as that provided for in Article 9(2), which is not applicable in the present case, the amendment of a final decision infringes the general principles referred to above. Nor is it even clear from the contested decision whether it concerns an 'amendment' proper, as indicated in its title, a 'readoption' (recital 7) or a 'replacement' (Article 1 of the operative part), even though the new statement of reasons is meant to be an addition to the original decision rather than a replacement of the previous statement of reasons. In any event, in the absence of a legal basis, it was not appropriate to amend the original, final decision by adding 'additional information' in the contested decision. The applicants state that the judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission* (C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582), affords 'the Commission not the possibility of providing a more detailed statement of reasons for the calculation of the fine' or of 'rectifying' an error of substantive law, but only the possibility of reopening the procedure in order to correct formal or procedural defects vitiating the annulled decision, which is not the case here, in view of the serious nature of the misuse of powers committed.

55 The Commission contends that the first plea should be rejected as unfounded.

56 In the first place, it should be noted that, in the case where the Court annuls an act of the institutions, the institutions are required under Article 266 TFEU to take the necessary measures to comply with the judgment annulling that act. It is clear from settled case-law that, in order to fulfil that obligation, those institutions are required to have regard not only to the operative part of the judgment of annulment, but also to the grounds which led to that judgment and constitute its essential basis, in so far as they are necessary to determine the exact meaning of what is stated in the operative part. It is those grounds which, on the one hand, identify the precise provision held to be illegal and, on the other, indicate the specific reasons which underlie the finding of illegality contained in the operative part and which the institution concerned must take into account when replacing the act that has been annulled. However, the annulment of an EU act does not necessarily affect the preparatory acts relating to it, nor necessarily entail the annulment of the entire procedure prior to the adoption of that act, regardless of the grounds, procedural or substantive, of the judgment pronouncing the annulment. Consequently, except where the irregularity found rendered the entire procedure null and void, those institutions may, in order to adopt an act intended to replace a preceding act that has been annulled or declared invalid, reopen the procedure at the stage at which that irregularity was committed, without it being necessary that the option of reopening the procedure must be expressly provided for by the applicable legislation in order that the institutions which adopted an act that has been annulled

may avail themselves thereof (see, to that effect, judgments of 7 November 2013, *Italy* v *Commission*, C-587/12 P, EU:C:2013:721, paragraph 12, and of 28 January 2016, *CM Eurologistik and GLS*, C-283/14 and C-284/14, EU:C:2016:57, paragraphs 48 to 52 and the case-law cited).

57 Those principles apply *mutatis mutandis* in the field of competition law, where the EU Courts annul a decision on the ground of illegality without themselves ruling on the substance of the infringement or on the penalty (see, to that effect, judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraphs 72, 73 and 693).

58 In the second place, it should be borne in mind that the Court of Justice has also held that, in a situation such as that obtaining in the present case, where the annulment of the contested decision is based on a procedural defect, such as a failure to state adequate reasons, and the EU Courts have not used their unlimited jurisdiction to vary the fine imposed, the *ne bis in idem* principle does not prevent the Commission from adopting a new decision imposing a fine on the applicant. The application of that principle presupposes that a ruling has been given on the question whether an offence has in fact been committed or that the legality of the assessment thereof has been reviewed. Thus, the principle of *ne bis in idem* prohibits solely a fresh in-depth assessment of the alleged commission of an offence which would result in the imposition of either a second penalty, in addition to the first, in the event that liability is established a second time, or a first penalty in the event that liability not established by the first decision is established by the second. By contrast, it does not in itself preclude the resumption of proceedings in respect of the same anticompetitive conduct where the first decision was annulled for procedural reasons without any ruling having been given on the substance of the facts alleged, since the annulment decision cannot in such circumstances be regarded as an 'acquittal' within the meaning given to that expression in criminal matters. In such a case, the penalties imposed by the new decision are not added to those imposed by the annulled decision but replace them (see, to that effect, judgment of 15 October 2002, *Limburgse Vinyl Maatschappij and Others* v *Commission*, C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P, EU:C:2002:582, paragraphs 60 to 62 and 693 to 695).

59 The Court considers that, in the case of the annulment, for failure to state adequate reasons, of a decision imposing a fine there is no reason for a divergent approach solely on the ground that that decision was adopted under a settlement procedure. Moreover, contrary to what the applicants maintain, the principles derived from the case-law referred to in paragraphs 56 to 58 above must be applied *mutatis mutandis* in the event that such a decision is annulled only in part, where the partial annulment is that only of the part imposing a fine, as in this case with Article 2(1)(e) of the original decision, while the part of that decision definitively establishing liability for the infringement on the part of the undertaking concerned is upheld. In such a situation, a reassessment of the question whether an infringement has in fact been committed, which would have the effect of penalising that undertaking once again, is a fortiori excluded. Accordingly, the complaints alleging infringement of the principles of legal certainty and the protection of legitimate expectations must, from the outset, be rejected as unfounded.

60 It is therefore necessary to determine whether – under the first paragraph of Article 266 TFEU, in the light of the operative part of the judgment of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722), annulling, in part, the original decision, and in the light of the essential grounds supporting it set out in that judgment – the Commission was entitled to rectify the failure to state adequate reasons established and penalised in that judgment by

adopting the contested decision, which contains an amended or supplemented statement of reasons and imposes on the applicants the same fine as that imposed on them in the original decision.

61 In this regard, it should be noted that, in paragraph 1 of the operative part of the judgment of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722), the Court confined itself to annulling Article 2(1)(e) of the original decision on the ground that it was vitiated by a failure to state adequate reasons for the purpose of the second paragraph of Article 296 TFEU (judgment of 13 December 2016, *Printeos and Others* v *Commission*, T-95/15, EU:T:2016:722, paragraphs 57 and 58).

62 Those paragraphs read as follows:

> '57 In the light of the foregoing considerations, it must be concluded that the [original] decision is vitiated by a failure to state adequate reasons and it is therefore necessary to uphold the first plea in law in so far as it alleges infringement of the duty to state reasons for the purpose of the second paragraph of Article 296 TFEU.
>
> 58 As a consequence, it is necessary to annul Article 2(1)(e) of the [original] decision. There is no need to rule on the complaint alleging misuse of power or the second and third pleas, including the question of the admissibility of the third plea. Furthermore, there is no need to rule on the second head of claim, put forward in the alternative.'

63 As the Commission argues, it follows that the Court refrained from ruling on the other pleas raised in Case T-95/15 contesting the merits of the original decision, including the plea of misuse of powers relied on by the applicants in the reply. Thus, the applicants cannot claim that the operative part ordering annulment was based on the finding of a substantive defect, or indeed a misuse of powers, consisting, in essence, of a criticism that the Commission gave reasons which were inconsistent with the truth or reality.

64 As regards the legal consequences of that operative part ordering annulment, it should be recalled that, in accordance with the first paragraph of Article 264 TFEU, that operative part had the effect only of declaring 'the act concerned to be void', that is to say, Article 2(1)(e) of the original decision, without taking into account the degree of 'seriousness' of the procedural defect found or the legal status of the procedural rule infringed. In that regard, it should be pointed out that a number of procedural guarantees, as essential procedural requirements for the purposes of the second paragraph of Article 263 TFEU, the infringement of which may be raised *ex proprio motu* and may entail annulment of a contested act, constitute superior rules of law, such as the rights of the defence within the meaning of Article 41(2)(a) of the Charter. The same holds true with regard to infringement of the obligation to state reasons under Article 41(2)(c) of the Charter and the second paragraph of Article 296 TFEU, on which the annulment of Article 2(1)(e) of the original decision is based.

65 Accordingly, it must be held that the partial annulment of the original decision, ordered in the judgment of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722), was exclusively procedural in scope within the meaning of the case-law cited in paragraphs 56 and 58 above, in that it criticised the Commission for having failed to provide adequate reasons for the method by which the fines were calculated, thereby allowing neither the applicants effectively to dispute that method nor the Court to exercise its review of the lawfulness of the

decision, in particular with regard to whether there had been compliance with the principle of equal treatment (judgment of 13 December 2016, *Printeos and Others* v *Commission*, T-95/15, EU:T:2016:722, paragraphs 49 and 55).

66 It is true that, in paragraph 55 of the judgment of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722), the Court also noted that 'the perfunctory statement of reasons given in recital 92 of the [original] decision is capable of giving the misleading impression that the main reason for the horizontal adjustment of the basic amounts for the undertakings concerned was the fact that they were all in situations that were, at the very least, comparable, on account of the "mono-product" nature of their businesses', which 'was not the case with Hamelin, as the Commission acknowledged in the course of the proceedings'. However, those comments refer primarily to a statement of reasons which was deficient and unintelligible in that regard, thus constituting a cardinal case of failure to state adequate reasons for the purpose of the second paragraph of Article 296 TFEU. Accordingly, it cannot be inferred from this that the Court took the view that the Commission intended to mislead the litigants or the EU Courts or to knowingly put forward facts inconsistent with the truth or reality, let alone that, in annulling Article 2(1)(e) of the original decision, the Court sought to censure such an approach.

67 It follows that the Commission complied with the requirements of the case-law cited in paragraphs 56 and 58 above by pointing out, in recital 7 of the contested decision, that the partial annulment of the original decision for failure to state adequate reasons was merely procedural in nature, with the result that it could not be regarded as an acquittal for the purpose of Article 50 of the Charter, and that the Commission was therefore entitled to take up the administrative procedure at the point at which the illegality occurred, that is to say, in principle, at the time of the adoption of the original decision.

68 Finally, the other complaints put forward by the applicants in support of the present plea must also be rejected. First, contrary to what they claim, so long as the Commission complies with the requirements set out in paragraphs 56 to 59 above, which is the case here, the terms used in the contested decision to describe its approach, that is to say, 'amend', 'readopt' (recital 7) or 'replace' (Article 1 of the operative part replacing Article 2(1)(e) of the original decision), are not decisive. Secondly, since the case-law referred to in paragraphs 56 and 58 above is based on an interpretation of the scope of the first paragraph of Article 266 TFEU, the applicants are not justified in invoking the absence of a relevant legal basis for that purpose in Regulation No 1/2003 (see, by analogy, judgment of 28 January 2016, *CM Eurologistik and GLS*, C-283/14 and C-284/14, EU:C:2016:57, paragraph 52). Thirdly, they also cannot validly argue that the definitive nature of the original decision precludes the adoption of a new decision replacing, amending or supplementing the annulled part of the original decision, as the case-law referred to in paragraph 58 above would otherwise be rendered meaningless. On the contrary, since the applicants have not challenged the part of the original decision establishing their liability for the infringement in question and since the Court was therefore not required to give a ruling on that part in the judgment of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722), it is only that part of the original decision which has become final (see, to that effect, judgment of 14 November 2017, *British Airways* v *Commission*, C-122/16 P, EU:C:2017:861, paragraphs 80 to 85) and the *ne bis in idem* principle – which prohibits solely a fresh in-depth assessment of the alleged commission of an offence for the purpose, in particular, of imposing a second penalty – is necessarily inapplicable in this case (see paragraph 59 above).

69 Consequently, the present plea must be rejected as being unfounded in its entirety.

B. The second plea in law, alleging infringement of the principle of equality of treatment in determining the amount of the fine

1. Summary of the main arguments of the parties

70 By the present plea, the applicants allege infringement of the principle of equal treatment, to their detriment, in the context of the determination of the basic amount of the fine imposed on them, connected, in particular, with the application of different rates of reduction under paragraph 37 of the Guidelines. In so far as the rates of reduction granted are based on the 'mono-product' nature of the undertakings concerned, the applicants note that they are the only undertaking whose rate of reduction (90%) coincides exactly with its 'mono-product' ratio (90%), whereas the rates of reduction granted to all the other undertakings are higher than their respective 'mono-product' ratios. For example, Bong, which had a 'mono-product' ratio of 80%, was granted a reduction of 88%. However, if the applicants had benefited from the same 'rate of increase', a reduction rate of 99% would have applied in their case, since their 'mono-product' ratio was ten percentage points higher than that of Bong.

71 In the first place, the applicants claim that that approach discriminated against them in view of the percentage of their total turnover represented by their adjusted basic amount, as compared with the situations of Bong and Hamelin. The fine imposed on the applicants – before the reductions granted on the basis of the Leniency Notice, the settlement procedure and the ability to pay – amounted to 9.7% of their total turnover, whereas the fines imposed on Bong and Hamelin, after 'adaptation' of the basic amounts, represented only 4.7% and 4.5% of their respective total turnovers. That inequality of outcome concerning the discrepancy as regards the ceiling of 10% of total turnover referred to in Article 23(2) of Regulation No 1/2003 results, they submit, not from application of the method of calculation provided for by the Guidelines in order to impose a fine 'justified by reference to the gravity and duration' of the infringement committed, but from the fact that the Commission departed from those guidelines by making, in the exercise of its discretion under paragraph 37 of the Guidelines, an exceptional adjustment to the basic amounts of the fines by reference to the 10% ceiling before any subsequent reduction.

72 According to the applicants, the adjustment consisting in the unequal reduction of the basic amounts among the undertakings – EUR 11.8 million for the applicants, EUR 13.8 million for Bong and EUR 22.6 million for Hamelin – led to discrimination adversely affecting the applicants, since the resulting amounts are, contrary to the requirement of Article 23(2) of Regulation No 1/2003, unrelated to their respective sizes and economic powers, determined according to their respective total turnovers, that is to say, EUR 121 million for the applicants, EUR 296 million for Bong and EUR 501 million for Hamelin. The fine imposed on the applicants is close to their ceiling of 10%, whereas those imposed on Bong and Hamelin do not amount to half of their respective ceilings. However, in the absence of any adjustment, all of those fines reached that ceiling, namely EUR 12.1 million for the applicants, EUR 29.6 million for Bong, and EUR 50.1 million for Hamelin. Thus, the fine imposed on the applicants after adjustment should have been much lower than those imposed on Bong and Hamelin, whose turnovers were, respectively, two and four times higher than that of the applicants.

73 The applicants dispute having 'benefited from a generous reduction', since their fine resulting from the application of the 10% ceiling was reduced by only 0.3% (to 9.7%), compared with the far more substantial reductions granted to Bong and Hamelin, whose infringements were otherwise identical in terms of gravity and duration. Moreover, the proper application of the 10% ceiling would not have led to the imposition on the applicants of a 'considerably' higher fine, since

that fine would have been increased by only EUR 140 000, which is entirely negligible in view of the reductions granted to Bong and Hamelin resulting from the adjustment of their basic amounts. In the present case, the differences in treatment are, as a matter of fact, not the result of applying the 10% ceiling as a 'capping ceiling' within the meaning of the case-law, but the result of an exceptional adjustment of the basic amounts under paragraph 37 of the Guidelines which departed from the calculation method provided for therein. Furthermore, the 10% ceiling is a criterion 'legally established' in Article 23(2) of Regulation No 1/2003 for determining fines, in the same way as the criteria of gravity and duration of the infringement, within the meaning of Article 23(3) of that regulation.

74 The applicants maintain that that unequal treatment is not objectively justified. In its judgment of 16 June 2011, *Putters International* v *Commission* (T-211/08, EU:T:2011:289, paragraph 80), they submit, the Court itself acknowledged that it was inherent in the methodology of the Guidelines that mitigating circumstances have no effect in the case of undertakings having a high 'mono-product' ratio and refrained from adjusting the fines. Although, in the present case, the Commission departed from that methodology with the stated aim of ensuring that the mitigating circumstances applicable to Mayer-Kuvert had an impact on the fine imposed on it, that approach cannot be justified objectively, in so far as it resulted in discriminatory treatment of the applicants as compared with Bong and Hamelin, since the only factor distinguishing the three undertakings was their total turnover. In the absence of any exceptional 'adaptation' of the basic amounts, all the fines would have reached the ceiling of 10%, in accordance with the objective pursued by Article 23(2) of Regulation No 1/2003 allowing 'fines to vary according to the size and economic power of the penalised undertakings, so that the higher the turnover, the higher the possible fine'.

75 According to the applicants, the differences between the 'mono-product' ratios of the applicants (90%), on the one hand, and of Bong (80%) and Hamelin (17%), on the other, cannot objectively justify the fine imposed on the applicants being close to the ceiling of 10% of their total turnover, whereas those imposed on Bong and Hamelin do not amount to even half of their respective ceilings. The applicants claim to be even more particularly discriminated against as compared with Hamelin, the activity of which is not even 'mono-product' in nature. Indeed, in 2012, Hamelin made no sales of the cartelised product, with the result that its 'mono-product' ratio was 0% and not 17%. Nor can the unequal treatment be objectively justified by the relative weight of the non-adjusted basic amounts of the applicants (EUR 118 235 000), on the one hand, and those of Bong and Hamelin (EUR 115 500 000 and EUR 150 717 000), on the other hand. By contrast, the applicants' adjusted basic amount almost reaches the ceiling of 10% of their total turnover (9.7%), unlike Bong and Hamelin, whose non-adjusted basic amounts do not reach even half of their ceilings (4.7% and 4.5% respectively).

76 The applicants take issue with the Commission's argument that the rate of reduction applied to them is the smallest possible allowing the basic amount to be reduced below the 10% ceiling. In fact, they argue, a reduction of 88% was applied in Bong's case, although a rate of 75% would have been sufficient to bring its basic amount (of EUR 115 500 000) below that ceiling (of EUR 29 631 227). Similarly, according to the same tables, a rate of reduction of 85% was applied in Hamelin's case, although a rate of 67% would have been sufficient to bring its basic amount (of EUR 150 717 000) below that ceiling (of EUR 50 170 600). The applicants take the view that the Commission's obligation to reduce their fine by applying a higher rate, proportionate to the difference between their 'mono-product' ratio and that of the other undertakings, follows directly from the general principle of equal treatment. They submit that they were the only penalised undertaking whose rate of reduction (90%) was not increased by reference to their 'mono-product' ratio (90%), whereas the rates of reduction applied to Bong (88%) and GPV (98%) were higher than

their respective actual 'mono-product' ratios (80% and 93%). In the case of Hamelin, the rate of reduction was even raised to 85% whereas its 'mono-product' ratio was 0%, since there was nothing to justify taking into account the 17% ratio of its former subsidiary sold to Bong in 2010. Accordingly, in order to remedy that discrimination, the rate of reduction which should have been granted to the applicants under paragraph 37 of the Guidelines had to be 95.3671%, and not 90%, since it would have brought their basic amount, after adjustment, to 4.5% of their total turnover in 2013.

77 In the second place, in the alternative, the applicants also claim to have suffered discrimination against as regards the basic amounts as adjusted. The contested decision, they submit, attaches great importance to the 'relative weight' of the non-adjusted basic amounts, as a criterion determining the rate of reduction applied to each undertaking under paragraph 37 of the Guidelines. However, having regard to the non-adjusted basic amounts, the applicants also claim to have been discriminated against as compared with GPV. GPV benefited from a rate of reduction of 98%, in contrast to the 90% reduction granted to the applicants, with the result that its adjusted basic amount represented only 2% of its non-adjusted basic amount. By contrast, the applicants' adjusted basic amount corresponded to 10% of their non-adjusted basic amount, or five times higher than in the case of GPV.

78 That unequal treatment has, they argue, no objective justification. The difference between the 'mono-product' ratios of the applicants and of GPV is not of sufficient significance for that purpose, since the 'mono-product' ratio of GPV (93%) was only three percentage points higher than that of the applicants (90%). Given the 98% rate of reduction granted to GPV, a rate of reduction of 94.84% should have applied in the applicants' case, reducing their adjusted basic amount to EUR 6 100 926 instead of EUR 11 823 500. That approach, they submit, is also necessary in the light of the relative weight of the non-adjusted basic amounts, since the applicants' non-adjusted basic amount was only 14.5% higher than that of GPV (EUR 118 235 000 as against EUR 103 196 000), but their adjusted basic amount was 472.8% higher than that of GPV (EUR 11 823 500 as against EUR 2 063 920). However, if the applicants had been granted a rate of reduction of 94.84%, their adjusted basic amount would have been 5.16% of their non-adjusted basic amount, as compared with 2% for GPV. In asserting that GPV's adjusted basic amount represents 17.45% of that of the applicants, the Commission itself also recognises that the balance between the fines imposed on the applicants and on GPV has not been maintained.

79 The Commission contends that the present plea should be rejected in its entirety.

80 It disputes the claim that the ceiling of 10% of total turnover, for the purposes of Article 23(2) of Regulation No 1/2003, is a criterion for the gradation of fines. It is an extrinsic limit, a statutory maximum which the penalty, irrespective of the method of calculation used, cannot exceed, aimed at preventing the imposition of disproportionate and excessive fines which the undertaking concerned would be unable to pay. That aim should be combined with the need to ensure that the fine has a sufficiently deterrent effect. To that end, the ceiling of 10% is calculated on the basis of the size and economic power of the undertaking concerned, as reflected in its total turnover during the financial year preceding the imposition of the fine. Moreover, a ceiling thus quantified has the merit of being foreseeable, in accordance with the principle of legal certainty and the principle that penalties must have a proper legal basis. That predictability is reinforced in the settlement procedure, in the course of which the undertaking concerned must approve the maximum amount of the fine which may be imposed on it. Thus, unlike the criteria of gravity and duration of the infringement set out in Article 23(2) of Regulation No 1/2003, in the application of which the Commission enjoys a wide discretion, the 10% ceiling is not a criterion

for the calculation of fines, but pursues a distinct and autonomous objective. Furthermore, it is not a maximum fine, to be imposed only in the case of the most serious infringements, but a capping ceiling, the application of which has the sole effect of reducing, to the maximum permissible level, the amount of the fine calculated solely on the basis of the criteria of gravity and duration of the infringement.

81 The Commission also disputes the contention that it infringed the principle of equal treatment in the present case. Since the ceiling of 10% of total turnover is a capping ceiling and not a criterion for the gradation of fines, the mere fact that the fine imposed on one undertaking is close to that ceiling, in contrast to the fines imposed on other participants in the cartel, can not constitute an infringement of that principle. Moreover, differences between the fines in terms of the proportion of total turnover are 'inherent' in the method of calculation provided for in paragraph 13 of the Guidelines, which is not based on the total turnover of the undertakings concerned. Accordingly, comparisons based on the proportions of total turnover represented by the fines, or on the discrepancies between those proportions and the 10% ceiling, are irrelevant and incapable of supporting a claim that the applicants have suffered unequal treatment. In order to comply with the principle of equal treatment, the Commission is not required to ensure that the final amount of the fines imposed on the undertakings involved in the same infringement reflects a difference between them in terms of their total turnover. Where the Commission imposes on them fines which are justified, for each of them, by reference to the gravity and duration of the infringement, it cannot be criticised on the ground that, for some of them, the amount of the fine is greater, by reference to turnover, than that imposed on other undertakings. A fortiori, it is not possible to conclude that there was unequal treatment by comparing the ratio of the intermediate amounts of the fines to the 10% ceiling for each undertaking.

82 The Commission states that the principle of equal treatment is subject to limitations arising from the need to apply it in conjunction with other general principles of law, such as the principle of legality, the principle that penalties should be applied solely to the offender, or the requirement that the fine must achieve a sufficiently deterrent effect. Thus, an undertaking cannot plead in its favour, in order to obtain a reduction of the fine imposed on it, an error in the determination of the amount of the fine imposed on another undertaking. Even assuming that the Commission erred in determining the amount of the fines imposed on Bong, Hamelin or GPV, and that those fines ought to have been higher, that error would not justify a further reduction of the fine imposed on the applicants. In the present case, the Commission applied the same method of calculating the fines to all undertakings, the only difference being the slightly different rates of reduction granted to each undertaking. However, those discrepancies are based on objective reasons relating to the situation of each undertaking and on the need to ensure that the fines have a sufficiently deterrent effect, which is therefore an objectively justified differentiating criterion. Nor is it contrary to the principle of equal treatment to apply rates of reduction in such a way as to maintain the link between the non-adjusted basic amounts of the various fines.

83 The Commission takes issue with the claim that it infringed the principle of equal treatment of the applicants by adjusting the basic amounts of the fines and by departing from the method laid down in the Guidelines. It points out that the applicants themselves requested that exceptional adjustment during the settlement procedure and benefited from a generous rate of reduction of 90% corresponding to their 'mono-product' ratio, which adjusted their fine to the gravity and duration of their infringement. According to the Commission, if it had applied the ceiling of 10%, that fine would have been considerably higher, that is to say, on the basis of the total turnover in 2013, an amount of EUR 12 173 000, on the basis of that in 2015, an amount of EUR 13 166 700 and, on the basis of that in 2016, an amount of EUR 16 282 000. By contrast, the method of calcu-

lation requested by the applicants would not have resulted in the fines being more in line with the gravity and duration of the infringement committed by each undertaking, but there would have been a risk of the outcome being determined solely by the ceiling of 10%. Moreover, the lesser participation of Mayer-Kuvert would not have had any effect and, in any event, the amounts of the fines would have been different. Accordingly, the Commission argues that it cannot be criticised for having imposed on the applicants a fine which is based neither on the gravity nor on the duration of their infringement.

84 As regards the first part of the present plea, the Commission contends that it did not apply the 'mono-product' ratios in a linear way by attributing to each undertaking a rate of reduction equal or proportionate to its 'mono-product' ratio, since no rule of EU law required it to do so. In taking into account the 'mono-product' ratio, the Commission also sought to maintain the link between the non-adjusted basic amounts, which reflected each undertaking's participation in the cartel. Moreover, in order for the fine to be a deterrent, the reduction applied had to be the smallest possible which would allow the basic amount to be lowered below the ceiling of 10%. However, the adjustment of the basic amount of the applicants' fine on the basis of a higher rate, proportionate to the difference between their 'mono-product' ratio and that of the other undertakings, would have had the effect of imposing on them a fine which did not have a sufficiently deterrent effect. Furthermore, the applicants benefited from a larger reduction than Bong and Hamelin, the adjusted basic amounts being EUR 11 823 500, EUR 13 860 000 and EUR 22 607 550, respectively. As regards Bong, the Commission states that, although a rate of reduction (88%) higher than Bong's 'mono-product' ratio (80%) was applied to it, its adjusted basic amount (EUR 13 860 000) was, in absolute terms, higher than that of the applicants (EUR 11 823 500), notwithstanding the fact that the applicants' value of sales and non-adjusted basic amount (EUR 143 316 000 and EUR 118 235 000) were higher than those of Bong (EUR 140 000 000 and EUR 115 500 000). As regards Hamelin, the Commission applied to it the lowest rate of reduction of all the undertakings (85%). Only GPV benefited from a higher rate of reduction than the applicants, due, on the one hand, to its higher, or even the highest, 'mono-product' ratio (93%) and, on the other hand, to the need to grant it a minimum rate of reduction of 98% to ensure that the adjusted basic amount would be less than the ceiling of 10% of its total turnover. However, the applicants' situation was different, since their 'mono-product' ratio was 90% and the minimum rate of reduction required to bring their adjusted basic amount below the ceiling of 10% of their 2013 total turnover was 89.9% (88.9% with respect to the total turnover of 2015 and 86.2% with respect to that of 2016). Finally, taking into account the 'mono-product' ratio in a linear manner would have ascribed too much importance to it and would have had unfair consequences. For example, the adjusted basic amount of Mayer-Kuvert, whose 'mono-product' ratio was 76%, would have been higher (EUR 57 769 000 – 70% = EUR 13 864 560) than the applicants' adjusted basic amount (EUR 118 235 000 – 90% = EUR 11 823 500), whereas the applicants' non-adjusted basic amount was more than double that of Mayer-Kuvert (EUR 118 235 000 for the applicants compared with EUR 57 769 000 for Mayer-Kuvert). The Commission concludes from this that the rate of reduction applied to each undertaking follows from an overall assessment of several factors and not solely from the 'mono-product' ratio. The applicants, it argues, are in fact seeking to obtain the benefit of the rates of reduction applied to other undertakings and not to rectify any illegality. In any event, in view of their total turnover in 2015, the adjusted basic amount of their fine represents not 9.7% but 8.97% of that turnover.

85 The Commission concludes from this that the complaints put forward by the applicants are ineffective in that they seek to transform the 10% ceiling into a criterion for the calculation of the fines. It is, however, clear from established case-law that the amounts derived from intermediate

calculations may exceed that ceiling. As regards the final amounts of the fines, the Commission notes that the applicants do not compare themselves to GPV, which, having a 'mono-product' ratio higher than theirs (98%) and a non-adjusted basic amount slightly lower (EUR 103 196 000), was assigned an adjusted basic amount representing 9.6% of its total turnover, or only 0.1% less than that represented by the applicants' adjusted basic amount of 9.7%, and a final fine representing a higher rate (7.07%) of its total turnover than the applicants' final fine (3.88% or 2.9% of total turnover in 2015 or 2016). Nor do the applicants compare themselves to Mayer-Kuvert, whose final fine is higher than theirs in absolute terms (EUR 4 991 000 as against EUR 4 729 000) notwithstanding the fact that Mayer-Kuvert's participation in the infringement was less significant and that the value of its sales represented less than half of the value of the applicants' sales (EUR 70 023 181 as against EUR 143 316 000).

86 As regards the second part of the present plea, the Commission recalls that the adjustments to the basic amounts were not intended automatically to apply the 'mono-product' ratio of each undertaking, but sought, first, in the light of that ratio, to reduce the fine by the percentage necessary to bring the non-adjusted basic amount of the fine of each undertaking below the 10% ceiling and, secondly, to maintain the balance between the fines imposed after those adjustments. As regards GPV, the non-adjusted basic amount (EUR 103 196 000) represents 87.2% of the applicants' non-adjusted basic amount (EUR 118 235 000), which is therefore 12.7% higher than that of GPV. Moreover, the 'mono-product' ratio of GPV (93%) was higher than that of the applicants (90%). According to the Commission, even though GPV's adjusted basic amount (EUR 2 063 920) is 17.45% of the applicants' adjusted basic amount (EUR 11 823 500), this is based on an overall assessment of all the objective circumstances related to the situation of each undertaking. In calculating the applicants' fine, the Commission had no reason to make an adjustment solely by comparison with GPV. Thus, the applicants' non-adjusted basic amount was also 2.32% higher than that of Bong, 204% higher than that of Mayer-Kuvert and 21.56% higher than that of Hamelin. However, on the one hand, GPV's 'mono-product' ratio (93%), which was higher than that of the applicants, justified a greater reduction than those granted to the other undertakings and, on the other hand, in contrast to the situation of the applicants, the minimum reduction required to lower GPV's adjusted basic amount below the 10% ceiling was 98%. Accordingly, any unequal treatment was objectively justified. In fact, the applicants obtained an advantage as a result of the application of a rate of reduction of 90%, even though, in the light of their total turnover in 2015 (or 2016), the minimum reduction required to ensure that their adjusted basic amount was below the 10% ceiling was 88.9% (2015) or 86.2% (2016).

2. Preliminary observations

87 By the present plea, the applicants allege infringement of the principle of equal treatment in their regard in the application of the method of calculating the fines imposed and, in particular, of the method of adjusting the basic amounts, under paragraph 37 of the Guidelines, as summarised in Table A in recital 22 of the contested decision.

88 The applicants complain, primarily, that the Commission applied to them a discriminatory rate of reduction of 90%, which corresponded exactly to their 'mono-product' ratio but differed from that enjoyed by the other undertakings, in particular Bong and Hamelin. That discriminatory adjustment of the basic amounts, they submit, had the effect that the applicants' adjusted basic amount was 9.7% of their total turnover, whereas the adjusted basic amounts of Bong and Hamelin represented only 4.7% and 4.5% of their respective total turnovers. Those variations in the discrepancies as regards the ceiling of 10% of total turnover are, in their view, the result of an unequal weighting of the respective size and economic power of those undertakings, determined

on the basis of their respective total turnover – that is to say, EUR 121 million for the applicants, EUR 296 million for Bong and EUR 501 million for Hamelin – which is contrary to Article 23(2) of Regulation No 1/2003 and is not objectively justified, inter alia, either by the relative weight of the non-adjusted basic amounts of the applicants, Bong and Hamelin, or by the need to reduce those basic amounts just below the 10% ceiling, which would have justified a reduction of only 75% in the case of Bong and 67% in the case of Hamelin.

89 In the alternative, the applicants submit that the fine imposed on them is also discriminatory with regard to the adjusted basic amounts under paragraph 37 of the Guidelines, in particular in relation to that of GPV, which was granted a rate of reduction of 98% of its basic amount, as compared with a rate of reduction of only 90% in the case of the applicants, with the result that GPV's adjusted basic amount represented only 2% of its non-adjusted basic amount. By contrast, the applicants' adjusted basic amount was 10% of their non-adjusted basic amount, that is to say, five times higher than in the case of GPV, even though the non-adjusted basic amounts of the applicants and of GPV were both very similar.

90 The Court considers it appropriate to assess, first, the validity of the legal premises of the complaints put forward by the applicants in the light of the criteria set out in the case-law, in particular as regards the principle of equal treatment and the application of the ceiling of 10% of total turnover provided for in the second subparagraph of Article 23(2) of Regulation No 1/2003. Secondly, the Court will examine whether the method of adjusting the basic amounts of the fines, as set out in the contested decision, is consistent with those criteria and in particular with those governing the principle of equal treatment.

3. Review of the case-law

91 The principle of equal treatment is a general principle of EU law, enshrined in Articles 20 and 21 of the Charter. According to settled case-law, applicable also to competition law, the principle of equal treatment requires that comparable situations must not be treated differently and that different situations must not be treated in the same way, unless such treatment is objectively justified (see judgments of 11 July 2013, *Team Relocations and Others* v *Commission*, C-444/11 P, not published, EU:C:2013:464, paragraph 186 and the case-law cited, and of 12 November 2014, *Guardian Industries and Guardian Europe* v *Commission*, C-580/12 P, EU:C:2014:2363, paragraph 51 and the case-law cited).

92 A breach of the principle of equal treatment as a result of discriminatory treatment presumes that the situations concerned are comparable, having regard to all the elements which characterise them. The elements which characterise different situations, and hence their comparability, must in particular be determined and assessed in the light of the subject matter and purpose of the EU act which makes the distinction in question. The principles and objectives of the field to which the act relates must also be taken into account (see judgment of 11 July 2013, *Team Relocations and Others* v *Commission*, C-444/11 P, not published, EU:C:2013:464, paragraph 187 and the case-law cited). The case-law states in this regard that the Commission must assess, in each specific case and having regard both to the context and to the objectives pursued by the scheme of penalties created by Regulation No 1/2003, the intended impact on the undertaking in question, taking into account in particular a turnover which reflects the undertaking's real economic situation during the period over which the infringement was committed (judgments of 12 November 2014, *Guardian Industries and Guardian Europe* v *Commission*, C-580/12 P, EU:C:2014:2363, paragraph 53, and of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 144 and the case-law cited).

93 In this regard, the case-law recognises that it is permissible, for the purpose of fixing the fine, to have regard both to the total turnover of the undertaking, which gives an indication, albeit approximate and imperfect, of the size of that undertaking and of its economic power, and to the proportion of that turnover accounted for by the goods in respect of which the infringement was committed, which therefore provides an indication of the scale of the infringement. Thus, the proportion of the overall turnover deriving from the sale of the products in respect of which the infringement was committed is best able to reflect the economic significance of that infringement (see, to that effect, judgments of 12 November 2014, *Guardian Industries and Guardian Europe* v *Commission*, C-580/12 P, EU:C:2014:2363, paragraphs 54 and 59; of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraphs 145 and 149; and of 1 February 2018, *Kühne + Nagel International and Others v Commission*, C-261/16 P, not published, EU:C:2018:56, paragraph 81).

94 In accordance with that case-law, paragraph 13 of the Guidelines provides that 'in determining the basic amount of the fine to be imposed, the Commission will take the value of the undertaking's sales of goods or services to which the infringement directly or indirectly … relates in the relevant geographic area within the EEA'. Paragraph 6 of those guidelines states that 'the combination of the value of sales to which the infringement relates and of the duration of the infringement is regarded as providing an appropriate proxy to reflect the economic importance of the infringement as well as the relative weight of each undertaking in the infringement' (see, to that effect, judgments of 12 November 2014, *Guardian Industries and Guardian Europe* v *Commission*, C-580/12 P, EU:C:2014:2363, paragraph 56; of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 147; and of 1 February 2018, *Kühne + Nagel International and Others* v *Commission*, C-261/16 P, not published, EU:C:2018:56, paragraph 65 and the case-law cited).

95 Moreover, it has been held that, although Article 23(2) of Regulation No 1/2003 leaves the Commission a discretion, it nevertheless limits the exercise of that discretion by establishing objective criteria to which the Commission must adhere. Thus, first, the amount of the fine that may be imposed on an undertaking is subject to a quantifiable and absolute ceiling, with the result that the maximum amount of the fine that can be imposed on a given undertaking can be determined in advance. Secondly, the exercise of that discretion is also limited by rules of conduct which the Commission has imposed on itself, in particular in the Guidelines (see, to that effect, judgments of 18 July 2013, *Schindler Holding and Others* v *Commission*, C-501/11 P, EU:C:2013:522, paragraph 58; of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe* v *Commission*, C-286/13 P, EU:C:2015:184, paragraph 146; and of 7 September 2016, *Pilkington Group and Others* v *Commission*, C-101/15 P, EU:C:2016:631, paragraph 37).

96 With regard to the application of the second subparagraph of Article 23(2) of Regulation No 1/2003, it is apparent from settled case-law that it is only the final amount of the fine imposed which must comply with that upper limit of 10% of turnover laid down in that provision, and that that provision does not prohibit the Commission from arriving, during the various stages of calculation of the fine, at an intermediate amount higher than that limit, provided that the final amount of the fine does not exceed that limit. Thus, where it transpires, following the calculation, that the final amount of the fine must be reduced by the amount by which it exceeds that upper limit, the fact that certain factors such as the gravity and duration of the infringement are not effectively reflected in the amount of the fine imposed is merely a consequence of the application of that upper limit to the final amount. That upper limit seeks to prevent the imposition of fines which it is foreseeable that the undertakings, owing to their size, as determined, albeit approximately and imperfectly, by their total turnover, will not be able to pay.

That limit is therefore one which is uniformly applicable to all undertakings and arrived at according to the size of each of them and seeks to ensure that the fines are not excessive or disproportionate. That upper limit thus has an objective which is distinct and autonomous in relation to the criteria of gravity and duration of the infringement. The only possible consequence of the upper limit is that the amount of the fine calculated on the basis of those criteria will be reduced to the maximum permitted level. Its application implies that the undertaking concerned will not pay the fine which in principle would be payable if it were assessed on the basis of those criteria (see, to that effect, judgments of 12 July 2012, *Cetarsa* v *Commission*, C-181/11 P, not published, EU:C:2012:455, paragraphs 80 to 84; of 7 September 2016, *Pilkington Group and Others* v *Commission*, C-101/15 P, EU:C:2016:631, paragraph 36; and of 26 January 2017, *Mamoli Robinetteria* v *Commission*, C-619/13 P, EU:C:2017:50, paragraphs 83 and 84 and the case-law cited).

97 The Court of Justice infers from this that the setting of fines for all penalised undertakings that have participated in the same infringement at 10% of their respective turnovers, cannot, since it is merely the result of applying the ceiling provided for in the second subparagraph of Article 23(2) of Regulation No 1/2003, constitute an infringement of the principles of proportionality and equal treatment. Similarly, in view of the objective of that ceiling, the fact that the application of the Guidelines by the Commission leads frequently or regularly to the amount of the fine imposed being equal to 10% of turnover cannot call into question the legality of the application of that ceiling (see, to that effect, judgment of 26 January 2017, *Mamoli Robinetteria* v *Commission*, C-619/13 P, EU:C:2017:50, paragraphs 85 and 86). To that same effect, the General Court has held, on the one hand, that the ceiling of 10% of the worldwide turnover of an undertaking which infringed the competition rules constituted only a capping ceiling and, on the other hand, that the mere fact that the fine imposed on such an undertaking was very close to that ceiling, whereas that percentage was lower for other participants in the cartel, could not constitute a breach of the principles of equal treatment or proportionality, since that consequence is inherent in the interpretation of the 10% ceiling as a capping ceiling applicable after any reduction of the fine on account of mitigating circumstances or the principle of proportionality (see, to that effect, judgment of 12 December 2012, *Novácke chemické závody* v *Commission*, T-352/09, EU:T:2012:673, paragraphs 161 to 163 and the case-law cited).

98 It has also been held that, when the amount of the fine is determined, there cannot, by the application of different methods of calculation, be any discrimination between the undertakings which have participated in an agreement or a concerted practice contrary to Article 101(1) TFEU (see, to that effect, judgments of 19 July 2012, *Alliance One International and Standard Commercial Tobacco* v *Commission*, C-628/10 P and C-14/11 P, EU:C:2012:479, paragraph 58, and of 11 July 2013, *Ziegler* v *Commission*, C-439/11 P, EU:C:2013:513, paragraph 133 and the case-law cited).

99 Finally, as the Court acknowledged in its judgment of 20 May 2015, *Timab Industries and CFPR* v *Commission* (T-456/10, EU:T:2015:296, paragraph 74), upheld by the judgment of 12 January 2017, *Timab Industries and CFPR* v *Commission* (C-411/15 P, EU:C:2017:11), those principles derived from the case-law apply *mutatis mutandis* to the calculation of fines imposed under a settlement procedure.

4. The validity of the legal premises of the complaints relied on

100 It follows from the case-law principles referred to in paragraphs 91 to 99 above that, for the purposes of reviewing compliance with the principle of equal treatment in the present case, it is necessary to draw a distinction between, first, the requirement to determine in a fair way the basic amount of the fines to be imposed on the undertakings concerned and, secondly, the application with respect to those undertakings of the 10% ceiling pursuant to the second subparagraph of Article 23(2) of Regulation No 1/2003, a ceiling which is likely to vary according to their respective total turnovers.

101 Indeed, although it is true that the Commission may reasonably choose, as it did in the present case, a method of calculating the basic amount that is based on the value of the sales made over the course of a full year covered by the infringement, that is to say, 2007 in the original decision, for the purpose of determining the economic significance of the infringement and the relative weight of each undertaking participating in it (see the case-law cited in paragraphs 93 and 94 above), the Commission must, in that context, observe the principle of equal treatment. By contrast, application of the 10% ceiling for the purpose of determining the final amount of the fines is, in principle, not dependent on the economic importance of the infringement, the relative weight of each participating undertaking or the gravity or duration of the infringement committed by that undertaking, but is purely automatic in nature, being linked exclusively to its total turnover, which is why, according to the case-law, the application of that ceiling cannot lead, in particular, to an infringement of the principle of equal treatment. On the contrary, in the light of its objective – distinct and autonomous by comparison with the criteria of gravity and duration of the infringement – as the foreseeable and uniformly applicable maximum ceiling aimed at ensuring that undertakings are not subject to fines of an excessive and disproportionate level in relation to their size and ability to pay, automatic application of that ceiling is *ipso facto* consistent with the principle of equal treatment (see the case-law cited in paragraphs 96 and 97 above).

102 It must be recalled that, in the present case, the applicants do not dispute the application per se of the 10% ceiling, either as a capping ceiling for the fines ultimately imposed on the undertakings concerned or as an exceptional corrective criterion at an intermediate stage in their calculation, that is to say; in the context of determining the basic amounts in order to bring them below that ceiling. As the Commission rightly points out, the applicants had, in the course of the administrative procedure, even expressly requested an exceptional adjustment of their basic amount, under paragraph 37 of the Guidelines, in order to take account of their 'mono-product' nature (see paragraph 9 above). In that regard, the applicants also do not call into question the fact that the Commission drew inspiration from the methodology envisaged in the judgment of 16 June 2011, *Putters International* v *Commission* (T-211/08, EU:T:2011:289, paragraph 80), in order to take into account, in particular, the 'mono-product' nature of the undertakings concerned – admittedly with the exception of Hamelin – and the lesser involvement of Mayer-Kuvert in the infringement for the purpose of ensuring that the resulting mitigating circumstances would be reflected in the final amount of the fine to be imposed on it (recitals 11 to 13 of the contested decision).

103 By contrast, what the applicants dispute, in particular, in the context of the first part of the present plea, is both the way in which the Commission made that adjustment to the basic amounts and its results – with respect to discrepancies as regards the ceiling of 10% – which, they argue, discriminate against them.

104 In that regard, it must be stated from the outset that the Commission is not justified in maintaining that the application of the 10% ceiling at that intermediate stage of the calculation of the fines to be imposed *ipso facto* produces results which are consistent with the principle of equal treatment, since it takes into account differences between the total turnovers of all the undertakings concerned. Indeed, where, as in the present case, the Commission chooses, in accordance with its discretion under paragraph 37 of the Guidelines, to take account of the ceiling of 10%, on an exceptional basis, at an intermediate stage of the calculation of the fines in order to adjust their basic amounts, it does so outwith the strict scope of the second subparagraph of Article 23(2) of Regulation No 1/2003, with the result that the case-law principles referred to in paragraphs 96 and 97 above cannot be applied unchanged. Thus, contrary to the Commission's claims, by drawing inspiration from the 10% ceiling outwith its formal legal framework, for the purpose of using it as a criterion for the differentiation or even gradation of fines at an intermediate stage, the Commission's approach is liable to produce results that are contrary to the principle of equal treatment, having regard, in particular, to the objectives of punishment and deterrence connected with the criteria of gravity and duration of the infringement.

105 It is thus necessary to determine whether the Commission complied with the principle of equal treatment in the context of the adjustment of the basic amounts of the fines when it drew inspiration from the methodology envisaged in the judgment of 16 June 2011, *Putters International* v *Commission* (T-211/08, EU:T:2011:289, paragraph 80). To that end, regard being had to the case-law cited in paragraph 92 above, it is necessary to ascertain whether the undertakings concerned, in particular the applicants, on the one hand, and Bong, Hamelin (first part) and GPV (second part), on the other hand, were in identical or comparable situations, whether those situations were treated in the same way or differently, and whether, if there was unequal treatment, such treatment was objectively justified.

5. Whether the situations in question were comparable, whether they were treated in the same way or differently and whether that treatment was objectively justified

(a) Preliminary observations

106 In order to assess whether or not the individual situations of the undertakings concerned were comparable, account must be taken of the relevant data and of the calculations made by the Commission in the original and contested decisions for the purposes of determining and adjusting the basic amounts of the fines, as reproduced in the following table:

Undertaking	Value of sales (EUR) in 2007	Coefficient for seriousness	Duration (years)	Additional amount	Basic amount (EUR)	Product/ turnover ratio	Adjustment / Reduction	Adjusted basic amount
Bong	140 000 000	15%	4.5	15%	115 500 000	80%	88%	13 860 000
GPV …	125 086 629	15%	4.5	15%	103 196 000	93%	98%	2 063 920
Hamelin	185 521 000	15%	4.416	15%	150 717 000	17%	85%	22 607 550
Mayer-Kuvert	70 023 181	15%	4.5	15%	57 769 000	76%	88%	6 932 280
Printeos …	143 316 000	15%	4.5	15%	118 235 000	90%	90%	11 823 500

107 It is clear from that table that, for the purposes of determining the basic amounts of the fines before their adjustment ('the non-adjusted basic amounts'), the Commission took due account of the differences between the values of the sales made by the undertakings concerned, as well as of the differences relating to the duration of their participation in the infringement (4.5 years, except for Hamelin with 4.416 years) in order to apply the same method of calculation to them, by multiplying those elements by the same coefficient for seriousness (15%) and by adding an additional amount determined using the same percentage (15%), in accordance with paragraphs 13, 21 and 25 of the Guidelines.

108 Accordingly, having regard to the punitive objective of Article 23(3) of Regulation No 1/2003 and of the Guidelines, and given the application of the same method of calculation to them, at that stage, the applicants and the other undertakings were in comparable situations for the purposes of the calculation of the fines relating to them. In fact, in the light of that punitive and in particular deterrent objective, which depends on the size and economic power of the undertakings concerned, the variation between the values of sales is, in principle, an appropriate criterion of differentiation, in that it reflects the economic importance of the infringement in question as well as the relative weight of each undertaking participating in that infringement and is, therefore, an important precondition for the correct application of the principle of equal treatment in the calculation of the basic amounts (see the case-law cited in paragraphs 93 and 94 above).

109 It must therefore be concluded that, in the present case, the non-adjusted basic amounts were determined in accordance with the principle of equal treatment.

110 However, it is necessary to ascertain whether the Commission treated non-comparable situations in the same way or treated identical or comparable situations differently by the manner in which, on an exceptional basis, it adjusted the basic amounts under paragraph 37 of the Guidelines.

(b) Equal adjustment of the basic amounts of the fines

(1) The method of adjustment set out in the contested decision

111 It should be recalled that the Commission granted distinct rates of reduction to the applicants (90%), Bong (88%), Hamelin (85%) and GPV (98%), which, except in the applicants' case, did not match the product/turnover ratios of those undertakings, which were 90% for the applicants, 80 % for Bong, 17% for Hamelin and 93% for GPV (see recitals 15 to 17 of the contested decision).

112 The objectives, reasons and method of calculation underlying the adjustment of the basic amounts by the Commission are set out in recitals 10 to 22 and 57 to 62 of the contested decision (see paragraph 31 et seq. above), which constitutes an amended and supplemented, or even new, statement of reasons in relation to the statement of reasons which was set out in the original decision and gave rise to its annulment in the judgment of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722).

113 Thus, it is clear from recital 15 of the contested decision that the Commission first of all adjusted the basic amounts by taking into account the proportion of the total turnover of each of the undertakings concerned represented by the value of sales of the cartelised product, which the Commission calls the product/turnover ratio. According to the Commission, those adjustments are also intended to ensure that the adjusted fines always reflect the gravity of the infringement as a whole, without, however, distorting the relative weight of those undertakings' respective basic amounts which reflect their comparable involvement in the cartel. That product/turnover ratio was calculated on the basis of the total turnover of sales of the cartelised product (envelopes) as compared with the total worldwide turnover of each of those undertakings in 2012. As is evident from Table A in recital 22 of the contested decision, an undertaking with a higher product/turnover ratio was granted a rate of reduction which was higher than or equal to that enjoyed by an undertaking with a lower product/turnover ratio (recital 16 of the contested decision).

114 It is pointed out that only Hamelin, following the disposal of its envelope production assets, no longer recorded sales of the cartelised product in 2012, which is the reason why its product/turnover ratio was estimated by comparing its 2012 turnover with sales of the cartelised product in that year by its former subsidiary. Moreover, it is stated that GPV, the undertaking with the highest product/turnover ratio, benefited from a 98% reduction, necessary to bring its turnover below the ceiling of 10%. Consequently, the other undertakings benefited from smaller reductions, determined on an individual basis and reflecting their respective product/turnover ratios, as well as the relative weight of the basic amounts imposed on them (recital 17 of the contested decision).

115 According to the Commission, a linear reduction based on individual product/turnover ratios would have led to unjustified results and would have distorted the relative weight of the basic amounts. Under such an approach, for example, the adjusted basic amount of Mayer-Kuvert, with a product/turnover ratio of 76%, would have been higher than the adjusted basic amount of the applicants, with a product/turnover ratio of 90%, whereas, before adjustment, the applicants' basic amount was more than double that of Mayer-Kuvert. The methodology used therefore sought, on equitable grounds, to restore the balance between the adjusted basic amounts by granting individual reductions that reflected not only the product/turnover ratios, but also the comparable nature of the involvement of the undertakings concerned in the cartel, as shown by the non-adjusted basic amounts (recital 18 of the contested decision).

116 Finally, the Commission states that, even though Hamelin had a significantly lower product/turnover ratio than the other undertakings, it was also necessary to reduce its fine in order to take into account the fact that its role in the cartel was similar to that of those undertakings. Given Hamelin's product/turnover ratio, the reduction of its basic amount was the smallest in comparison with those granted to all the other undertakings (recital 19 of the contested decision). Had the Commission based the reductions solely on the product/turnover ratio of the undertakings concerned, Hamelin would not have benefited from a reduction and its basic amount would have been approximately 1 275% higher than the applicants' adjusted basic amount, whereas the value of Hamelin's sales was only 30% higher than that of the applicants' sales (recital 20 of the contested decision). It follows that the setting of the basic amount of the fine imposed on Hamelin reflects its comparable involvement in the cartel, as well as the gravity and duration of the infringement, and has a sufficiently deterrent effect (recital 21 of the contested decision).

117 In the light of the foregoing, it must be found that the following elements led the Commission, in the original and contested decisions, to make an exceptional adjustment to the basic amounts of the fines to be imposed on the undertakings concerned:

– the need to establish a rate of reduction to bring the basic amount below the ceiling of 10% of total turnover;

– the determination of a rate of reduction, in particular, on the basis of the product/turnover ratio of the undertakings concerned in 2012, but in a non-linear way (a higher product/turnover ratio giving rise to a higher rate of reduction, the reference point being GPV with a product/turnover ratio of 93%, benefiting from a 98% reduction);

– the restoration of a balance between the adjusted basic amounts by granting individual rates of reduction reflecting not only the product/turnover ratios but also the comparability of the involvement of the undertakings concerned in the cartel, as shown by the non-adjusted basic amounts;

– in the case of Hamelin, the determination of the lowest rate of reduction of 85% based on a product/turnover ratio of only 17%, estimated by taking into account the sales of its former subsidiary in 2012, and because of the need to restore, on equitable grounds, the balance between its adjusted basic amount and those of the other undertakings (since a reduction based solely on the product/turnover ratio results in a basic amount approximately 1 275% higher than the applicants' basic amount, whereas the value of Hamelin's sales was only 30% higher than the value of the applicants' sales).

(2) The legality of the principles and objectives which guided the adjustment of the basic amounts

118 As regards the non-linear reduction of the basic amounts of the fines to be imposed on the undertakings concerned, based on the various product/turnover ratios, the applicants essentially complain that the Commission granted notably to Bong a rate of reduction of 88%, which was almost as high as that granted to them (90%), even though Bong's product/turnover of 80% was 10% lower than theirs (90%). They infer from this that the rate of reduction to be granted to them should have been higher in order to satisfy the principle of equal treatment. Likewise, they argue that it is also contrary to that principle for the basic amount thus adjusted, in particular in the case of Bong, to represent only 4.7% of its total turnover, even though the applicants' adjusted basic amount is equivalent to 9.7% of their total turnover.

119 However, since the Commission did not determine the rates of reduction exclusively or schematically on the basis of those various product/turnover ratios, the applicants are not justified in arguing that this necessarily results in an erroneous comparative assessment or unequal treatment to their detriment. Nevertheless, the fact remains that, for the purpose of comparing the situations in question, it is necessary to start with the various non-adjusted basic amounts, which were determined in accordance with the principle of equal treatment, while duly taking into account the gravity of the infringement and the objective of punishment and deterrence (see paragraphs 107 and 108 above). To that end, it is necessary to ascertain whether the results of the respective adjustment of those basic amounts, using the product/turnover ratios, retain a sufficient link with the relevant criteria of Article 23(3) of Regulation No 1/2003 and the Guidelines, in particular with the gravity of the infringement and the objective of punishment and deterrence, the assessment of which depends in particular on the size and economic power of the undertakings concerned.

120 In that regard, it must be borne in mind that the applicants challenge not the fact that the product/turnover ratio of all the undertakings concerned was taken into account for the purposes of adjusting their basic amounts below the ceiling of 10% of their total turnover, but only the non-linear determination of the rates of reduction, allegedly to the detriment of the applicants, on the basis of those ratios and with the aim of maintaining the balance between the various fines according to the seriousness of the participation of each of the undertakings concerned while ensuring that the adjusted basic amounts would be below the threshold of 10% of total turnover (see paragraph 117, second and third indents, above). However, it must be noted that application of that method resulted, first, in the applicants being granted a greater reduction, in terms of the percentage of the basic amount (90%), than that enjoyed respectively by Bong (88%) and Hamelin (85%), with which they compare themselves, and, secondly, in the relative weight of the fine ultimately imposed on the applicants being slightly decreased and their relative position being improved in the classification of the undertakings concerned in descending order of the amounts of fines imposed, since they fell from second to third place following the adjustment of the basic amounts. Moreover, as the Commission rightly points out, if it had merely applied that ceiling of 10%, as provided for in the second subparagraph of Article 23(2) of Regulation No 1/2003, as a capping ceiling at the end of the process of calculating the fines, that is to say, without intermediate adjustment of the basic amounts based, in particular, on the product/turnover ratios, the fine to be imposed on the applicants would have been higher and, more specifically, the second highest, instead of the third highest, of those imposed on all the undertakings concerned.

121 Similarly, in the exercise of its discretion under paragraph 37 of the Guidelines, requested by the applicants themselves, the Commission could, in principle, validly adopt, on that basis, a non-linear method of adjustment of the basic amounts in order to take into account the need for those amounts to continue to reflect the comparable participation of the undertakings concerned in the cartel and the relative weight of the non-adjusted basic amounts imposed on them. As stated, in essence, in recitals 17 to 19 of the contested decision, in the light of the essential criteria governing the determination of the amounts of the fines, namely the criteria of the gravity and duration of the infringement referred to in Article 23(3) of Regulation No 1/2003, it was necessary to maintain a sufficiently important link between the adjusted basic amounts, on the one hand, and the non-adjusted basic amounts, on the other hand, since the latter were determined by reference to those criteria and, in particular, to the size and economic power of the undertakings concerned, in order to ensure that the penalties would have a sufficiently deterrent effect (see paragraph 119 above). By contrast, a linear and schematic reduction of the basic amounts, based solely on product/turnover ratios, would not have ensured such a result but

would, inter alia, have led, especially in the case of Bong and Mayer-Kuvert, to the setting of adjusted basic amounts that were much higher than that of the applicants, even though the non-adjusted basic amounts of those undertakings were lower than that of the applicants.

122 In that regard, it should be stated that, contrary to what the applicants claim, the product/turnover ratio, as a rather unusual calculation coefficient which combines the value of sales and total turnover, does not in itself constitute, unlike the criterion of the value of sales as such, either an appropriate criterion to reflect the size and economic power of an undertaking and, therefore, the economic importance of its participation in the infringement (see, by analogy, the case-law cited in paragraph 93 above), or a decisive criterion for the setting of a fine. If that were the case, a higher product/turnover ratio would even be such as to justify a corresponding increase in the basic amount of a fine to reflect better the size and economic power of an undertaking and fulfil the objective of punishment and deterrence. In the present case, however, the Commission merely used that ratio as a downward correction aid, or even adopted the opposite approach by granting to undertakings with a higher product/turnover ratio, albeit in a non-linear way, a higher rate of reduction, while taking into account the need to ensure a balance between the basic amounts adjusted on the basis of the relative weight of the undertakings concerned in the commission of the infringement. In that context, the applicants also disregard the relevance of total turnover as a criterion representing the size and economic power of an undertaking (see paragraph 88 above), the case-law referred to in paragraph 93 above having stated clearly that the value of sales of the cartelised product was a more appropriate criterion for that purpose, which must, moreover, for the reasons set out in paragraphs 119 and 121 above, be reflected in the basic amounts of the fines to be imposed. Therefore, if only for those reasons, it is not possible to accept the applicants' argument that the adjustment methodology chosen by the Commission produced results which bore no relation to size and economic power (see paragraph 72 above) and which were discriminatory in so far as those results led to differing discrepancies as regards the ceiling of 10% of total turnover.

123 On the contrary, in the present case, the Commission sought to maintain the balance between the adjusted basic amounts, on the one hand, and the relative weight of the participation of the undertakings concerned in the infringement and the need to ensure a sufficiently deterrent effect of the fines, on the other, by determining, in a non-linear way, individual rates of reduction in order to ensure that those amounts did not exceed the 10% ceiling but still reflected the comparable nature of the involvement of those undertakings in that infringement, as measured by their size and economic power.

124 It follows that the taking into account of individual rates of reduction by the Commission, based not only on the respective product/turnover ratios of the undertakings concerned but also on the need to maintain a sufficient link between the adjusted basic amounts, on the one hand, and the relative weight of their participation in the cartel and the need to ensure a sufficiently deterrent effect of the fines, as expressed in the non-adjusted basic amounts, on the other hand, constitutes, in the light of the criteria and objectives of Article 23(3) of Regulation No 1/2003, equal treatment of comparable situations for the purposes of the principle of equal treatment. Indeed, in addition to the objective of reducing the basic amounts below the 10% ceiling, that approach sought to incorporate into the adjusted basic amounts both the gravity of the infringement, measured according to the size and economic power of the undertakings concerned, and the deterrent nature of the penalty, as reflected in the non-adjusted basic amounts which were based on the values of the sales of the cartelised product. By contrast, a linear and schematic reduction of the basic amounts on the basis solely of the product/turnover ratio, which is, as a matter of fact, not an appropriate criterion to represent the size and

economic power of the undertakings concerned, would not have ensured that such a link was maintained but, on the contrary, would have been likely to distort or even completely break it (see paragraph 122 above).

125 In the light of those principles and objectives which guided the adjustment of the basic amounts of the fines to be imposed on the undertakings concerned, it is necessary to assess, more specifically, whether or not the applicants were in situations comparable to those of Bong and Hamelin (principal first part of the plea) and of GPV (second, alternative, part of the plea), as well as whether those situations were treated in the same way or differently and, if so, whether or not such treatment was objectively justified.

(c) Comparison with Bong's situation

126 In the light of the foregoing considerations, it must be held that the Commission rightly argues (see paragraph 84 above), in essence, that, even though Bong's product/turnover ratio was 10% lower than that of the applicants, it had to be taken into account that Bong's non-adjusted basic amount was slightly lower than that of the applicants. Therefore, regardless of that difference in the respective product/turnover ratios, the Commission could legitimately take the view that it was not reasonable to establish adjusted basic amounts with substantially differing discrepancies. However, following its adjustment, Bong's adjusted basic amount (EUR 13 860 000) was even higher than that of the applicants (EUR 11 823 500), which shows that the 90% rate of reduction applied to the applicants – larger than that of 88% applied to Bong – even afforded them a comparative advantage. The Commission therefore committed no error of assessment in taking the view that a further reduction of the applicants' adjusted basic amount, as requested by them, would have had the effect of giving them a disproportionate advantage and of imposing on them a fine lacking a sufficiently deterrent effect with respect to the comparative starting point in the light of the non-adjusted basic amounts determined according to the value of sales of the cartelised product.

127 It also follows that the alleged existence of a significant discrepancy between the adjusted basic amounts as regards the ceiling of 10% of total turnover, that is to say, 4.7% for Bong and 9.7% for the applicants, is solely the result of the equal adjustment assessed and validated in paragraphs 120 to 125 above, with the result that the complaint raised in this respect must be rejected as unfounded.

128 Moreover, even assuming that the non-linear adjustment of Bong's basic amount must be regarded as unequal treatment of comparable situations, determined solely by the product/turnover ratios, which is not the case, such unequal treatment would, in any event, for the reasons set out in paragraphs 121 to 124 above, be objectively justified by the aim of restoring the balance of the fines in accordance with the objective of punishment and deterrence, and therefore cannot constitute an infringement of the principle of equal treatment in relation to the applicants.

129 Accordingly, the complaint alleging unequal treatment of the applicants by comparison with Bong must be rejected as unfounded.

(d) Comparison with Hamelin's situation

130 As regards the comparison with Hamelin's situation, it follows from recitals 16, 17, 19 and 20 of the contested decision that, in the light of the data for the reference year 2012 used to determine and adjust the basic amounts, Hamelin was in a unique situation which was therefore distinct from those of the other undertakings concerned, including the applicants. This was so, on the one hand, because its economic activity was not of a 'mono-product' nature and, on the other hand, because its product/turnover ratio was only 17%, which, moreover, was estimated by taking into account the 2012 sales of its former subsidiary sold to Bong in 2010.

131 As is apparent, essentially, from recital 19 of the contested decision, by contrast with the situation of the other undertakings concerned, the adjustment of Hamelin's basic amount, pursuant to paragraph 37 of the Guidelines, by applying to it a rate of reduction of 85%, which is the lowest in comparison with those granted to the other undertakings, could not be justified either by its 'mono-product' nature or by its product/turnover ratio of 17%, but was essentially based on equitable grounds relating to its comparable participation in the cartel and the need to restore the balance between the fines imposed. To that same effect, recital 20 of the contested decision states that, if a rate of reduction of 85% of the basic amount had not been applied to Hamelin, its basic amount would have been approximately 1 275% higher than that of the applicants, even though the value of its sales of the cartelised product in 2007 was only 30% higher than the value of the applicants' sales. However, as the Commission pointed out, such a result would have been disproportionate and incompatible with the need to restore the balance between the fines, which are meant to reflect the comparable importance of the participation in the infringement of the undertakings concerned and to ensure a sufficient comparative deterrent effect, in the same way as the non-adjusted basic amounts, which had been determined on the basis of the value of sales of the cartelised product in 2007 in order to take into account the respective size and economic power of those undertakings.

132 Therefore, even if the Commission's approach to Hamelin may be regarded as equal treatment of different situations – in that the approach consisted in granting Hamelin a rate of reduction of 85%, based primarily on a product/turnover ratio intended to take into account the 'mono-product' nature of the other undertakings, even though Hamelin was not such an undertaking and had only a very low product/turnover ratio – the adjustment of its basic amount was objectively justified, given the criteria set out in paragraphs 120 to 124 above and the fact that Hamelin's participation in the infringement giving rise to the determination of its non-adjusted basic amount was broadly comparable to that of the other undertakings (see paragraphs 107 and 108 above). In that regard, it is important to recall that the adjusted basic amount of Hamelin's fine remains the highest as compared with those of the other undertakings, which takes into account the fact that it had the highest value of sales in 2007, that its non-adjusted basic amount was the highest and that its product/turnover ratio was the lowest. Those elements, taken as a whole, led to the granting of a rate of reduction of 85%, which is lower than that of all the other undertakings, and resulted in the setting of an adjusted basic amount almost twice as high as that of the applicants (EUR 22 607 550 as against EUR 11 823 500), which the Commission could reasonably describe as being proportionate and as having a sufficiently deterrent effect. In that context, it is also necessary to take account of the fact that, although Hamelin's non-adjusted basic amount was already the highest (EUR 150 717 000), it exceeded the applicants' non-adjusted basic amount (EUR 118 235 000) only by approximately one quarter. In those circumstances, the Commission could reasonably consider the potentially excessive nature of Hamelin's basic

amount to be a further particularity, for the purposes of paragraph 37 of the Guidelines, to justify making a significant adjustment to that amount and ensuring that it was, like the other basic amounts, not only below the 10% ceiling, but also in balance with them.

133 It follows that the existence of a significant discrepancy between the adjusted basic amounts as regards the ceiling of 10% of total turnover, that is to say, 4.5% for Hamelin and 9.7% for the applicants, is merely the outcome of the objectively justified adjustment assessed and validated in paragraphs 130 to 132 above, with the result that the complaint raised in that regard must be rejected as unfounded.

134 Similarly, the complaint that the Commission was not entitled to attribute to Hamelin a product/turnover ratio of 17% cannot be upheld. On the contrary, since the Commission had determined the non-adjusted basic amounts of all the undertakings concerned, including Hamelin, on the basis of the value of sales of the cartelised product in 2007, that is to say, at a time when Hamelin was still active in the production and marketing of the cartelised product, it was even essential for the Commission to estimate a notional, but nonetheless sufficiently reliable, product/turnover ratio for Hamelin in 2012 in order to be able to adjust those basic amounts in a fair manner.

135 Consequently, the complaint alleging unequal treatment of the applicants by comparison with Hamelin and, consequently, the first part of the present plea, must be rejected as unfounded.

(e) Comparison with GPV's situation

136 In the context of the second part of the present plea, raised in the alternative, the applicants criticise the Commission, in essence, for discriminating against them as compared with GPV by setting GPV's adjusted basic amount at a significantly lower level than theirs.

137 As regards the comparison with GPV's situation, it should be recalled that, unlike the applicants, which, for the purposes of the adjustment of their basic amount, were granted a 90% rate of reduction precisely matching their product/turnover ratio, GPV benefited from a 98% rate of reduction, which is five percentage points higher than its product/turnover ratio of 93%. The result was a significantly lower adjusted basic amount than that of the other undertakings concerned, in particular of Bong and the applicants (EUR 2 063 920 as against EUR 13 860 000 and EUR 11 823 500), even though the non-adjusted amounts of GPV, Bong and the applicants were quite close to one other (EUR 103 196 000, EUR 115 500 000 and EUR 118 235 000).

138 As is apparent from recital 17 of the contested decision, according to the Commission that approach was necessary in particular to reduce the non-adjusted basic amount to just below the ceiling of 10% of GPV's total turnover in 2013, and the 98% rate of reduction was the maximum reference against which the other rates of reduction were determined. In reply to the written question from the Court, the Commission confirmed that GPV's total turnover in 2012 was EUR 23 460 596 (used to determine its product/turnover ratio) and in 2013 was EUR 23 356 449 (used in the intermediate application of the 10% ceiling). In the course of the proceedings, the Commission likewise explained that the 98% rate of reduction granted to GPV was primarily the result of the need to bring GPV's basic amount below the 10% ceiling and due to the fact that it had the highest comparative product/turnover ratio and its total turnover had fallen substantially in 2012 and 2013 (see paragraph 86 above).

139 Having regard, first, to the relatively high value of GPV's sales of the cartelised product in 2007, which led to the determination of its non-adjusted basic amount; secondly, to its particularly low total turnover in 2012 and 2013 by comparison with the total turnovers of the other undertakings concerned, and, thirdly, to the fact that, in the case of GPV, taking into account the product/turnover ratio and the 10% ceiling in order to adjust its basic amount necessarily entailed a substantial or even disproportionate reduction of that amount, it must be held that GPV was in a situation different from those of the other undertakings concerned, including the applicants. Consequently, the application of the same methodology for adjusting the basic amount to GPV by, inter alia, applying the product/turnover ratio in order to bring that amount below the 10% ceiling, constituted unequal treatment in favour of GPV.

140 Moreover, even if, in so doing, the Commission intended to implement the spirit of the judgment of 16 June 2011, *Putters International* v *Commission* (T-211/08, EU:T:2011:289, paragraph 80), the fact remains that the result of that calculation led to the setting of an adjusted basic amount for GPV which was significantly lower than that for all the other undertakings. Above all, unlike in the situations of Bong, Hamelin and the applicants, and contrary to the requirements set out in paragraph 123 above, the level of that adjusted basic amount no longer had a sufficiently important link with GPV's non-adjusted basic amount, even though its non-adjusted basic amount was meant to reflect, in particular, that undertaking's actual size and economic power, which had determined the relative importance of its participation in the infringement. It follows that, in the case of GPV, the Commission adjusted the basic amount with respect to the 10% ceiling in an overly schematic and rigid manner, disregarding the unique position of GPV resulting from a substantial difference between the value of its sales in 2007 – serving as an essential criterion to represent its size and economic power – and its total turnover in 2012 and 2013. That approach therefore had the effect of decoupling GPV's adjusted basic amount from the criteria and objectives of punishment and deterrence, for the purposes of Article 23(3) of Regulation No 1/2003, by bringing about, at that intermediate stage of the process of calculating the fines, an outcome normally arising only at the end of that process, that is to say, when applying the 10% capping ceiling under the second subparagraph of Article 23(2) of that regulation.

141 Thus, on the basis of that methodology, the necessary link between the non-adjusted and adjusted basic amounts was broken as a consequence of GPV's product/turnover ratio and the 10% ceiling being taken into account for GPV's benefit, notwithstanding the significant difference between the value of its sales and its total turnover. As a result, contrary to the objective emphasised by the Commission itself in the comparison of the situations of Bong, Hamelin and the applicants, the adjusted basic amount was no longer able to reflect the size and the economic power of GPV and to ensure a sufficiently deterrent effect with respect to GPV, or to maintain a balance between that amount and the amount of the other undertakings' fines, with the result that that unequal treatment could not be objectively justified. In that regard, the Commission cannot rely on the case-law cited in paragraphs 96 and 97 above, the application of which is in fact dependent on compliance with the 10% ceiling as a capping ceiling at the end of the process of calculating the fine and not at the intermediate stage of adjustment of the basic amounts of the fines (see paragraph 104 above). In the absence of any adjustment of GPV's basic amount, the fine ultimately imposed on it after application of that ceiling would have been significantly higher, that is to say, in the region of EUR 2.34 million instead of EUR 1.651 million, as imposed on it in the original decision.

142 Consequently, the application in relation to GPV of the method of adjusting the basic amounts constitutes unequal treatment without objective justification by comparison with the other undertakings concerned, in particular by comparison with Bong and the applicants.

143 However, it does not follow from this that the second part of the present plea, relied on in the alternative, should be upheld.

144 In that regard, it must be noted first that, at the hearing, the applicants repeatedly confirmed that they were not challenging the legality of the fines imposed on the other undertakings concerned which had become final, including the legality of the fine imposed on GPV. Secondly, even if the more favourable and objectively unjustified treatment of GPV is unlawful, it should be recalled that respect for the principle of equal treatment must be reconciled with respect for the principle of legality, according to which a person may not rely, in support of his claim, on an unlawful act committed in favour of a third party (judgments of 5 December 2013, *Solvay* v *Commission*, C-455/11 P, not published, EU:C:2013:796, paragraph 109; of 16 June 2016, *Evonik Degussa and AlzChem* v *Commission*, C-155/14 P, EU:C:2016:446, paragraph 58; and of 14 September 2017, *LG Electronics and Koninklijke Philips Electronics* v *Commission*, C-588/15 P and C-622/15 P, EU:C:2017:679, paragraph 91).

145 It follows that the applicants may not rely, to their own advantage, on the unlawful act committed in favour of the undertaking GPV alone. In the present case, this is even less possible since, first, the original decision has become final with respect to GPV and the amount of the fine imposed on it is not the subject matter of the present dispute and, secondly, all the other undertakings concerned, except GPV, were treated equally, on the basis of the same methodology for adjusting the basic amounts of the fines. If the applicants' claim that they should be granted a higher rate of reduction were to be upheld, this would be liable to call into question the determination of whether the principle of equal treatment was complied with as regards the applicants in the context of adjustment of the basic amounts as compared with Bong, Mayer-Kuvert and Hamelin, whose fines have also become final and by comparison with which the applicants have already been treated more favourably (see paragraphs 118 to 135 above). In any event, the applicants have not shown that the unlawful act committed as regards GPV concerned the application of a different legal criterion for determining the amount of the fine or had the effect of reducing the relative weight of GPV in the infringement to their detriment (see, to that effect, judgment of 14 September 2017, *LG Electronics and Koninklijke Philips Electronics* v *Commission*, C-588/15 P and C-622/15 P, EU:C:2017:679, paragraphs 95 and 96).

146 Consequently, the second part of the present plea and, therefore, this plea in its entirety must be rejected as unfounded.

C. The third plea in law, alleging infringement of the principles of proportionality and of non-discrimination or fairness

147 The applicants dispute the lawfulness of the Commission's failure to take into account the fine already imposed by the CNC in the decision of 25 March 2013 (recitals 46 and 56 of the contested decision). They rely not on infringement of the *ne bis in idem* principle, but on infringement of the principle of proportionality, as interpreted in the judgment of 13 February 1969, *Wilhelm and Others* (14/68, EU:C:1969:4, paragraph 11), which is relevant even where the *ne bis in idem* principle is not applicable and is known in the German legal literature as the set-off principle (Anrechnungsprinzip) or as the general requirement of natural justice, which the Commission itself has in the past already complied with in its previous decision-making practice.

148 In recital 50 of the contested decision, they submit, the Commission wrongly rejected the comparability between its previous decision-making practice and the present case, in asserting that it had not been shown that the applicants were in a difficult economic situation or that the combined effect of the two penalties was so significant that it had to be regarded as having an excessively deterrent effect. As the Commission had already been informed in the course of the administrative procedure, the applicants' economic situation deteriorated significantly as a result of the economic and financial crisis, as well as of the widespread reduction in the demand for paper envelopes in an increasingly digital environment, as a consequence of which they suffered losses of EUR 2 900 000 in 2013, adding to the pre-tax losses of EUR 18 855 000 incurred in 2012, including EUR 12 002 000 resulting from the fines imposed by the CNC. Thus, in February 2014, they were compelled to lay off 132 employees in the main production centre in Alcalá de Henares (Spain), corresponding to 28% of the employees, and net revenue in 2013 was 8.5% lower than in 2012. As regards the excessively deterrent effect, the applicants point out that the fine imposed by the CNC amounted to 10% of their total turnover, whereas that imposed in the contested decision amounted to 9.7% of the same total turnover. As a result, the combined impact of the fines was almost twice as high as the 10% ceiling.

149 The applicants state that they have submitted detailed information demonstrating the connection, 'partial overlap' or obvious complementarity and interaction between the acts ultimately penalised by the CNC and those penalised in the contested decision. The cartel penalised by the contested decision can, they argue, be explained only on the basis and within the general or organisational context of the agreements concluded between the undertakings under investigation following Spain's accession to the European Communities in 1986. Until that date, the anticompetitive agreements on the Spanish market from 1978 had been concluded at national level, since that market was protected against imports by a customs duty of 36% on envelopes. Following Spain's accession and the dismantling of customs duties, Spanish producers became aware that the continued existence of their agreements depended on protection of the Spanish market against the entry of foreign producers. Accordingly, those agreements were extended to France and Portugal by an agreement concluded in Paris (France) on 16 July 1986 between the main Spanish and French producers and by a similar agreement concluded previously with the main Portuguese producers. Those agreements were communicated to all the Spanish producers in the Asociación Española de Fabricantes de Sobres y Manipulados de Papel y Cartón para la Enseñanza y la Oficina (ASSOMA) at a meeting held on 16 October 1986. Those agreements were subsequently extended in 1995 to Hamelin and in 1999 to the Swedish producer Bong to cover also the Nordic countries, the United Kingdom and France. As a result, the operation of the agreements in Spain depended on the existence of the European agreements protecting the Spanish market against the entry of foreign producers.

150 According to the applicants, the failure to take into account the fine imposed by the CNC also discriminates against them. Among the undertakings held liable for the infringement covered by the original decision, the applicants were the only one which was penalised by a national competition authority for acts related to those which were penalised by the Commission. Contrary to what is stated in recital 55 of the contested decision, the request for a reduction based on the judgment of 13 February 1969, *Wilhelm and Others* (14/68, EU:C:1969:4), does not confer on them a de facto advantage, but seeks to recognise a factual circumstance which is absent in the case of the other undertakings penalised by the original decision. Accordingly, as an alternative to the first plea and in the form of a supplement to the second plea, the applicants request the Court to vary the contested decision and to reduce the fine imposed on them by an additional 33% in order to take account of the fine imposed by the CNC in its decision of 25 March 2013, the substance of which was upheld by the Audiencia Nacional, Sala de lo

Contencioso (National High Court, Contentious Proceedings Division) in its judgment of 29 March 2017. The applicants add, in essence, that that judgment recognises that the 'period [of the acts penalised by the Commission] overlaps' with that penalised by the CNC and that there is an overlap as regards the product (paper envelopes). This, they argue, confirms that the organisational framework relating to the practices penalised by the CNC and the organisational framework relating to the practices penalised by the contested decision partially overlapped or were identical.

151 The Commission contends that the present plea should be rejected.

152 By the present plea, the applicants allege infringement of the principles of proportionality and non-discrimination, more specifically of the principle of fairness, on the ground that, in calculating the fine imposed in the original and contested decisions, the Commission, in essence, contrary to its previous decision-making practice, did not take into account the fine which the CNC, in its decision of 25 March 2013, imposed on the applicants alone among the addressees of the original decision, even though the amount of that fine was already more than 10% of the applicants' total turnover (see recitals 46 to 55 of the contested decision).

153 Against this, the Commission disputes the contention that the principle of fairness, as recognised in the judgment of 13 February 1969, *Wilhelm and Others* (14/68, EU:C:1969:4, paragraph 11), is applicable in the present case.

154 As a preliminary point, it must be borne in mind that, at the time of the judgment of 13 February 1969, *Wilhelm and Others* (14/68, EU:C:1969:4), first, the system of parallel powers of the Commission and of the national competition authorities, based on Regulation No 1/2003, for the purposes of implementation of Articles 101 and 102 TFEU, did not yet exist; secondly, the powers of the national authorities to apply, in particular, Article 101 TFEU – and only paragraph 1 thereof – were more restricted; and, thirdly, the manner in which it was to be applied in parallel with national competition law had not yet been clarified by legislation for the purposes of Article 103 TFEU (see, to that effect, judgments of 13 February 1969, *Wilhelm and Others*, 14/68, EU:C:1969:4, paragraphs 2 to 9, and of 21 March 1974, *BRT and Société belge des auteurs, compositeurs et éditeurs*, 127/73, EU:C:1974:25, paragraph 7 et seq.). Moreover, the judgment of 13 February 1969, *Wilhelm and Others* (14/68, EU:C:1969:4), concerned the application by the Bundeskartellamt (Federal Competition Authority, Germany) of German competition law alone to a cartel in respect of which the Commission had also initiated a procedure for the purposes of the application of Article 85 EEC. The Court of Justice therefore took into account the possibility that the national competition authorities and the Commission might impose, separately and cumulatively, fines intended to penalise, within their respective spheres of competence, a 'single cartel', which, in accordance the general principle of fairness, entailed the need to avoid a 'cumulation of penalties'.

155 In the present case, however, the CNC applied both Article 101 TFEU and Spanish competition law, in accordance with the first sentence of Article 3(1) of Regulation No 1/2003, which, for the purposes of Article 103(1) and (2)(e) TFEU (former Article 87(2)(e) EEC), is indeed a regulation to give effect to the principles set out in Articles 101 and 102 TFEU and to determine the relationship between national laws, on the one hand, and the provisions of EU law, on the other hand, in accordance with the judgment of 13 February 1969, *Wilhelm and Others* (14/68, EU:C:1969:4, paragraph 4). That regulation not only provides that the national competition authorities are to be responsible to a very large extent for the implementation of Articles 101 and 102 TFEU in view of the direct applicability of the provisions of those articles, including Article 101(3) TFEU

(see recital 4 of that regulation referring to the exception system), but, in accordance with the convergence rule provided for in Article 3 thereof and the principle that EU law takes precedence (judgment of 13 February 1969, *Wilhelm and Others*, 14/68, EU:C:1969:4, paragraph 6), is also intended to preserve consistency and even uniformity in the application of EU competition law, in particular of Article 101 TFEU, and corresponding national competition law as regards the result to be achieved, when the criterion of an effect on trade between Member States is fulfilled.

156 It follows that where, as in the present case, Article 101 TFEU is applicable, it is no longer possible to take the view that the procedures initiated by the national authorities and by the Commission pursue 'different ends' within the meaning of the judgment of 13 February 1969, *Wilhelm and Others* (14/68, EU:C:1969:4, paragraph 11). This is because, first, in so far as those procedures seek to implement Article 101 TFEU, irrespective of the competition authority conducting them, they pursue the same objectives, that is to say, the protection of competition on the single market (see, to that effect, Opinion of Advocate General Kokott in *Toshiba Corporation and Others*, C-17/10, EU:C:2011:552, point 81), and, secondly, in so far as national competition law remains applicable, its implementation must, in accordance with the first sentence of Article 3(2) of Regulation No 1/2003, lead to the same result as the application of EU competition law. It follows that, within the system of parallel powers under that regulation, a 'cumulation of penalties' within the meaning of the judgment of 13 February 1969, *Wilhelm and Others* (14/68, EU:C:1969:4), is possible only where Article 102 TFEU is applied at the same time as corresponding but stricter national legislation prohibiting or penalising unilateral conduct by an undertaking, which is not the situation in the present case.

157 Contrary to what the applicants maintain, such a 'cumulation of penalties' also cannot be based on the alleged overlapping of the infringements in question, even less so in the light of their respective territorial effects. In that regard, with respect to a similar situation concerning the parallel implementation of national law and EU competition law, in which the application of national law by the national competition authority concerned only the anticompetitive conduct within national territory, whereas the procedure relating to the application of Article 101 TFEU initiated by the Commission concerned the anticompetitive nature of the same conduct within the single market, excluding the national territory concerned, the Court of Justice has already held that the *ne bis in idem* principle – which the applicants admittedly do not rely on in support of the present plea – was inapplicable on the ground that the criterion of identity of the facts was lacking (see, to that effect, judgment of 14 February 2012, *Toshiba Corporation and Others*, C-17/10, EU:C:2012:72, paragraphs 96 to 103). Moreover, in the case which gave rise to that judgment, the issue of the applicability of the principle of fairness had not been raised and did not arise in a manner similar to that in the case which gave rise to the judgment of 13 February 1969, *Wilhelm and Others* (14/68, EU:C:1969:4, paragraph 11), in which there was a true cumulation of penalties relating to the same cartel in overlapping territories, namely Germany, on the one hand, and the common market, including Germany, on the other. By contrast, in the present case, as in the situation in the case which gave rise to the judgment of 14 February 2012, *Toshiba Corporation and Others* (C-17/10, EU:C:2012:72), such territorial overlap and cumulation of penalties are both excluded from the outset.

158 Without it being necessary to rule definitively on the question whether it is possible to apply the principle of fairness in situations in which Article 101 TFEU and the corresponding national competition law are applied in parallel, it must be observed that, in the present case, the facts giving rise to the original and contested decisions and the facts giving rise to the CNC's decision of 25 March 2013 did not concern the 'same cartel' or a 'cumulation of penalties', within the meaning of the judgment of 13 February 1969, *Wilhelm and Others* (14/68, EU:C:1969:4, paragraphs 3

and 11), let alone identical facts, in view of the different territories covered by the infringements and their different durations. As the Commission has rightly pointed out, the duration of the infringement examined and penalised by it in the initial and contested decisions extended over the period from 8 October 2003 to 22 April 2008, whereas the CNC investigated anticompetitive conduct covering the period from 1977 to 2010 (as regards envelopes for elections), from 1990 to 2010 (as regards pre-printed envelopes) and from 1994 to 2010 (as regards standard envelopes and the restriction of technological progress). Moreover, it follows from the foregoing that the products to which that anticompetitive conduct related were not exactly the same as those which formed the subject matter of the cartel penalised by the Commission. Accordingly, it is to no avail that the applicants rely on the elements common to the anticompetitive conduct penalised by those decisions. Similarly, since, first, the CNC penalised the applicants' conduct in connection with its effects in Spain alone and in relation to a different period and, secondly, the Commission excluded that territory from its procedure and from the scope of the initial and contested decisions, the applicants cannot claim that there was a 'cumulation of penalties' for the purposes of the judgment of 13 February 1969, *Wilhelm and Others* (14/68, EU:C:1969:4, paragraph 11). On the contrary, in those circumstances, a comprehensive and sufficiently deterrent penalty for the applicants' anticompetitive conduct necessarily involves taking into account precisely all the effects of that conduct on those various territories, including over time, and therefore the Commission cannot be criticised for not having reduced, on the same grounds, the fine imposed on the applicants in the initial and contested decisions.

159 That assessment is not called into question by the Commission's previous decision-making practice in relation to other situations, regardless of whether or not they are comparable to the situation in the present case. In that regard, it is sufficient to recall that, according to settled case-law, such practice in previous decisions does not itself serve as a legal framework for the fines imposed in competition matters and that decisions in other cases can provide only an indication for the purposes of determining whether there is, inter alia, discrimination or a disproportionate fine (see, to that effect, judgments of 11 July 2013, *Team Relocations and Others* v *Commission*, C-444/11 P, not published, EU:C:2013:464, paragraph 82 and the case-law cited; of 10 July 2014, *Telefónica and Telefónica de España* v *Commission*, C-295/12 P, EU:C:2014:2062, paragraph 189; and of 7 September 2016, *Pilkington Group and Others* v *Commission*, C-101/15 P, EU:C:2016:631, paragraph 68). However, as has been stated, in particular, in paragraph 158 above, in the present case the complaints put forward by the applicants are not such as to support a claim that the fine imposed on them is disproportionate.

160 Finally, as the Commission points out, the applicants are not justified in claiming that they suffered discrimination on the ground that they were the only undertaking fined by the CNC for participating in the analogous cartel in Spain, since, in the same decision of 25 March 2013, a subsidiary of Hamelin, Envel Europa, was fined EUR 637 464 by the CNC, a fact which is not contested by the applicants. In that context, the applicants also cannot rely on the alleged deterioration in their economic situation, which could have formed the subject matter of a request for a reduction of the fine on the basis of inability to pay, as provided for in paragraph 35 of the Guidelines. First, the applicants do not dispute the fact that, unlike Bong and Hamelin, they failed to submit such a request to the Commission during the administrative procedure, including after its reopening, and, secondly, they have not made any similar request before the Court, in particular in support of their second head of claim, raised in the alternative, seeking a reduction of the fine imposed.

161 Consequently, the present plea must be rejected as unfounded.

D. Conclusion

162 In the light of all the foregoing considerations, the application for annulment, set out as the principal head of claim, must be rejected.

163 As regards the request for a reduction of the fine put forward in the alternative, it should be recalled that, in accordance with Article 261 TEU, read in conjunction with Article 31 of Regulation No 1/2003, the EU Courts have unlimited jurisdiction which empowers them, in addition to merely reviewing the legality of the penalty, to substitute their own assessment in relation to the determination of the amount of that penalty for that of the Commission, the author of the act in which that amount was initially fixed. Consequently, the EU Courts may vary the contested act, even without annulling it, in order to cancel, reduce or increase the amount of the fine imposed, that jurisdiction being exercised by taking into account all the factual circumstances (see, to that effect, judgment of 25 July 2018, *Orange Polska* v *Commission*, C-123/16 P, EU:C:2018:590, paragraph 106 and the case-law cited).

164 That exercise involves, in accordance with Article 23(3) of Regulation No 1/2003, taking into consideration, with respect to each undertaking sanctioned, the seriousness and duration of the infringement at issue, in compliance with the principles of, inter alia, adequate reasoning, proportionality, the individualisation of penalties and equal treatment, and without the EU Courts being bound by the indicative rules defined by the Commission in its guidelines (see, to that effect, judgment of 21 January 2016, *Galp Energía España and Others* v *Commission*, C-603/13 P, EU:C:2016:38, paragraph 90).

165 To that end, it is necessary to take account of the duration of the infringements and of all the factors capable of affecting the assessment of their gravity, such as the conduct of each of the undertakings, the role played by each of them in the establishment of the concerted practices, the profit which they were able to derive from those practices, their size, the value of the goods concerned and the threat that infringements of that type pose to the European Union. In addition, objective factors such as the content and duration of the anticompetitive conduct, the number of incidents and their intensity, the extent of the market affected and the damage to the economic public order must be taken into account. Finally, the analysis must also take into consideration the relative importance and market share of the undertakings responsible and also any repeated infringements (see, to that effect, judgment of 8 December 2011, *Chalkor* v *Commission*, C-386/10 P, EU:C:2011:815, paragraphs 56 and 57).

166 In the present case, it is for the General Court, in the exercise of its unlimited jurisdiction, to determine, in the light of the arguments put forward by the applicants in support of their application for variation, the amount of the fine which the Court considers most appropriate, having regard to the findings made in particular in the context of the examination of the second plea (see, in particular, paragraphs 136 to 146 above) and taking into account all the factual circumstances.

167 It should be recalled, first of all, on the one hand, that the value of the applicants' sales in 2007 was EUR 143 316 000 and, on the other hand, that their turnover in 2013 was EUR 121 728 000, facts which have not been disputed by the applicants.

168 It must be pointed out, next, that the infringement was of considerable gravity, since the applicants participated fully in an agreement to coordinate sale prices, allocate customers and exchange sensitive commercial information on the market for European stock/catalogue and special printed envelopes covering, inter alia, Denmark, Germany, France, Sweden, the United Kingdom and Norway.

169 Moreover, it is established that the applicants participated in the infringement from 8 October 2003 to 22 April 2008.

170 As regards the errors made by the Commission in setting the amounts of the fines, it must be borne in mind that the Court concluded, in essence, that the method used by the Commission indeed respected the principle of equal treatment in relation to the applicants, Bong, Hamelin and Mayer-Kuvert but failed to comply with that principle in a manner which conferred an advantage on GPV (see paragraphs 139 to 142 above).

171 GPV was in a particular situation, first, because of the relatively high value of its sales of the cartelised product in 2007, which formed the basis for the determination of its non-adjusted basic amount, and, secondly, because its total turnover in 2012 and 2013 was particularly low when compared with the total turnover of the other undertakings concerned, with the result that, in its case, taking into account the product/turnover ratio and the 10% ceiling to adjust its basic amount necessarily resulted in a substantial reduction of that amount. It must therefore be held that, in view of GPV's particular and different situation and the unsuitable nature of the Commission's method of adjusting the basic amounts of the fines in relation to GPV, the other undertakings concerned, including the applicants, whose situation was not comparable to that of GPV in so far as their total turnover was substantially higher, cannot benefit from a reduction similar to that obtained by GPV.

172 In the light of the foregoing considerations, including those set out in paragraphs 158 to 160 above, and in view of the need to apply a weighting to the various factors to be taken into consideration for the purpose of setting the amount of the fine (see paragraphs 164 and 165 above), the Court considers that the amount of the fine imposed on the applicants is appropriate, having regard in particular to the gravity of the infringement and to the duration of their participation in it, and that there is therefore no need to reduce that fine.

173 It is therefore necessary to reject the applicants' alternative claim for variation of the penalty, in so far as they seek a reduction of the fine of EUR 4 729 000 imposed on them.

174 Accordingly, the action must be dismissed in its entirety.

IV. Costs

175 Article 134(1) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, according to Article 135(1) of the Rules of Procedure, exceptionally, if equity so requires, the Court may decide that an unsuccessful party is to pay only a proportion of the costs of the other party in addition to bearing its own costs. In addition, according to Article 135(2) of those Rules, the Court may order a party, even if successful, to pay some or all of the costs, if this appears justified by the conduct of that party, including before the proceedings were brought. The Court may, inter alia, order an institution whose decision has not been annulled to pay the costs by reason of the

inadequacy of that decision, which may have led an applicant to bring an action (see judgment of 22 April 2016, *Italy and Eurallumina* v *Commission*, T-60/06 RENV II and T-62/06 RENV II, EU:T:2016:233, paragraph 245 and the case-law cited).

176 It is true, in the present case, that the applicants have been unsuccessful in their first and second heads of claim. However, it is necessary to take into account the fact that the examination of the action in the present case has revealed that the Commission lacked rigour both in the definition of the methodology for adjusting the basic amounts of the fines and in the manner in which it applied that methodology and gave reasons for its decision (see paragraphs 139 to 142 above), even though those considerations are not sufficient for those heads of claim to be upheld. That lack of rigour is all the more regrettable since the contested decision is the second decision imposing a fine on the applicants for having committed the infringement in question, after they had already obtained annulment of the original decision, on the ground of failure to state adequate reasons, in the judgment of 13 December 2016, *Printeos and Others* v *Commission* (T-95/15, EU:T:2016:722). The Court considers that those considerations may have led the applicants to bring their actions.

177 In those circumstances, the Court considers that it is just and equitable to order the Commission to bear its own costs and to pay those incurred by the applicants.

On those grounds,

THE GENERAL COURT (Third Chamber, Extended Composition)

hereby:

1. Dismisses the action;

2. Orders the European Commission to pay the costs.

Van der Woude Frimodt Nielsen Kreuschitz

Półtorak Perillo

Delivered in open court in Luxembourg on 24 September 2019.

[Signatures]

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