Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber)

30 May 2013 *

(Agriculture — Common organisation of the markets — Aid in the fruit and vegetable sector — Actions for annulment — Whether directly concerned — Admissibility — Processed fruit and vegetables — Operational funds and operational programmes — Funding of '[non-]genuine processing activities')

In Joined Cases T-454/10 and T-482/11,

Associazione Nazionale degli Industriali delle Conserve Alimentari Vegetali (Anicav), established in Naples (Italy), represented initially by J. L. da Cruz Vilaça, S. Estima Martins and S. Carvalho de Sousa, and subsequently by S. Estima Martins, S. Carvalho de Sousa and R. Oliveira, lawyers,

applicant in Case T-454/10,

Agrupación Española de Fabricantes de Conservas Vegetales (Agrucon), established in Madrid (Spain), and the sixteen other applicants whose names appear in Annex I, represented initially by J. L. da Cruz Vilaça, S. Estima Martins and S. Carvalho de Sousa, and subsequently by S. Estima Martins, S. Carvalho de Sousa and R. Oliveira, lawyers,

applicants in Case T-482/11,

supported by

Associazione Italiana Industrie Prodotti Alimentari (AIIPA), established in Milan (Italy), and the ten other interveners whose names appear in Annex II, represented initially by J. L. da Cruz Vilaça, S. Estima Martins and S. Carvalho de Sousa, and subsequently by S. Estima Martins, S. Carvalho de Sousa and R. Oliveira, lawyers,

interveners in Case T-454/10,

v

European Commission, represented, in Case T-454/10, initially by B. Schima and M. Vollkommer, and subsequently by B. Schima and N. Donnelly, and, in Case T-482/11, by K. Banks and M. Schima, acting as Agents,

defendant,

supported by

* Language of the case: English.

Confederazione Cooperative Italiane, established in Rome (Italy), and the eight other interveners whose names appear in Annex III, represented by M. Merola, C. Santacroce and L. Cappelletti, lawyers,

interveners,

APPLICATION, in Case T-454/10, for annulment of Article 52(2)a of, and Annex VIII to, Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector (OJ 2007 L 350, p. 1), as amended by Commission Regulation (EU) No 687/2010 of 30 July 2010 (OJ 2010 L 199, p. 12), and, in Case T-482/11, for annulment of Article 50(3) and Article 60(7) of Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors (OJ 2011 L 157, p. 1),

THE GENERAL COURT (Second Chamber),

composed of N. J. Forwood (Rapporteur), President, F. Dehousse and J. Schwarcz, Judges,

Registrar: N. Rosner, Administrator,

having regard to the written procedure and further to the hearing on 13 November 2012,

gives the following

Judgment

Background to the dispute

1 Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (OJ 2007 L 299, p. 1; 'the Single CMO Regulation') applies, pursuant to its Article 1(1)(i) and (j) respectively, to the fruit and vegetables sector and the processed fruit and vegetables sector.

2 Council Regulation (EC) No 361/2008 of 14 April 2008 amending the Single CMO Regulation (OJ 2008 L 121, p. 1) incorporated into the latter, inter alia, certain provisions of Council Regulation (EC) No 1182/2007 of 26 September 2007 laying down specific rules as regards the fruit and vegetable sector, amending Directives 2001/112/EC and 2001/113/EC and Regulations (EEC) No 827/68, (EC) No 2200/96, (EC) No 2201/96, (EC) No 2826/2000, (EC) No 1782/2003 and (EC) No 318/2006 and repealing Regulation (EC) No 2202/96 (OJ 2007 L 273, p. 1) (see recital 8 in the preamble to Regulation No 361/2008).

3 Recital 6 in the preamble to Regulation No 1182/2007 states that '[t]he scope of this Regulation should be products covered by the common market organisations of the markets in fruit and vegetables and processed fruit and vegetables', but specifies that, '[h]owever, the provisions on producer organisations and interbranch organisations and agreements apply only to products covered by the common market organisation for fruit and vegetables and [that] this distinction should be maintained'.

4 Article 1(22) of Regulation No 361/2008 inserted Section IVa into Chapter IV of Title I of Part II of the Single CMO Regulation. Pursuant to Articles 103b, 103c and 103d of that new section, producer organisations in the fruit and vegetables sector may set up operational funds used to finance operational programmes having specific objectives. Those funds are financed by members' contributions and by Community financial assistance.

5 According to Article 103d(2) of the Single CMO Regulation, the Community financial assistance is to be capped at 4.1% of the value of the marketed production of each producer organisation, but may attain 4.6% of that value, provided that the amount in excess of 4.1% is used solely for crisis prevention and management measures.

6 Article 52(1) and (6) of Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector (OJ 2007 L 350 p. 1), provides as follows:'*Basis for calculation*

1. For the purposes of this Chapter, the value of marketed production for a producer organisation shall be calculated on the basis of the production of members of producer organisations, for which the producer organisation is recognised.

...

6. The marketed production shall be invoiced at the 'ex-producer organisation' stage:

(a) where applicable, as product which is packaged, prepared, or has undergone first-stage processing;

(b) excluding VAT; and

(c) excluding internal transport costs ...'

7 Recital 4 in the preamble to Commission Regulation (EU) No 687/2010 of 30 July 2010 amending Regulation (EC) No 1580/2007 (OJ 2010 L 199, p. 12) provides as follows:

'The calculation of the value of fruit and vegetables intended for processing has proven difficult. For control purposes and for the sake of simplification, it is appropriate to introduce a flat rate for the purposes of calculating the value of fruit and vegetables intended for processing, representing the value of the basic product, namely fruit and vegetables intended for processing, and activities which do not amount to genuine processing activities. Since the volumes of fruit and vegetables needed for the production of processed fruit and vegetables differ largely between groups of products, those differences should be reflected in the applicable flat rates.'

8 Article 1(1) of Regulation No 687/2010 amended Article 21(1)(i) of Regulation No 1580/2007 by defining the term 'preparation' as 'preparatory activities such as cleaning, cutting, peeling[,] trimming and drying of fruit and vegetables, without transforming them into processed fruit and vegetables'.

9 Article 1(2) of Regulation No 687/2010 inserted paragraph 2a in Article 52 of Regulation No 1580/2007, which states:

'The value of the marketed production shall not include the value of processed fruit and vegetables or any other product that is not a product of the fruit and vegetables sector.

However, the value of the marketed production of fruit and vegetables intended for processing, which have been transformed into one of the processed fruit and vegetables listed in Part X of Annex I to [the Single CMO Regulation] or any other agricultural product referred to in this Article and described further in Annex VIa to this Regulation, by either a producer organisation, an association of

producer organisations or their members, who are producers or their cooperatives, or subsidiaries as referred to in paragraph 7 of this Article, either by themselves or through outsourcing, shall be calculated as a flat rate in percentage applied to the invoiced value of those processed products.

That flat rate shall be:

(a) 53% for fruit juices;

(b) 73% for concentrated juices;

(c) 77% for tomato concentrate;

(d) 62% for frozen fruit and vegetables;

(e) 48% for canned fruit and vegetables;

(f) 70% for canned mushrooms of the genus Agaricus;

(g) 81% for fruits provisionally preserved in brine;

(h) 81% for dried fruits;

(i) 27% for other processed fruit and vegetables;

(j) 12% for processed aromatic herbs;

(k) 41% for paprika powder.'

10 Article 1(2) of Regulation No 687/2010 replaced paragraph 6 of Article 52 of Regulation No 1580/2007 by the following:

'6. The marketed production of fruit and vegetables shall be invoiced at the "ex-producer organisation" stage where applicable, as product listed in Part IX of Annex I to [the Single CMO Regulation] which is prepared and packaged excluding:

(a) VAT;

(b) internal transport costs, where the distance between the centralised collection or packing points of the producer organisation and the point of distribution of the producer organisation is significant.

For the purposes of point (b) of the first subparagraph, Member States shall provide for reductions to be applied to the invoiced value for products invoiced at different stages of delivery or transport.'

11 Article 61(4) of Regulation No 1580/2007, a provision which was not amended by Regulation No 687/2010, states that '[o]perational programmes shall not include actions or expenditure referred to in the list set out in Annex VIII'.

12 Regulation No 1580/2007 was repealed by Article 149 of Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of the Single CMO Regulation in respect of the fruit and vegetables and processed fruit and vegetables sectors (OJ 2011 L 157, p. 1), the latter regulation having incorporated the detailed application rules covering those sectors.

13 Recital 35 in the preamble to Implementing Regulation No 543/2011 provides as follows:

'To facilitate the use of the scheme of support to operational programmes, the marketed production of producer organisations should be clearly defined, including the specification of which products may be taken into account and the marketing stage at which the value of production is to be calculated. For control purposes and for the sake of simplification, it is appropriate to use a flat rate for the purposes of calculating the value of fruit and vegetables intended for processing, representing the value of the basic product, namely fruit and vegetables intended for processing, and activities which do not amount to genuine processing activities. Since the volumes of fruit and vegetables needed for the production of processed fruit and vegetables differ largely between groups of products, those differences should be reflected in the applicable flat rates …'

14 In that context, Article 21(1)(i) of Regulation No 1580/2007 (see paragraph 8 above) became Article 19(1)(j) of Implementing Regulation No 543/2011 and Article 52(2)a of Regulation No 1580/2007 became Article 50(3) of Implementing Regulation No 543/2011, whilst Article 50(7) of Implementing Regulation No 543/2011 essentially reproduces Article 52(6) of Regulation No 1580/2007 (see paragraphs 9 and 10 above).

15 Moreover, according to Article 60(7) of Implementing Regulation No 543/2011, '[i]nvestments and actions related to the transformation of fruit and vegetables into processed fruit and vegetables may be eligible for support where such investments and actions pursue the objectives referred to in Article 103c(1) of [the Single CMO Regulation], including those referred to in point (c) of the first paragraph of Article 122 of that Regulation, and provided that they are identified in the national strategy referred to in Article 103f(2) of [the Single CMO Regulation]'.

Procedure and forms of order sought

16 By application lodged at the Court Registry on 30 September 2010, the Associazione Nazionale degli Industriali delle Conserve Alimentari Vegetali (Anicav) brought the action in Case T-454/10. By application lodged at the Court Registry on 5 September 2011, the Agrupación Española de Fabricantes de Conservas Vegetales (Agrucon) and the sixteen other applicants whose names appear in Annex I brought the action in Case T-482/11.

17 By five documents lodged at the Court Registry on 13 and 17 January 2011, the Associazione Italiana Industrie Prodotti Alimentari (AIIPA) and the entities set out in Annex II requested leave to intervene in Case T-454/10 in support of the form of order sought by Anicav.

18 By four documents lodged at the Court Registry on 24 January 2011, the Confederazione Cooperative Italiane and the entities set out in Annex III requested leave to intervene in Case T-454/10 in support of the form of order sought by the European Commission.

19 By two documents lodged at the Court Registry on 19 December 2011, the Confederazione Cooperative Italiane and the entities set out in Annex III requested leave to intervene in Case T-482/11 in support of the form of order sought by the Commission.

20 By two orders of 5 October 2011 and 6 March 2012, the President of the Second Chamber of the General Court granted those applications to intervene. The interveners lodged their statements in intervention and the other parties lodged their observations on those statements within the periods prescribed.

21 By order of the President of the Second Chamber of the General Court of 22 October 2012, Cases T-454/10 and T-482/11 were joined for the purposes of the oral procedure and the judgment, in accordance with Article 50 of the Rules of Procedure of the General Court.

22 In Case T-454/10, Anicav claims that the Court should:

— annul Article 52 and Annex VIII to Regulation No 1580/2007, as amended by Regulation No 687/2010;

— order the Commission to pay the costs.

23 In Case T-482/11, Agrucon and the sixteen other applicants whose names appear in Annex I claim that the Court should:

— annul Article 50(3) and Article 60(7) of Implementing Regulation No 543/2011;

— order the Commission to pay the costs.

24 In Cases T-454/10 and T-482/11, the Commission claims that the Court should:

— dismiss the applications as inadmissible or in any event as unfounded;

— order Anicav, Agrucon and the sixteen other applicants whose names appear in Annex I to pay the costs.

25 In Case T-454/10, the interveners in support of the form of order sought by Anicav claim that the Court should:

— annul the contested provisions;

— order the Commission to pay the costs.

26 In Cases T-454/10 and T-482/11, the interveners in support of the form of order sought by the Commission contend that the Court should:

— dismiss the applications as inadmissible or in any event as unfounded;

— order Anicav, Agrucon and the sixteen other applicants whose names appear in Annex I to pay the costs.

Law

27 The applicants put forward three pleas in law, alleging that the provisions whose annulment is sought are in breach, first, of the Single CMO Regulation, second, of the principle of non-discrimination and, third, of the principle of proportionality.

28 The Commission contests, first, the admissibility and, second, the substance of the applications.

Admissibility

Admissibility of the action in Case T-454/10 in so far as it refers to Annex VIII to Regulation No 1580/2007

29 It should be noted that, under the sixth paragraph of Article 263 TFEU, an action for annulment must be brought within two months of the publication or notification of the contested measure or, in the absence thereof, of the date on which it came to the applicant's knowledge, as the case may be. It is

clear from the actual wording of that provision, as from its aim which is to guarantee legal certainty, that a measure which has not been challenged within that period becomes definitive. That definitive nature concerns not only the measure itself, but also any later measure which is merely confirmatory. That approach, which is justified by the requirement of legal stability, applies to individual measures as well as those which have a legislative character, such as a regulation. By contrast, where a provision in a regulation is amended, a fresh right of action arises, not only against that provision alone, but also against all the provisions which, even if not amended, form a whole with it (Case C-299/05 *Commission* v *Parliament and Council* [2007] ECR I-8695, paragraphs 28 to 30).

30 The Commission submits that Annex VIII to Regulation No 1580/2007, which has not been amended by Regulation No 687/2010, does not form a whole with Article 52 of Regulation No 1580/2007, which has been amended by Regulation No 687/2010.

31 In the present case, according to Article 103d of the Single CMO Regulation (see paragraph 5 above), the Community financial assistance is capped, in particular, at 4.1% of the value of the marketed production of each producer organisation, although that cap may be raised to 4.6% if the difference is used solely for crisis prevention and management measures.

32 As is apparent from recital 4 in the preamble to Regulation No 687/2010 (see paragraph 7 above), the flat rates set out in Article 52(2)a of Regulation No 1580/2007, on the basis of which the value of the marketed production of fruit and vegetables intended for processing is established, represent the value of the basic product and 'activities which do not amount to genuine processing activities'. That is confirmed by the second subparagraph of Article 52(2)a, which creates an exception to the rule laid down in the first subparagraph thereof, according to which the value of the marketed production is not to include the value of processed fruit and vegetables.

33 Moreover, pursuant to Article 61(4) of Regulation No 1580/2007, operational programmes are not to include actions or expenditure referred to in the list set out in Annex VIII to that regulation. It should be noted that that list constitutes the corollary of a provision setting the detailed rules for the calculation of Community aid in the framework of operational programmes. It is apparent from this that, to that extent, contrary to the Commission's contention, Annex VIII to Regulation No 1580/2007 forms a whole with Article 52 of that regulation for the purposes of the case-law cited in paragraph 29 above.

34 However, as is apparent from paragraphs 104 and 105 of the application in conjunction with the first head of claim thereof, Anicav is seeking annulment of Annex VIII to Regulation No 1580/2007 in so far as that annex does not refer to processing costs as expenditure to be excluded from funding in the framework of operational programmes.

35 In that regard, it should be pointed out that the eligibility of expenditure relating to 'activities which do not amount to genuine processing activities' results from the flat rates set out in Article 52(2)a of Regulation No 1580/2007 and not from Annex VIII to that regulation. Moreover, annulment of Article 52(2)a of Regulation No 1580/2007 on the grounds put forward by the applicant would entail the obligation on the Commission to take the necessary measures to comply with the judgment of the General Court according to Article 266 TFEU, including by possibly amending Annex VIII to that regulation. Consequently, any analysis of the content which Annex VIII to Regulation No 1580/2007 should have in order to comply with the Single CMO Regulation falls within the scope of the implementing measures that the Commission will have to take in the event of annulment of Article 52(2)a of that regulation. The application for annulment of Annex VIII to Regulation No 1580/2007 in so far as that regulation does not expressly exclude the cost of processing in reality has the same purpose as the application for annulment of Article 52(2)a of that regulation, so that there is no need for the Court to annul that annex if it annuls Article 52(2)a.

The applicants' standing to bring proceedings

36 In accordance with settled case-law, the condition that the contested decision must be of direct concern to a natural or legal person, as laid down in the fourth paragraph of Article 263 TFEU, requires the contested European Union measure to affect directly the legal situation of the individual and leave no discretion to its addressees, who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from European Union rules without the application of other intermediate rules (see Case C-125/06 P *Commission* v *Infront WM* [2008] ECR I-1451, paragraph 47 and the case-law cited).

37 In both Case T-454/10 and Case T-482/11, the Commission contends that the principle that producer organisations are eligible to receive Community aid in the framework of operational programmes whereas processors are not eligible for that purpose does not result from Regulation No 1580/2007, or from Implementing Regulation No 543/2011, but from the Single CMO Regulation. Accordingly, in the Commission's submission, Regulation No 1580/2007 and Implementing Regulation No 543/2011 merely implement that principle, so that the applicants are not directly concerned by Article 52(2)a of Regulation No 1580/2007, or by Article 50(3) or Article 60(7) of Implementing Regulation No 543/2011 ('the contested provisions').

38 In that regard, it should be noted that, as is apparent from paragraphs 91, 92, 97, 103, 104 and 111 of the application and from paragraphs 27 and 30 of the reply in Case T-454/10 and from paragraphs 92, 97, 100, 110, 117 and 119 of the application in Case T-482/11, the applicants do not criticise the general distinction between producer organisations and processors, nor do they claim that processors who are not members of a producer organisation should be entitled to any aid. The applicants claim that the contested provisions are illegal in so far as they provide for the grant of aid to producer organisations covering processing activities that are also carried out by processors which are not members of a producer organisation as well as investments and actions related to the transformation of fruit and vegetables. As the Commission accepts, the contested provisions have indeed established a system whereby producer organisations are eligible to receive aid covering processing activities that are also carried out by processors which are not members of a producer organisation, even though those activities have been called '[non-]genuine' processing activities.

39 Moreover, it is not contested that either Article 52(2)a of Regulation No 1580/2007 or Article 50(3) of Implementing Regulation No 543/2011 does not leave Member States a margin of discretion as regards the application of the flat rates for the purposes of calculating the value of the marketed production. The same is true of Article 60(7) of Implementing Regulation No 543/2011, which provides that investments and actions related to transformation may be eligible provided that they pursue the objectives referred to in Article 103c(1), and in point (c) of the first paragraph of Article 122 of the Single CMO Regulation and provided that they are identified in the national strategy referred to in Article 103f(2) of that regulation.

40 As regards the Commission's argument that the competitive disadvantage stemming from the contested provisions for the applicants and their members is an indirect factual consequence, it must be pointed out that the effect on the competitive position of the applicants and of their members results directly from the specific flat rates laid down in Article 52(2)a of Regulation No 1580/2007 and in Article 50(3) of Implementing Regulation No 543/2011 and from the eligibility of investments and actions related to the transformation of fruit and vegetables for European Union funding under Article 60(7) of Regulation No 543/2011, so that the contested provisions are of direct concern to the applicants and their members (see, to that effect, Joined Cases T-528/93, T-542/93, T-543/93 and T-546/93 *Métropole télévision and Others* v *Commission* [1996] ECR II-649, paragraph 64).

41 Moreover, the Commission's interpretation of the meaning of direct concern would prevent any individual from seeking the annulment of an act whose object is the payment of aid to his competitors, since the associated disadvantage would be merely an indirect factual consequence. If, by

virtue of settled case-law, it is established that the competitor of an aid recipient is directly concerned by a Commission decision authorising a Member State to pay that aid where the intention of that State to make such payment is not in doubt (see, to that effect, Case T-442/93 *AAC and Others* v *Commission* [1995] ECR II-1329, paragraphs 45 and 46; Case T-435/93 *ASPEC and Others* v *Commission* [1996] ECR II-1281, paragraphs 60 and 61; and Case T-266/94 *Skibsværftsforeningen and Others* v *Commission* [1996] ECR II-1399, paragraph 49), a provision of European Union law which provides for the grant of aid by the European Union itself is *a fortiori* likely to be of direct concern within the meaning of the fourth paragraph of Article 263 TFEU to the competitor of the recipient of that aid.

42 Moreover, Regulation No 1580/2007 and Implementing Regulation No 543/2011 constitute regulatory acts within the meaning of the fourth paragraph of Article 263 TFEU, since they are neither legislative acts, as defined in Article 289(3) TFEU, nor individual acts. It should be added that, as the applicants claim, without being contradicted by the Commission, Article 52(2)a of Regulation No 1580/2007 and Article 50(3) of Implementing Regulation No 543/2011 must be regarded as not entailing implementing measures within the meaning of the fourth paragraph of Article 263 TFEU.

43 Whilst it is true that the payment of European Union aid pursuant to those provisions is effected through the national authorities, the fact remains that the instruments pursuant to which those authorities make the payments in question do not refer to the applicants and are not addressed or notified to them. Moreover, each paying body performs its duties according to the rules applicable in the Member State concerned, which do not necessarily provide for the adoption of acts which are challengeable before the national courts. In those circumstances, as the Commission moreover states in paragraph 16 of the rejoinder in Case T-454/10 and in paragraph 32 of the defence in Case T-482/11, it is clear that Article 52(2)a of Regulation No 1580/2007 and Article 50(3) of Implementing Regulation No 543/2011 cannot be regarded as entailing implementing measures within the meaning of the fourth paragraph of Article 263 TFEU.

44 The same holds true *a fortiori* in respect of Article 60(7) of Implementing Regulation No 543/2011. The applicants contest the legality of the provision in so far as it provides that investments and actions related to transformation may be eligible for European Union funding, this being a matter determined exclusively by that regulation, without the Member States being called upon, or even being able, to intervene in that regard.

45 As regards the argument raised by the interveners in support of the form of order sought by the Commission, according to which the eligibility of investments and actions related to the transformation of fruit and vegetables is subject to their being identified in the national strategies drawn up under Article 103f(2) of the Single CMO Regulation, first of all, it should be pointed out that the strategies in question are established pursuant to Article 103f(2) and not pursuant to Article 60(7) of Implementing Regulation No 543/2011. The drawing up of those strategies does not therefore constitute a measure implementing Article 60(7). Next, as is apparent from Article 103f(2) of the Single CMO Regulation, national strategies essentially provide for analyses of the situation in terms of strengths and weaknesses and for justification of the priorities chosen, refer to the objectives of operational programmes, assess those programmes and refer to producer organisations' reporting obligations. Those strategies do not therefore constitute, by their nature, measures the purpose of which is to declare investments and actions related to transformation eligible for European Union funding. Accordingly, that eligibility, the legality of which is being challenged, does not constitute a characteristic of the strategies in question, but is directly determined by Article 60(7) of Implementing Regulation No 543/2011.

46 Lastly, neither the Commission nor the interveners in support of the form of order sought by the Commission dispute that the applicant undertakings are responsible for protecting the interests of their members, including by bringing actions. Since the members of the associations in question are directly

concerned by the contested provisions, the applicant associations also fulfil that condition for the admissibility of their actions (see, to that effect, Joined Cases C-182/03 and C-217/03 *Belgium and Forum 187* v *Commission* [2006] ECR I-5479, paragraph 56).

Anicav's standing to bring proceedings

47 In Case T-454/10, the Commission contends that the annulment sought by Anicav would result in the application of the legal framework prior to the adoption of Regulation No 687/2010. That legal framework provided for the grant of aid for 'first-stage processing' activities, so that it was even more disadvantageous for the applicant.

48 In that regard, it must be stated that, as is apparent from recitals 2, 3 and 4 in the preamble to Regulation No 687/2010, that regulation repealed the former system for calculating the value of the marketed production, replacing it by a system based on the application of the flat rates. Annulment of Article 52(2)a of Regulation No 1580/2007 will not result automatically in a return to the system of aid that the legislature decided to abandon. However, such annulment will have the effect of requiring the Commission to take the necessary measures to comply with the judgment of the General Court in accordance with Article 266 TFEU.

49 Nor is it possible to accept the interveners' argument in support of the form of order sought by the Commission, according to which Anicav's action no longer has any purpose and is therefore inadmissible for lack of a legal interest in bringing proceedings as a result of the entry into force of Implementing Regulation No 543/2011, which repealed Regulation No 1580/2007 (see paragraph 12 above). In that regard, first of all, it must be observed that the repeal of Regulation No 1580/2007 is not equivalent to annulment by the Court, in that that repeal does not amount to recognition of the illegality of Article 52(2)a of that regulation. Furthermore, the repeal in question took effect *ex nunc*, whereas annulment would take effect *ex tunc*. It is only in the latter case that the contested provisions would be considered to be void within the meaning of Article 264 TFEU. Next, under Article 266 TFEU, an institution whose act has been declared void is required to take the necessary measures to comply with the judgment. Those measures involve, inter alia, the removal of the effects of the illegal conduct found in the judgment annulling the act. The institution concerned may thus be required to take adequate steps to restore the applicant to his original position or avoid the adoption of an identical measure (Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraphs 46 and 47). Accordingly, Anicav retains an interest in the annulment of Article 52(2)a of Regulation No 1580/2007.

50 In those circumstances, it must be held that the applications are admissible in so far as they seek annulment of the contested provisions.

Substance

51 In the light of their connexity, it is appropriate to examine together the first two pleas, alleging breach of the Single CMO Regulation and of the principle of non-discrimination respectively. As will be explained below, the agricultural policy choices to which the relevant provisions of the Single CMO Regulation give concrete expression take account of the requirement to ensure equal treatment, in accordance with Article 34(2) EC (now Article 40(2) TFEU), between, on the one hand, fruit and vegetable processors which do not form part of a producer organisation and, on the other, producer organisations which are active, as processors, in the processed fruit and vegetables sector.

52 The applicants submit that the Single CMO Regulation does not make processing activities eligible for aid within the framework of operational programmes. Accordingly, the contested provisions are contrary to the Single CMO Regulation in so far as that regulation does not provide for the payment

of aid covering the cost of such activities. The contested provisions are also contrary to the principle of non-discrimination, in so far as they reserve aid covering processing activities to producer organisations, thus excluding processors which do not form part of such organisations.

53 As a preliminary point, it must be observed that the complaints raised in Case T-454/10 formally in respect of Article 52 of Regulation No 1580/2007 concern exclusively paragraph 2a of that article. When questioned on this point at the hearing, Anicav specified that the application for annulment in fact relates only to paragraph 2a of Article 52 of Regulation No 1580/2007. Given that it is the second subparagraph of that paragraph 2a which establishes the possibility of taking account of the value of certain processing activities and that it is the legality of that possibility which is being challenged by Anicav, the Court considers that it is the second subparagraph of Article 52(2)a of Regulation No 1580/2007 which is being challenged in Case T-454/10. On the other hand, no complaint has been raised against the first subparagraph of paragraph 2a, since the latter provision specifically excludes taking into account the value of processed fruit and vegetables or any other product that is not a product of the fruit and vegetables sector from the calculation of the value of the marketed production. Accordingly, the reference to the contested provisions concerns henceforth the second subparagraph of Article 52(2)a of Regulation No 1580/2007, and Article 50(3) and Article 60(7) of Implementing Regulation No 543/2011.

54 As regards the substance of the applicants' complaints, it is first of all appropriate to recall briefly the legal framework relating to the grant of aid covering fruit and vegetable processing activities.

55 In that regard, Council Regulation (EC) No 2201/96 of 28 October 1996 on the common organisation of the markets in processed fruit and vegetable products (OJ 1996 L 297, p. 29), established, in Articles 2 to 4 thereof, a system of production aid which applied to certain products and included two parts. The purpose of the first part was to introduce a minimum price for producers, which was paid by processors when purchasing the raw material. The system therefore involved compensatory aid to processors in exchange for payment by them of a minimum price to producers, which constituted the second part of that system (judgment of 20 June 2006 in Case T-251/04 *Greece v Commission*, not published in the ECR, paragraph 97).

56 Council Regulation (EC) No 2699/2000 of 4 December 2000 amending Regulation (EC) No 2200/96 on the common organisation of the market in fruit and vegetables, Regulation No 2201/96 and Regulation (EC) No 2202/96 introducing a Community aid scheme for producers of certain citrus fruits (OJ 2000 L 311, p. 9), repealed in respect of most of the products concerned the previous system from the 2001/02 marketing year onwards, replacing that system, pursuant to Article 2 thereof, by a single aid paid directly to producer organisations, without providing for aid in favour of the processing sector, which was henceforth free to negotiate prices with producers (*Greece* v *Commission*, paragraph 55 above, paragraph 98). It should be noted that Article 3(1) of Regulation No 2201/96, as amended by Regulation No 2699/2000, does not make any distinction relating to the eligibility of producer organisations to receive aid according to whether or not their goods are processed by processors which form part of a producer organisation.

57 Moreover, an aid scheme for producer organisations which deliver for processing certain citrus fruits harvested in the Community was established under Articles 1 to 5 of Council Regulation (EC) No 2202/96 of 28 October 1996 introducing a Community aid scheme for producers of certain citrus fruits (OJ 1996 L 297, p. 49). That scheme involved a single aid paid directly to producer organisations, without providing for aid in favour of the processing sector, which was free to negotiate prices with producers. In that context, it should be noted that Article 2(1) of Regulation No 2202/1996 also does not make any distinction relating to the eligibility of producer organisations to receive aid according to whether or not their goods are processed by processors which form part of a producer organisation.

58 Those aid schemes in the sector of processed fruit and vegetable products remained in force, pursuant to Article 55 of Regulation No 1182/2007, up to the marketing year ending in 2008, at which point they were abolished (see also recitals 18 to 20, 38 and 42 in the preamble to Regulation No 1182/2007). Article 55 of Regulation No 1182/2007 was incorporated as Article 203a(1) into the Single CMO Regulation by Article 1(43) of Regulation No 361/2008.

59 The aids in question were abolished at the same time as the fruit and vegetables which were eligible for that aid were included in the single payment scheme set up by Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1). The inclusion in question was effected pursuant to Article 52 of Regulation No 1182/2007, which amended several provisions of Regulation No 1782/2003 (see also recitals 18 to 20 in the preamble to Regulation No 1182/2007).

60 Next, as the Commission observes in paragraphs 58 and 44 of its statements in defence lodged in Cases T-454/10 and T-482/11, respectively, Section IVa of Chapter IV of Title I of Part II of the Single CMO Regulation, entitled 'Aids in the fruit and vegetables sector', concerns solely that sector as defined in Article 1(1)(i) of the Single CMO Regulation to the exclusion of the processed fruit and vegetables sector, as defined in Article 1(1)(j) of that regulation. It should be noted in that regard that, according to those provisions, each of those sectors is defined by the products as listed by the European Union legislature that fall within those sectors. Thus, where aid covers costs of processing fruit and vegetables leading to the marketing of processed goods, that aid is granted in the framework of the processed fruit and vegetables sector. The Commission also stated, in a note of 17 November 2009 addressed to the Management Committee, that the Single CMO Regulation did not provide a legal basis for payment of aid in the processed fruit and vegetable sector.

61 It should moreover be borne in mind that the sectors eligible for European Union funding are defined by the Single CMO Regulation, so that sectors in respect of which that regulation does not provide for the payment of aid are not eligible. In those circumstances, it is clear that, as of the marketing year ending in 2008, no European Union aid covering costs related to the processing of fruit and vegetables can be paid.

62 That conclusion is confirmed by recital 7 in the preamble to the Single CMO Regulation, according to which that regulation constitutes an instrument of simplification, which does not call into question the policy decisions that have been taken over the years in the field of the Common Agricultural Policy (CAP), and is not therefore intended to repeal or change existing instruments or to provide for new instruments or measures. That state of affairs was reiterated in recital 2 in the preamble to Regulation No 361/2008, which incorporated into the Single CMO Regulation the provisions of Regulation No 1182/2007, which had abolished aids in in the processed fruit and vegetables sector (see paragraph 58 above).

63 However, as is apparent from Article 52(2)a of Regulation No 1580/2007 and Article 50(3) of Implementing Regulation No 543/2011, the fruit and vegetables to which the flat rates established by those provisions apply are the processed products falling within Part X of Annex I to the Single CMO Regulation and the processed products mentioned in Annex VIa to Regulation No 1580/2007 and Annex VI to Implementing Regulation No 543/2011. The Commission and the interveners in support of the form of order sought by the Commission accept moreover that the flat rates established by the abovementioned provisions also cover the cost of certain activities referred to as '[non-]genuine processing activities' in recital 4 in the preamble to Regulation No 687/2010 and in recital 35 in the preamble to Implementing Regulation No 543/2011. Those activities are therefore undertaken in the context of a process the object of which is the production of processed fruit and vegetables and in the context of the marketing of those processed products. That circumstance is also demonstrated by the

notice that the Commission sent to the Member States in June 2010, according to which preparation costs, such as cutting and cleaning, are incurred before those products enter the processing 'tunnel', while the other category of costs also taken into account for the purposes of calculating the value of the marketed production relates to 'post-processing' costs.

64 Moreover, the Commission confirms in paragraphs 70 and 61 of the statements in defence lodged in Cases T-454/10 and T-482/11 respectively, that '[non-]genuine processing activities' consist of preparation activities and post-processing activities, such as promotion, marketing and storage.

65 Lastly, the Commission does not contest that the activities in question are also carried out by processors which do not form part of a producer organisation as part of their activities of processing the products listed in Article 52(2)a of Regulation No 1580/2007 and Article 50(3) of Implementing Regulation No 543/2011.

66 It must be stated that the Single CMO Regulation does not lend itself to an interpretation such as that advocated by the Commission.

67 Whilst it is true that the Single CMO Regulation does not draw up a list of processing activities, the fact remains that such activities are not eligible for funding in the framework of operational programmes (see paragraphs 58 to 62 above). Thus, notwithstanding the fact that there is no definition of the concept of value of the marketed production in Article 103d of the Single CMO Regulation, the Commission cannot interpret that concept in such a way as to result in the grant of European Union aid in sectors in respect of which no aid is provided for in the Single CMO Regulation.

68 Nor is it possible to accept the Commission's argument based on Article 103c(1)(c) and (d) of the Single CMO Regulation.

69 According to Article 103c(1)(c) of that regulation, operational programmes in the fruit and vegetables sector may have the objective of boosting those products' commercial value. As was stated in paragraph 60 above, Section IVa of Chapter IV of Title I of Part II of the Single CMO Regulation concerns the fruit and vegetable sector to the exclusion of the processed fruit and vegetables sector. Consequently, the boosting of the commercial value of fruit and vegetables intended for processing must concern any activity related to the production of the products in question to the exclusion of the activities of processing those products. Moreover, the circumstance that the recipients of funding of activities related to processing are producer organisations active in the production of fruit and vegetables does not in any way alter the fact that the funding in question concerns processing activities and thus the processed fruit and vegetables sector (see paragraph 60 above), in respect of which no aid is provided for in the Single CMO Regulation.

70 As regards Article 103c(1)(d) of that regulation, according to which operational programmes in the fruit and vegetables sector may have the objective of promoting products, whether in a fresh or processed form, it should be noted that that provision reflects the nature of the activity that it is intended to promote. In the framework of a campaign to promote fruit and vegetables, it is virtually impossible to draw distinctions between fresh products and processed products in such a way as to encourage solely consumption of fresh fruit and vegetables to the exclusion of processed products. In those circumstances, to make the eligibility of promotion actions in the fruit and vegetables sector subject to the condition that only fresh products are the subject of such actions would be tantamount to declaring that no promotion activity could be eligible. Accordingly Article 103c(1)(d) of the Single CMO Regulation, which is limited to promotion actions, does not permit the grant of Community funding covering activities related to fruit and vegetable processing. It should be added that Article 52(2)a of Regulation No 1580/2007 and Article 50(3) and Article 60(7) of Implementing

Regulation No 543/2011 do not limit payment of aid solely to producer organisations which have had an operational programme approved having the objective set out in Article 103c(1)(d) of the Single CMO Regulation, or restrict the actions which are eligible to those relating to that objective.

71 It must be added that, according to settled case-law, the provisions of European Union law must be interpreted and applied in a manner which ensures compliance with the principle of equal treatment (Joined Cases 146/81, 192/81 and 193/81 *BayWa and Others* [1982] ECR 1503, paragraph 30; Case C-513/99 *Concordia Bus Finland* [2002] ECR I-7213, paragraph 69; Case C-470/99 *Universale-Bau and Others* [2002] ECR I-11617, paragraph 99; Case T-236/97 *Ouzounoff Popoff* v *Commission* [1998] ECR-SC I-A-311 and II-905, paragraph 35; Case T-81/97 *Regione Toscana* v *Commission* [1998] ECR II-2889, paragraphs 50 and 51; and Case T-333/99 *X* v *ECB* [2001] ECR II-3021, paragraph 38).

72 In the framework of the CAP, that principle finds specific expression in the second subparagraph of Article 40(2) TFEU (Case C-33/08 *Agrana Zucker* [2009] ECR I-5035, paragraph 46), which prohibits any discrimination between producers or consumers within the Union.

73 In that regard, it should be pointed out that the various aid schemes covering processing costs (see paragraphs 55 to 57 above) were drawn up in such a way as to preserve equal treatment among European Union processors, namely operators active in the processed fruit and vegetables sector, irrespective of whether or not they formed part of a producer organisation. In particular, the scheme established by Regulation No 2201/96 provided for payment of aid directly to processors alone (*Greece* v *Commission*, paragraph 55 above, paragraphs 101 and 102), and did not discriminate according to whether or not they formed part of a producer organisation, whilst Regulation No 2699/2000 provided for the payment of aid to producers whose production was intended for processing, without making a distinction according to whether or not the processor belonged to a producer organisation. That was also the case in respect of the scheme established by Regulation No 2202/96.

74 It is in the context of the same concept relating to equal treatment among European Union operators carrying out fruit and vegetable processing activities that the Single CMO Regulation reflects the agricultural policy choices that the Council made regarding aids in the processed fruit and vegetables sector. As was set out in paragraphs 58 to 62 and 67 to 70 above, that policy consists of abolishing all aid in that sector, irrespective of whether or not a processor forms part of a producer organisation.

75 Accordingly, the Commission is not entitled to grant aid covering the costs relating to processing activities by characterising as '[non-]genuine processing activities' – a concept which is moreover absent from the Single CMO Regulation – certain activities falling exclusively within the process leading to the production of processed fruit and vegetables. The Commission is even less entitled to do so by creating discrimination to the detriment of processors who are not members of a producer organisation and to the advantage of producer organisations in so far as they carry out processing activities.

76 In the present case, Article 52(2)a of Regulation No 1580/2007 and Article 50(3) of Implementing Regulation No 543/2011 have the effect specifically of granting aid in the processed fruit and vegetables sector to producer organisations which themselves process their production or have it processed on their behalf. Those provisions infringe the Single CMO Regulation since that regulation does not provide for the payment of such aid and, for the reasons set out in paragraphs 73 and 74 above, consequently result in discrimination between European Union processors in competition with one another. Those effects are produced to the extent that the flat rates referred to in those provisions also cover the cost of certain activities carried out by processors when processing fruit and vegetables delivered to them by associations of producers, since aid covering certain costs of those activities is granted solely when the processing is carried out by producer organisations or under their responsibility by means of outsourcing, as defined in Article 29 of Regulation No 1580/2007 and Article 27 of Implementing Regulation No 543/2011.

77 The same applies *a fortiori* in respect of Article 60(7) of Implementing Regulation No 543/2011.

78 In particular, first, as the Commission confirmed at the hearing, that provision declares eligible for European Union funding any action or investment undertaken by a producer organisation related to processing, without even limiting the scope of that eligibility to '[non-]genuine processing activities'. Second, the fact that the eligibility in question depends on the pursuit of the objectives of Article 103c or point (c) of the first paragraph of Article 122 of the Single CMO Regulation does not render the provision in question compatible with the Single CMO Regulation. Article 103c of the Single CMO Regulation falls within Section IVa of Chapter IV of Title I of Part II of that regulation and therefore concerns only aids in the fruit and vegetables sector to the exclusion of the processed fruit and vegetables sector (see paragraph 60 above). Moreover, Article 122 of the Single CMO Regulation falls within Chapter II of Title II of Part II of the Single CMO Regulation, entitled 'Producer organisations, interbranch organisations, operator organisations'. In that regard, it should be noted that the rules concerning producer organisations, interbranch organisations and producer groups in the fruit and vegetables sector are laid down in Article 125a to 125j of the Single CMO Regulation, inserted into that regulation by Article 1(28) of Regulation No 361/2008, which incorporated into the Single CMO Regulation certain provisions of Regulation No 1182/2007 (see paragraph 2 above). According to recital 6 in the preamble to Regulation No 1182/2007, 'the provisions on producer organisations and interbranch organisations and agreements apply only to products covered by the common market organisation for fruit and vegetables and this distinction should be maintained'. Thus, the circumstance that a producer organisation pursues one of the objectives of point (c) of the first paragraph of Article 122 of the Single CMO Regulation, a provision to which Article 125b(1)(a) of that same regulation refers, is not capable of permitting the funding of activities related to the processing of fruit and vegetables.

79 The Commission's position, according to which favourable treatment of producer organisations is justified by the need to grant them also aid covering certain funded activities in the sector of fruit and vegetables to be marketed fresh cannot be accepted. In that regard, first, on the assumption that such an assessment were tenable *de lege ferenda*, the fact remains that the Single CMO Regulation does not provide for the grant of such aid. Second, whilst it is true that the marketing of fresh fruit and vegetables may necessitate certain cleaning, packaging or storage activities similar to certain activities undertaken in relation to processing, the fact remains that the fruit and vegetables in question are still products which are marketed fresh. Given that fruit and vegetables marketed fresh, even having undergone some of the abovementioned processes, on the one hand, and fruit and vegetables intended for processing, on the other, are not in competition with one another, similar treatment of this type is not required. Third, the distinction drawn by the Commission between those two categories of producers is artificial in respect of most of those producers, since the marketing of products as fresh products or as products intended for processing depends essentially on whether they comply with the marketing standards applicable to products to be marketed fresh laid down in Article 113a of the Single CMO Regulation and set out in detail in Implementing Regulation No 543/2011. Accordingly, the fact that the fruit and vegetable market can be distinguished from the processed fruit and vegetable market does not mean that a similar distinction applies necessarily at the level of producers and even less at the level of the producer organisations in receipt of the contested aid. Fourth, it must be stated that the explanation relating to the alleged objective of granting aid to producers of fruit and vegetables intended for processing in order to reflect the funding of analogous activities undertaken on fruit and vegetables to be marketed fresh is undermined by the fact that neither the second subparagraph of Article 52(2)a of Regulation No 1580/2007 nor Article 50(3) of Implementing Regulation No 543/2011 provides for the grant of aid to producer organisations which are not able to process themselves or to outsource the processing of their production, without there being any apparent justification for that different treatment.

80 Lastly, the Commission's arguments by which it seeks to justify the difference in the treatment (i) of producer organisations receiving aid for actions related to processing and (ii) of processors cannot be accepted. In particular, first, since the Single CMO Regulation does not provide for the grant of aid

covering costs of activities falling within the processing process, no aid of that type can be granted, even if the Commission calls those activities '[non-]genuine processing activities'. Second, and in any event, contrary to the Commission's contention, processors and producer organisations engaged in processing activities are not in different situations as regards their involvement in the processed fruit and vegetable sector, but, on the contrary, are in competition on the same market. In that regard, a processor cannot be regarded as being in a position analogous to that of a producer organisation whose members are not engaged in the cultivation of fruit and vegetables, since, pursuant to Article 2(2)(a), the first subparagraph of Article 122(a)(iii), and Article 125c of the Single CMO Regulation in conjunction with Article 2(a) and (c) of Regulation No 1782/2003, such an activity constitutes a condition which a legal entity must fulfil in order to be recognised as a producer organisation in that sector. Thus, a producer organisation in the fruit and vegetables sector whose members are not engaged in the cultivation of fruit and vegetables is inconceivable. Accordingly, the objective of the grouping of supply laid down in recital 10 in the preamble to Regulation No 1182/2007 does not justify discriminatory treatment in favour of producer organisations when they are engaged in processing activities and to the detriment of processors, treatment which that regulation did not indeed create. In that context, the objective in question calls for aid covering solely the production of fruit and vegetables, since the European Union legislature decided to abolish all aid covering the cost of processing activities.

81 It is apparent from the foregoing that the contested provisions must be annulled in so far as they provide that the value of '[non-]genuine processing activities' is included in the value of the marketed production and in so far as they provide that investments and actions related to the transformation of fruit and vegetables may be eligible for European Union funding, and that there is no need to adjudicate on the action in Case T-454/10 in so far as that action seeks annulment of Annex VIII to Regulation No 1580/2007.

82 In those circumstances, there is no need to examine the third plea, alleging breach of the principle of proportionality, since the scope of the annulment sought on the basis of that plea is identical to the scope of the annulment sought on the basis of the first two pleas.

Maintenance of the effects of the contested provisions

83 Under the second paragraph of Article 264 TFEU, the General Court may, if it considers it necessary, state which of the effects of the act which it has declared void shall be considered as definitive.

84 At the hearing, the applicants and the interveners in support of the form of order sought by Anicav submitted that the second paragraph of Article 264 TFEU should not be applied in the present case. By contrast, the Commission was in favour of maintaining the effects of the contested provisions.

85 The Court considers that the second subparagraph of Article 52(2)a of Regulation No 1580/2007 and Article 50(3) of Implementing Regulation No 543/2011 should be annulled on the ground that the flat rates that they establish also cover certain costs of activities carried out in connection with the processing of fruit and vegetables. In that context, it is necessary to prevent a partial calling into question of financial transactions involving the Commission, national paying bodies and producer organisations in such a way that it would be necessary to recalculate the entirety of the aid paid to producer organisations pursuant to the contested provisions in order to determine the portion corresponding to processing activities for each product concerned, which would moreover give rise to considerable technical difficulties in the circumstances.

86 Accordingly, the Court holds that the effects produced by the second subparagraph of Article 52(2)a of Regulation No 1580/2007 and Article 50(3) of Implementing Regulation No 543/2011 in the relations between the Commission, the Member States and the producer organisations shall be maintained to

the extent only that payments to producer organisations executed pursuant to those provisions since the entry into force of Regulation No 687/2010 and until delivery of this judgment are to be considered definitive.

87 By contrast, with respect to investments or actions which have benefited from European Union aid pursuant to Article 60(7) of Implementing Regulation No 543/2011, there is no reason to hold that the effects of that provision are definitive, since the funding relating to that provision is by its nature vitiated in its entirety by the illegality found.

Costs

88 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has failed in its submissions and the applicants have applied for costs, the Commission must be ordered to pay the costs other than the costs incurred in connection with the interventions in support of the form of order sought by the Commission, in accordance with the form of order sought by the applicants.

89 The Commission is also ordered to pay the interveners' costs in support of the form of order sought by Anicav in Case T-454/10.

90 The interveners in support of the form of order sought by the Commission are ordered to pay the costs of the applicants incurred in connection with their interventions.

On those grounds,

THE GENERAL COURT (Second Chamber)

Hereby:

1. **Annuls the second subparagraph of Article 52(2)a of Commission Regulation (EC) No 1580/2007 of 21 December 2007 laying down implementing rules of Council Regulations (EC) No 2200/96, (EC) No 2201/96 and (EC) No 1182/2007 in the fruit and vegetable sector, as amended by Commission Regulation (EU) No 687/2010 of 30 July 2010 in so far as it provides that the value of '[non-]genuine processing activities' is included in the value of marketed production of fruit and vegetables intended for processing;**

2. **Annuls Article 50(3) of Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors in so far as it provides that the value of '[non-]genuine processing activities' is included in the value of marketed production of fruit and vegetables intended for processing;**

3. **Annuls Article 60(7) of Implementing Regulation No 543/2011;**

4. **Declares that it is not necessary to adjudicate on the action in Case T-454/10 in so far as that action seeks annulment of Annex VIII to Regulation No 1580/2007;**

5. **Maintains the effects of the second subparagraph of Article 52(2)a of Regulation No 1580/2007 and of Article 50(3) of Implementing Regulation No 543/2011 to the extent only that payments to producer organisations executed pursuant to those provisions until delivery of this judgment are to be considered definitive;**

6. Orders, in Case T-454/10, the European Commission to bear its own costs and to pay the costs of the Associazione Nazionale degli Industriali delle Conserve Alimentari Vegetali (Anicav) and of the interveners in support of the form of order sought by Anicav, whose names appear in Annex II;

7. Orders, in Case T-454/10, the interveners in support of the form of order sought by the Commission, whose names appear in Annex III, to bear their own costs;

8. Orders, in Case T-482/11, the Commission, in addition to bearing its own costs, to pay the costs of the Agrupación Española de Fabricantes de Conservas Vegetales (Agrucon) and of the other applicants whose names appear in Annex I;

9. Orders, in Case T-482/11, the interveners in support of the form of order sought by the Commission, whose names appear in Annex III, to bear their own costs;

Forwood Dehousse Schwarcz

Delivered in open court in Luxembourg on 30 May 2013.

[Signatures]

ANNEX I

Associazione Italiana Industrie Prodotti Alimentari (AIIPA), established in Milano (Italy),

Associazione Nazionale degli Industriali delle Conserve Alimentari Vegetali (Anicav), established in Naples (Italy),

Campil-Agro-Industrial do Campo do Tejo, L^{da}, established in Cartaxo (Portugal),

Evropaïka Trofima AE, established in Larissa (Greece),

FIT – Fomento da Indústria do Tomate, SA, established in Águas de Moura (Portugal),

Konservopoiia Oporokipeftikon Filippos AE, established in Veria (Greece),

Panellinia Enosi Konservopoion, established in Athens (Greece),

Elliniki Etairia Konservon AE, established in Nafplio (Greece),

Anonymos Viomichaniki Etaireia Konservon D. Nomikos, established in Marousi (Greece),

Italagro – Indústria de Transformação de Produtos Alimentares, SA, established in Castanheira do Ribatejo (Portugal),

Kopaïs AVEE Trofimon & Poton, established in Marousi,

Serraïki Konservopoiia Oporokipeftikon Serko AE, established in Serres (Greece),

Sociedade de Industrialização de Produtos Agrícolas – Sopragol, SA, established in Mora (Portugal),

Sugalidal – Indústrias de Alimentação, SA, established in Benavente (Portugal),

Sutol – Indústrias Alimentares, L^{da}, established in Alcácer do Sal (Portugal),

ZANAE Zymai Artopoiias Nikoglou AE Viomichania Emporio Trofimon, established in Thessaloniki (Greece).

ANNEX II

Agrupación Española de Fabricantes de Conservas Vegetales (Agrucon), established in Madrid (Spain),

AIT – Associação dos Industriais de Tomate, established in Lisbon (Portugal),

Panellinia Enosi Konservopoion, established in Athens (Greece),

Kopaïs AVEE Trofimon & Poton, established in Maroussi (Greece),

Evropaïka Trofima AE, established in Larissa (Greece),

Konservopoiia Oporokipeftikon Filippos AE, established in Veria (Greece),

Anonymos Viomichaniki Etaireia Konservon D. Nomikos, established in Maroussi,

Serraïki Konservopoiia Oporokipeftikon Serko AE, established in Serres (Greece),

Elliniki Etairia Konservon AE, established in Nafplio (Greece),

ZANAE Zymai Artopoiias Nikoglou AE Viomichania Emporio Trofimon, established in Thessaloniki (Greece). **ANNEX III**

Cooperativas Agro-alimentarias, established in Madrid (Spain),

Fédération française de la coopération fruitière, légumière et horticole (Felcoop), established in Paris (France),

VOG Products Soc. agr. coop., established in Laives (Italy),

Consorzio Padano Ortofrutticolo Soc. agr. coop. (Copador), established in Collecchio (Italy),

Consorzio Casalasco del Pomodoro Soc. agr. coop., established in Rivarolo del Re ed Uniti (Italy),

ARP Agricoltori Riuniti Piacentini Soc. agr. coop., established in Podenzano (Italy),

Orogel Fresco Soc. coop. agr., established in Cesena (Italy),

Conserve Italia – Consorzio Italiano Fra Cooperative Agricola Soc. coop. agr., established in San Lazzaro di Savena (Italy).