



Reports of Cases

ORDER OF THE GENERAL COURT (Fourth Chamber)

30 January 2020*

(Action for annulment — Common fisheries policy — Treaty of Paris on the archipelago of Spitsbergen (Norway) — Fishing opportunities for snow crab around the area of Svalbard (Norway) — Regulation (EU) 2017/127 — EU-registered vessels authorised to fish — Detention of a Latvian vessel — Article 265 TFEU — Invitation to act — Adoption of a position by the Commission — Measure not producing binding legal effects — Inadmissibility)

In Case T-293/18,

Republic of Latvia, represented by V. Soņeca, acting as Agent,

applicant,

v

European Commission, represented by A. Bouquet, E. Paasivirta, I. Naglis and A. Sauka, acting as Agents,

defendant,

APPLICATION under Article 263 TFEU seeking, first, annulment of the Commission's letter of 12 March 2018 by which that institution adopted its position on the invitation to act which the Republic of Latvia had addressed to it, pursuant to Article 265 TFEU, by letter of 22 December 2017 and which was intended, in essence, to require the Commission to adopt measures relating to the defence of the fishing rights and European Union interests in the Svalbard fishing area (Norway) and, second, to order the Commission to adopt a position in that regard which is not the source of legal effects unfavourable to the Republic of Latvia,

THE GENERAL COURT (Fourth Chamber),

composed, at the time of the deliberation, of H. Kanninen, President, J. Schwarcz and C. Iliopoulos (Rapporteur), Judges,

Registrar: E. Coulon,

makes the following

* Language of the case: Latvian.

Order

Background to the dispute

- 1 By letter of 22 December 2017, received by the European Commission on 12 January 2018, the Republic of Latvia called on the Commission to act, pursuant to Article 265 TFEU, by adopting measures for the defence of fishing rights and EU interests in the Svalbard fishing area in Norway ('the invitation to act'). More specifically, it requested the Commission to adopt the following measures:
 - arrange and participate in official talks with the [Kingdom of Norway] in the first quarter of 2018 (by 31 March 2018) with the aim of securing the [EU's] fishing rights in the Svalbard fishing area and thereby enable [EU] vessels which have been awarded opportunities, in accordance with the Union's legal framework, to fish for snow crab in the Svalbard fishing area, actually to exercise those rights;
 - in the event that the [EU's] fishing rights in the Svalbard fishing area cannot be secured by 31 March 2018, bring international judicial proceedings against the [Kingdom of Norway].
- 2 By letter of 12 March 2018, the Commission replied to the invitation to act, setting out its position on the alleged failure to act within the meaning of Article 265 TFEU and, in particular, the two measures sought by the Republic of Latvia ('the contested letter').
- 3 As regards the first measure proposed by the Republic of Latvia, that negotiations with the Kingdom of Norway should be organised and in which the Commission would participate with a view to ensuring that EU fishing rights in the Svalbard fishing area up to the deadline of 31 March 2018 were upheld, the Commission impliedly rejected it, stating, in essence, that it would continue to participate in the negotiations without fixing a final date for the end of those negotiations. More specifically, the Commission stated as follows:

'53. Despite the current stalemate of discussions with [the Kingdom of Norway], the Commission will continue to look for solutions to this dispute with Norwegian authorities, based on dialogue and constructive approach, rather than confrontation. At the same time, given the high stakes beyond fisheries, the Commission will try to ensure that whatever solution is found, it is consistent with the [EU's] position on Svalbard.

54. The most recent *Note verbale* extends the invitation to [the Kingdom of Norway] to renew the dialogue with the EU in order to arrive, like many times in the past, [at] a mutually satisfactory arrangement allowing the resumption by [EU] fishing vessels of fishing activities in the area. It is also clear, considering recent Norwegian reactions, that it is at present unlikely that in the immediate future a solution will be found and precautions must be taken to avoid escalation of the disagreement to the expense of pressing strategic interests in the relationship with [the Kingdom of Norway], as well as in the Arctic region.'
- 4 As regards the second measure proposed by the Republic of Latvia, that international legal proceedings should be initiated against the Kingdom of Norway after 31 March 2018, the Commission stated, in essence, that it could not act on that measure, since there were procedural obstacles. More specifically, the Commission stated as follows:

'55. As regards the suggestion in the [invitation to act] to bring international judicial proceedings against [the Kingdom of Norway], and leaving aside any substantive considerations, there are clear procedural impediments, which the [invitation to act] does not take into account.

56. Firstly, it should be noted that the 1920 Treaty of Paris does not provide for a dispute-settlement mechanism. The dispute-settlement mechanisms provided for by the United Nations Convention on Law of the Sea (Unclos) are not applicable since the issues are not about the interpretation and application Unclos, but rather about the interpretation and application of the 1920 Treaty of Paris.

57. Secondly, international arbitration is subject to finding an agreement with [the Kingdom of Norway], which is currently highly unlikely in the prevailing circumstances.

58. Thirdly, the default dispute-settlement mechanism that remains is the International Court of Justice. [However], the EU has no legal standing before this Court. In addition, whilst a number of Member States are ... party to the 1920 Treaty of Paris, the European Union is not. Nevertheless, the [European Union] has exclusive competence regarding the conservation of marine biological resources.

59. In any event, initiation of international proceedings in a multilateral context could have significant implications. The Treaty of Paris involves 46 Contracting Parties, each with different interpretations of its provisions. Such a step would also risk affecting the [EU's] bilateral relations with [the Kingdom of Norway] beyond the fisheries issues at stake.

60. Finally, if there is a general principle in international law of peaceful settlement of disputes, there is no obligation under EU or international law to bring judicial proceedings, as international law provides for different ways to settle disputes, not all of them of [a] judicial nature.'

5 Finally, with regard to its alleged failure to act, within the meaning of Article 265 TFEU, the Commission concluded by stating as follows:

'61. ... The Commission has not failed to act on its duties, but it has acted, and continues to do so. In fulfilling its tasks, the Commission chooses the most appropriate ways and steps in order to best safeguard the [EU's] fishing rights and interests in the Svalbard fishing area, including steps regarding Commission talks and other means to settle the differences with [the Kingdom of Norway]. In this respect, it also takes into account [the EU's] relations with [the Kingdom of Norway] and the multilateral nature of [the] Treaty of Paris.

62. The Commission is of the opinion that it has done its utmost to find an appropriate, non-confrontational bilateral solution to the snow crab disagreement with [the Kingdom of Norway]. As the above account shows, it has engaged in this matter [in] different ways and [at different] levels, including directly with [the Kingdom of Norway], within the Council context and with [the Republic of Latvia].

63. The issues at stake around Svalbard go beyond fisheries interests and the spill-over risks [are] an important element that had to be taken into account at every step of the way. The Commission, in its role of representing the EU as the only interlocutor for fisheries matters with third countries, has been working at each stage of the process in close cooperation with the Council and the Member States. Every step has been prepared and established by consulting all Member States at Council level and keeping them informed regularly.'

Procedure and forms of order sought

6 By application lodged at the General Court Registry on 10 May 2018, the Republic of Latvia brought the present action.

7 By a document lodged at the Court Registry on 16 August 2018, the Kingdom of Spain applied for leave to intervene in support of the form of order sought by the Republic of Latvia.

- 8 By a document lodged at the Court Registry on 24 August 2018, the Commission raised a plea of inadmissibility under Article 130(1) of the Rules of Procedure of the General Court.
- 9 By a document lodged at the Court Registry on 17 October 2018, the Republic of Latvia submitted its observations on the plea of inadmissibility raised by the Commission.
- 10 On 10 May 2019, the Court (Fourth Chamber) put questions to the main parties for written reply, by way of measures of organisation of procedure as provided for in Article 89 of the Rules of Procedure. The main parties replied to those questions within the period prescribed.
- 11 In its application, the Republic of Latvia claims that the Court should:
- annul the contested letter and order the Commission to adopt, in that regard, a position which does not give rise to adverse legal effects on the applicant;
 - order the Commission to pay the costs.
- 12 In the plea of inadmissibility, the Commission contends, in essence, that the Court should:
- dismiss the action as manifestly inadmissible;
 - order the Republic of Latvia to pay the costs;
 - in the alternative, in the event that the plea of inadmissibility is rejected, set a new time limit for the continuation of the proceedings, in accordance with Article 130(8) of the Rules of Procedure.
- 13 In its observations on the plea of inadmissibility, the Republic of Latvia claims that the Court should:
- reject the plea of inadmissibility;
 - continue the proceedings on the substance.

Law

- 14 Under Article 130(1) and (7) of the Rules of Procedure, the Court may, if the defendant so requests, rule on the question of admissibility without considering the merits of the case.
- 15 In the present case, as the Commission has applied for a decision on inadmissibility, the Court, finding that it has sufficient information from the documents in the case file, has decided to rule on that application without taking further steps in the proceedings.
- 16 In support of its plea of inadmissibility, the Commission raises two grounds of inadmissibility, the first of which is that the contested letter is not a challengeable act within the meaning of Article 263 TFEU, in that it does not produce any legal effects altering the legal position of the Republic of Latvia and the second is the lack of jurisdiction of the General Court to order it to adopt a position which would not give rise to legal effects unfavourable to the Republic of Latvia.
- 17 In the application and in its observations on the plea of inadmissibility, the Republic of Latvia submits that its action is admissible in that the contested letter constitutes a challengeable act within the meaning of Article 263 TFEU. It does not, however, submit any argument in response to the second plea of inadmissibility.

- 18 The Court considers it necessary to assess first whether the contested letter is an act open to challenge within the meaning of Article 263 TFEU.
- 19 In that regard, the Republic of Latvia submits, in essence, that the position expressed by the Commission in the contested letter has legal effects on Latvia, to the extent that, since the Commission has repeatedly maintained that it could use fishing rights and has not resolved the situation with the Kingdom of Norway, a situation has arisen in which Latvia could not make use of its rights under EU rules, namely Council Regulation (EU) 2017/127 of 20 January 2017 fixing for 2017 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters (OJ 2017 L 24, p. 1), and Council Regulation (EU) 2018/120 of 23 January 2018 fixing for 2018 the fishing opportunities for certain fish stocks and groups of fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, and amending Regulation 2017/127 (OJ 2018 L 27, p. 1). A Member State should not be in the position of suffering negative consequences (for example, the arrest of a vessel) as a result of the use of the rights conferred on it by EU law. In particular, that finding follows from the fact that, in the contested letter, the Commission pointed out once more that the Republic of Latvia was able to exercise fishing rights.
- 20 As a preliminary point, it should be noted that, by the contested letter, the Commission adopted a position on the invitation to act which the Republic of Latvia had submitted to it under Article 265 TFEU, concluding that there had been no failure to act within the meaning of Article 265 TFEU. Giving more details, the Commission argued that it had not failed to fulfil its obligation to act, but that it had acted and indeed continued to do so.
- 21 In that regard, it follows from settled case-law that an institution's refusal to act in accordance with the invitation of an applicant constitutes the adoption of a position putting an end to the failure to act (see order of 4 May 2005, *Holcim (France) v Commission*, T-86/03, EU:T:2005:157, paragraph 36 and the case-law cited, and judgment of 21 July 2016, *Nutria v Commission*, T-832/14, not published, EU:T:2016:428, paragraph 44 and the case-law cited). It is appropriate to add that it also follows from settled case-law that an institution's refusal to act in accordance with an invitation to act under Article 265 TFEU may be challenged pursuant to Article 263 TFEU (see order of 4 May 2005, *Holcim (France) v Commission*, T-86/03, EU:T:2005:157, paragraph 36 and the case-law cited, and judgment of 21 July 2016, *Nutria v Commission*, T-832/14, not published, EU:T:2016:428, paragraph 44 and the case-law cited). Accordingly, the fact that the Republic of Latvia cannot bring an action for failure to act cannot affect the admissibility of the action for annulment. The contested letter constitutes an act which may be open to challenge within the meaning of Article 263 TFEU provided that the conditions for bringing such an action are satisfied (see, to that effect, order of 5 January 2010, *Química Atlântica v Commission*, T-71/09, not published, EU:T:2010:1, paragraph 32).
- 22 It follows from settled case-law that any provisions adopted by the EU institutions, whatever their form, which are intended to have binding legal effects are regarded as 'challengeable acts' for the purposes of Article 263 TFEU (see, to that effect, judgments of 25 October 2017, *Slovakia v Commission*, C-593/15 P and C-594/15 P, EU:C:2017:800, paragraph 46 and the case-law cited, and of 20 February 2018, *Belgium v Commission*, C-16/16 P, EU:C:2018:79, paragraph 31 and the case-law cited).
- 23 However, any act not producing binding legal effects, such as preparatory acts, confirmatory measures and implementing measures, mere recommendations and opinions and, in principle, internal rules, fall outside the scope of the judicial review provided for in Article 263 TFEU (see, to that effect, judgment of 12 September 2006, *Reynolds Tobacco and Others v Commission*, C-131/03 P, EU:C:2006:541, paragraph 55 and the case-law cited, and order of 14 May 2012, *Sepracor Pharmaceuticals (Ireland) v Commission*, C-477/11 P, not published, EU:C:2012:292, paragraph 52). Thus, a purely informative act cannot either affect the interests of the addressee or alter his or her legal position in relation to the situation prior to receipt of that act (see, to that effect, order of 4 October 2007, *Finland v*

Commission, C-457/06 P, not published, EU:C:2007:582, paragraph 36). Accordingly, it is not sufficient that a letter was sent by an EU institution to its addressee, in response to a request made by the latter, for it to be classified as a decision against which an action for annulment may be brought (see judgment of 14 December 2006, *Germany v Commission*, T-314/04 and T-414/04, not published, EU:T:2006:399, paragraph 37 and the case-law cited). In the same way, a written expression of opinion or a simple statement of intention cannot constitute a decision that is challengeable by an action for annulment, since it cannot produce legal effects or is not intended to produce such effects (see, to that effect, order of 9 January 2006, *Finland v Commission*, T-177/05, not published, EU:T:2006:1, paragraph 30 and the case-law cited).

- 24 In order to ascertain whether or not a measure which has been challenged produces such effects, it is necessary to look to its substance. Those effects must be assessed in accordance with objective criteria, such as the contents of that measure, taking into account, as appropriate, the context in which it was adopted and the powers of the institution which adopted the measure (see judgments of 25 October 2017, *Slovakia v Commission*, C-593/15 P and C-594/15 P, EU:C:2017:800, paragraph 47 and the case-law cited, and of 20 February 2018, *Belgium v Commission*, C-16/16 P, EU:C:2018:79, paragraph 32 and the case-law cited).
- 25 Lastly, where an act of the Commission amounts to a rejection, it must be appraised in the light of the nature of the request to which it constitutes a reply (judgment of 24 November 1992, *Buckl and Others v Commission*, C-15/91 and C-108/91, EU:C:1992:454, paragraph 22; see also, to that effect, judgment of 9 October 2018, *Multiconnect v Commission*, T-884/16, not published, EU:T:2018:665, paragraph 45). In particular, a refusal is an act in respect of which an action for annulment may be brought within the meaning of Article 263 TFEU, provided that the act which the institution refuses to adopt could itself have been contested under that provision (see judgment of 22 October 1996, *Salt Union v Commission*, T-330/94, EU:T:1996:154, paragraph 32 and the case-law cited).
- 26 In the present case, in order for the contested letter to be regarded as an act open to challenge within the meaning of Article 263 TFEU, it must produce binding legal effects. In accordance with the case-law cited in paragraph 24 above, in order to ascertain whether the contested letter produces such effects, it is necessary to examine its substance in order to determine whether it has legally binding effects vis-à-vis the Republic of Latvia, having regard to objective criteria, such as its wording, its content and the context of which the intention of its author forms part, having regard, in particular, to the Commission's powers in the area of the conservation of marine biological resources under the common fisheries policy.
- 27 As regards the wording and content of the contested letter, it must be noted that the contested letter consists of a covering letter and an annex, entitled 'Position of the European Commission on the Republic of Latvia's invitation to act under Article 265 TFEU' ('the position on the invitation to act'). In addition, it is appropriate to note that a part of the position on the invitation to act (paragraphs 1 to 52) describes the context of international law of the Spitsbergen Treaty concluded in Paris on 9 February 1920 ('the Treaty of Paris') and the key actions which the Commission has carried out in relation to the Kingdom of Norway and that another part of that provision, in particular paragraphs 53 to 64, which are repeated verbatim in the covering letter (set out in paragraphs 3 and 4 above), contains the Commission's position on the invitation to act. It must therefore be ascertained whether those passages of the contested letter contain information capable of producing binding legal effects vis-à-vis the Republic of Latvia.
- 28 In the first place, with regard to the parties 'Introduction' and 'Preliminary remarks and legal context' (see paragraphs 1 to 5 and 6 to 17 respectively of the position on the invitation to act), it must be noted that, in those passages, the Commission made preliminary remarks and set out the relevant legal context. In the light of the case-law cited in paragraph 23 above, they cannot therefore be regarded as producing legal effects.

- 29 In the second place, with regard to the part entitled ‘The snow crab dispute in Svalbard: key actions carried out so far by the Commission’ (paragraphs 18 to 52 of the position on the invitation to act), the Commission describes in detail the EU position on the interpretation of the Treaty of Paris by the Member States which are Contracting Parties, the correspondence with the Republic of Latvia subsequent to that Member State’s accession to the Treaty of Paris on 13 June 2016, and the various actions undertaken by the Commission. In that regard, the Commission concludes that ‘all these actions cannot be interpreted in the sense that [it] had authorised Latvian vessels to engage in this fishing activity and assumed the legal risks associated with disregarding Norwegian [legislation]’. Moreover, the Commission notes that, despite those warnings, the vessel ‘Senator’ fished for snow crab in the Svalbard fishing area and was arrested for having fished without the express consent of the Kingdom of Norway and in breach of Norwegian Regulation No 1836 of 19 December 2014. Next, the Commission describes the various steps taken following the arrest of the vessel.
- 30 It follows that that part of the position on the invitation to act is, in essence, descriptive and, in itself, cannot produce legal effects affecting the interests of the Republic of Latvia.
- 31 That finding cannot be called into question by the Republic of Latvia’s argument that the Commission repeatedly stated that the Republic of Latvia could use fishing rights when the Commission had not resolved the situation with the Kingdom of Norway, thus creating a situation in which the Republic of Latvia could not exercise the rights conferred by EU legislation.
- 32 It is true that, in paragraph 20 of the position on the invitation to act, the Commission stated that, ‘in line with the EU’s consistent position on the interpretation of [the Treaty of Paris], those Member States which [were] contracting parties [were] entitled to equal access to fishing resources on the maritime zones of Svalbard, including to sedentary species such as snow crab on the archipelago’s continental shelf’. However, contrary to the Republic of Latvia’s claims, that sentence cannot be interpreted as expressing encouragement to make use of the fishing rights granted by EU legislation. First, as is apparent from paragraph 25 of the position on the invitation to act, the Commission highlights the fact that Regulation 2017/127 contains a footnote according to which ‘the allocation of fishing opportunities available to the Union in the zone of Svalbard is without prejudice to the rights and obligations deriving from [the Treaty of Paris]’, pointing out that ‘a provision of EU law cannot have by itself any binding effects and/or create enforceable obligations upon third countries’. Second, it is apparent from the case file that, on several occasions, the Commission reminded the Member States and, in particular, the Republic of Latvia of the legal and practical uncertainties surrounding fisheries in the Svalbard area, requesting that they inform national operators considering such activities of the risks involved.
- 33 In the third place, the part entitled ‘Way forward’ (paragraphs 53 to 64 of the position on the invitation to act, set out in the covering letter and reproduced in paragraphs 3 and 4 above), contains the Commission’s position on the invitation to act. It is necessary to ascertain the legal effects that may flow from those passages. In other words, it remains to be examined whether the intention not to act in the way sought by the Republic of Latvia was such as to render the contested letter capable of forming the subject matter of an action for annulment (see, to that effect, order of 22 January 2010, *Makhteshim-Agan Holding and Others v Commission*, C-69/09 P, not published, EU:C:2010:37, paragraphs 39 and 40).
- 34 First, as regards the Republic of Latvia’s first request, connected with the continuation of negotiations with the Kingdom of Norway until the deadline of 31 March 2018, it must be stated that, by the contested letter, the Commission indicated by implication that it would continue to participate in the negotiations without fixing a deadline. The Commission stated that, by the last *note verbale* of 1 March 2018, it had requested the Kingdom of Norway to extend the dialogue with the European Union in order to reach a mutually satisfactory arrangement enabling the fishing vessels of the Union to resume their fishing activities in the region, but that it was, at present, unlikely that a solution would be found in the near future (see paragraph 3 above).

- 35 In accordance with the case-law cited in paragraph 25 above, where an act of the Commission amounts to a rejection, it must be appraised in the light of the nature of the request to which it constitutes a reply. In the present case, it must be noted that the act the adoption of which was refused was, in essence, an act which would have had the effect of imposing a deadline for negotiations with the Kingdom of Norway. The Republic of Latvia did not specify in the invitation to act the manner in which the Commission could have set a deadline for the continuation of negotiations with the Kingdom of Norway. However, in its written submissions, it stated that the Commission should have drawn up a request for a recommendation (that is to say, an informal document) on the European Union's position and requested the Council of the European Union to give it a mandate to open formal negotiations under Article 218 TFEU.
- 36 In order to determine whether such acts could have produced binding legal effects capable of forming the subject matter of an action, it is necessary to examine the relevant context of which they form part.
- 37 In that regard, first of all, it must be borne in mind that, in accordance with Article 38(1) TFEU, the European Union has competence to establish and implement the common fisheries policy. In addition, under Article 3(1)(d) TFEU, the European Union has exclusive competence in the area of the conservation of marine biological resources under the common fisheries policy and, for the rest of the fisheries sector, in accordance with Article 4(2)(d) TFEU, there is shared competence between the Member States and the European Union. In the light of that division of powers in implementing the common fisheries policy, the Commission must, first of all, take action in the context of Article 17(1) TEU, in accordance with which, in particular, it is to promote the general interest of the European Union, take appropriate initiatives to that end and ensure the Union's external representation. Next, the Commission must cooperate with the Council in accordance with Article 13(2) TEU, which requires each institution to act within the limits of the powers conferred on it by the Treaties and requires the institutions to cooperate with each other in good faith. Lastly, the Commission must be in a position to listen to concerns communicated, on a bilateral basis, by a Member State, in accordance with the principle of cooperation in good faith laid down in Article 4 TEU.
- 38 In the negotiations on fishing activity in the Svalbard area, it is common ground between the parties that the Commission did not enter into official negotiations with the Kingdom of Norway and accordingly does not act on the basis of Article 218 TFEU, which constitutes, in relation to the conclusion of international treaties, an autonomous and general rule of constitutional scope, in that it confers specific powers on the EU institutions (see, to that effect, judgment of 9 August 1994, *France v Commission*, C-327/91, EU:C:1994:305, paragraph 28). It follows that the Commission is to assume responsibility for questions of cooperation and dispute resolution, by proposing possible solutions and defining the conditions for negotiations, while respecting the principle of cooperation in good faith referred to in paragraph 37 above. In the context of those negotiations, the Commission is to consult the Council and, with regard to communication with the Kingdom of Norway for which it is responsible on behalf of the EU, the Member States are to express their views as members of the Council. More specifically, the Commission, in collaboration with the Council, is to prepare the position of the European Union and, as external representative and guardian of the Treaties (under Article 17(1) TEU), forwards that position to the Kingdom of Norway. In order to defend the European Union's position and interests, it is to issue *notes verbales* which, in the normal course of events, are a matter for coordination with the Member States and the Council working group 'Internal and external fisheries policy'.
- 39 Having regard to the foregoing, an informal Commission document on the position of the European Union imposing a deadline for negotiations or the submission by the Commission of a request to the Council of a mandate to open formal negotiations under Article 218 TFEU are not acts which can have binding legal effects.

- 40 The adoption of such acts is not an automatic procedure, since the Commission is not obliged to act upon any request made by a Member State. More specifically, having regard to the institutional context described in paragraphs 37 and 38 above, it is true that the Commission must take into consideration any proposal communicated on a bilateral basis by a Member State, in accordance with the principle of cooperation in good faith referred to in Article 4 TEU. However, that principle does not in any way oblige the Commission to act on a proposal from a Member State, in particular without a wider consensus within the Council. In that regard, the argument of the Republic of Latvia that, since the EU Treaty does not determine the number of Member States which must request the Commission to act in order for the Commission to be obliged to do so in the context of those negotiations, the Commission must also act at the request of a single Member State must be rejected.
- 41 For the sake of completeness, it must be noted that it is only if the negotiations with the Kingdom of Norway concerning fishing rights in the Svalbard area were to reach a consensus on the conclusion of an international agreement that the Council decision on the signature and conclusion of that agreement could be challenged before the Court under Article 263 TFEU.
- 42 Accordingly, in the circumstances of the present case, a request for the adoption of an informal document on the position of the European Union or the submission of a request for a mandate to the Council for formal negotiations does not constitute an act capable of producing binding legal effects such as to affect the interests of the Republic of Latvia.
- 43 That conclusion cannot be invalidated by the arguments of the Republic of Latvia that, on the one hand, the Council regulations establishing fishing opportunities for 2017 to 2019 provided and still provide for fishing opportunities for snow crab in Svalbard for fishing vessels of several Member States and, on the other, as a result of the exclusive EU competence, the Republic of Latvia did not possess, in the field of the exercise of fishing rights belonging to the EU, any instrument for the protection of rights which it could use to protect its interests.
- 44 On the one hand, as rightly pointed out by the Commission and acknowledged by the Republic of Latvia, there is no written rule in EU law which requires the Commission to settle disputes with the Kingdom of Norway. In the negotiations, the Commission cannot therefore be required to achieve a certain result, despite its role of promoting the general interest of the European Union.
- 45 On the other hand, while it is true that the Commission is required, under Article 17(1) TEU, to monitor the application of EU law under the supervision of the Court of Justice of the European Union, in the absence of an agreement concluded under the EU and FEU Treaties, that task cannot, as the Republic of Latvia claims, be interpreted as requiring the Commission to ensure the correct application of EU law by a third country, particularly where there are different views as to the interpretation and scope of the obligations relied upon against that third country. The Commission is not in a position to satisfy the Republic of Latvia's requests by acting under Article 17 TEU. It is only in the context of a legally binding international agreement concluded in accordance with Article 218 TFEU that the Commission may effectively protect the fishing rights. In order to be able to organise official negotiations with the Kingdom of Norway and to participate therein in order to protect EU fishing rights, within the meaning of Article 218(9) TFEU, the Commission needs a corresponding decision of the Council.
- 46 Secondly, as regards the Republic of Latvia's second request, to bring international judicial proceedings against the Kingdom of Norway from 1 April 2018, the Commission, referring to a series of procedural obstacles, concluded, in essence, that it was unable to act on the proposal of the Republic of Latvia.
- 47 As is the case in respect of the first request, where an act of the Commission amounts to a rejection, it must be appraised in the light of the request to which it constitutes a reply. Consequently, it is necessary to examine whether the opening of such judicial proceedings against the Kingdom of Norway could constitute a challengeable decision for the purposes of Article 263 TFEU.

- 48 In that regard, first of all, it must be noted that, in the absence of legislation which requires the Commission to settle disputes with the Kingdom of Norway by bringing an action against that country, there are no grounds for considering that the Commission was bound to settle disputes in the manner advocated by a single Member State (see, to that effect, order of 12 July 2012, *Mugraby v Council and Commission*, C-581/11 P, not published, EU:C:2012:466, paragraphs 68 to 70).
- 49 Next, and in any event, it must be held that, in accordance with settled case-law, the decision to commence legal proceedings, although constituting an indispensable step for the purpose of obtaining a decision of the court capable of altering the legal position does not, per se, alter that legal position (see, to that effect, judgments of 29 September 1998, *Commission v Germany*, C-191/95, EU:C:1998:441, paragraph 47, and of 15 January 2003, *Philip Morris International v Commission*, T-377/00, T-379/00, T-380/00, T-260/01 and T-272/01, EU:T:2003:6, paragraph 79). Moreover, that conclusion applies not only to the bringing of an action before the Court of Justice of the European Union, but also as regards the national courts of the Member States and of third countries (judgment of 15 January 2003, *Philip Morris International v Commission*, T-377/00, T-379/00, T-380/00, T-260/01 and T-272/01, EU:T:2003:6, paragraph 93), and there is no reason to take the view that a different conclusion should be drawn in respect of the bringing of an action before an international court.
- 50 It follows from all the foregoing considerations that it is not possible to attribute a legally binding nature to the contested letter with regard to the Republic of Latvia, with the result that it is not a challengeable act for the purposes of Article 263 TFEU.
- 51 Consequently, the plea of inadmissibility raised by the Commission must be upheld and the action dismissed as inadmissible, without it being necessary to rule on the admissibility of the form of order sought by the Republic of Latvia requesting the Court to order the Commission to adopt a position on the invitation to act which does not give rise to adverse legal effects on that Member State. Moreover, there is no longer any need to adjudicate on the Kingdom of Spain's application for leave to intervene, in accordance with Article 142(2) of the Rules of Procedure.

Costs

- 52 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Republic of Latvia has been unsuccessful, it must be ordered to bear its own costs and to pay those of the Commission, with the exception of those relating to the application for leave to intervene.
- 53 Under Article 144(10) of the Rules of Procedure, where the main proceedings are brought to an end before a ruling is given on the application for leave to intervene, the Kingdom of Spain, the Republic of Latvia and the Commission must each be ordered to bear their own costs relating to the application for leave to intervene.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby orders:

- 1. The action is dismissed as inadmissible.**
- 2. There is no longer any need to adjudicate on the application for leave to intervene of the Kingdom of Spain.**

- 3. The Republic of Latvia shall bear its own costs and pay those incurred by the European Commission, with the exception of those relating to the application for leave to intervene.**
- 4. The Kingdom of Spain, the Republic of Latvia and the Commission shall each bear their own costs relating to the application for leave to intervene.**

Luxembourg, 30 January 2020.

E. Coulon
Registrar

H. Kanninen
President