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

6 July 2022 (*)

(Law governing the institutions – Members of the European Parliament – Refusal of the President of the Parliament to recognise the status of Member of the European Parliament and the associated rights of elected candidates – Action for annulment – Act not open to challenge – Inadmissibility)

In Case T 388/19,

**Carles Puigdemont i Casamajó,** residing in Waterloo (Belgium),

**Antoni Comín i Oliveres,** residing in Waterloo,

represented by P. Bekaert, G. Boye, S. Bekaert, lawyers, and by B. Emmerson QC,

applicants,

v

**European Parliament,** represented by N. Görlitz, T. Lukácsi and C. Burgos, acting as Agents,

defendant,

supported by

**Kingdom of Spain,** represented by A. Gavela Llopis, acting as Agent,

intervener,

THE GENERAL COURT (Sixth Chamber, Extended Composition),

composed of A. Marcoulli, President, S. Frimodt Nielsen, J. Schwarcz, C. Iliopoulos (Rapporteur) and R. Norkus, Judges,

Registrar: I. Pollalis, Administrator,

having regard to the written part of the procedure,

further to the hearing on 21 January 2022,

gives the following

## Judgment

1 By their action based on Article 263 TFEU, the applicants, Mr Carles Puigdemont i Casamajó and Mr Antoni Comín i Oliveres, seek the annulment of, first, the Instruction of 29 May 2019 of the President of the European Parliament refusing them access to the special welcome and assistance service offered to incoming Members of the European Parliament and the grant of temporary accreditation and, second, the refusal of the President of the Parliament to recognise their status as Members of the European Parliament, contained in the letter of 27 June 2019.

### Legal context

#### *Protocol (No 7) on the privileges and immunities of the European Union*

2 Article 9 of Protocol (No 7) on the privileges and immunities of the European Union (OJ 2010 C 83, p. 266) ('Protocol No 7') states:

'During the sessions of the European Parliament, its Members shall enjoy:

(a) in the territory of their own State, the immunities accorded to members of their parliament;

(b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the [Parliament].

…'

*Electoral Act*

3 Article 5 of the Act concerning the election of the Members of the European Parliament by direct universal suffrage (OJ 1976 L 278, p. 5), annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976 (OJ 1976 L 278, p. 1), as amended by Council Decision 2002/772/EC, Euratom of 25 June and 23 September 2002 (OJ 2002 L 283, p. 1) ('the Electoral Act') states the following:

'1. The five-year term for which members of the [Parliament] are elected shall begin at the opening of the first session following each election.

…

2. The term of office of each member of the [Parliament] shall begin and end at the same time as the period referred to in paragraph 1.'

4 Article 7 of the Electoral Act states:

'1. The office of member of the [Parliament] shall be incompatible with that of:

– member of the Government of a Member State,

– member of the [European] Commission,

– Judge, Advocate-General or Registrar of the Court of Justice [of the European Union],

– member of the Board of Directors of the European Central Bank,

– member of the [European] Court of Auditors,

– [European] Ombudsman,

– member of the [European] Economic and Social Committee,

– member of the Committee of the Regions,

– member of committees or other bodies set up pursuant to the Treaties establishing the European Economic Community and the European Atomic Energy Community for the purpose of managing the Communities' funds or carrying out a permanent direct administrative task,

– member of the Board of Directors, Management Committee or staff of the European Investment Bank,

– active official or servant of the institutions of the European [Union] or of the specialised bodies attached to them or of the European Central Bank.

2. From the [Parliament] elections in 2004, the office of member of the [Parliament] shall be incompatible with that of member of a national parliament.

…

3. In addition, each Member State may, in the circumstances provided for in Article [8], extend rules at national level relating to incompatibility.

…'

5 Article 8 of the Electoral Act provides that:

'Subject to the provisions of this Act, the electoral procedure shall be governed in each Member State by its national provisions.

These national provisions, which may if appropriate take account of the specific situation in the Member States, shall not affect the essentially proportional nature of the voting system.'

6 Article 12 of the Electoral Act provides that:

'The [Parliament] shall verify the credentials of members of the [Parliament]. For this purpose it shall take note of the results declared officially by the Member States and shall rule on any disputes which may arise out of the provisions of this Act other than those arising out of the national provisions to which the Act refers.'

7 Article 13 of the Electoral Act states:

'1. A seat shall fall vacant when the mandate of a member of the [Parliament] ends as a result of resignation, death or withdrawal of the mandate.

2. Subject to the other provisions of this Act, each Member State shall lay down appropriate procedures for filling any seat which falls vacant during the five-year term of office referred to in Article [5] for the remainder of that period.

3. Where the law of a Member State makes explicit provision for the withdrawal of the mandate of a member of the [Parliament], that mandate shall end pursuant to those legal provisions. The competent national authorities shall inform the [Parliament] thereof.

…'

***Rules of Procedure of the Parliament (2019-2024)***

8 Rule 3 of the Rules of Procedure of the Parliament applicable to the 9th parliamentary term (2019-2024) ('the Rules of Procedure'), entitled 'Verification of credentials', is worded as follows:

'1. Following general elections to the [Parliament], the President [of the Parliament] shall invite the competent authorities of the Member States to notify Parliament without delay of the names of the elected Members so that all Members may take their seats in Parliament with effect from the opening of the first sitting following the elections.

At the same time, the President [of the Parliament] shall draw the attention of those authorities to the relevant provisions of the [Electoral Act] and invite them to take the necessary measures to avoid any incompatibility with the office of Member of the [Parliament].

2. Members whose election has been notified to Parliament shall declare in writing, before taking their seat in Parliament, that they do not hold any office incompatible with that of Member of the [Parliament] within the meaning of Article 7(1) or (2) of the [Electoral Act]. Following general elections, the declaration shall be made, where possible, no later than six days prior to Parliament's first sitting following the elections. Until such time as Members' credentials have been verified or a ruling has been given on any dispute, and provided that they have previously signed the abovementioned

written declaration, they shall take their seat in Parliament and on its bodies and shall enjoy all the rights attaching thereto.

Where it is established from facts verifiable from sources available to the public that a Member holds an office incompatible with that of Member of the [Parliament], within the meaning of Article 7(1) or (2) of the [Electoral Act], Parliament, on the basis of the information provided by its President, shall establish that there is a vacancy.

3. On the basis of a report by the committee responsible, Parliament shall verify credentials without delay and rule on the validity of the mandate of each of its newly elected Members and also on any disputes referred to it pursuant to the provisions of the [Electoral Act], other than those which, under that Act, fall exclusively under the national provisions to which that Act refers.

The committee's report shall be based on the official notification by each Member State of the full results of the election, specifying the names of the candidates elected and those of any substitutes, together with their ranking in accordance with the results of the vote.

The validity of the mandate of a Member may not be confirmed unless the written declarations required under this Rule and Annex I to these Rules of Procedure have been made.

…'

9 Rule 8 of the Rules of Procedure, entitled 'Urgent action by the President [of the Parliament] to assert immunity', states:

'1. As a matter of urgency, in circumstances where a Member is arrested or has his or her freedom of movement curtailed in apparent breach of his or her privileges and immunities, the President [of the Parliament] may, after consulting the Chair and rapporteur of the committee responsible, take an initiative to assert the privileges and immunities of the Member concerned. The President [of the Parliament] shall notify the committee of that initiative and inform Parliament.

…'

10 Rule 9 of the Rules of Procedure, entitled 'Procedures on immunity', provides:

'1 Any request addressed to the President [of the Parliament] by a competent authority of a Member State for the immunity of a Member to be waived, or by a Member or a former Member for privileges and immunities to be defended, shall be announced in Parliament and referred to the committee responsible.

2. With the agreement of the Member or the former Member concerned, the request may be made by another Member, who shall be permitted to represent the Member or former Member concerned at all stages of the procedure.

…'

11 Finally, Annex I to the Rules of Procedure, entitled 'Code of Conduct for Members of the [Parliament] with respect to financial interests and conflicts of interests', provides in Article 4(1):

'For reasons of transparency, Members of the [Parliament] shall be personally responsible for submitting a declaration of financial interests to the President by the end of the first part-session after elections to the [Parliament] (or within 30 days of taking up office with the Parliament in the course of a parliamentary term), in accordance with a form to be adopted by the Bureau pursuant to Article 9. They shall notify the President of any changes that have an influence on their declaration by the end of the month following each change occurring.'

***Spanish Electoral Law***

12 Article 224 of Ley orgánica 5/1985, del Régimen Electoral General (Institutional Law 5/1985 on the general electoral regime) of 19 June 1985 (*Boletín Oficial del Estado* No 147 of 20 June 1985,

p. 19110; 'the Spanish Electoral Law') states as follows:

'1 The Junta Electoral Central [(Central Electoral Commission, Spain)] shall, at the latest by the twentieth day following the elections, count the votes at national level, allocate the seat corresponding to each of the candidates, and declare the elected candidates.

2. Within five days of their being declared the elected candidates, the latter shall take an oath or promise to respect the [Spanish] Constitution before the [Central Electoral Commission]. Once that period has elapsed, the [Central Electoral Commission] shall declare the seats corresponding to Members of the [Parliament] who have not taken an oath or promised to respect the [Spanish] Constitution to be vacant and that all the prerogatives to which they may be entitled by reason of their office are suspended until such time as that oath or promise has taken place.

…'

**Background to the dispute and facts subsequent to the bringing of the action**

13 Mr Puigdemont i Casamajó was President of the Generalitat de Cataluña (Generality of Catalonia, Spain) and Mr Comín i Oliveres was a Member of the Gobierno autonómico de Cataluña (Autonomous Government of Catalonia, Spain) at the time of the adoption of Ley 19/2017 del Parlamento de Cataluña, reguladora del referéndum de autodeterminación (Law 19/2017 of the Parliament of Catalonia regulating the referendum on self-determination) of 6 September 2017 (DOGC No 7449A of 6 September 2017, p. 1) and of Ley 20/2017 del Parlamento de Cataluña, de transitoriedad jurídica y fundacional de la República (Law 20/2017 of the Parliament of Catalonia on legal and functional transition of the Republic) of 8 September 2017 (DOGC No 7451A of 8 September 2017, p. 1), and at the time of the holding, on 1 October 2017, of the referendum on self-determination provided for in the first of those two laws, the provisions of which had in the meantime been suspended by a decision of the Tribunal Constitucional (Constitutional Court, Spain).

14 Following the adoption of those laws, and following the holding of that referendum, the Ministerio fiscal (Public Prosecutor's Office, Spain), the Abogado del Estado (State Counsel, Spain) and the Partido político VOX (Political Party VOX) initiated criminal proceedings against a number of individuals, including the applicants, on the ground that they had committed acts coming within, inter alia, the offences of 'sedition' and 'misuse of public funds'.

15 By order of 9 July 2018, the Tribunal Supremo (Supreme Court, Spain) declared that the applicants had absconded, following their flight from Spain, and stayed the criminal proceedings against them until such time as they were found.

16 Furthermore, the applicants stood as candidates in the elections for the European Parliament which were held in Spain on 26 May 2019 ('the elections of 26 May 2019'), in the list of the coalition Lliures per Europa (Junts) which they led.

17 Following the elections of 26 May 2019, the abovementioned list received 1 018 435 votes and won two seats in the Parliament.

18 On 29 May 2019, the then President of the Parliament ('the former President of the Parliament') issued an internal instruction to the Secretary-General of the institution ('the Instruction of 29 May 2019') to refuse all the candidates elected in Spain access to the 'Welcome Village' and to the assistance which the institution provided to candidates newly elected to the Parliament ('the special welcome service') and to suspend their accreditation until the Parliament had officially received confirmation of their election in accordance with Article 12 of the Electoral Act. Under that instruction, the applicants were unable to benefit from the special welcome service and, therefore, were denied access to the 'Welcome Village' as well as to temporary accreditation and a temporary badge.

19 On 13 June 2019, the Junta Electoral Central (Central Electoral Commission, Spain) adopted a decision in the form of a 'declaration of the Members elected to the European Parliament in the elections held on 26 May 2019' (*Boletín Oficial del Estado* No 142 of 14 June 2019, p. 62477; 'the

declaration of 13 June 2019'). The declaration of 13 June 2019 stated that, in accordance with Article 224(1) of the Spanish Electoral Law, and according to the data in the consolidated statements submitted by each of the provincial electoral commissions, the Central Electoral Commission had prepared a new statement of the votes at national level in the elections of 26 May 2019, allocated the corresponding seats to each of the candidates and issued the declaration of elected candidates mentioned by name, including the applicants. The declaration of 13 June 2019 also stated that the session during which the elected candidates would take an oath to respect the Spanish Constitution, as required by Article 224(2) of the Spanish Electoral Law, would take place on 17 June 2019.

20 By letter of 14 June 2019, the applicants requested the former President of the Parliament, in essence, to take note of the results of the elections of 26 May 2019 as set out in the declaration of 13 June 2019, to withdraw his Instruction of 29 May 2019 so that they might have access to the premises of the Parliament and benefit from the special welcome service, and to instruct the Parliament's services to allow them to take their seats and to enjoy the rights associated with their status as Members of the Parliament with effect from 2 July 2019, the date of the first plenary session following the elections of 26 May 2019.

21 On 15 June 2019, the investigating judge of the Tribunal Supremo (Supreme Court) rejected the applicants' request for the withdrawal of the national arrest warrants issued against them by the Spanish criminal courts for them to be tried in the context of the criminal proceedings referred to in paragraph 14 above.

22 On 17 June 2019, the Central Electoral Commission notified the Parliament of the list of candidates elected in Spain ('the communication of 17 June 2019'), which did not include the applicants' names.

23 On 20 June 2019, the Central Electoral Commission, in essence, refused to allow the applicants to take the oath or promise to respect the Spanish Constitution, as required by Article 224(2) of the Spanish Electoral Law, by means of a written declaration made before a notary in Belgium or through attorneys designated by a notarised deed drawn up in Belgium, on the ground that that oath or promise is an act which must be made in person before the Central Electoral Commission.

24 On the same day, the Central Electoral Commission notified the Parliament of a decision in which it noted that the applicants had not taken the oath or promised to respect the Spanish Constitution and, in accordance with Article 224(2) of the Spanish Electoral Law, declared that the seats allocated to the applicants in the Parliament were vacant and that all the prerogatives to which they might be entitled by virtue of their duties were suspended until such time as they took that oath or made that promise.

25 By letter of 20 June 2019, the applicants requested the former President of the Parliament to adopt, as a matter of urgency, on the basis of Rule 8 of the Rules of Procedure, any measure necessary for the purpose of asserting their privileges and immunities and, in particular, to defend those privileges and immunities, declare that the national arrest warrants issued against them breached the privileges and immunities which they enjoyed under Article 9 of Protocol No 7, declare that the second paragraph of Article 9 of that protocol protects Members of the European Parliament against any judicial restriction of their freedom of movement that might prevent them from completing the formalities necessary for them to take office and, last, to communicate his decision immediately to the competent Spanish authorities.

26 By letter of 24 June 2019, the applicants, in essence, reiterated all the requests previously submitted in their letters of 14 and 20 June 2019 (see paragraphs 20 and 25 above), which had gone unanswered.

27 By letter of 27 June 2019, the former President of the Parliament replied to the applicants' letters of 14, 20 and 24 June 2019, informing them, in essence, that he was not in a position to treat them as future Members of the European Parliament because their names were not on the list of elected candidates officially communicated by the Spanish authorities ('the letter of 27 June 2019').

28 Following that response, the applicants, on 28 June 2019, brought the present action for annulment (registered as Case T 388/19) directed against (i) the Instruction of 29 May 2019 and (ii) several acts contained in the letter of 27 June 2019, namely, in essence: first, the refusal of the former President of the Parliament to take note of the results of the elections of 26 May 2019, second, the declaration of the

former President of the Parliament that the seats allocated to the applicants were vacant, third, the refusal of the former President of the Parliament to recognise the applicants' right to take office, to exercise the mandate of Member of the European Parliament and to sit in Parliament from the beginning of the first session following the elections of 26 May 2019 and, fourth, the refusal of the former President of the Parliament to take an initiative, as a matter of urgency, on the basis of Rule 8 of the Rules of Procedure, to assert their privileges and immunities.

29 On the same day, the applicants also made an application for interim measures, which was registered as Case T 388/19 R.

30 On 2 July 2019, the first session took place for the newly elected Parliament following the elections of 26 May 2019.

31 By email of 10 October 2019, the Member of the European Parliament, Ms Riba i Giner, acting on behalf of the applicants, submitted to the new President of the Parliament elected on 3 July 2019 ('the new President of the Parliament') and to the President and Vice-President of the Legal Affairs Committee of the Parliament a request from 38 Members of the European Parliament, of various nationalities and from various political parties, including herself, that the Parliament should defend, on the basis of Rule 9 of the Rules of Procedure, the applicants' parliamentary immunity referred to in the first and second paragraphs of Article 9 of Protocol No 7.

32 On 14 October 2019, the investigating judge of the Criminal Chamber of the Tribunal Supremo (Supreme Court) issued a national arrest warrant, a European arrest warrant and an international arrest warrant against Mr Puigdemont i Casamajó, so that he might be tried in the context of the criminal proceedings referred to in paragraph 14 above. On 4 November 2019, the investigating judge of the Criminal Chamber of the Tribunal Supremo (Supreme Court) issued the same arrest warrants against Mr Comín i Oliveres. The applicants were subsequently placed in detention in Belgium on 17 October and 7 November 2019, respectively, and released on the same day, subject to conditions.

33 By two similarly worded letters of 10 December 2019, one addressed to Ms Riba i Giner and the other to all 38 Members of the Parliament, the new President of the Parliament replied to the request referred to in paragraph 31 above. In essence, the new President of the Parliament claimed, in particular, that he could not regard the applicants as Members of the Parliament in the absence of official notification by the Spanish authorities of their election, within the meaning of the Electoral Act.

34 On 20 February 2020, the applicants brought an action for annulment of the letter of 10 December 2019 addressed to Ms Riba i Giner by the new President of the Parliament (see paragraph 33 above), which was registered as Case T 115/20.

35 By judgment of 19 December 2019, *Junqueras Vies* (C 502/19, EU:C:2019:1115), the Court of Justice held, in particular, that a person who had been officially declared elected to the Parliament but who had not been authorised to comply with certain requirements under national law following such a declaration and to travel to the Parliament in order to take part in its first session had to be regarded as enjoying an immunity under the second paragraph of Article 9 of Protocol No 7.

36 At the plenary session of 13 January 2020, the Parliament took note, following the judgment of 19 December 2019, *Junqueras Vies* (C 502/19, EU:C:2019:1115), of the applicants' election to the Parliament with effect from 2 July 2019 ('the taking note of 13 January 2020').

## Procedure and forms of order sought

37 By application lodged at the Court Registry on 28 June 2019, the applicants brought the present action.

38 By separate document lodged at the Court Registry on the same date, the applicants made an application for interim measures, on the basis of Articles 278 and 279 TFEU, registered as Case T 388/19 R.

39 By order of 1 July 2019, *Puigdemont i Casamajó and Comín i Oliveres* v *Parliament* (T 388/19 R, not published, EU:T:2019:467), the President of the General Court dismissed the application for interim measures and reserved the costs. The applicants brought an appeal against that order before the Court of Justice, which was registered as Case C 646/19 P(R).

40 By order of 20 December 2019, *Puigdemont i Casamajó and Comín i Oliveres* v *Parliament* (C 646/19 P(R), not published, EU:C:2019:1149), the Vice-President of the Court of Justice set aside the order of 1 July 2019, *Puigdemont i Casamajó and Comín i Oliveres* v *Parliament* (T 388/19 R, not published, EU:T:2019:467), referred the case back to the General Court and reserved the costs.

41 By document lodged at the Court Registry on 10 September 2019, the Kingdom of Spain requested leave to intervene in the present case.

42 By separate document lodged at the Court Registry on 19 September 2019 under Article 130 of the Rules of Procedure of the General Court, the Parliament lodged, first, a claim that there was no need to adjudicate for part of the action and, second, a plea of inadmissibility for the remainder of the action, on which the applicants submitted their observations on 4 November 2019.

43 By document lodged at the Court Registry on 20 January 2020, the Parliament requested the Court to rule that there was no need to adjudicate on the entire action. The applicants submitted their observations on that request on 7 February 2020.

44 By order of 19 March 2020, *Puigdemont i Casamajó and Comín i Oliveres* v *Parliament* (T 388/19 R-RENV, not published, EU:T:2020:114), the President of the General Court, adjudicating on the application after the case had been referred back to the General Court following the order of 20 December 2019, *Puigdemont i Casamajó and Comín i Oliveres* v *Parliament* (C 646/19 P(R), not published, EU:C:2019:1149), referred to in paragraph 40 above, held that, having regard to the taking note of 13 January 2020, there was no longer any need to adjudicate on the application for interim measures, and reserved the costs.

45 By order of 29 July 2020, the Court (Sixth Chamber) decided to join the plea of inadmissibility and the claims that there is no need to adjudicate of 19 September 2019 and 20 January 2020 to the substance of the case.

46 By decision of 11 September 2020, the President of the Sixth Chamber of the General Court granted the Kingdom of Spain leave to intervene in support of the form of order sought by the Parliament.

47 The Parliament lodged the defence at the Court Registry on 11 September 2020.

48 The Kingdom of Spain lodged the statement in intervention at the Court Registry on 8 January 2021.

49 The applicants lodged the reply at the Court Registry on 11 January 2021.

50 The Parliament lodged its observations on the Kingdom of Spain's statement in intervention at the Court Registry on 4 March 2021.

51 The applicants lodged their observations on the Kingdom of Spain's statement in intervention at the Court Registry on 11 March 2021.

52 The Parliament lodged the rejoinder at the Court Registry on 11 March 2021.

53 Acting on a proposal from the Judge-Rapporteur, the General Court (Sixth Chamber) decided to open the oral part of the procedure and, by way of the measures of organisation of procedure provided for under Article 89 of the Rules of Procedure, requested the parties to answer questions in writing, which they did within the prescribed period.

54 Acting on a proposal from the Sixth Chamber, the Court decided, pursuant to Article 28 of the Rules of Procedure, to refer the case to a Chamber sitting in extended composition.

55 The parties presented oral argument and replied to the oral questions put by the Court at the hearing on 21 January 2022. At the hearing, the Parliament withdrew its claims of 19 September 2019 and 20 January 2020 that there is no need to adjudicate.

56 The applicants claim, in essence, that the Court should:

– reject the plea of inadmissibility of 19 September 2019;

– annul the Instruction of 29 May 2019;

– annul the refusal of the former President of the Parliament to take note of the results of the elections of 26 May 2019 officially declared by the Kingdom of Spain, contained in the letter of 27 June 2019;

– annul the declaration of the former President of the Parliament that the applicants' seats were vacant, contained in the letter of 27 June 2019;

– annul the refusal of the former President of the Parliament to recognise the applicants' right to take office, to exercise their mandate and to sit in Parliament from the opening of the first session following the elections of 26 May 2019, contained in the letter of 27 June 2019;

– annul the refusal of the former President of the Parliament to take an initiative, as a matter of urgency, on the basis of Rule 8 of the Rules of Procedure, to assert their privileges and immunities, contained in the letter of 27 June 2019;

– order the Parliament to pay the costs.

57 The Parliament, supported, in essence, by the Kingdom of Spain, contends that the Court should:

– principally, dismiss the action as inadmissible;

– in the alternative, dismiss the action as being, in part, inadmissible and, in part, unfounded;

– very much in the alternative, dismiss the action as unfounded;

– order the applicants to pay the costs.

**Law**

58 In support of the action, the applicants rely on five pleas in law. The first plea concerns the Instruction of 29 May 2019 and alleges infringement of Articles 20 and 21 and Article 39(2) of the Charter of Fundamental Rights of the European Union ('the Charter') and of Rule 3(2) of the Rules of Procedure. The second plea concerns the refusal of the former President of the Parliament to take note of the results of the elections of 26 May 2019 officially declared by the Kingdom of Spain and alleges, in essence, infringement of Article 39(2) of the Charter, Article 5(1) and Article 12 of the Electoral Act, Article 2, Article 10(2) and (4), and Article 14(3) TEU and Rule 3(1) of the Rules of Procedure. The third plea concerns the alleged declaration by the former President of the Parliament that the applicants' seats are vacant, and alleges, in essence, infringement of Article 6(2), Article 8 and Article 13 of the Electoral Act, read in conjunction with Article 39(2) of the Charter and with Article 10(2) and (3) TEU. The fourth plea concerns the refusal of the former President of the Parliament to recognise the applicants' right to take office, to exercise their mandate and to sit in Parliament from the opening of the first session following the European elections of 26 May 2019, and alleges infringement of Article 5(1) and Article 12 of the Electoral Act, read in conjunction with Article 39(2) of the Charter and with Article 10(1) and (2) and Article 14(2) and (3) TEU, and infringement of Rule 3(2) of the Rules of Procedure. Lastly, the fifth plea concerns the refusal of the former President of the Parliament to assert the applicants' privileges and immunities on the basis of Rule 8 of the Rules of Procedure, and alleges infringement of Rule 5(2) of those rules, of Article 39(2) of the Charter, of the obligation to state reasons and of the principle of good administration.

59 The Parliament, supported by the Kingdom of Spain relies, principally, on the inadmissibility of the action on the grounds, first, that the application does not clearly define certain acts which the Court is asked to annul, and, second, that there are no challengeable acts.

60 The applicants contend that the plea of inadmissibility should be rejected. First, they submit that the acts which they claim should be annulled are clearly identified in the application. Second, they argue that the action is brought against acts that can be challenged in an action on the basis of Article 263 TFEU.

61 It is therefore necessary to examine the admissibility of the action brought by the applicants.

*Preliminary observations on the subject matter of the dispute*

62 In the first place, it should be noted that, in response to questions put by the Court at the hearing, first, the applicants confirmed that their action was still directed against the Instruction of 29 May 2019 (see second indent of paragraph 56 above).

63 Second, the applicants stated that, while they maintain the heads of claim referred to in paragraph 56 above, what they were disputing was, in essence, the refusal of the former President of the Parliament to recognise their status as Members of the European Parliament from the time of the declaration of 13 June 2019, contained in the letter of 27 June 2019.

64 In that regard, the applicants stated that the abovementioned refusal had had a number of legal consequences, including the refusal of the former President of the Parliament to recognise their right to take office, to exercise their mandate and to sit in Parliament, and that President's refusal to take an initiative, as a matter of urgency, on the basis of Rule 8 of the Rules of Procedure in order to assert their privileges and immunities.

65 Finally, the applicants confirmed that, if, contrary to what they claim, the Court were to conclude that the lawfulness of the refusal of the former President of the Parliament to recognise their status as Members of the European Parliament cannot be called into question, it would not be necessary to examine separately the lawfulness of the acts referred to in paragraph 56 above.

66 In view of the applicants' explanations referred to in paragraphs 63 to 65 above, it must be held, in essence, that they are not seeking the annulment of the acts referred to in the third, fourth, fifth and sixth indents of paragraph 56 above, but solely the annulment of the refusal of the former President of the Parliament to recognise their status of Members as the European Parliament, which, in the applicants' view, led to the abovementioned acts.

67 In the second place, in the rejoinder, the Parliament contended that the head of claim which the applicants put forward for the first time in the reply, seeking annulment, first, of the alleged refusal of the former President of the Parliament to defend their privileges and immunities on the basis of Rules 7 and 9 of the Rules of Procedure, and, second, of the alleged decision of that president not to notify the competent committee of the Parliament of their alleged request to have their privileges and immunities defended, is inadmissible.

68 In their response to a written question put by the Court (see paragraph 53 above), the applicants stated that they were not seeking annulment of any decision of the Parliament refusing to defend their privileges and immunities on the basis of Rules 7 and 9 of the Rules of Procedure, since such a decision has, moreover, never been adopted. They merely disputed the fact that the former President of the Parliament had not announced, in plenary session, their request to have their privileges and immunities defended and had not referred that request to the competent committee, in breach of Rule 9(1) of the Rules of Procedure. In essence, the applicants stated that that too was a legal consequence of the refusal of the former President of the Parliament to recognise their status as Members of the European Parliament.

69 It follows that, in the reply, the applicants have not sought either the annulment of any refusal of the former President of the Parliament to defend their privileges and immunities on the basis of Rules 7 and 9 of the Rules of Procedure or the annulment of any decision of that president not to announce, in

plenary session, their alleged request to have their privileges and immunities defended, and not to refer that request to the competent committee of the Parliament.

70 In view of all of the foregoing, it must be held that the present action seeks, in essence, the annulment, first, of the Instruction of 29 May 2019 and, second, of the refusal of the former President of the Parliament to recognise the applicants' status as Members of the European Parliament, contained in the letter of 27 June 2019 (together, 'the contested acts').

*The nature of the contested acts*

71 In the plea of inadmissibility, first, the Parliament claims that the letter of 27 June 2019 is an act of a purely informative nature which merely reminds the applicants that, in accordance with the applicable legal framework, they could not be treated as incoming Members of the European Parliament for the ninth parliamentary term. Second, the Parliament claims that the Instruction of 29 May 2019 does not produce legal effects vis-à-vis third parties, within the meaning of the first paragraph of Article 263 TFEU, and requests the Court to examine of its own motion whether that instruction is a challengeable act.

72 The applicants contend that the Parliament's arguments should be rejected. First, they submit, in essence, that the refusal of the former President of the Parliament to recognise their status as Members of the European Parliament, contained in the letter of 27 June 2019, is not of an informative nature. That refusal, they submit, led to a change in their legal situation because it prevented them, inter alia, from taking office, exercising their mandate and sitting in Parliament. It therefore constitutes an act adversely affecting them under the first paragraph of Article 263 TFEU. Second, the applicants submit that the Instruction of 29 May 2019 is a challengeable act because it prevented them from taking the necessary steps to take office.

73 The Kingdom of Spain argues, in essence, that the action is inadmissible on the ground that what the applicants claim to be the negative effects of the contested acts do not flow from those acts but from the decisions of the Spanish authorities.

74 According to settled case-law, any acts adopted by the institutions of the European Union, whatever their nature or form, which are intended to have binding legal effects capable of affecting the interests of an applicant, by bringing about a distinct change in his or her legal position, are regarded as actionable measures for the purposes of Article 263 TFEU (judgments of 11 November 1981, *IBM* v *Commission*, 60/81, EU:C:1981:264, paragraph 9, and of 26 January 2010, *Internationaler Hilfsfonds* v *Commission*, C 362/08 P, EU:C:2010:40, paragraph 51; see, also, judgment of 25 October 2017, *Romania* v *Commission*, C 599/15 P, EU:C:2017:801, paragraph 47 and the case-law cited).

75 By contrast, any act not producing binding legal effects, such as preparatory acts, confirmatory measures, implementing measures, mere recommendations and opinions and, in principle, internal instructions, falls outside the scope of the judicial review provided for in Article 263 TFEU (see 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 and the case-law cited; see also, to that effect, judgment of 23 November 1995, *Nutral* v *Commission*, C 476/93 P, EU:C:1995:401, paragraph 30). Furthermore, measures of a purely informative character can neither affect the interests of the addressee nor change his or her legal position compared with the situation prior to receipt of those measures (see judgment of 11 December 2012, *Sina Bank* v *Council*, T 15/11, EU:T:2012:661, paragraph 30 and the case-law cited).

76 In the light of the case-law, in order to determine whether an act is capable of having legal effects and, therefore, whether an action for annulment under Article 263 TFEU can be brought against it, it is necessary to examine the substance of that act and to assess those effects on the basis of objective criteria, such as the content of that act, taking into account, as appropriate, the context in which that act was adopted and the powers of the EU institution which adopted it (see judgment of 20 February 2018, *Belgium* v *Commission*, C 16/16 P, EU:C:2018:79, paragraph 32 and the case-law cited).

77 Finally, it should be noted that the condition relating to the existence of a challengeable act is among those that constitute an absolute bar to proceeding with a case which the Court may raise, where applicable, of its own motion (see, to that effect, orders of 14 January 1992, *ISAE/VP and Interdata* v *Commission*, C 130/91, EU:C:1992:7, paragraph 11, and of 19 October 2016, *E-Control* v *ACER*, T 671/15, not published, EU:T:2016:626, paragraph 91; Opinions of Advocate General Bot in *Commission* v *Ireland and Others*, C 89/08 P, EU:C:2009:298, point 62, and in *BSH* v *OHIM*, C 43/15 P, EU:C:2016:129, point 52).

78 It is in the light of those considerations that it is necessary to examine whether the refusal of the former President of the Parliament to recognise the applicants' status as Members of the European Parliament, on the one hand, and the Instruction of 29 May 2019, on the other, are challengeable acts under Article 263 TFEU.

*The refusal of the former President of the Parliament to recognise the applicants' status as Members of the European Parliament*

79 The applicants submit, in essence, that the refusal of the former President of the Parliament to recognise their status of Members as the European Parliament had a number of legal effects such as, first, the fact that they could not take office, exercise their mandate and sit in Parliament from the opening of the first session following the elections of 26 May 2019, second, the declaration of the former President of the Parliament that their seats were vacant, third, the former President's refusal to take an initiative, as a matter of urgency, on the basis of Rule 8 of the Rules of Procedure to assert their privileges and immunities and, fourth, the failure to announce, in plenary session, their request to have those privileges and immunities defended on the basis of Rule 9 of the Rules of procedure and to have that request referred to the competent committee of the Parliament.

80 The Parliament, supported by the Kingdom of Spain, submits that, even if the effects alleged by the applicants were established, those effects do not result from the refusal of the former President of the Parliament to recognise their status as Members of the European Parliament.

– *The content of the letter of 27 June 2019*

81 In the letter of 27 June 2019, first of all, the former President of the Parliament notified the applicants that, on 17 and 20 June 2019, the Spanish authorities had informed him of the official results of the European elections that had taken place in Spain. Next, he reminded the applicants that, under Article 12 of the Electoral Act, 'Parliament shall take note of the results declared officially by the Member States and it is for the national courts on the first hand to rule on the lawfulness of the national electoral provisions and procedures'. Finally, the former President of the Parliament stated that the applicants' names were not on the list of elected candidates officially communicated to the Parliament by the Spanish authorities and that, 'until further notice by the Spanish authorities, I am currently not in a position to treat you as future Members of the [Parliament] as requested in your letter of 14 June 2019'.

82 It is thus apparent from the wording of the letter of 27 June 2019 that the former President of the Parliament merely took note of the applicants' legal situation which had been officially notified to him by the Spanish authorities by way of the communications of 17 and 20 June 2019.

83 Furthermore, it follows expressly from the wording of the letter of 27 June 2019 that the position expressed by the former President of the Parliament could have evolved on the basis of further information received from the Spanish authorities.

84 Therefore, in view of its content, the letter of 27 June 2019 expressly demonstrated that the position of the former President of the Parliament in that letter was neither a decision nor definitive.

– *The alleged legal effects of the letter of 27 June 2019*

*(i) Preliminary observations*

85 In the first place, it should be noted that, in the judgment of 19 December 2019, *Junqueras Vies* (C 502/19, EU:C:2019:1115), the Court of Justice drew a distinction between the status of Member of the European Parliament and the exercise of the mandate attaching to that status.

86 After stating that, under Article 5(1) and (2) of the Electoral Act, the term of office of a Member of the European Parliament coincided with the five-year term which began at the opening of the first session following each election, with the result that it began and ended at the same time as that five-year term, the Court of Justice held that, unlike the status of Member of the European Parliament, which, first, was acquired at the time a person was officially declared elected, and, second, established a link between that person and the institution of which he or she then formed part, the term of office of a Member of the European Parliament established a link between that person and the parliamentary term for which he or she had been elected. That latter term did not begin until the opening of the first session of the 'new' Parliament held after the election, which occurred, by definition, after the official declaration of the election results by the Member States (judgment of 19 December 2019, *Junqueras Vies*, C 502/19, EU:C:2019:1115, paragraphs 72 and 74).

87 In the second place, in the judgment of 19 December 2019, *Junqueras Vies* (C 502/19, EU:C:2019:1115, paragraphs 70, 71 and 81), the Court of Justice held that Articles 8 and 12 of the Electoral Act had to be understood as meaning that a person who had been officially declared elected to the Parliament had to be regarded as having acquired, as a result of this and from that time, the status of Member of that institution, for the purposes of Article 9 of Protocol No 7, and as enjoying, on that basis, the immunity provided for in the second paragraph of that article.

88 In that regard, the Court of Justice stated that the immunity provided for in the second paragraph of Article 9 of Protocol No 7 also applied to the Members of the Parliament while they were travelling to and from the place of meeting of the Parliament, and therefore, inter alia, while they were travelling to the first sitting held after the official declaration of the election results, in order to allow the new Parliament to hold its inaugural session and to verify the credentials of its Members. Those Members therefore enjoyed the immunity in question before their term of office had begun (judgment of 19 December 2019, *Junqueras Vies*, C 502/19, EU:C:2019:1115, paragraph 80).

89 In the third place, it follows implicitly but necessarily from paragraph 89 of the judgment of 19 December 2019, *Junqueras Vies* (C 502/19, EU:C:2019:1115) that the official declaration of the results of the elections of 26 May 2019 which took place in Spain is the declaration of 13 June 2019.

90 In view of the foregoing, in the present case, it must be held that the applicants, whose names were listed in the declaration of 13 June 2019, acquired the status of Members of the European Parliament from that date and, therefore, by reason of that fact alone, enjoyed the immunity referred to in the second paragraph of Article 9 of Protocol No 7. Moreover, the parties now agree on that point.

91 Furthermore, it follows from the case-law cited in paragraphs 86 and 87 above that the applicants' acquisition of the status of Members of the European Parliament and, consequently, of the immunity referred to in the related second paragraph of Article 9 of Protocol No 7 follows exclusively from the declaration of 13 June 2019 and, therefore, could not be called into question either by the former President of the Parliament or by the Parliament itself.

92 Thus, even if the letter of 27 June 2019 did not refer to the issue of the applicants' immunity, it must be stated that the refusal of the former President of the Parliament to recognise the applicants' status as Members of the European Parliament in that letter did not, in any event, have the effect of depriving them of the immunity referred to in the second paragraph of Article 9 of Protocol No 7, which the national authorities were obliged to respect simply as a result of the official declaration of the results of the European elections.

93 It is in the light of those considerations that it is necessary to examine whether the refusal of the former President of the Parliament to recognise the applicants' status as Members of the European Parliament was the cause of the legal effects alleged by the applicants and referred to in paragraph 79 above.

*(ii) The allegation that the applicants could not take office, exercise their mandate and sit in Parliament*

94 The Parliament, supported by the Kingdom of Spain, maintains, in essence, that it could not adopt acts producing legal effects vis-à-vis the applicants, on the ground that, pursuant to Article 12 of the Electoral Act and in accordance with the applicable case-law, it was bound by the list of elected candidates which had been officially notified to it by the Spanish authorities by way of the communication of 17 June 2019. In that regard, the Parliament submits that, having regard to the allocation of areas of competence enshrined in the Electoral Act, it is for the Member States to determine the conditions governing the exercise of the mandate of a Member of the European Parliament. Thus, pursuant to Articles 8 and 12 of the Electoral Act, read in conjunction with the principle of sincere cooperation enshrined in Article 4(3) TEU, the Parliament was required to give full effect to the applicable provisions of Spanish electoral law, as reflected in the communications of 17 and 20 June 2019. Furthermore, the Parliament claims, in essence, that it follows from the abovementioned provisions and from Rule 3 of the Rules of Procedure that the official notifications addressed to it by the competent national electoral bodies are the only authoritative sources of information as regards the legal situation of Members of the European Parliament according to national law and that they are an indispensable element in the electoral process. In conclusion, the Parliament submits that, in view of all the information communicated by the Central Electoral Commission, it was not in a position, on 27 June 2019, to take the view that the applicants had 'unconditionally [acquired the status of] future Members of the Parliament' and it was therefore not entitled to recognise, in essence, their right to take office, to exercise their mandate and to sit in Parliament from 2 July 2019.

95 The applicants dispute those arguments. According to them, the principal issue in the present case is whether the Parliament was bound by the declaration of 13 June 2019 or by the communications of 17 and 20 June 2019. In that regard, the applicants submit that it follows from Article 12 of the Electoral Act that the concept of 'results declared officially' is an autonomous concept of EU law. In the present case, those results coincide with the results declared in accordance with Article 224(1) of the Spanish Electoral Law, as the Court of Justice held in paragraph 89 of the judgment of 19 December 2019, *Junqueras Vies* (C 502/19, EU:C:2019:1115), that is to say, the results set out in the declaration of 13 June 2019. Furthermore, the applicants claim, in essence, that the Kingdom of Spain did not have the power to set conditions for the exercise of the mandate of Members of the European Parliament, such as the condition of taking the oath to respect the Spanish Constitution, laid down in Article 224(2) of the Spanish Electoral Law. That interpretation, they argue, has been confirmed by the judgment of 19 December 2019, *Junqueras Vies* (C 502/19, EU:C:2019:1115), in which the Court of Justice held that the 'necessary formalities' to be able to sit as a Member of the Parliament had to be completed before that institution. Finally, the applicants claim that the Parliament knew that the Spanish authorities had not communicated the full results of the elections of 26 May 2019 to it, given that the applicants themselves had sent a copy of those results to the Parliament. Thus, the Spanish authorities' failure to communicate the full results of those elections did not release the Parliament from its obligation to take note of those results.

96 In the present case, the question which arises is whether the former President of the Parliament had the power to call into question the communication of 17 June 2019, by which the Spanish authorities officially notified him of the list of the candidates elected at the elections of 26 May 2019, which did not mention the applicants' names even though their names featured in the official declaration of 13 June 2019.

97 As a preliminary point, it should be noted that, in accordance with Article 5(1) and Article 13(2) TEU, the Parliament acts within the limits of the powers conferred on it by the Treaties. The principles of institutional balance and of the allocation of powers, as laid down in Article 13(2) TEU, require that each institution act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out therein (judgment of 3 December 2020, *Changmao Biochemical Engineering* v *Distillerie Bonollo and Others*, C 461/18 P, EU:C:2020:979, paragraph 102).

98 As regards the election of Members of the European Parliament, the Electoral Act establishes a sharing of power between the Parliament and the Member States.

99 Thus, first, under the first paragraph of Article 8 of the Electoral Act, subject to the other provisions of that act, the electoral procedure is governed in each Member State by its national provisions.

100 Second, under Article 12 of the Electoral Act, the Parliament verifies the credentials of its Members. For that purpose, it takes note of the results declared officially by the Member States and rules on any disputes which may arise out of the provisions of that act, other than those arising out of the national provisions to which that act refers.

101 It follows from the second sentence of Article 12 of the Electoral Act that Parliament's power of verification is subject to two significant restrictions (judgment of 30 April 2009, *Italy and Donnici* v *Parliament*, C 393/07 and C 9/08, EU:C:2009:275, paragraph 52).

102 First, according to the first part of the second sentence of Article 12 of the Electoral Act, for the purposes of the verification of credentials, Parliament takes note of the results declared officially by the Member States (judgment of 30 April 2009, *Italy and Donnici* v *Parliament*, C 393/07 and C 9/08, EU:C:2009:275, paragraph 53).

103 According to the case-law, the use of the expression 'shall take note' referred to in Article 12 of the Electoral Act must be interpreted as indicating the Parliament's complete lack of discretion. It is the national authorities that have the power to designate the future Members of the Parliament in accordance with the electoral procedure, which is governed, as expressly stated in Article 8 of the Electoral Act, by national provisions (see, to that effect, judgment of 30 April 2009, *Italy and Donnici* v *Parliament* (C 393/07 and C 9/08, EU:C:2009:275, paragraphs 55 and 56 and the case-law cited, and order of 8 October 2020, *Junqueras i Vies* v *Parliament*, C 201/20 P(R), not published, EU:C:2020:818, paragraph 66).

104 Thus, the exercise of '[taking] note of the results declared officially' means that the Parliament is required, for the purposes of the processes of verifying the credentials of its Members, to rely on the official declaration of election results, as this follows from a decision making process which complies with the national procedures by which the legal issues pertaining to that declaration were settled and therefore constitutes a pre existing legal situation which is binding on the Parliament (see, to that effect, judgment of 30 April 2009, *Italy and Donnici* v *Parliament* (C 393/07 and C 9/08, EU:C:2009:275, paragraph 55).

105 Secondly, in accordance with the second part of the second sentence of Article 12 of the Electoral Act, the Parliament decides disputes which may arise out of the provisions of that act other than those arising out of the national provisions to which the act refers (judgment of 30 April 2009, *Italy and Donnici* v *Parliament* (C 393/07 and C 9/08, EU:C:2009:275, paragraph 53).

106 It is therefore clear from the wording itself of Article 12 of the Electoral Act that that article does not confer on the Parliament the power to settle disputes which arise out of EU law as a whole, but only those which arise out of the provisions of the Electoral Act (judgment of 30 April 2009, *Italy and Donnici* v *Parliament* (C 393/07 and C 9/08, EU:C:2009:275, paragraph 54). Furthermore, that article expressly excludes the Parliament's power to rule on disputes arising out of national law, even where the Electoral Act refers to that law.

107 Furthermore, it should be noted, as the Parliament submits and as Advocate General Szpunar stated in his Opinion in *Junqueras Vies* (C 502/19, EU:C:2019:958, point 53), that, after the official declaration of the electoral results, a number of events may lead to a situation whereby a candidate officially declared elected as a Member of the European Parliament following the counting of the votes does not take office and does not exercise the related mandate, such as, for example, an incompatibility with the mandate of Member of the European Parliament or the withdrawal of the Member of Parliament elected to take office. Furthermore, it must be noted, as Advocate General Szpunar stated in *Junqueras Vies* (C 502/19, EU:C:2019:958, point 48), that various parliamentary systems impose formal obligations that elected candidates must satisfy before they effectively take office.

108 That is the case with regard to Spanish law, since Article 224(2) of the Spanish Electoral Law establishes that, within five days of their being declared elected, elected candidates must take an oath or give a promise, before the Central Electoral Commission, to respect the Spanish Constitution, failing which their seats in the Parliament are declared 'vacant' and the prerogatives to which they could be entitled on the basis of their duties are suspended until they have made that oath or given that promise (see paragraph 12 above).

109 In view of the foregoing, it cannot be ruled out that the Parliament must verify the credentials on the basis of the list of candidates officially declared elected, as amended following disputes raised on the basis of national law.

110 Thus, Rule 3 of the Rules of Procedure, governing the procedure for the verification of credentials, provides that that procedure is based on the Member States' official notification of the list of the electoral results.

111 First of all, according to Rule 3(1) of the Rules of Procedure, following general elections to the Parliament, the President is to invite the competent authorities of the Member States to notify Parliament without delay of the names of the elected Members so that all Members may take their seats in Parliament with effect from the opening of the first sitting following the elections.

112 Next, under Rule 3(2) of the Rules of Procedure, it is the Members of the European Parliament whose names are on that list who must make a declaration of non-incompatibility and who may take their seat in Parliament and on its bodies and enjoy all their rights until such time as their credentials have been verified or a ruling has been given on any dispute falling within the scope of the Parliament's powers.

113 Finally, it follows from Rule 3(3) of the Rules of Procedure that the Parliament is to verify the credentials of its newly elected Members on the basis of a report by the competent committee, which is, in accordance with the second paragraph of Rule 3(3) of those rules, based on the official notification by each Member State of the full results of the election, specifying the names of the candidates elected and those of any substitutes, together with their ranking in accordance with the results of the vote.

114 It follows that, in order to verify the credentials of its Members, the Parliament must rely on the list of elected candidates officially communicated by the national authorities, which, in theory, is established in the light of the officially declared results and after any objections based on the application of national law have been dealt with by those authorities.

115 It is in the light of those considerations that the applicants' arguments must be examined.

116 In the first place, the applicants submit, in essence, that the Parliament was not bound either by the communication of 17 June 2019 or by the communication of 20 June 2019, which the Parliament itself acknowledged, because, after the taking note of 13 January 2020, it authorised the applicants to take office and to sit in the Parliament. Moreover, the applicants note that the Parliament was aware that the Spanish authorities had not communicated the full results of the elections of 26 May 2019 to it, since the applicants themselves had sent a copy of those results to the Parliament. Thus, the applicants claim, in essence, that the Parliament was obliged, in accordance with Rule 3(1) of the Rules of Procedure, to request the Spanish authorities to send to it the full results of the elections of 26 May 2019. Finally, relying on the Opinion of Advocate General Szpunar in *Junqueras Vies* (C 502/19, EU:C:2019:958, point 51), the applicants submit that the fact that the Spanish authorities never notified the Parliament of the results of the elections as followed from the declaration of 13 June 2019 did not free the Parliament from its obligation to take note of those results pursuant to Article 12 of the Electoral Act.

117 In the present case, first, it is common ground between the parties that the applicants did not comply with the requirement laid down in Article 224(2) of the Spanish Electoral Law and that that is why their names were not included in the communication of 17 June 2019 by which the Spanish authorities officially notified the Parliament of the list of candidates elected at the elections of 26 May 2019.

118 Second, the former President of the Parliament did not have the power to review the validity of the exclusion of certain elected candidates from the abovementioned list which was officially communicated by the Spanish authorities pursuant to Rule 3(1) of the Rules of Procedure, since that list reflected the official results of the elections of 26 May 2019 as established, where necessary, after any disputes raised on the basis of national law had been dealt with (see paragraphs 97 to 106 above).

119 The applicants are therefore not entitled to argue that the former President of the Parliament should, in accordance with Rule 3(1) of the Rules of Procedure, have requested the Spanish authorities to notify the Parliament of the full results of the elections of 26 May 2019 which were set out in the declaration of 13 June 2019.

120 Furthermore, it should be noted that, in accordance with the case-law referred to in paragraph 76 above, the issue of whether an act is capable of having legal effects and, therefore, whether an action for annulment under Article 263 TFEU can be brought against it, involves an examination of the substance of that act and an assessment of those effects on the basis of objective criteria, such as the content of that act, taking into account, as appropriate, the context in which it was adopted and the powers of the EU institution which adopted it.

121 Thus, the fact that, in the light of the judgment of 19 December 2019, *Junqueras Vies* (C 502/19, EU:C:2019:1115) and after the taking note of 13 January 2020, the Parliament authorised the applicants to sit in Parliament and to enjoy fully the rights associated with the status of Member of the European Parliament in the absence of an official notification by the Member State is not such as to call into question the findings in paragraphs 82 to 84 and 100 to 114 above.

122 Moreover, at the hearing, the Parliament explained that, in view of the legal uncertainty regarding the applicants' status following the judgment of 19 December 2019, *Junqueras Vies* (C 502/19, EU:C:2019:1115), and the order of 20 December 2019, *Puigdemont i Casamajó and Comín i Oliveres* v *Parliament* (C 646/19 P(R), not published, EU:C:2019:1149), it decided to authorise the applicants to take office and to sit in Parliament, on the basis of Rule 3(2) of the Rules of Procedure, without, however, verifying their credentials because that would have required, beforehand, an official notification by the national authorities as regards the election of the applicants.

123 The applicants' line of argument referred to in paragraph 116 above must therefore be rejected.

124 Finally, as regards the applicants' reference to the Opinion of Advocate General Szpunar in *Junqueras Vies* (C 502/19, EU:C:2019:958), it should be noted that the issue that arose in that case was whether, in essence, a person officially declared elected enjoyed the immunity provided for in the second paragraph of Article 9 of Protocol No 7 in order to be able to complete the formalities and comply with the requirements necessary for him or her to take office.

125 In point 50 of the Opinion of Advocate General Szpunar in *Junqueras Vies* (C 502/19, EU:C:2019:958), the Advocate General accepted that the requirement laid down in Article 224(2) of the Spanish Electoral Law could be a condition for candidates elected as Members of the European Parliament effectively to take office. However, according to Advocate General Szpunar, that requirement could not be a condition for the acquisition of the status of Member of the European Parliament and the ensuing prerogatives, including immunity, as otherwise a person duly elected as a Member of the European Parliament would be prevented from completing the formalities and complying with the requirements necessary for him or her to take office.

126 It is in that context that it is necessary to read point 51 of the Opinion of Advocate General Szpunar in *Junqueras Vies* (C 502/19, EU:C:2019:958), according to which, although it makes sense that the Parliament must be informed of the results of the elections by way of official notification by the Member States, as referred to in Rule 3(1) of the Rules of Procedure, that notification cannot, in essence, constitute acquisition of the status of Member of the European Parliament.

127 Thus, the view of Advocate General Szpunar set out in point 51 of his Opinion in *Junqueras Vies* (C 502/19, EU:C:2019:958) cannot support the applicants' line of argument that, in order to verify the credentials, the Parliament was under an obligation to take note of the results of the elections of 26 May 2019 set out in the declaration of 13 June 2019, instead of the results officially communicated by the Spanish authorities on 17 June 2019.

128 In the second place, the applicants submit that the Spanish authorities did not have power to set the requirement referred to in Article 224(2) of the Spanish Electoral Law. The condition to take an oath or to promise to respect the Spanish Constitution does not come under the 'electoral procedure' of the Member States within the meaning of Article 8 of the Electoral Act and, therefore, is not covered by that article's reference to national legislation. The applicants add that, under Article 223(2) TFEU, it is for the Parliament to determine the status and the general conditions governing the performance of the duties of its Members, as that competence has not been delegated to the Member States. Thus, when a Member of the European Parliament acquires that status following the declaration of the results of

European elections, all subsequent formalities fall within the competence provided for in the abovementioned article.

129 It follows from paragraphs 97 to 109 above that the Parliament does not have the power to rule on disputes based on provisions of national law in respect of which the Electoral Act makes no reference, such as the requirement laid down in Article 224(2) of the Spanish Electoral Law.

130 It follows that, even if the Kingdom of Spain did not have the power to lay down the abovementioned requirement in its national law, the former President of the Parliament did not have any power to state that the Kingdom of Spain did not have that power or, a fortiori, to call into question the lawfulness of the list of elected candidates officially notified by the Spanish authorities on 17 June 2019.

131 In addition, it must be noted that the General Court also does not have jurisdiction to assess, first, whether the Kingdom of Spain had power, in the light of Article 223(2) TFEU and Article 8 of the Electoral Act, to establish the requirement laid down in Article 224(2) of the Spanish Electoral Law and, second, whether that requirement complies with EU law, since those questions fall within the jurisdiction of the national courts and, if applicable, of the Court of Justice where it hears an action for failure to fulfil obligations under Article 258 TFEU or when asked a question referred for a preliminary ruling on a point of interpretation on the basis of Article 267 TFEU (see, to that effect, judgment of 30 April 2009, *Italy and Donnici* v *Parliament*, C 393/07 and C 9/08, EU:C:2009:275, paragraph 65, and order of 8 October 2020, *Junqueras i Vies* v *Parliament*, C 201/20 P(R), not published, EU:C:2020:818, paragraph 60).

132 For the sake of completeness, under Article 223(2) TFEU, the Parliament, acting by means of regulations on its own initiative and in accordance with a special legislative procedure, after seeking an opinion from the European Commission and with the consent of the Council of the European Union, is to lay down the regulations and general conditions governing the performance of the duties of its Members.

133 The ‘general conditions governing the performance of the duties of Members of the European Parliament’ are set out in Title I of Decision 2005/684/EC, Euratom of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament (OJ 2005 L 262, p. 1), entitled ‘Regulations and general conditions governing the performance of the duties of the Members of the European Parliament’ and concern, in essence, the detailed rules for the performance of the duties of a Member of the European Parliament and not the formalities prior to taking office.

134 Accordingly, Article 223(2) TFEU confers on the Parliament exclusive competence to establish the Statute for Members of the European Parliament and, in that context, the ‘general’ conditions for the performance of the mandate of a Member of the European Parliament. By contrast, that article does not expressly state that the Parliament also has such an exclusive competence to establish the conditions or requirements prior to Members of the European Parliament taking office.

135 The applicants’ argument that the Kingdom of Spain does not have the power to lay down the requirement in Article 224(2) of the Spanish Electoral Law, which establishes a condition for the performance of the mandate of Member of the European Parliament, must therefore be rejected as ineffective.

136 In the third place, in view of the foregoing considerations, it is also necessary to reject as ineffective the applicants’ argument that, in paragraph 74 of the order of 20 December 2019, *Puigdemont i Casamajó and Comín i Oliveres* v *Parliament* (C 646/19 P(R), not published, EU:C:2019:1149), the Vice-President of the Court of Justice held that the accomplishment of any formality following the count of the votes cast by the electorate did not form part of the electoral procedure.

137 In that regard, it should be noted that, in paragraph 74 of the order of 20 December 2019, *Puigdemont i Casamajó and Comín i Oliveres* v *Parliament* (C 646/19 P(R), not published, EU:C:2019:1149), the Vice-President of the Court of Justice held that, taking into account the fact that, in accordance with Article 14(3) TEU, Article 223(1) TFEU, Article 39 of the Charter, and Article 1 of the Electoral Act, the election of Members of Parliament is governed by the principle of direct universal suffrage in a free and secret ballot, it could not, prima facie, be excluded that the act closing the procedure for electing

Members of Parliament was that containing the results of the count of the votes cast by the electorate, such that the accomplishment of all subsequent formalities required by national law did not form part of that electoral procedure.

138 First, it must be noted that the abovementioned assessment was carried out in an interlocutory order made in the appeal brought against the order of 1 July 2019, *Puigdemont i Casamajó and Comín i Oliveres* v *Parliament* (T 388/19 R, not published, EU:T:2019:467). Thus, the view cannot be taken that the Vice-President of the Court of Justice adopted a final position on that issue.

139 Second, even if the Kingdom of Spain did not have the power to impose such a formality, a finding to that effect by the Vice-President of the Court of Justice could not, in any event, form the basis for the Parliament's power to refuse to take note of the list of elected candidates officially notified by the Spanish authorities, for the reasons set out in paragraphs 97 to 114 and 117 to 119 above.

140 The applicants' argument must therefore be rejected.

141 In the fourth place, the applicants claim that it follows from the judgment of 19 December 2019, *Junqueras Vies* (C 502/19, EU:C:2019:1115), that the 'necessary formalities' to be able to sit in Parliament as a Member of the European Parliament must be completed exclusively before that institution.

142 However, the abovementioned argument is not confirmed in the judgment of 19 December 2019, *Junqueras Vies* (C 502/19, EU:C:2019:1115).

143 It should be noted that, in the case which gave rise to the judgment of 19 December 2019, *Junqueras Vies* (C 502/19, EU:C:2019:1115), the Court of Justice was asked to rule exclusively on whether Article 9 of Protocol No 7 had to be interpreted as meaning that a person who had officially been declared elected to the European Parliament while subject to a measure of provisional detention in the context of proceedings in respect of serious criminal offences, but who had not been authorised to comply with certain requirements under national law following such a declaration and to travel to the Parliament, in order to take part in its first session, had to be regarded as enjoying an immunity under that article. If so, the referring court also asked whether that immunity meant that the measure of provisional detention imposed on the person concerned had to be lifted, in order to enable that person to travel to the Parliament and to complete the necessary formalities there.

144 In paragraph 88 and in the second indent of the operative part of the judgment of 19 December 2019, *Junqueras Vies* (C 502/19, EU:C:2019:1115), the Court of Justice answered the second question by stating that the immunity provided for in the second paragraph of Article 9 of Protocol No 7 had to, subject to a request for that immunity to be lifted, enable the person concerned to travel to the Parliament and complete the 'necessary formalities' there. In that context, the mere reference to the formalities to be completed before the Parliament cannot be interpreted as meaning that the Court of Justice considered that national law could not make the taking of office by a Member of the European Parliament subject to the existence of certain formalities.

145 The applicants' argument must therefore be rejected.

146 In the light of all of the foregoing, it must be concluded that the fact that the applicants could not take office, exercise their mandate and sit in Parliament is not a result of the refusal of the former President of the Parliament to recognise the applicants' status as Members of the European Parliament, contained in the letter of 27 June 2019, but is a result of the application of Spanish law, as reflected in the communications of 17 and 20 June 2019, in respect of which the former President of the Parliament and, more generally, the Parliament did not have any discretion.

147 The applicants are therefore not entitled to submit that the refusal of the former President of the Parliament to recognise their status as Members of the European Parliament had the legal effect of depriving them of the possibility of taking office, exercising their mandate and sitting in Parliament.

*(iii) The alleged declaration that the applicants' seats were vacant*

148 The applicants submit, in essence, that the refusal of the former President of the Parliament to recognise their status as Members of the European Parliament, which was based on the communications of 17 and 20 June 2019, led to that President declaring that their seats were vacant, even though the ground used to justify those seats being vacant was not one of the grounds referred to in Article 13(1) of the Electoral Act.

149 In that regard, it is sufficient to note, as the Parliament submits, that neither the former President of the Parliament nor the Parliament declared that the applicants' seats were vacant.

150 Therefore, the legal effect alleged by the applicants as regards the Parliament's declaration that their seats were vacant does not exist substantively.

151 Moreover, under Article 13(1) of the Electoral Act, a seat falls vacant when the mandate of a Member of the European Parliament ends as a result of resignation, death or withdrawal of his or her mandate. In accordance with Article 13(3) of the Electoral Act, the national authorities are required to inform the Parliament of the end of the mandate of a Member of the European Parliament because of the withdrawal of that mandate, as explicitly provided for by national law.

152 In the present case, at the hearing, the Kingdom of Spain explained that, notwithstanding the terminology used in Article 224(2) of the Spanish Electoral Law, in Spanish law, a failure to take an oath or give a promise did not cause the elected candidates' seats to become 'vacant' within the meaning of Article 13 of the Electoral Act, but only temporarily suspended the possibility of occupying them. The Kingdom of Spain therefore confirmed that those seats remained 'reserved' for the elected candidates, where necessary, throughout the term of the Parliament until they took the oath or gave the promise to respect the Spanish Constitution, as referred to in Article 224(2) of the Spanish Electoral Law.

153 Therefore, and in any event, the fact that it was temporarily not possible for the applicants to take their seats in Parliament was not a result of the refusal of the former President of the Parliament to recognise their status as Members of the European Parliament, contained in the letter of 27 June 2019, but was a result of the application of Spanish law.

*(iv) The failure to take an initiative, as a matter of urgency, to assert the applicants' privileges and immunities*

154 The applicants submit, in essence, that the refusal of the former President of the Parliament to recognise their status as Members of the European Parliament, contained in the letter of 27 June 2019, led to that President refusing their request for him to take an initiative to assert their privileges and immunities on the basis of Rule 8 of the Rules of Procedure (see paragraphs 64 and 79 above).

155 It follows from the Court's case-law that the President of the Parliament is in no way required to take an initiative to assert the privileges and immunities of a Member of the European Parliament and that he or she has discretion in that regard, even when the Member has been arrested or has had his or her freedom of movement curtailed in apparent breach of his or her privileges and immunities (order of 20 January 2021, *Junqueras i Vies* v *Parliament*, T 734/19, not published, EU:T:2021:15, paragraph 44).

156 Thus, if the former President of the Parliament had recognised the applicants' status as Members of the European Parliament, he could, in any event, have refused to take an initiative as a matter of urgency on the basis of Rule 8 of the Rules of Procedure.

157 Therefore, the failure to adopt such an initiative cannot be regarded as a binding legal effect resulting from the refusal of the former President of the Parliament to recognise the applicants' status as Members of the European Parliament, but is the consequence of the discretionary power conferred on him, in that regard, by Rule 8 of the Rules of Procedure.

158 Furthermore, even if the refusal of the applicants' request, based on Rule 8 of the Rules of Procedure and seeking to have the former President of the Parliament take an initiative to assert their privileges and immunities, were the consequence of his refusal to recognise their status as Members of the

European Parliament, it follows from the Court's case-law that such a refusal would not, in any event, have had binding effects vis-à-vis the Spanish authorities (see, to that effect, order of 20 January 2021, *Junqueras i Vies* v *Parliament*, T 734/19, not published, EU:T:2021:15, paragraphs 62 and 65).

*(v) The failure to announce, in plenary session, the alleged request to defend the applicants' privileges and immunities, and the failure to forward that request to the competent committee of the Parliament*

159 The applicants submit that the fact that the former President of the Parliament did not announce, in plenary session, their request to have their privileges and immunities defended and did not refer that request to the competent committee, in breach of Rule 9(1) of the Rules of Procedure, is a legal effect of his refusal to recognise their status as Members of the European Parliament (see paragraph 68 above).

160 In that regard, it should be noted that, in the reply, the applicants claimed that, in their letter of 20 June 2019, they had requested the former President of the Parliament (i) to take an initiative, as a matter of urgency, to assert their privileges and immunities on the basis of Rule 8 of the Rules of Procedure, and (ii) to defend those privileges and immunities on the basis of Rule 9 of the Rules of Procedure. Furthermore, in that letter, they focused on Rule 8 of the Rules of Procedure, in essence, solely in order to highlight the urgent situation they were facing. In addition, they submit that Rules 8 and 9 of the Rules of Procedure do not establish different procedures and, therefore, it is not necessary to distinguish a request to assert, as a matter of urgency, the privileges and immunities, within the meaning of Rule 8 of the Rules of Procedure, from a request to defend those privileges and immunities, within the meaning of Rule 9 of those rules.

161 According to Rule 9(1) of the Rules of Procedure, any request addressed to the President of the Parliament by a Member or a former Member for the defence of privileges and immunities is to be announced in Parliament and referred to the competent committee.

162 It thus follows from the wording of that provision that its application is subject to the existence of a request for the defence of privileges and immunities addressed to the President of the Parliament by a Member or a former Member of Parliament.

163 In the present case, first, in the letter of 20 June 2019, the applicants requested the former 'President to take all necessary measures, as a matter of urgency, pursuant to Rule 8(1) of the Rules [of Procedure and], after consulting the Chair of the Committee on Legal Affairs, to assert [their] privileges and immunities'. That request was in bold and did not concern Rules 7 and 9 of the Rules of Procedure. Second, the applicants listed the abovementioned measures which they requested to be adopted 'in particular', including the defence of their privileges and immunities (see paragraph 25 above).

164 It must therefore be held that the abovementioned request for the defence of privileges and immunities was not made separately, but was part of the request for the adoption, as a matter of urgency, of measures to assert the applicants' privileges and immunities on the basis of Rule 8 of the Rules of Procedure, which was the only rule expressly referred to in the letter of 20 June 2019.

165 Second, contrary to what the applicants claim, it follows from the case-law that a distinction must be made between a request based on Rule 8 of the Rules of Procedure and a request for the defence of privileges and immunities based on Rules 7 and 9 of those rules (order of 20 January 2021, *Junqueras i Vies* v *Parliament*, T 734/19, not published, EU:T:2021:15, paragraphs 42 to 46 and 57 and 61).

166 Thus, in view of the fact that there was no substantive request for the defence of privileges and immunities, duly made by the applicants on the basis of Rules 7 and 9 of the Rules of Procedure, the refusal of the former President of the Parliament to recognise the applicants' status as Members of the European Parliament could not have resulted in the failure to announce that request in plenary session and the failure to forward it to the competent committee.

167 In view of all of the foregoing, it must be held that the refusal of the former President of the Parliament to recognise the applicants' status as Members of the European Parliament is not an act producing

binding legal effects capable of affecting the applicants' interests within the meaning of the case-law cited in paragraph 74 above.

168 The action for annulment of that refusal is, therefore, inadmissible.

*The Instruction of 29 May 2019*

169 The Parliament claims that the Instruction of 29 May 2019 merely temporarily suspends an informal practice which had never been conceived as a legally binding commitment for the Parliament. Thus, that instruction does not produce legal effects vis-à-vis third parties, within the meaning of the first paragraph of Article 263 TFEU.

170 The applicants dispute that plea of inadmissibility on the ground that, contrary to what the Parliament claims, the practice in question was an 'essential step' in order for elected candidates to be able, in essence, to take office and to exercise their mandate, in accordance with Rule 3(2) of the Rules of Procedure.

171 From the day of the elections until the end of the week of the first session following the elections to the Parliament, the institution's practice is to provide, on its premises, a special welcome service for newly elected candidates.

172 The objective of that service is to assist the elected candidates, before the start of their mandate, with their initial contact with the Parliament and to facilitate as much as possible their taking office.

173 At the hearing, the Parliament explained that, as part of the special welcome service, first of all, the elected candidates obtain either a temporary accreditation, with a temporary badge allowing them access to the premises of the Parliament, or a definitive accreditation with a definitive badge when the Member State of which they are nationals has already officially notified the Parliament of the results of the European elections, as referred to in Rule 3 of the Rules of Procedure. Next, the elected candidates have access to themed stands which provide them with information, inter alia, on the administrative formalities to be completed and financial issues. Lastly, the Parliament stated that, in order to complete the administrative steps necessary for the candidates to take office, they have to make direct contact with the institution's administrative services.

174 Furthermore, the definitive badge issued to the candidates whose election has been officially communicated to the Parliament becomes effective only from the opening of the first session following the elections, which marks the start of the new parliamentary term.

175 Finally, the Parliament stated that, in practice, the procedure for the verification of credentials, carried out by the Parliament's Legal Affairs Committee on the basis of Rule 3(3) of the Rules of Procedure, also began after the opening of the first session following the elections. During that period of verification of credentials, which can last several months, elected candidates may send any useful information or document to that committee, including a declaration of non-incompatibility.

176 In that regard, in response to a question put by the Court, the Parliament confirmed that, although Rule 3(2) of the Rules of Procedure provided that the declaration of non-incompatibility had to be made 'where possible' no later than six days prior to the opening of the first sitting following the elections, this did not in any way amount to an obligation.

177 In the present case, following the elections of 26 May 2019, the Parliament put in place the special welcome service within the 'Welcome Village' at its premises in Brussels (Belgium) and in Strasbourg (France), which ended on 4 July 2019.

178 By the Instruction of 29 May 2019, adopted orally by the former President of the Parliament, the latter decided, first, to suspend the grant of temporary accreditations to the candidates elected in Spain and to suspend the accreditations that had already been granted to some of those candidates and, second, to refuse them access to the 'Welcome Village' until the Spanish authorities had officially communicated the results of the elections of 26 May 2019. As is apparent from an email of 30 May 2019 written by the former President of the Parliament and produced by the Parliament as an annex to the plea of

inadmissibility of 19 September 2019, the purpose of that instruction was not to interfere in the national electoral procedure, given that the results of the elections were not yet final and the counting of votes was still ongoing.

179 In the first place, in the light of the wording of the Instruction of 29 May 2019, as set out in the abovementioned email, it must be held that the former President of the Parliament adopted a measure of internal organisation which was intended solely to produce temporary effects, pending the final results of the elections held in Spain and pending the Spanish authorities' official communication of those results to the Parliament.

180 In the second place, contrary to what the applicants claim, the Instruction of 29 May 2019 did not in any way prejudge whether the candidates elected in Spain could obtain a definitive accreditation and badge in order to be able to sit in Parliament from the opening of the first session following the European elections. It follows from the considerations set out in paragraphs 117, 118, 129 and 130 above, and from the explanations provided by the Parliament at the hearing, referred to in paragraphs 173 to 175 above, that the definitive accreditation and badge may be granted by the Parliament only after receipt of the official notification of the results of the elections, as referred to in Rule 3 of the Rules of Procedure.

181 In the third place, even if, as the applicants claim, they were not able to make declarations of non-incompatibility and of financial interests referred to in, respectively, Rule 3 of the Rules of Procedure and Article 4 of Annex I to those rules because they did not have access to the 'Welcome Village' within which the forms necessary for that purpose were distributed, that fact was not, in any event, capable of affecting their ability to sit in Parliament from the opening of the first session following the European elections.

182 First, it follows from Rule 3(1), (2) and (3) of the Rules of Procedure that, during the procedure for the verification of credentials, only elected candidates whose names are on the list of the results of the elections, as communicated by the national authorities, are able to sit in Parliament (see paragraphs 109 to 114 above). Second, and in any event, under Rule 3(2) of the Rules of Procedure, the declaration of non-incompatibility may be made after the opening of the first session following the European elections, a fact which the Parliament confirmed at the hearing (see paragraphs 175 and 176 above).

183 In addition, it must be noted that the applicants have not claimed that the Instruction of 29 May 2019 had prohibited the candidates elected in Spain from sending the declaration of non-incompatibility and the declaration of financial interests to the Parliament. Moreover, that instruction was not addressed to the candidates elected in Spain, but to the institution's Secretary-General (see paragraph 18 above).

184 Therefore, contrary to what the applicants claim, the Instruction of 29 May 2019 did not prevent them from carrying out the administrative steps necessary for them to take office and to exercise their mandate, referred to in Rule 3(2) and (3) of the Rules of Procedure, namely the declaration of non-incompatibility and the declaration of financial interests.

185 In view of the foregoing, the Instruction of 29 May 2019 was not the reason why the applicants were unable to take office, sit in Parliament and exercise their mandate from the opening of the first session following the elections, that is, from 2 July 2019. At the very most, that instruction deprived the applicants of assistance from the Parliament for the purposes of their taking office from the time at which the instruction was adopted up until 17 June 2019, the date on which the Spanish authorities officially notified the Parliament of the results of the elections.

186 It follows that, in view of its content, its provisional nature and the context in which it was adopted, the Instruction of 29 May 2019 did not produce binding legal effects capable of affecting the applicants' interests, within the meaning of the case-law cited in paragraph 74 above.

187 The action for annulment of the Instruction of 29 May 2019 is, therefore, inadmissible.

188 In the light of all of the foregoing, it must be held that the present action is not directed against acts that are challengeable under Article 263 TFEU and that, therefore, it must be dismissed as inadmissible, without there being any need to rule on the other pleas of inadmissibility raised by the Parliament.

**Costs**

189 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.

190 Since the applicants have been unsuccessful, they must be ordered to bear their own costs and to pay those incurred by the Parliament before the General Court in the present case and in Cases T 388/19 R and T 388/19 R-RENV and before the Court of Justice in Case C 646/19 P(R), in accordance with the form of order sought by the Parliament.

191 Finally, pursuant to Article 138(1) of the Rules of Procedure, the Kingdom of Spain must bear its own costs.

On those grounds,

THE GENERAL COURT (Sixth Chamber, Extended Composition)

hereby:

1. **Dismisses the action as inadmissible;**

2. **Orders Mr Carles Puigdemont i Casamajó and Mr Antoni Comín i Oliveres to bear their own costs and to pay those incurred by the European Parliament, including the costs in Cases T 388/19 R, C 646/19 P(R) and T 388/19 R-RENV;**

3. **Orders the Kingdom of Spain to bear its own costs.**

Marcoulli Frimodt Nielsen Schwarcz

Iliopoulos Norkus

Delivered in open court in Luxembourg on 6 July 2022.

E. Coulon S. Papasavvas

Registrar President

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* Language of the case: English.