



Reports of Cases

OPINION OF ADVOCATE GENERAL
WATHELET
delivered on 6 September 2017¹

Case C-384/16 P

**European Union Copper Task Force
v**

European Commission

(Appeal — Action for partial annulment — Fourth paragraph of Article 263 TFEU — Regulatory act which does not entail implementing measures — Individual concern — Plea of partial illegality — Plant protection products — Regulation (EC) No 1107/2009 — Implementing Regulation (EU) No 540/2011 — Implementing Regulation (EU) 2015/408 — Placing of plant protection products on the market and establishing a list of candidates for substitution — Copper compounds)

I. Introduction

1. The present case concerns the appeal brought by the European Union Copper Task Force ('the EUCuTF') against the order of the General Court of the European Union of 27 April 2016, *European Union Copper Task Force v Commission* (T-310/15, not published, 'the order under appeal', EU:T:2016:265).

2. By the order under appeal, the General Court dismissed as inadmissible the action of the EUCuTF for partial annulment of Commission Implementing Regulation (EU) 2015/408 of 11 March 2015 on implementing Article 80(7) of Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market and establishing a list of candidates for substitution ('the regulation at issue').² The General Court, essentially, held that the appellant could not prove an interest of its own and that its members did not have standing to bring proceedings since the regulation at issue was not of individual concern to them. Furthermore, the General Court also held that the action brought by the EUCuTF could not be based on the final limb of the fourth paragraph of Article 263 TFEU because the regulation at issue entails implementing measures within the meaning of that provision.

3. By its appeal, the EUCuTF gives the Court the opportunity to clarify the interpretation of the verb 'entail' used in that provision.³ Although that term is essential to the application of the aforementioned provision, the Court has not actually addressed the issue of its interpretation, be it, for example, in the cases which gave rise to the judgments of 19 December 2013, *Telefónica v Commission* (C-274/12 P, EU:C:2013:852) or of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission* (C-456/13 P, EU:C:2015:284).

¹ Original language: French.

² OJ 2015 L 67, p. 18.

³ See also, appeal brought against the order of 16 February 2016, *Industrias Químicas del Vallés v Commission* (T-296/15, not published, EU:T:2016:79) (Case C-244/16 P, *Industrias Químicas del Vallés v Commission*) and my Opinion delivered on the same day in that case.

II. Legal context

A. Directive 91/414/EEC

4. Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market⁴ set out, in Annex I thereto, a list of active substances authorised for incorporation in plant protection products.

5. In accordance with Article 1 and the annex to Commission Directive 2009/37/EC of 23 April 2009 amending Council Directive 91/414 to include chlormequat, copper compounds, propaquizafop, quizalofop-P, teflubenzuron and zeta-cypermethrin as active substances,⁵ the list contained in Annex I to Directive 91/414 was amended to add, inter alia, copper compounds.

B. Regulation (EC) No 1107/2009

6. Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414⁶ provides, in Article 50 thereof, entitled ‘Comparative assessment of plant protection products containing candidates for substitution’:

‘1. A comparative assessment shall be performed by Member States when evaluating an application for authorisation for a plant protection product containing an active substance approved as a candidate for substitution. Member States shall not authorise or shall restrict the use of a plant protection product containing a candidate for substitution for use on a particular crop where the comparative assessment weighing up the risks and benefits, as set out in Annex IV, demonstrates that:

...

4. For plant protection products containing a candidate for substitution, Member States shall perform the comparative assessment provided for in paragraph 1 regularly and at the latest at renewal or amendment of the authorisation.

Based on the results of that comparative assessment, Member States shall maintain, withdraw or amend the authorisation.’

7. Chapter XI, entitled ‘Transitional and final provisions’, contains Article 80 of Regulation No 1107/2009, entitled ‘Transitional measures’, paragraph 7 of which provides:

‘By 14 December 2013, the Commission shall establish a list of substances included in Annex I to Directive 91/414 ... which satisfy the criteria set out in point 4 of Annex II to this Regulation and to which the provisions of Article 50 of this Regulation shall apply.’

⁴ OJ 1991 L 230, p. 1.

⁵ OJ 2009 L 104, p. 23.

⁶ OJ 2009 L 309, p. 1.

8. Article 83 of Regulation 1107/2009, entitled ‘Repeal’ states:

‘Without prejudice to Article 80, [Council] Directives 79/117/EEC [of 21 December 1978 prohibiting the placing on the market and use of plant protection products containing certain active substances (OJ 1978 L 33, p. 36)] and 91/414/EEC, as amended by the acts listed in Annex V, are repealed with effect from 14 June 2011, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law and application of the Directives set out in that Annex.

References to the repealed Directives shall be construed as references to this Regulation. ...’

C. Implementing Regulations

1. Implementing Regulation (EU) No 540/2011

9. According to recital 1 and Article 1 of Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation No 1107/2009 of the European Parliament and of the Council as regards the list of approved active substances,⁷ active substances included in Annex I to Council Directive 91/414/EEC are to be deemed to have been approved under Regulation (EC) No 1107/2009.

2. Implementing Regulation (EU) 2015/232

10. According to recital 8 of Commission Implementing Regulation (EU) 2015/232 of 13 February 2015 amending and correcting Implementing Regulation (EU) No 540/2011 as regards the conditions of approval of the active substance copper compounds,⁸ ‘it is confirmed that the active substance copper compounds is to be deemed to have been approved under Regulation ... No 1107/2009. ...’

11. Article 1 of Implementing Regulation 2015/232, entitled ‘Amendment to Implementing Regulation (EU) No 540/2011’, provides as follows:

‘Part A of the Annex to Implementing Regulation (EU) No 540/2011 is amended in accordance with the Annex to this Regulation.’

12. The annex to Implementing Regulation 2015/232 provides that Part A of the annex to Implementing Regulation No 540/2011 is amended to provide as follows:

‘...’

the notifiers shall present to the Commission, the Authority and the Member States a monitoring programme for vulnerable areas where the contamination of the soil and water (including sediments) by copper is a concern or may become one.

...’

⁷ OJ 2011 L 153, p. 1.

⁸ OJ 2015 L 39, p. 7.

3. *The regulation at issue*

13. Entitled ‘Candidates for substitution’, Article 1 of the regulation at issue is worded as follows:

‘Active substances included in Annex I to Directive 91/414/EEC which fulfil the criteria set out in point 4 of Annex II to Regulation (EC) No 1107/2009 shall be as set out in the list in the Annex to this Regulation.

The first paragraph shall also apply to active substances approved under Regulation (EC) No 1107/2009 pursuant to the transitional measures of Article 80(1).’

14. The list in the annex to that regulation includes:

‘ ...

copper compounds (variants copper hydroxide, copper oxychloride, copper oxide, Bordeaux mixture and tribasic copper sulphate)

...’

III. Background to the dispute

15. The background to the dispute was briefly set out by the General Court in paragraphs 1 to 6 of the order under appeal. It can be summarised as follows.

16. EUCuTF is an association of producers of copper compounds, some of which are holders of marketing authorisations for plant protection products containing copper compounds. It was established for the purposes of securing inclusion of copper compounds in Annex I to Directive 91/414 which set out the list of active substances authorised for incorporation in plant protection products.

17. By adopting Directive 2009/37, the Commission amended the list in Annex I to Directive 91/414 to include copper compounds. That directive was repealed by Regulation No 1107/2009. However, according to recital 1 and Article 1 of Implementing Regulation No 540/2011, active substances listed in Annex I to Directive 91/414 are henceforth deemed to have been approved under Regulation No 1107/2009.

18. After the appellant submitted further information on the risk from inhalation of copper compounds and on the risk assessment for non-target organisms, soil and water, the Commission adopted Implementing Regulation 2015/232. By that regulation, the Commission confirmed that copper compounds had to be approved under Regulation No 1107/2009 and also amended the annex to Implementing Regulation No 540/2011 by providing, *inter alia*, that the appellant was to submit to the Commission, the European Food Safety Authority (EFSA) and the Member States a monitoring programme for vulnerable areas where the contamination of the soil and water by copper is a concern or may become one.

19. On 11 March 2015, the Commission adopted the regulation at issue for the purposes of implementing Article 80(7) of Regulation No 1107/2009, the latter provision providing that the Commission must establish a list of substances included in Annex I to Directive 91/414 which satisfy the criteria to be fulfilled in order to be deemed a candidate for substitution and to which Article 50 of that regulation applies. That list, which is contained in the annex to the regulation at issue, includes copper compounds on the ground that that substance satisfies those criteria.

IV. The procedure before the General Court and the order under appeal

20. By application lodged at the Registry of the General Court on 5 June 2015, the appellant brought an action for partial annulment of the regulation at issue. In support of its action, the appellant raised, *inter alia*, a plea of illegality against Article 24 of and paragraph 4 of Annex II to Regulation No 1107/2009.

21. By the order under appeal, the General Court upheld the plea of inadmissibility raised by the Commission. It held that the appellant could not prove an interest of its own and that its members did not have standing to bring proceedings. In that regard, the General Court considered, first, that the members of the appellant were not individually concerned by the regulation at issue for the purposes of the fourth paragraph of Article 263 TFEU and, secondly, that the regulation constituted a regulatory act entailing implementing measures within the meaning of the fourth paragraph of Article 263 TFEU.

22. The General Court also rejected the appellant's line of argument relating to the infringement of its right to effective judicial protection.

V. The forms of order sought and the procedure before the Court

23. By its appeal, the appellant claims that the Court should set aside the order under appeal, declare admissible its action for annulment of the regulation at issue and refer the case back to the General Court for a decision on the substance. It also claims that the Court should order the Commission to pay the costs of the appeal proceedings.

24. The Commission asks the Court to dismiss the appeal and order the appellant to pay the costs.

VI. The appeal

25. In support of its appeal, the appellant puts forward three grounds of appeal. First, it argues that the General Court committed an error of law in considering that the regulation at issue was a regulatory act that entails, with regard to the appellant, implementing measures within the meaning of the final limb of the fourth paragraph of Article 263 TFEU. Secondly, it claims that the General Court committed an error of law in holding that the inadmissibility of the appellant's action did not deprive it, or its members, of effective judicial protection. Finally and thirdly, it submits that the General Court committed an error of law in considering that the appellant and its members were not individually affected by the regulation at issue.

26. Furthermore, the appellant considers that it and its members were directly affected by the regulation at issue.

A. The first ground of appeal, concerning the absence of measures implementing the regulation at issue

1. Arguments of the parties

27. By its first ground of appeal, the appellant disputes paragraphs 42 to 44, 46 to 48, 50 to 52, 60 and 61 of the order under appeal. It criticises the General Court for having held that the regulation at issue entails implementing measures within the meaning of the final limb of the fourth paragraph of Article 263 TFEU.

28. According to the appellant, the classification of copper compounds as ‘candidates for substitution’ and the subsequent application of the regime established by Regulation No 1107/2009 arise without the need for implementing measures.

29. First, while any renewal of the authorisation for copper compounds is to be formally laid down by an act of the Commission following an application to that effect made by the EUCuTF, that act cannot be considered a measure implementing the regulation at issue, but rather must be regarded as a measure implementing Regulation No 1107/2009, which governs the procedure for the renewal of approval for active substances. Moreover, the regulation at issue has the effect of making copper compounds subject to approval at least every seven years, and not every 15 years as is the case for active substances which are not candidates for substitution. Therefore, under the approval procedure laid down in that regulation, copper compounds would be the subject, in principle, of twice as many approval renewal applications, which increases the costs associated with maintaining approval for those compounds. That effect is direct and does not require any implementing measure on the part of the Commission or Member States.

30. Next, the appellant submits that the regulation at issue has the immediate effect of making plant protection products containing copper compounds and their use subject to the comparative assessment referred to in Article 50 of Regulation No 1107/2009. Article 50(4) of that regulation requires Member States to perform the comparative assessment regularly and, at the latest, at renewal or amendment of the authorisation. Moreover, contrary to the General Court’s findings in paragraph 48 of the order under appeal, applicants not only have to bear the costs of the comparative assessment but also have to carry out the assessment itself, since the national authorities merely adopt a decision on the application for renewal of the authorisation for the plant protection product. It follows that the EUCuTF and its members are required to fulfil obligations arising from the comparative assessment, irrespective of its end result.

31. In finding, in paragraph 46 of the order under appeal, that the performance of that comparative assessment has no bearing on the fact that marketing authorisations are granted or refused, renewed, withdrawn or amended by Member States, the General Court does not take account of the fact that the effect of the regulation at issue is unconnected with any decision taken by a national authority.

32. Since any measures that the national authorities take will have no effect on the legal status of copper compounds as candidates for substitution or on the regime introduced by Regulation No 1107/2009, they cannot be regarded as measures implementing the regulation at issue.

33. Lastly, the appellant submits that a similar conclusion must be drawn in relation to the principle of mutual recognition of plant protection products between Member States. As a result of the adoption of the regulation at issue, mutual recognition of a product containing a candidate for substitution is no longer automatic, as is the case, by contrast, for all other active substances.

34. The Commission contends that that first ground of appeal is unfounded.

35. It maintains that the General Court was correct in pointing out, in paragraph 41 of the order under appeal, that three types of specific rules apply to substances included on the list of candidates for substitution and that the application of each of those three distinct rules leads to the adoption of implementing measures the legality of which may be challenged by the appellant.⁹

⁹ Those three rules are as follows: renewal of the approval of the active substance, the obtaining or renewal of a marketing authorisation for plant protection products containing such substances and the triggering of mutual recognition of marketing authorisations between Member States.

36. First, concerning the argument that renewal of the approval of copper compounds by the Commission constitutes a measure implementing Regulation No 1107/2009 and not one implementing the regulation at issue, the Commission argues that the General Court's finding in that regard is fully consistent with the rationale behind the fourth paragraph of Article 263 TFEU, as set out by the Court in paragraph 27 of its judgment of 19 December 2013, *Telefónica v Commission* (C-274/12 P, EU:C:2013:852).

37. It follows from that case-law that the issue requiring consideration is not whether the contested act constitutes the legal basis, strictly speaking, for any implementing measure. According to the Commission, a proper examination should consist in ascertaining whether the contested act definitively and negatively changes the legal situation of the applicant. If it does, it would then be necessary to examine whether the applicant must infringe the provisions of the contested act in order to obtain a remedy because there is no other act, adopted or to be adopted at the EU level or national level, which may be contested before a court.

38. However, in the present case, the legal situation of the appellant remains unchanged until an act constituting the culmination of the application of one of the three categories of specific rules provided for in Regulation No 1107/2009 is adopted.

39. Next, the Commission claims that the arguments put forward by the appellant as regards the application of each of those categories of rules must be rejected.

40. First, the renewal of the approval of candidates for substitution requires, as the General Court held in paragraph 44 of the order under appeal, the adoption by the Commission of a regulation, whether or not approving the substance at issue, which would entail the effective implementation of the regulation at issue. The appellant would therefore have the opportunity to challenge the first regulation referred to and to rely, at that point, on the inapplicability of the regulation at issue under Article 277 TFEU.

41. Secondly, as regards the application of the rules relating to mutual recognition of marketing authorisations, the Commission argues that the General Court correctly considered, in paragraph 50 of the order under appeal, that the effects of the change introduced in that regard will occur only through the exercise of the discretion conferred upon Member States when their national authorities adopt acts deciding on applications for mutual recognition. The appellant failed to demonstrate that granting discretion to national authorities in that context affected the legal situation of its members otherwise than as a result of the adoption of the national decision to grant or refuse mutual recognition. Nor did it show that the regulation at issue makes any other change to the system of mutual recognition affecting its legal situation.

42. Thirdly, as regards the application of rules on conditions for obtaining or renewing a marketing authorisation, the appellant misinterprets paragraph 46 of the order under appeal. The General Court considers, correctly, according to the Commission, that the comparative assessment is part of the process of examination of the marketing authorisation. The act which affects the legal situation of the appellant is the decision to maintain, withdraw or amend the marketing authorisation, a decision which, in practice, effectively implements the regulation at issue.

43. That conclusion is not affected by the argument that the applicants for authorisation are now responsible for carrying out the comparative assessment. The General Court correctly rejected that argument in paragraph 48 of the order under appeal. The Commission claims that the fact that the burden of performing the comparative assessment may be shifted in that way concerns solely the process and does not alter the fact that acts must be adopted by national authorities to implement that comparative evaluation and that those acts are actionable. The decision of the national authority

to carry out the comparative assessment *ex officio* may be contested. Moreover, even if the outcome of the assessment was negative in respect of copper compounds and, consequently, affected the legal situation of the appellant, the decision to withdraw the marketing authorisation would be an actionable act.

2. Analysis

(a) Preliminary observation on the interpretation of the final limb of the fourth paragraph of Article 263 TFEU

44. In its appeal, the EUCuTF submits that the classification of copper compounds as candidates for substitution and the consequent application of the regime established in Regulation No 1107/2009 occur in an ‘immediate and direct’ manner, and do not require any implementing measure.¹⁰

45. The issue of interpretation before the Court therefore consists in determining whether making copper compounds subject to the specific rules provided for in Regulation No 1107/2009 constitutes a mere ‘effect’ of the regulation at issue, which would thus not require any implementing measure in the strict sense, or whether, on the contrary, acts taken by the Commission or Member States pursuant to the specific rules of Regulation No 1107/2009 must be regarded as measures implementing the regulation at issue, since it is only by means of those acts that those rules have practical effects *vis-à-vis* the appellant.

46. From a more theoretical perspective, the question is whether the verb ‘entail’ used in the final limb of the fourth paragraph of Article 263 TFEU refers solely to implementing measures adopted on the immediate basis of regulatory act ‘B’ or whether its scope may be extended to acts adopted on the basis of an earlier regulation ‘A’, but on account of the adoption of regulation ‘B’, which is essential for its application, that is to say in an indirect sequential chain or, in effect, as a repercussion.

47. It is not necessary to recall that the fourth paragraph of Article 263 was amended by the Lisbon Treaty so as to provide a third direct route of access to the courts in their role as arbiters of legality. Now, ‘any natural or legal person may ... institute proceedings against an act addressed to that person or which is of direct and individual concern to them, *and against a regulatory act which is of direct concern to them and does not entail implementing measures*’.¹¹

48. While the Court has acknowledged that that third limb of the fourth paragraph of Article 263 TFEU ‘relaxed the conditions of admissibility of actions for annulment brought by natural and legal persons’,¹² it nevertheless adopted a restrictive interpretation of it.

49. First, in interpreting the concept of ‘regulatory act’, it stated that ‘the purpose of the alteration to the right of natural and legal persons to institute legal proceedings, laid down in the fourth paragraph of Article 230 EC, was to enable those persons to bring, under less stringent conditions, actions for annulment of acts of general application *other than legislative acts*’.¹³

¹⁰ See paragraph 36 of the appeal.

¹¹ Fourth paragraph of Article 263 TFEU. Emphasis added.

¹² Judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council* (C-583/11 P, EU:C:2013:625, paragraph 57).

¹³ Judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council* (C-583/11 P, EU:C:2013:625, paragraph 60; emphasis added). As I have already had occasion to point out, that interpretation leads to the paradox that the case which gave rise to the judgment of 25 July 2002, *Unión de Pequeños Agricultores v Council* (C-50/00 P, EU:C:2002:462) would again result in a finding of inadmissibility, even though it gave rise to the amendment of the fourth paragraph of Article 263 TFEU (see point 58 of my Opinion in *Stichting Woonpunt and Others v Commission* (C-132/12 P, EU:C:2013:335)).

50. Next, as regards the condition relating to the absence of implementing measures, a general framework of analysis was defined in the case which gave rise to the judgment of 19 December 2013, *Telefónica v Commission* (C-274/12 P, EU:C:2013:852):

- first, the Court considers that where a regulatory act entails implementing measures, ‘judicial review of compliance with the European Union legal order is ensured irrespective of whether those measures are adopted by the European Union or the Member States’.¹⁴ An individual may, in the first case, challenge the implementing measures directly before the Courts of the European Union and plead in support of its action the illegality of the basic act, pursuant to Article 277 TFEU, and, in the second case, call into question the validity of the basic act before the national court which may request a preliminary ruling from the Court pursuant to Article 267 TFEU.¹⁵
- Secondly, the Court limits its assessment of the existence of implementing measures ‘to the position of the person pleading the right to bring proceedings under the final limb of the fourth paragraph of Article 263 TFEU. It is therefore irrelevant whether the act in question entails implementing measures with regard to other persons’,¹⁶ and
- thirdly, ‘reference should be made exclusively to the subject-matter of the action and, where an applicant seeks only the partial annulment of an act, it is solely any implementing measures which that part of the act may entail that must, as the case may be, be taken into consideration’.¹⁷

51. The Court continued to apply a restrictive interpretation with the judgment of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission* (C-456/13 P, EU:C:2015:284), taking the view that the allegedly mechanical nature of the measures taken at national level is a question which is ‘irrelevant in ascertaining whether [the] regulations [at issue] entail implementing measures within the meaning of the final limb of the fourth paragraph of Article 263 TFEU’.¹⁸ Specifically, that means that ‘the condition relating to the absence of implementing measures is distinct from that of direct concern’.¹⁹

52. By excluding legislative acts from the concept of ‘regulatory act’ and by including any act adopted by the European Union or by a Member State on the basis of an act of general application of EU law within the concept of ‘implementing measure’, the Court reduced the scope of the final limb of the fourth paragraph of Article 263 to its most simple expression.

53. Moreover, if the term ‘entail’ had to be interpreted as meaning that it covers any act adopted following an EU act, I would then have to concur with those who without hesitation concluded that the interpretation of the final limb of the fourth paragraph of Article 263 recalled in points 49 to 51 of this Opinion made practically no change to an individual’s access to the Court on the basis of the fourth paragraph of Article 263 TFEU.²⁰

14 Judgment of 19 December 2013, *Telefónica v Commission* (C-274/12 P, EU:C:2013:852, paragraph 28).

15 See, to that effect, judgment of 19 December 2013, *Telefónica v Commission* (C-274/12 P, EU:C:2013:852, paragraph 29).

16 Judgment of 19 December 2013, *Telefónica v Commission* (C-274/12 P, EU:C:2013:852, paragraph 30).

17 Judgment of 19 December 2013, *Telefónica v Commission* (C-274/12 P, EU:C:2013:852, paragraph 31).

18 Paragraph 42. See also, judgments of 10 December 2015, *Canon Europa v Commission* (C-552/14 P, not published, EU:C:2015:804, paragraph 47) and of 10 December 2015, *Kyocera Mita Europe v Commission* (C-553/14 P, not published, EU:C:2015:805, paragraph 46).

19 Order of 14 July 2015, *Forgital Italy v Council* (C-84/14 P, not published, EU:C:2015:517, paragraph 43).

20 See, to that effect, Mastroianni, R., and Pezza, A., ‘Striking the Right Balance: Limits on the Right to Bring an Action under Article 263(4) of the Treaty on the Functioning of the European Union’, *American University International Law Review*, 2015, (30:4), pp. 443 to 795, in particular p. 793. Those authors go so far as to state that the Court’s interpretation of the concept of ‘implementing measures’ within the meaning of the final limb of the fourth paragraph of Article 263 TFEU ‘makes it practically impossible for private applicants ... to bring a case before EU courts’.

54. As the Court again recently recalled in order to support its jurisdiction in matters relating to common foreign and security policy, first, ‘Article 47 of the Charter, which constitutes a reaffirmation of the principle of effective judicial protection, requires, in its first paragraph, that any person whose rights and freedoms guaranteed by EU law are violated should have the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article [and, secondly,] the very existence of effective judicial review designed to ensure compliance with provisions of EU law is of the essence of the rule of law’.²¹ In that regard, it is clear from the case-law of the Court that procedural disadvantages, in terms, *inter alia*, of cost, duration and the rules of representation, are not irrelevant when assessing whether effective judicial protection has been ensured, at least in relation to Member States.²² I cannot imagine that different rules apply for the European Union. Undoubtedly, to require an individual to exercise an indirect remedy — supposing one exists — when a direct remedy could be permitted, without infringing the conditions of the treaty, would result in such procedural disadvantages.

(b) *The term ‘entail’*

55. The conclusion of my preliminary observation leads me to take the view that the verb ‘entail’ used in the final limb of the fourth paragraph of Article 263 must be interpreted as referring solely to implementing measures that must necessarily be adopted on the immediate basis of a regulatory act.

56. Its literal interpretation, the objective pursued by the amendment to Article 230 EC and the principle of legal certainty lend weight to that interpretation of the term ‘entail’.

57. First, considering the meaning of the word used in the French version, I note that ‘*comporter*’ (‘entail’ in the English version) means ‘*inclure en soi*’ (‘to include within itself’).²³ A regulatory act that does not entail an implementing measure is therefore an act whose implementation does not *require* or *necessitate* any supplementary act, that is to say a self-contained act.²⁴

58. This does not mean therefore that merely identifying a measure as having been taken *following* the regulatory act at issue is sufficient to dismiss the action brought against it. On the contrary, since an act of general application actionable on the basis of the final limb of the fourth paragraph of Article 263 TFEU must be sufficient in itself to be directly challenged on that basis, the use of the word ‘entail’ requires that the measure identified has an immediate causal link with the rule of general application.²⁵ If no such link exists between the two acts, it cannot be claimed that the second is *required* or made *necessary* by the first.

21 Judgment of 28 March 2017, *Rosneft* (C-72/15, EU:C:2017:236, paragraph 73).

22 Thus the Court held that ‘the provisions of the framework agreement [on fixed-term work, concluded on 18 March 1999, which is set out in the annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP], read in conjunction with the principle of effectiveness, must be interpreted as *precluding national procedural rules* which require a fixed-term worker to bring a new action in order to determine the appropriate penalty where abuse resulting from the use of successive fixed-term employment contracts has been established by a judicial authority, *to the extent that it results in procedural disadvantages for that worker, in terms, inter alia, of cost, duration and the rules of representation, liable to render excessively difficult the exercise of the rights conferred on him by EU law*’ (judgment of 14 September 2016, *Martínez Andrés and Castrejana López* (C-184/15 and C-197/15, EU:C:2016:680, paragraph 64; emphasis added). Although the Court examines the problem in the light of the principle of effectiveness, it recalls in paragraph 59 of that judgment that the requirements of equivalence and effectiveness ‘embody the general obligation on the Member States to ensure *judicial protection* of an individual’s rights under EU law’ (emphasis added).

23 See Dixel Dictionnaire — Le Robert, 2011 Edition.

24 Regarding paragraph 4 of Article III-365 of the Treaty establishing a Constitution for Europe, identical to the fourth paragraph of Article 263 TFEU, see, to that effect, Coutron, L., *La contestation incidente des actes de l’Union européenne*, Bruylant, 2007, p. 488. See also, Blumann, C., ‘L’amélioration de la protection juridictionnelle effective des personnes physiques et morales résultant du traité de Lisbonne’, *L’homme et le droit. En hommage au professeur Jean-François Flauss*, Éditions Pedone, 2014, pp. 77 to 100, in particular p. 98. Other language versions of the Treaty better translate that idea. Accordingly, the English version uses the word ‘entail’ which is a synonym of the verbs ‘necessitate’, ‘make necessary’, ‘require’, ‘need’ and ‘demand’ (see *Oxford Thesaurus of English*, Second Edition, Oxford University Press, 2004). See, also, the Polish version ‘*nie wymagają środków wykonawczych*’ or the Portuguese version ‘*que não necessitem de medidas de execução*’ (emphasis added).

25 See, to that effect, Rhimes, M., ‘The EU Courts Stand Their Ground: Why Are the Standing Rules for Direct Actions Still So Restrictive?’, *European Journal of Legal Studies*, 2016, vol. 9, No 1, pp. 103 to 172, in particular, p. 124.

59. In order to avoid, as far as possible, any controversy or difficulty, that causal link must be treated in the same way as the legal basis. Unlike the interpretation of the legal link necessary for the application of Article 277 TFEU, an *indirect* interference by the contested act in the process of adopting the executive measure identified cannot suffice.²⁶ In the present case, the regulation at issue is only *indirectly* applicable to the case which was brought following measures possibly adopted on the *direct* basis of Regulation No 1107/2009 by the Commission and the Member States.

60. Furthermore, the objective pursued by adding to the fourth paragraph of Article 263 TFEU a third channel of access to the courts in their role as arbiters of legality confirms that interpretation. As the Court stated in paragraph 60 in its judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council* (C-583/11 P, EU:C:2013:625), the purpose of the alteration to the right of natural and legal persons to institute legal proceedings, laid down in the fourth paragraph of Article 230 EC, was to enable those persons to bring actions for annulment under less stringent conditions. It is 'in order to strengthen the judicial protection of natural or legal persons with regard to acts of the European Union [that] the Treaty of Lisbon broadened the conditions of admissibility of an action for annulment, through the adoption of the fourth paragraph of Article 263 TFEU, which authorises such an action against a regulatory act which directly concerns such a person and does not entail implementing measures'.²⁷

61. The more the scope of the condition relating to the existence of implementing measures is broadened, the more the scope of the extension inserted into the fourth paragraph of Article 263 TFEU is reduced.

62. Lastly, a concern for legal certainty reinforces the need to limit the scope of the term 'entail'. It must be remembered that, in accordance with the judgment of 9 March 1994, *TWD Textilwerke Deggendorf* (C-188/92, EU:C:1994:90), a person who would unquestionably have had standing to bring proceedings under the fourth paragraph of Article 263 TFEU for the annulment of an act of the European Union cannot, after the expiry of the time limit for bringing proceedings laid down in the sixth paragraph of Article 263 TFEU, contest the validity of that act before the national courts. The same rule applies to the objection of illegality established in Article 277 TFEU.²⁸ The Court recently had occasion to confirm that the broadening of the conditions of admissibility of an action for annulment established by the Treaty of Lisbon was not accompanied by any corresponding abandonment of that case-law.²⁹

63. Consequently, the more distant the link between the regulatory act and the implementing measure, the harder it is for an individual to determine whether he is able to challenge that regulatory act before the General Court on the basis of the fourth paragraph of Article 263 TFEU. This uncertainty constitutes not only a risk for an individual — who may find that the General Court declares his action for annulment of the regulatory act inadmissible or that a national court refuses to make a reference for a preliminary ruling — but also an uncertainty within the legal order of the European Union, as the identification of an implementing measure in connection with the regulatory act at issue may vary from individual to individual or from court to court.

64. In conclusion, the literal and teleological interpretations, as well as the principle of legal certainty, lead me to take the view that the verb 'entail' used in the final limb of the fourth paragraph of Article 263 TFEU must be interpreted as referring solely to implementing measures which are necessarily adopted on the immediate basis of a regulatory act.

26 Since the judgment of 13 July 1966, *Italy v Council and Commission* (32/65, EU:C:1966:42), the Court has held that the rule of general application, the legality of which is called into question on the basis of Article 277 TFEU, must be applicable '*directly or indirectly* to the issue with which the application is concerned' (ECR p. 409; emphasis added). The General Court continues to apply that rule (see, *inter alia*, judgment of 12 June 2015, *Plantavis and NEM v Commission and EFSA* (T-334/12, EU:T:2015:376, paragraph 51)).

27 Judgment of 14 March 2017, *A and Others* (C-158/14, EU:C:2017:202, paragraph 68).

28 See, to that effect, judgment of 6 March 1979, *Simmmenthal v Commission* (92/78, EU:C:1979:53, paragraph 39).

29 Judgment of 14 March 2017, *A and Others* (C-158/14, EU:C:2017:202, paragraph 69).

65. It is true that an isolated interpretation of the regulation at issue could seem artificial. There is no doubt that if the list of candidates for substitution had been annexed to Regulation No 1107/2009 and not to a separate regulation, the issue of the existence of implementing measures would probably not arise, since the effects of classifying copper compounds as a ‘candidate for substitution’ would necessarily be defined by implementing measures for that single regulation. However, that consideration cannot, to my mind, influence the analysis. Without prejudice to any misuse of powers or the infringement of a rule conferring competency which would invalidate the act at issue, the choice of legal instrument falls within the exclusive competence of the author of the act and not of the Court.

(c) The application of the final member of the fourth paragraph of Article 263 TFEU by the General Court

66. The General Court held that the regulation at issue constituted a regulatory act within the meaning of the final member of the fourth paragraph of Article 263 TFEU. That classification is not disputed.

67. As the General Court usefully stated in paragraphs 34 and 35 of the order under appeal, the regulation at issue is an act of general application which applies to objectively determined situations and which produces legal effects with respect to categories of persons envisaged in general and in the abstract. Moreover, the regulation at issue must be regarded as a non-legislative act since, according to the criteria applied by the Court for the application of the final member of the fourth paragraph of Article 263 TFEU, it was not adopted in accordance with an ordinary or special legislative procedure.

68. However, I take the view that the General Court erred in law in concluding, in paragraphs 44, 47 and 50 of the order under appeal, respectively that:

- ‘the effects of the ... regulation [at issue] on the period of validity of the approval renewal for previously-approved substances which are candidates for substitution, such as copper compounds, will affect the applicant’s members only through a regulation adopted by the Commission in the course of renewing that approval’, such a regulation thus constituting an implementing measure within the meaning of the final limb of the fourth paragraph of Article 263 TFEU;
- ‘the effects of the ... regulation [at issue] relating to the Member States’ performance of a comparative assessment of the health or environmental risks of plant protection products containing copper compounds, as compared to an alternative or a non-chemical method of pest control or prevention, will affect the applicant’s members only through measures adopted by the competent authorities of the Member States’, such measures accordingly constituting implementing measures within the meaning of the final limb of the fourth paragraph of Article 263 TFEU; and that,
- ‘the effects of the ... regulation [at issue] relating to the mutual recognition of marketing authorisations for plant protection products containing a candidate for substitution concern solely the discretion left to the Member States to decide on an application. Those effects will, as the case may be, affect the applicant’s members only through measures adopted by the national authorities deciding on applications for mutual recognition submitted by those members’, such measures accordingly being implementing measures within the meaning of the final limb of the fourth paragraph of Article 263 TFEU.

69. Contrary to the General Court’s decision, I consider that the various measures cited above do not constitute measures implementing the regulation at issue within the meaning of the final member of the fourth paragraph of Article 263 because they were not adopted on the *immediate* basis of it. Rather, the legal basis of each of those measures will be a provision of Regulation No 1107/2009.

70. It is true that the adoption of the regulation at issue was a necessary condition of the application of provisions of Regulation No 1107/2009 relating to candidates for substitution. However, once the active substance has been included on the list of candidates for substitution by the regulation at issue, the provisions of Regulation No 1107/2009 specific to those substances apply automatically. The regulation at issue therefore does not constitute the immediate basis of the measures which will be adopted by the Commission or Member States.

71. On the contrary, as the EUCuTF correctly claims, the regulation at issue produces its specific effects *per se*. It is, in other words, self-contained: the inclusion of copper compounds as candidates for substitution is immediate and direct merely upon application of the regulation at issue.

72. That inclusion is precisely the subject of the action for annulment brought by the EUCuTF. Therefore, since the measures that the Commission or Member States will adopt, where appropriate, on the basis of Regulation No 1107/2009 in respect of copper compounds will not have any effect on the inclusion of those substances on the list of candidates for substitution, there is no need to take them into account. In assessing the admissibility of an action brought pursuant to the final limb of the fourth paragraph of Article 263, the assessment should be limited exclusively to the position of the person pleading the right to bring proceedings and reference should be made exclusively to the subject matter of the action.³⁰

73. Moreover, I cannot agree with the Commission's claim that the argument relating to the basis of the implementing measures — that is to say Regulation No 1107/2009 and not the regulation at issue — should be rejected because the General Court's conclusion is 'fully consonant with the rationale of the fourth paragraph of Article 263 TFEU'.³¹

74. It is true that the fourth paragraph of Article 263 TFEU was amended to avoid a situation whereby an individual would be obliged to infringe EU law to access a court. However, that concern and the subsequent amendment of the Treaty must be viewed within the overall framework of the system of legal remedies as envisaged by the Court, the coherence of which ensures completeness of the system of review of legality established by the Treaty.

75. The Court's statement that 'the FEU Treaty has established, by Articles 263 and 277, on the one hand, and Article 267, on the other, a complete system of legal remedies and procedures designed to ensure judicial review of the legality of European Union acts, and has entrusted such review to the Courts of the European Union'³² is attributable to a corrective logic. The Court asserts that the system is complete because, as a result of the plea of illegality and the reference for a preliminary ruling on validity, 'natural and legal persons are *thus* protected against the application to them of general measures which they cannot contest directly before the Court *by reason of the special conditions of admissibility laid down in [the fourth paragraph of Article 263 TFEU]*'.³³ The indirect mechanisms for reviewing legality therefore have a compensatory function.³⁴

³⁰ See, to that effect, judgment of 19 December 2013, *Telefónica v Commission* (C-274/12 P, EU:C:2013:852, paragraphs 30 and 31).

³¹ Paragraph 30 of the Commission's response.

³² Judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council* (C-583/11 P, EU:C:2013:625, paragraph 92). That assertion appears for the first time in paragraph 23 of the judgment of 23 April 1986, *Les Verts v Parliament* (294/83, EU:C:1986:166). Since then it has been repeated on numerous occasions. See, *inter alia*, judgments of 25 July 2002, *Unión de Pequeños Agricultores v Council* (C-50/00 P, EU:C:2002:462, paragraph 40); of 19 December 2013, *Telefónica v Commission* (C-274/12 P, EU:C:2013:852, paragraph 57); of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission* (C-456/13 P, EU:C:2015:284, paragraph 45), and of 28 March 2017, *Rosneft* (C-72/15, EU:C:2017:236, paragraph 66).

³³ Judgment of 23 April 1989, *Les Verts v Parliament* (294/83, EU:C:1986:166, paragraph 23). Emphasis added.

³⁴ See, to that effect, Berrod, F., *La systématique des voies de droit communautaires*, Dalloz, Paris, 2003, No 294 regarding the reference for a preliminary ruling and No 834 regarding the plea of illegality, and Coutron, L., *La contestation incidente des actes de l'Union européenne*, Bruylant, Brussels, 2007, pp. 129 and 213.

76. I consider that widening the scope of one of the conditions imposed in the fourth paragraph of Article 263 TFEU in such a way as to exclude the Court's jurisdiction to annul measures *in favour* of an indirect remedy would be to overturn the logic of the system. It is not the conditions of admissibility in the fourth paragraph of Article 263 TFEU that must be interpreted in the light of a hypothetical compensatory legal remedy. Rather, it is the conditions of the compensatory remedies which must, where appropriate, be interpreted broadly because direct access to the Courts of the European Union is not possible.

77. To my mind, that approach was confirmed by the Court in the case which gave rise to the order of 16 November 2000, *Schiocchet v Commission* (C-289/99 P, EU:C:2000:641). The Court confirms that the possibility which Article 277 TFEU affords of invoking the inapplicability of a regulation can constitute only a plea in support of an action and not the subject matter of the action and that 'therefore the admissibility of the action itself must be assessed by reference to the relief claimed in it, *irrespective of any pleas of illegality which might be raised in support of it*'.³⁵

78. Consequently, since the EUCuTF has put forward a plea of illegality against Regulation No 1107/2009, it is not, in my view, illogical to refer to the rules of that regulation in the examination of the substance of the application for annulment of the regulation at issue but not taking it into account for assessing the admissibility of that action. In the present case, the EUCuTF seems to me, therefore, to have fully respected the relationship between the legal remedies by contesting, on the one hand, the regulation at issue and by raising, on the other hand, in support of its action, a plea of illegality against Regulation No 1107/2009.

79. That procedural choice distinguishes, moreover, the present case from that which gave rise to the judgment of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission* (C-456/13 P, EU:C:2015:284).

80. At first sight, the latter case may seem to be concerned with a similar mechanism, that is to say a situation where a factor that is essential for the application of implementing regulation X, on the basis of which implementing measures will be adopted, is determined by implementing regulation Y.

81. However, the applicants in that case did not raise a plea of illegality but were seeking the annulment of two regulations. The implementing measures identified by the Court in paragraph 40 of that judgment are based expressly on the two regulations in question: although the applications for certificates are based on Commission Implementing Regulation (EU) No 302/2011 of 28 March 2011 opening an exceptional import tariff quota for certain quantities of sugar in the 2010/11 marketing year,³⁶ the decisions of national authorities following those applications apply the coefficients fixed by Commission Implementing Regulation (EU) No 393/2011 of 19 April 2011 fixing the allocation coefficient for the issuing of import licences applied for from 1 to 7 April 2011 for sugar products under certain tariff quotas and suspending submission of applications for such licences.³⁷

82. In paragraph 40 of the judgment of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission* (C-456/13 P, EU:C:2015:284) the Court held that 'Implementing Regulations No 302/2011 and No 393/2011 produce their legal effects vis-à-vis the appellants only through the intermediary of acts taken by the national authorities following the submission of applications for certificates on the basis of Implementing Regulation No 302/2011'. However, the Court took care to specify that 'the decisions of the national authorities granting such certificates ... apply the coefficients fixed by Implementing Regulation No 393/2011 to the operators concerned', which is why 'the decisions refusing such certificates in full or in part therefore constitute implementing measures within the meaning of the final limb of the fourth paragraph of Article 263 TFEU'.

³⁵ Paragraph 25; emphasis added.

³⁶ OJ 2011 L 81, p. 8.

³⁷ OJ 2011 L 104, p. 39.

83. By contrast, in the present case, the EUCuTF is not seeking the annulment of the regulation on the basis of which any implementing measures will be adopted.

3. Conclusion on the first ground of appeal

84. Since the implementing measures identified by the General Court are measures which are based not immediately on the regulation at issue but on Regulation No 1107/2009, I consider that the first ground of appeal relied upon by the EUCuTF must be upheld. The order under appeal must therefore be set aside in so far as the General Court held that the regulation at issue entailed implementing measures within the meaning of the final limb of the fourth paragraph of Article 263 TFEU.

85. Consequently, I shall examine the second and third grounds of appeal only in the alternative.

B. The third ground of appeal, relating to the individual concern of the EUCuTF or its members

86. I shall first examine the third ground of appeal. The second ground of appeal is concerned with the question of the absence of effective judicial protection of the EUCuTF and its members in the event that it had no direct right to bring an action before the Courts of the European Union. The third ground of appeal concerns the condition of individual concern to the appellant. Consequently, if the third ground of appeal were to be well founded, the action for annulment brought by the EUCuTF before the General Court could still be upheld, provided that the EUCuTF is also directly concerned by the regulation at issue.

87. The question whether the right of the EUCuTF and its members to effective judicial protection is affected by the order under appeal therefore arises only if the General Court declared the EUCuTF's action inadmissible on the basis of a correct interpretation of the fourth paragraph of Article 263 TFEU. It therefore seems more logical to examine the second and third grounds of appeal in reverse order.³⁸

1. Arguments of the parties

88. By its third ground of appeal, the appellant complains that the General Court held, in paragraphs 22, 31 and 32 of the order under appeal, that it and its members were not individually concerned by the regulation at issue.

89. In the first place, the appellant claims that the regulation at issue is of individual concern to the EUCuTF, given the particular circumstances of that association³⁹ and its role in configuring the legal framework applicable to copper compounds as active substances in plant protection products.

90. First, the EUCuTF alone notified copper compounds for the purpose of their inclusion in Annex I to Directive 94/414. The EUCuTF was, moreover, the sole applicant for the renewal of copper compounds as an active substance and the only party to submit an active substance dossier on behalf of all producers, a dossier which was submitted in July 2015.

³⁸ See, to that effect, judgments of 19 December 2013, *Telefónica v Commission* (C-274/12 P, EU:C:2013:852, paragraph 18).

³⁹ See paragraph 62 of the appeal. 'The EUCuTF considers that the GCEU did not take into account *the particular circumstances of the task force* ...' (emphasis added).

91. Secondly, the EUCuTF took part in the procedure which resulted in the rules applicable to copper compounds until the regulation at issue was adopted. The appellant refers in particular to Implementing Regulation 2015/232, which was adopted on the basis of studies and documents which it submitted itself, after it was invited to submit its comments on the review report for copper compounds.

92. Thirdly, the appellant submits that the list of candidates for substitution approved by the regulation at issue was established exclusively on the basis of the results of a document that was based on the final review report for copper compounds, which was adopted by the Commission with the exclusive intervention, on the applicant side, of the EUCuTF.

93. Fourthly, the EUCuTF was the Commission's interlocutor throughout the entire drafting process of the regulation at issue and exchanged letters and took part in a meeting with that institution concerning the classification of copper compounds as candidates for substitution.

94. In the light of the foregoing, the appellant maintains that, as the Court held in the judgment of 17 January 1985, *Piraiki-Patraiki and Others v Commission* (11/82, EU:C:1985:18), the EUCuTF's standing to bring proceedings should have been recognised in so far as, in the light of the particular circumstances of the present case, the Commission knew that the regulation at issue was of direct and individual concern to it.

95. In the second place, the appellant submits that the members of the EUCuTF are also individually concerned by the regulation at issue.

96. On the one hand, the EUCuTF represents all producers of copper compounds for use as plant protection products operating in the European Union. Therefore, the General Court was wrong in finding, in paragraph 31 of the order under appeal, that the EUCuTF and its members were concerned by the regulation at issue in the same capacity as any other economic operator, since all producers of copper compounds for use as plant protection products in the European Union are members of the EUCuTF or act on behalf of an EUCuTF member as a distributor.

97. Further to the foregoing, Article 15(1) of Regulation No 1107/2009 provides that the application for renewal of an active substance is to be submitted by a producer of the active substance. The regulation at issue concerns copper compounds and affects the renewal process for their approval, as stated by the General Court in paragraphs 41 and 42 of the order under appeal. Only the EUCuTF and its members are in a position to request renewal since they are the sole producers of copper compounds for use in plant protection products in the European Union. Moreover, only the EUCuTF applied for the renewal of copper compounds as an active substance and submitted an active substance dossier on behalf of all producers.

98. In the judgment of 3 September 2003, *Sony Computer Entertainment Europe v Commission* (T-243/01, EU:T:2003:251, paragraph 75) the General Court held that the fact that the applicant is the sole authorised importer of the PlayStation² into the Union constitutes a relevant factor for the assessment of the applicant's individual concern.

99. On the other hand, the EUCuTF's action is concerned with the inclusion of copper compounds on the list of candidates for substitution by the regulation at issue, on account of the misapplication of the criteria relating to persistent, bioaccumulative and toxic substances (PBT) to inorganic substances. Copper compounds are the only inorganic substance included on the list of candidates for substitution. Consequently, the only basis for the inclusion of those compounds in that list distinguishes and individualises the EUCuTF and its members.

100. The appellant submits that, having regard to the foregoing, even though the regulation at issue formally constitutes an implementing regulation, it is, in reality, a Commission decision, in the light of its effects on copper compounds, and, therefore, on the EUCuTF and its members as the sole producers of that active substance.

101. The Commission contends that the third ground of appeal relied on by the EUCuTF in support of its appeal is unfounded.

102. In the first place, the General Court was correct in finding that the appellant was not individually concerned by the regulation at issue.

103. As the General Court correctly found, in paragraph 22 of the order under appeal, no provision of the legislation at issue confers procedural rights on the appellant. The fact that the appellant may have communicated with the Commission regarding the drafting of the regulation at issue is not sufficient to confer on the appellant standing to bring proceedings if the applicable legislation does not confer on the appellant any standing as a party to the proceedings.

104. The fact that the appellant notified copper compounds for inclusion in Annex 1 to Directive 91/414 is irrelevant since the regulation at issue does not deal with that issue.

105. As regards the argument that the appellant is the sole applicant for the renewal of approval for copper compounds, that fact alone is not sufficient to distinguish the appellant individually. In that regard, the Commission notes that, according to Article 15(1) of Regulation No 1107/2009, any producer of the active substance, and not solely the applicant in the procedure which culminated in the initial approval, may submit an application for renewal.

106. In the second place, the Commission submits that the General Court correctly found that the appellant's members are not individually concerned by the regulation at issue.

107. The Commission claims that the General Court was correct to recall, in Paragraph 29 of the order under appeal, the case-law stemming from the judgment of 19 December 2013, *Telefónica v Commission* (C-274/12 P, EU:C:2013:852, paragraph 47), according to which the possibility of determining more or less precisely the number, or even the identity, of the persons to whom a measure applies by no means implies that it must be regarded as being of individual concern to them as long as that measure is applied by virtue of an objective legal or factual situation defined by it.

108. The appellant has therefore not shown that its members form a closed class or group of producers and that other operators cannot potentially be in an identical situation, as the General Court noted in paragraph 31 of the order under appeal.

109. According to the Commission, the appellant is wrong to rely on the judgment of 30 September 2003, *Sony Computer Entertainment Europe v Commission* (T-243/01, EU:T:2003:251). That judgment, as the General Court acknowledged in its order of 19 February 2008, *Apple Computer International v Commission* (T-82/06, EU:T:2008:46) dealt with a very particular set of facts and legal circumstances which distinguished Sony from any other, actual or potential, operator. None of the legal or factual circumstances of the case that gave rise to that decision are present in this case.

2. Analysis

110. Given that the EUCuTF describes itself as an association of producers of copper compounds for use in producing plant protection products,⁴⁰ it is, as a rule, entitled to bring an action for annulment only if the undertakings which it represents or some of those undertakings themselves have *locus standi* or if it can prove an interest of its own.⁴¹

111. On the basis of that case-law, recalled in paragraph 19 of the order under appeal, the General Court held that the EUCuTF could not rely on an interest of its own because no provision of the legislation at issue in the present case conferred procedural rights on it and it did not play any role in the drafting of the regulation at issue.⁴²

112. The General Court also noted that the members of the appellant were concerned by the regulation at issue only in their objective capacity as producers of copper compounds, some of whom hold marketing authorisations for plant protection products containing copper compounds, and thus in the same capacity as any other economic operator currently and potentially in an identical situation. It inferred from this that the appellant's members were, consequently, not in a situation which individualised them.⁴³

113. Contrary to what the EUCuTF claims, I see no error of law in the General Court's findings or in the conclusion that the General Court draws from them in paragraph 32 of the order under appeal, that is to say that, as the condition of being individually affected is not fulfilled, the admissibility of the action brought by the EUCuTF cannot be established under the final limb of the fourth paragraph of Article 263 TFEU.

(a) *The position of the EUCuTF*

114. Although the third ground of appeal put forward by the EUCuTF refers to paragraph 22 of the order under appeal, it does not dispute the fact that it did not play the role of 'negotiator' for the inclusion of copper compounds on the list in the annex to the regulation at issue or that the applicable rules do not provide for any procedural guarantee in its favour.

115. Although the EUCuTF refers to the fact that it was the Commission's 'interlocutor' and took part in a meeting with officials from the Directorate-General for Health, it does not, however, claim any specific procedural right that might confer on it a special legal position capable of distinguishing it individually for the purposes of the fourth paragraph of Article 263 TFEU.⁴⁴

116. The other arguments put forward by the EUCuTF to prove that it was individually concerned are also unfounded. The steps that it took to secure the inclusion of copper compounds in Annex 1 to Directive 94/414 and its participation in the procedure which culminated in Implementing Regulation 2015/232 relating to the conditions of *approval* of the active substance 'copper compounds' are irrelevant. They are not capable of distinguishing it individually in the present action since the object of the act under appeal is not, strictly speaking, authorisation of the active substance 'copper compounds' but its recognition as a candidate for substitution following a procedure different from that which culminated in its inclusion in Annex I to Directive 91/414.

⁴⁰ See paragraph 11 of the EUCuTF's appeal.

⁴¹ See, to that effect, regarding an action for annulment brought by an association against a final decision of the Commission in matters of State aid, judgment of 22 June 2006, *Belgium and Forum 187 v Commission* (C-182/03 and C-217/03, EU:C:2006:416, paragraph 56).

⁴² See paragraph 22 of the order under appeal.

⁴³ See paragraph 31 of the order under appeal.

⁴⁴ See, to that effect, order of 17 February 2009, *Galileo Lebensmittel v Commission* (C-483/07 P, EU:C:2009:95, paragraph 53).

117. Moreover, contrary to what the EUCuTF claims, it is not in a situation comparable to that giving rise to the judgment of 17 January 1985, *Piraiki-Patraiki and Others v Commission* (11/82, EU:C:1985:18) since no *specific provision* of the rules at issue required the Commission to take account of the consequences of the act that it intended to adopt on the particular situation of the EUCuTF or its members.

118. The General Court therefore did not commit an error of law in holding that the EUCuTF could not prove any interest of its own in the annulment of the regulation at issue.

(b) The standing to bring proceedings of the members of the EUCuTF

119. Since the judgment of 15 July 1963, *Plaumann v Commission* (25/62, EU:C:1963:17), ‘persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person addressed’. That interpretation of individual concern also applies when the contested act is a measure of general application.⁴⁵

120. It should be noted that the appellant does not specifically challenge paragraph 27 of the order under appeal, in which the General Court held that the regulation at issue is an act of general application because, first, it applies to situations determined objectively, which in the present case means by virtue of their active substance characteristics and, secondly, it produces legal effects with respect to categories of persons envisaged in general and in the abstract, that is to say, any operator whose activity is linked to one of the substances on the list annexed to that regulation.

121. Nor has the appellant claimed that the General Court erred in law or distorted the facts in holding, in paragraph 30 of the order under appeal that ‘it is apparent from recital 4 in the preamble to the regulation at issue that the list annexed to that regulation was established on the basis of information contained in the review report, EFSA’s conclusions, the draft assessment report and accompanying addenda and peer review reports, or the classification established under Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ 2008 L 353 p. 1)’. Nor does the EUCuTF criticise the General Court’s finding in the same paragraph that the regulation at issue relates to the application of Article 80(7) of Regulation No 1107/2009, under which the Commission was to establish, by 14 December 2013 at the latest, the list of candidates for substitution.

122. Consequently, I consider that the General Court did not err in law in concluding, in paragraph 31 of the order under appeal, that the appellant’s members were not individually concerned by the regulation at issue since that regulation is applied to them only in their objective capacity as producers of copper compounds, and thus in the same capacity as any other economic operator currently and potentially in an identical situation, and that the condition of individual concern is therefore not fulfilled with respect to them.

123. The argument that all the producer of copper compounds are members of the EUCuTF is not capable of contradicting that conclusion.

⁴⁵ See, to that effect, judgment of 25 July 2002, *Unión de Pequeños Agricultores v Council* (C-50/00 P, EU:C:2002:462, paragraph 36).

124. On the one hand, the members of the EUCuTF cannot be treated as a restricted group of persons identified or identifiable at the time when the regulation at issue was adopted — and therefore capable of being individually concerned by that regulation — since the group may be extended after its entry into force. Although it may be difficult to imagine, the Court has never departed from that flexible definition of ‘closed group’.⁴⁶

125. On the other hand, the fact that it is possible to determine more or less precisely the number, or even the identity, of the persons to whom a measure applies by no means implies that that measure must be regarded as being of individual concern to those persons where it is established that that application takes effect by virtue of an objective legal or factual situation defined by the measure in question.⁴⁷

126. When the regulation at issue was adopted, the decision to include copper compounds on the list of candidates for substitution was made not in the light of the particular qualities of the members of the appellant but because that substance met the criteria to be considered a persistent and toxic substance, for the purposes of paragraph 4 of Annex II to Regulation No 1107/2009.⁴⁸

127. In that regard, the fact that copper compounds are, as the appellant submits, the only inorganic substance on the list at issue, cannot have any bearing on whether the members of the EUCuTF are individually concerned. That circumstance in no way alters the fact that the regulation at issue has legal effects for the members of the appellant only as a result of their objective capacity as producers of copper compounds.⁴⁹

3. Conclusion on the third ground of appeal

128. The General Court did not err in law in holding, in paragraphs 22 and 31 of the order under appeal, that the EUCuTF could not rely on an interest of its own and that its members were not in a situation which individualised them. Consequently, the Court also did not err in law in concluding, in paragraph 32 of the order under appeal, that, as the condition of being individually affected was not fulfilled, the admissibility of the action brought by the EUCuTF could not be established under the second limb of the fourth paragraph of Article 263 TFEU.

129. Consequently, the third ground of appeal relied on by the appellant in support of its appeal must be rejected as unfounded.

⁴⁶ See, for a recent application, judgment of 24 November 2016, *Ackermann Saatzucht and Others v Parliament and Council* (C-408/15 P and C-409/15 P, not published, EU:C:2016:893, paragraph 39).

⁴⁷ See, to that effect, judgments of 23 April 2009, *Sahlstedt and Others v Commission* (C-362/06 P, EU:C:2009:243, paragraph 31 and the case-law cited), and of 19 December 2013, *Telefónica v Commission* (C-274/12 P, EU:C:2013:852).

⁴⁸ See recital 6 of the regulation at issue.

⁴⁹ The fact that the General Court, in the judgment of 30 September 2003, *Sony Computer Entertainment Europe v Commission* (T-243/01, EU:T:2003:251), considered that the fact that the applicant was the sole authorised importer of the PlayStation2 into the Community constituted a relevant factor for the assessment of the applicant’s individual concern is not, to my mind, capable of altering that conclusion. The appellant also failed to demonstrate the relevance of that judgment to the present case. The Court has already had occasion to confirm, in a situation involving an ‘exclusive’ importer, that that fact is not capable of altering the general application of an act ‘as long as it is established that [its] application takes effect by virtue of an objective legal or factual situation defined by the measure in relation to its purpose’ (judgment of 14 July 1983, *Spijker Kwasten v Commission*, 231/82, EU:C:1983:220, paragraph 10).

C. The second ground of appeal, relating to effective judicial protection for the EUCuTF and its members

1. Arguments of the parties

130. By its second ground of appeal, the appellant criticises the General Court for having considered, in paragraphs 52 to 60 of the order under appeal, that the rejection of its action as inadmissible did not deprive it or its members of their right to effective judicial protection.

131. The appellant submits that the members of the EUCuTF could not contest a national implementing measure, which enables it to challenge the effects of the regulation at issue. If a national authority decides to make copper compounds subject to a comparative assessment without making a decision on the substitution of those compounds following that assessment, the appellant claims that it will be unable to appeal against that ‘decision’ because it will have no legal interest in bringing proceedings against an act which does not adversely affect it.

132. The members of the EUCuTF would then be obliged to prompt the adoption of a negative decision by the national authorities, in order to be able to bring an action against it and challenge, within the context of that action, the classification of copper compounds as candidates for substitution.

133. According to the appellant, contrary to what the General Court holds in paragraphs 54 and 55 of the order under appeal, access to national courts and the possibility of making a reference to the Court for a preliminary ruling on the validity of the regulation at issue cannot guarantee its or its members’ right to effective judicial protection. First, it is not absolutely certain that a negative decision on the renewal of approval of copper compounds will be adopted. Consequently, the appellant and its members might never be in a position to challenge the regulation at issue, which will continue to produce legal effects indefinitely. Secondly, even if a negative decision is adopted, irrespective of the possibility of making a reference to the Court for a preliminary ruling, the appellant and its members would have to bear the administrative burden and economic costs resulting from the classification of copper compounds as a ‘candidate for substitution’.

134. The Commission contends that the ground of appeal is inadmissible because the EUCuTF merely reiterates the arguments put forward before the General Court without identifying any error of law in the order under appeal. In the alternative, it contends that the ground of appeal is unfounded.

2. Analysis

135. Unlike the Commission, I consider that the second ground of appeal relied on by the appellant is admissible.

136. The appellant expressly identifies the paragraphs of the order under appeal. Moreover, it provides a substantiated criticism of the arguments of the General Court regarding the judicial protection of the appellant’s members and it argues that it is the conclusion which it draws from them that constitutes an error of law.

137. Nevertheless, I must state that the General Court did not, in any event, commit an error of law. Although the case-law in question has been widely criticised in the legal literature, since the ‘completeness’ of the system is sometimes illusory, the General Court was simply applying the settled case-law of the Court that the FEU Treaty has established, by Articles 263 and 277, on the one hand, and Article 267, on the other, a complete system of legal remedies and procedures designed to ensure judicial review of the legality of European Union acts, and has entrusted such review to the Courts of

the European Union.⁵⁰

138. In that context, natural or legal persons who are unable, because of the conditions governing admissibility laid down in the fourth paragraph of Article 263 TFEU, to challenge a regulatory act of the European Union directly before the European Union judicature are protected against the application to them of such an act by the ability to challenge the implementing measures which the act entails.⁵¹

139. ‘Where responsibility for the implementation of those acts lies with the institutions of the European Union ..., [natural or legal] persons are entitled to bring a direct action before the Courts of the European Union against the implementing measures under the conditions stated in the fourth paragraph of Article 263 TFEU, and to plead, pursuant to Article 277 TFEU, in support of that action, the illegality of the general act at issue. Where that implementation is a matter for the Member States, such persons may plead the invalidity of the European Union act at issue before the national courts and tribunals and cause the latter to request a preliminary ruling from the Court of Justice, pursuant to Article 267 TFEU’.⁵²

140. In the present case, should the Court choose not to adopt my interpretation of regulatory act ‘which does not entail implementing measures’, the General Court was fully entitled to find that the regulation at issue entails implementing measures within the meaning of the final member of the fourth paragraph of Article 263 TFEU.

141. In those circumstances, it should have been possible indirectly to review both Regulation No 1107/2009 and the regulation at issue. It is true that the regulation at issue will not be the legal basis, in the strict sense, of the implementing measures. However, the case-law of the Court does not require such rigour in the determination of the legal link which must exist between the contested act and the act which is the subject of the plea of illegality in order for Article 277 TFEU to be applicable.⁵³ In the examination of the admissibility of a plea of illegality, the question which arises is whether it would have been possible to adopt the contested act in the absence of the rule to which the plea of illegality refers.⁵⁴

142. In the present case, it is clear that any implementing measures that will be adopted on the basis of Regulation No 1107/2009 could not be laid down if copper compounds had not first been included on the list of candidates for substitution by the regulation at issue.

⁵⁰ See, to that effect, point 75 of this Opinion and the case-law cited in footnote 32. Among numerous commentaries, see, in particular, Meij, A., ‘Standing in Direct Actions in the EU Courts after Lisbon’ in *De Rome à Lisbonne: les juridictions de l’Union européenne à la croisée des chemins — Mélanges en l’honneur de Paolo Mengozzi*, Brussels, Bruylant, 2013, pp. 301 to 312; Turmo, A., ‘Nouveau refus d’élargir l’accès des particuliers au recours en annulation contre les actes de l’Union européenne’, *R.A.E.*, 2013, pp. 825 to 835; Waelbroeck, D. and Bombois, T., ‘Des requérants “privilégiés” et des autres ... À propos de l’arrêt Inuit et de l’exigence de protection juridictionnelle effective des particuliers en droit européen’, *Cahiers de droit européen*, 2014/1, pp. 21 to 76; Van Malleghem, P.-A. and Baeten, N., ‘Before the Law Stands a Gatekeeper — Or, What is a “Regulatory Act” in Article 263(4) TFEU? *Inuit Tapiriit Kanatami*’, *Common Market Law Review*, 2014, vol. 51, pp. 1187 to 1216.

⁵¹ See, to that effect, judgments of 19 December 2013, *Telefónica v Commission* (C-274/12 P, EU:C:2013:852, paragraph 28), and of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission* (C-456/13 P, EU:C:2015:284, paragraph 30).

⁵² Judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council* (C-583/11 P, EU:C:2013:625, paragraph 93). See, also, judgments of 19 December 2013, *Telefónica v Commission* (C-274/12 P, EU:C:2013:852, paragraph 29), and of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission* (C-456/13 P, EU:C:2015:284, paragraph 31).

⁵³ For an example where the Court agreed to examine a plea of illegality against an act that was not the legal basis of the measure being challenged, see judgment of 28 June 2005, *Dansk Rørindustri and Others v Commission* (C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408).

⁵⁴ See, to that effect, Barav, A., ‘The Exception of Illegality in Community Law: a Critical Analysis’, *Common Market Law Review*, 1974, pp. 366 to 386, especially p. 374.

143. Furthermore, rejecting the plea of illegality against the regulation at issue would grant that regulation immunity from any judicial review since a direct action before the Court would be precluded on account of the implementing measures which that regulation ‘entails’. Such immunity would undoubtedly be contrary to a European Union based on the rule of law, which seeks to ensure that the acts of the institutions of the European Union are subject to review by the Court of their compatibility with EU law and, in particular, with the FEU Treaty and the general principles of law.⁵⁵ Such immunity would therefore constitute a lacuna in the system of legal remedies and procedures established by the FEU Treaty in order to confer on the Court the jurisdiction to review the legality of European Union acts. That system would, consequently, no longer be complete.

3. Conclusion on the second ground of appeal and supplementary remarks on the impact of Article 19 TEU

144. It follows from the foregoing observations that if the Court considers that the first ground of appeal is unfounded, the General Court did not err in law in holding, in paragraph 60 of the order under appeal, that the appellant’s argument relating to effective judicial protection must be disregarded. Even if the EUCuTF cannot, as a result of the conditions of admissibility referred to in the fourth paragraph of Article 263 TFEU, bring a direct action against the regulation before the Courts of the European Union, it may, as the General Court noted, in essence, in paragraph 61 of that order, claim in an indirect manner that that regulation is invalid before the courts having jurisdiction.

145. That conclusion cannot be called into question by the argument that the appellant will not be able to contest the comparative assessment performed by Member States so long as the national authorities decide to renew the approval of a plant protection product containing copper compounds, since such a decision would not alter the legal situation of the appellant and would therefore not be accepted as an actionable act by the Spanish courts.

146. As the General Court held, in essence, in paragraph 59 of the order under appeal, the second subparagraph of Article 19(1) TEU requires Member States to provide remedies sufficient to ensure effective judicial protection in the fields covered by EU law.

147. Furthermore, the case-law of the Tribunal Supremo (Supreme Court, Spain) and of the Tribunal Constitucional (Constitutional Court, Spain) concerning the requirement of an interest in bringing proceedings referred to by the EUCuTF in support of its appeal is not such as to alter the scope of Article 263 TFEU.

148. Since subparagraph 2 of Article 19(1) TEU imposes an obligation as to the result to be achieved on Member States, ‘it is for the national courts to interpret the conditions of admissibility and the procedural rules governing actions brought before them, such as the requirement for there to be a legal interest in bringing proceedings, in such a way as to enable those rules, wherever possible, to be implemented in such a manner as to contribute to the attainment of the objective, referred to in Article 47 of the Charter of Fundamental Rights of the European Union, of ensuring effective judicial protection of an individual’s rights under EU law’.⁵⁶

⁵⁵ See, inter alia, to that effect, judgment of 29 June 2010, *E and F* (C-550/09, EU:C:2010:382, paragraph 44).

⁵⁶ Order of 14 July 2015, *Forgital Italy v Council* (C-84/14 P, not published, EU:C:2015:517, paragraph 66).

149. Moreover, if such an interpretation was not possible, it should then be held that ‘the structure of the domestic legal system concerned [was] such that there was no remedy making it possible, even indirectly, to ensure respect for the rights which individuals derive from EU law’.⁵⁷ In those circumstances, it would be for the Member State concerned to create new remedies before the national courts to ensure the observance of EU law.⁵⁸

150. It is true that the solutions outlined in the two previous points appear somewhat paradoxical as regards the rigour with which the Court interprets the conditions of admissibility of an action for annulment.⁵⁹ They are nevertheless consistent with the logic behind Article 19 TEU and are the only solutions capable of ensuring that there is no lacuna in the judicial protection enjoyed by the citizens of the European Union.

151. In conclusion, having regard to the foregoing considerations, I consider that the second ground of appeal put forward by the appellant in support of its appeal must be rejected as unfounded.

VII. The admissibility of the appeal and referral of the case back to the General Court

152. Having completed my analysis of the grounds of appeal relied on by the appellant in support of its appeal, I consider that the first ground of appeal must be upheld. The order under appeal should therefore be set aside in so far as the General Court held that the regulation at issue entailed implementing measures within the meaning of the final member of the fourth paragraph of Article 263 TFEU.

153. In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, the Court may, after quashing the decision of the General Court, itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.

154. In the present case, since the General Court dismissed the action at the stage of the examination of admissibility, the Court cannot itself give a ruling on the substance of the action. However, it has the necessary elements to be able to give a definitive ruling on the plea of inadmissibility raised by the Commission in the procedure at first instance. Both the EUCuTF and the Commission submitted observations on the question whether the EUCuTF was directly concerned by the regulation at issue. Since it is established and not disputed that the regulation at issue is in the nature of a regulation, the only condition which has not yet been examined is that imposed in the final member of the fourth paragraph of Article 263 TFEU.

155. The appellant maintains that it and its members are directly concerned by the regulation at issue. In particular, it notes, first, that the regulation at issue classifies the active substance ‘copper compounds’ as an ‘active substance which is a candidate for substitution’, making it directly subject to the substantive provisions contained in Regulation No 1107/2009. Accordingly, copper compounds are subject to more restrictive conditions than those applicable to active substances which are not candidates for substitution. Moreover, that consequence results directly from the regulation at issue and does not afford the Commission, in future procedures for the renewal of approval of copper compounds, or national authorities, in procedures for the renewal of national authorisations for plant protection products containing copper compounds or requests for mutual recognition, any discretion as to the classification of copper compounds as a ‘candidate for substitution’.

⁵⁷ Judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council* (C-583/11 P, EU:C:2013:625, paragraph 104).

⁵⁸ See, to that effect, judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council* (C-583/11 P, EU:C:2013:625, paragraph 103 read in conjunction with paragraph 104).

⁵⁹ See, to that effect, Arnulf, A., ‘Arrêt “Inuit”: la recevabilité des recours en annulation introduits par des particuliers contre des actes réglementaires’, *Journal de droit européen*, 2014, pp. 14 to 16, in particular p. 15. The author speaks of a ‘paradox’ because ‘the Court imposes upon national courts requirements which it is not prepared to take on itself’.

156. However, the Commission submits that the regulation at issue could not directly concern the appellant and its members because the consequences referred to by the EUCuTF stem not directly from the inclusion of copper compounds on the list of candidates for substitution but from any subsequent decisions by the Commission or Member States, the adoption of which involves considerable discretion. As a consequence, the regulation at issue does not fulfil the conditions relating to direct concern.

157. According to the settled case-law of the Court relied on by the Commission, a natural or legal person is directly concerned by an EU measure if it affects ‘directly the legal situation of the individual and leave[s] no discretion to its addressees, who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from [Union] rules without the application of other intermediate rules’.⁶⁰

158. Nevertheless, in the present case, contrary to what the Commission claims, I consider that the regulation at issue produces a direct effect on the legal situation of the appellant, without there being any need for the European Union or the national authorities of a Member State to intervene. On account of the mere fact that copper compounds have been included on the list of candidates for substitution by the regulation at issue, the legal rules governing that substance have been amended.

159. Although the Commission and the Member States possess a certain margin of discretion in the context of applications for renewal of approval of an active substance or renewal of authorisations for plant protection products and in connection with the comparative assessment provided for in Article 50 of Regulation No 1107/2009, they have no discretion as regards the classification of copper compounds as ‘candidates for substitution’ or, consequently, concerning the legal rules applicable. The discretion of the Commission and Member States will apply only in the context of the application of Regulation No 1107/2009. However, that regulation is not the one which the appellant is seeking to have annulled.

160. Consequently, I am of the view that the appellant is entitled to bring an action for annulment of the regulation at issue on the basis of the final limb of the fourth paragraph of Article 263 TFEU since it is a regulatory act which concerns the appellant directly and which does not entail implementing measures within the meaning of that provision.

VIII. Conclusion

161. It seems indisputable that a person such as the EUCuTF (or one of its members) would not be entitled to bring proceedings against Regulation No 1107/2009. Two of the three conditions contained in the final limb of the fourth paragraph of Article 263 TFEU would not be fulfilled. First, despite being regulatory in nature for the purposes of the fourth paragraph of Article 263 TFEU, that regulation necessarily entails implementing measures. Secondly, it does not alter the legal situation of the persons concerned unless the Commission or Member States exercise their discretion.

162. The appellant seems to me, therefore, to have fully respected the interplay between the remedies established by the treaty and consistently recalled by the Court. It is bringing an action for annulment of a regulation which leads, for it, to the application of legal rules which are detrimental to it and is relying, in the context of that direct action, on the illegality of the regulation establishing that derogation on the basis of Article 277 TFEU. That dynamic between the available remedies is such as

⁶⁰ Judgment of 13 March 2008, *Commission v Infront WM* (C-125/06 P, EU:C:2008:159, paragraph 47). While the Court set out that interpretation in respect of the second limb of the fourth paragraph of Article 263 TFEU, I see no reason why it should not also apply to the third limb. See, in that regard, point 66 and footnote 21 of my Opinion in *Stichting Woonpunt and Others v Commission* (C-132/12 P, EU:C:2013:335).

to ensure both the effective judicial protection of the appellant and also the certainty of the legal order of the European Union. It provides a uniform solution to an issue of legality by means of a single procedure, which is quicker and less costly than a multitude of hypothetical and future references for a preliminary ruling.

163. In the light of the foregoing considerations, I therefore propose that the Court:

Primarily:

- (1) Set aside the order of the General Court of the European Union of 27 April 2016, *European Union Copper Task Force v Commission* (T-310/15, not published, EU:T:2016:265);
- (2) Declare admissible the action for annulment brought by the European Union Copper Task Force against Commission Implementing Regulation (EU) 2015/408 of 11 March 2015 on implementing Article 80(7) of Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market and establishing a list of candidates for substitution;
- (3) Refer the case back to the General Court for a ruling on the substance of the matter;
- (4) Order that the costs be reserved.

In the alternative, in the event that the Court finds the first ground of appeal to be unfounded:

- (1) Dismiss the appeal;
- (2) Order the European Union Copper Task Force to bear the costs.