



Reports of Cases

Case C-384/16 P

European Union Copper Task Force v European Commission

(Appeal — Plant protection products — Implementing Regulation (EU) 2015/408 — Placing on the market of plant protection products and establishing a list of candidates for substitution — Inclusion of active substance ‘copper compounds’ in that list — Action for annulment — Admissibility — Article 263, fourth paragraph, TFEU — Regulatory act that does not entail implementing measures — Individually concerned person)

Summary — Judgment of the Court (Grand Chamber), 13 March 2018

1. *Actions for annulment — Natural or legal persons — Regulatory acts entailing implementing measures — Definition — Criteria for assessment*

(Art. 263, fourth para., TFEU)

2. *Actions for annulment — Natural or legal persons — Regulatory acts entailing implementing measures — Definition — Commission regulation identifying an active substance as a candidate for substitution pursuant to Regulation No 1107/2009 — Included*

(Art. 263, fourth para., TFEU; European Parliament and Council Regulation No 1107/2009, Arts 20(1) and 24(2); Commission Regulation No 2015/408)

3. *Actions for annulment — Natural or legal persons — Regulatory acts entailing implementing measures — Definition — No requirement for an implementing measure to have the regulatory act in question as its legal base*

(Art. 263, fourth para., TFEU)

4. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Action brought by a trade association set up to protect and represent its members — Admissibility — Conditions*

(Art. 263, fourth para., TFEU)

5. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Commission regulation identifying an active substance as a candidate for substitution pursuant to Regulation No 1107/2009 — Action brought by an association of producers of the substance at issue — Not individually concerned — Inadmissibility*

(Art. 263, fourth para., TFEU; European Parliament and Council Regulation No 1107/2009, Art. 80(7), and Annex II, point 4; Commission Regulation No 2015/408, Recital 2 and Art. 1; Council Directive 91/414, Annex I)

6. *Fundamental rights — Right to effective judicial protection — Review of legality of EU measures — Procedures — Protection of that right by the EU judiciary or by the national courts according to the legal nature of the contested measure — Possibility of using an annulment action or reference for a preliminary ruling on validity*

(Arts 19(1) TEU; Art. 263, fourth para., TFEU, 267 TFEU and 277 TFEU; Charter of Fundamental Rights of the European Union, Arts 47 and 51(1))

1. See the text of the decision.

(see paras 35-40)

2. The fact that a regulatory act of the European Union entails implementing measures, within the meaning of the final limb of the fourth paragraph of Article 263 TFEU, such that certain legal effects of the regulation only materialise through those measures, does not exclude that that regulation produces, in the legal situation of a natural or legal person, other legal effects, which do not depend on the adoption of implementing measures.

The legal effects of Regulation 2015/408 on implementing Article 80(7) of Regulation (EC) No 1107/2009 concerning the placing of plant protection products on the market and establishing a list of candidates for substitution as regards the duration of the validity of the renewal of approval of copper compounds will only materialise, in respect of the members of the appellant, through the intermediary of implementing measures. It follows from the provisions of Regulation No 1107/2009, in particular, Article 24(2) thereof, that the classification of copper compounds as a candidate for substitution, by Regulation 2015/408, is without prejudice to the application of the procedure for the renewal of approval of that substance. That procedure requires, in the same way as the procedure for the renewal of approval of an active substance which is not included on the list annexed to Regulation 2015/408, the adoption of a regulation by the Commission, pursuant to Article 20(1) of Regulation No 1107/2009.

In those circumstances, a Commission regulation on the renewal of approval of candidates for substitution, such as copper compounds, is an implementing measure of Regulation 2015/408, within the meaning of the final limb of the fourth paragraph of Article 263 TFEU. Likewise, the effects of the regulation at issue in respect of the performance, by the Member States, of a comparative assessment of the health or environmental risks of plant protection products containing copper compounds compared with a substitute product or a non-chemical method of pest control or prevention will not be made with respect to an importer of copper compounds except through the intermediary of measures taken by the competent authorities of the Member States and that such acts constitute, therefore, implementing measures within the meaning of the final limb of the fourth paragraph of Article 263 TFEU.

(see paras 45, 50, 51, 54, 59)

3. The wording of the final limb of the fourth paragraph of Article 263 TFEU does not require, for a measure to be classified as an implementing measure of a regulatory act, that that act is the legal base of that measure. The same measure may be an implementing measure both of the act the provisions of which constitute its legal base and of a different act where all or part of the legal effects of the latter act will be produced, vis-à-vis the applicant, only through the intermediary of that measure.

(see para. 65)

4. See the text of the decision.

(see paras 87, 88, 91)

5. Persons other than those to whom a decision is addressed may claim to be individually concerned, within the meaning of the fourth paragraph of Article 263 TFEU, only 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 those factors distinguishes them individually just as in the case of the person addressed by such a decision. In that regard, 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.

As regards an action brought by an association of producers of copper compounds against Regulation 2015/408 on implementing Article 80(7) of Regulation (EC) No 1107/2009 concerning the placing of plant protection products on the market and establishing a list of candidates for substitution, members of the applicant were concerned by the regulation at issue only in their objective capacity as producers of copper compounds, and thus in the same capacity as any other economic operator actually or potentially in an identical situation, and that they were not therefore individually concerned by the regulation at issue. In that regard, when the Regulation 2015/408 was adopted, the inclusion of copper compounds in the list of candidates for substitution was decided not by taking into account the particular qualities of the members of the applicant, but on the ground that that substance fulfilled the conditions to be met to be regarded as a persistent and toxic substance, within the meaning of point 4 of Annex II to Regulation No 1107/2009.

(see paras 93, 94, 97, 101)

6. See the text of the decision.

(see paras 111-117, 119)