Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fifth Chamber)

27 September 2018 *

(Consumer protection — Implementing Regulation (EU) 2016/1056 — Implementing Regulation extending the approval period of the active substance 'glyphosate' — Regulation (EC) No 1367/2006 — Request for internal review — Article 2(1)(g) and Article 10(1) of Regulation No 1367/2006 — Measure of individual scope — Aarhus Convention)

In Case T-12/17,

Mellifera eV, Vereinigung für wesensgemäße Bienenhaltung, established in Rosenfeld (Germany), represented by A. Willand, lawyer,

applicant,

v

European Commission, represented by G. Gattinara and C. Hermes, acting as Agents,

defendant,

APPLICATION under Article 263 TFEU for annulment of Commission Decision Ares(2016) 6306335 of 8 November 2016, rejecting the request for internal review, based on Article 10 of Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13), of Commission Implementing Regulation (EU) 2016/1056 of 29 June 2016 amending Implementing Regulation (EU) No 540/2011 as regards the extension of the approval period of the active substance 'glyphosate' (OJ 2016 L 173, p. 52),

THE GENERAL COURT (Fifth Chamber),

composed of D. Gratsias, President, A. Dittrich and P.G. Xuereb (Rapporteur), Judges,

Registrar: E. Coulon,

gives the following

* Language of the case: German.

Judgment

Background to the dispute

1 The applicant, Mellifera eV, Vereinigung für wesensgemäße Bienenhaltung, is a not-for-profit association registered in Germany, which works for the conservation and promotion of bees.

Approval of the active substance 'glyphosate' and extension of the approval period

2 By Commission Directive 2001/99/EC of 20 November 2001 amending Annex I to Council Directive 91/414/EEC concerning the placing of plant protection products on the market to include glyphosate and thifensulfuron-methyl as active substances (OJ 2001 L 304, p. 14), the active substance 'glyphosate' was included in Annex I to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1) and was therefore approved under the latter directive, with effect from 1 July 2002.

3 Directive 91/414 was repealed, with effect from 14 June 2011 and subject to certain transitional measures, by Regulation (EC) No 1107/2009 of the European Parliament and of the Council of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 91/414/EEC (OJ 2009 L 309, p. 1).

4 Article 78(3) of Regulation No 1107/2009 provided for the adoption of a regulation containing the list of active substances included in Annex I to Directive 91/414, those substances being deemed to have been approved under Regulation No 1107/2009.

5 Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation No 1107/2009 as regards the list of approved active substances (OJ 2011 L 153, p. 1) adopted the list provided for in Article 78(3) of Regulation No 1107/2009.

6 Glyphosate appears on that list, with the expiry date for the approval period of 31 December 2015.

7 An application for renewal of that approval was submitted within the prescribed period.

8 The first paragraph of Article 17 of Regulation No 1107/2009, entitled 'Extension of approval period for the duration of the procedure', provides as follows:

'Where for reasons beyond the control of the applicant it appears that the approval is likely to expire before a decision has been taken on renewal, a decision shall be adopted in accordance with the regulatory procedure referred to in Article 79(3), postponing the expiry of the approval period for that applicant for a period sufficient to examine the application.'

9 By Commission Implementing Regulation (EU) 2015/1885 of 20 October 2015 amending Implementing Regulation No 540/2011 as regards the extension of the approval periods of the active substances: … glyphosate … (OJ 2015 L 276, p. 48), which was adopted on the basis of the first paragraph of Article 17 of Regulation No 1107/2009, the European Commission extended the approval period of glyphosate until 30 June 2016, on the grounds that the assessment of the substance had been delayed for reasons beyond the control of the applicant.

10 During the discussions which took place in the Standing Committee on Plants, Animals, Food and Feed on 18 and 19 May 2016, a number of Member States considered that it was appropriate to seek an opinion from the Committee for Risk Assessment of the European Chemicals Agency (ECHA) on

the harmonised classification as regards the carcinogenicity of glyphosate before taking a decision on a renewal of its approval, since such an opinion could be relevant on the basis of the criteria set out in Regulation No 1107/2009. The Commission acted on that suggestion.

11 In view of the time required for the ECHA to examine the dossier relating to the harmonised classification, the Commission considered that the approval in force for glyphosate would expire before a decision could be taken on its renewal. It therefore held that it was necessary to extend the approval of glyphosate.

12 By Commission Implementing Regulation (EU) 2016/1056 of 29 June 2016 amending Implementing Regulation No 540/2011 as regards the extension of the approval period of the active substance 'glyphosate' (OJ 2016 L 173, p. 52), the Commission extended for a second time the approval period of glyphosate on the basis of the first paragraph of Article 17 of Regulation No 1107/2009, setting its new expiry date, namely, '[six] months from the date of receipt of the opinion of the Committee for Risk Assessment of the European Chemicals Agency by the Commission, or 31 December 2017, whichever is the earlier'.

Request for internal review

13 On 11 August 2016, the applicant submitted a request to the Commission for internal review of Implementing Regulation 2016/1056, under Article 10(1) of Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

14 By Decision Ares(2016) 6306335 of 8 November 2016 ('the contested decision'), the Commission rejected that request for internal review as inadmissible on the grounds that the act referred to in that request did not constitute an administrative act within the meaning of Article 2(1)(g) of Regulation No 1367/2006, that is to say, a measure of individual scope. In that regard, the Commission explained inter alia that the provisions of Implementing Regulation 2016/1056 were applicable to all operators manufacturing or placing on the market plant protection products containing glyphosate.

Procedure and forms of order sought

15 By application lodged at the Registry of the General Court on 11 January 2017, the applicant brought the present action.

16 The defence was lodged at the Court Registry on 27 March 2017.

17 The reply and the rejoinder were lodged at the Court Registry on 10 May and 26 June 2017, respectively.

18 The applicant claims that the Court should:

– annul the contested decision;

– order the Commission to take a new decision on the merits of its request for internal review of Implementing Regulation 2016/1056;

– order the Commission to pay the costs.

19 The Commission contends that the Court should:

– reject the action as unfounded so far as the application for annulment is concerned and as manifestly inadmissible so far as the application for an order is concerned;

– order the applicant to pay the costs.

20 On 29 August 2017, the applicant lodged an application for priority treatment under Article 67(2) of the Rules of Procedure of the General Court. By decision of 6 September 2017, the President of the Fifth Chamber of the Court rejected the application for priority treatment.

21 By letter from the Court Registry of 19 December 2017, the Court invited the parties to comment on the consequences of renewal of the approval of glyphosate for a period of 5 years, by Commission Implementing Regulation (EU) 2017/2324 of 12 December 2017 renewing the approval of the active substance 'glyphosate' in accordance with Regulation No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation No 540/2011 (OJ 2017 L 333, p. 10), for the present action and in particular for the applicant's interest in bringing proceedings.

22 The applicant and the Commission lodged their answers to that question at the Court Registry on 17 January 2018.

Law

23 Under Article 106(3) of the Rules of Procedure, if no request for a hearing has been submitted by the parties within 3 weeks after service of notification of the close of the written part of the procedure, the Court may decide to rule on the action without an oral part of the procedure. In the present case, the Court considers that it has sufficient information available to it from the material in the file and has decided, in the absence of such a request, to give a decision on the action without an oral part of the procedure.

Legal interest in bringing proceedings

24 It is settled case-law that an action for annulment brought by a natural or legal person is admissible only in so far as that person has an interest in the annulment of the contested measure (judgment of 10 December 2010, *Ryanair* v *Commission*, T-494/08 to T-500/08 and T-509/08, EU:T:2010:511, paragraph 41; orders of 9 November 2011, *ClientEarth and Others* v *Commission*, T-120/10, not published, EU:T:2011:646, paragraph 46, and of 30 April 2015, *EEB* v *Commission*, T-250/14, not published, EU:T:2015:274, paragraph 14).

25 An applicant's interest in bringing proceedings must, in the light of the purpose of the action, exist at the stage of lodging the action, failing which the action will be inadmissible, and must continue until the final decision, failing which there will be no need to adjudicate, which presupposes that the action must be likely, if successful, to procure an advantage for the party bringing it (judgment of 10 December 2010, *Ryanair* v *Commission*, T-494/08 to T-500/08 and T-509/08, EU:T:2010:511, paragraphs 42 and 43; orders of 9 November 2011, *ClientEarth and Others* v *Commission*, T-120/10, not published, EU:T:2011:646, paragraphs 47 and 49, and of 30 April 2015, *EEB* v *Commission*, T-250/14, not published, EU:T:2015:274, paragraphs 15 and 17).

26 The Commission contends, in its answer to the question from the Court on this point, that the entry into force of Implementing Regulation 2017/2324 deprived the applicant of a legal interest in bringing proceedings so far as its application for annulment of the contested decision is concerned, its

application for an order being manifestly inadmissible from the outset. According to the Commission, such annulment would no longer procure an advantage for the applicant. If the Court were to annul the contested decision, the Commission would have to rule again on the request for internal review of Implementing Regulation 2016/1056 submitted by the applicant in complying with the legal assessment of the Court. The internal review of the content of Implementing Regulation 2016/1056 would no longer procure an advantage for the applicant, since the sole purpose of that regulation was to extend the approval period of glyphosate for a period sufficient to examine the request for renewal of the approval. Since Implementing Regulation 2017/2324 had in the meantime renewed the approval of glyphosate for the period 16 December 2017 to 15 December 2022, internal review of Implementing Regulation 2016/1056 had become devoid of purpose.

27 In its observations in response to the question from the Court, the applicant contends that it has not lost an interest in bringing proceedings. In that regard, it contends that review of Implementing Regulation 2016/1056 is still possible. It also contends that the fact that the act in question continues to exist and have legal effect is not a precondition for a review under Article 10 of Regulation No 1367/2006. Lastly, the applicant points to the risk of the unlawfulness alleged in the present action recurring in the future.

28 In that regard, it follows from the case-law that the applicant retains an interest in seeking annulment of an act of an EU institution in order to prevent its alleged unlawfulness from recurring in the future. That interest in bringing proceedings follows from the first paragraph of Article 266 TFEU, under which the institution whose act has been declared void is required to take the necessary measures to comply with the judgment of the Court. However, that interest in bringing proceedings can exist only if the alleged unlawfulness is liable to recur in the future independently of the circumstances which have given rise to the action brought by the applicant (see judgments of 7 June 2007, *Wunenburger* v *Commission*, C-362/05 P, EU:C:2007:322, paragraphs 50 to 52, and of 22 March 2018, *De Capitani* v *Parliament*, T-540/15, EU:T:2018:167, paragraph 32).

29 That is so in the present case, since the unlawfulness alleged by the applicant is based on an interpretation of Article 10(1) of Regulation No 1367/2006, read in conjunction with Article 2(1)(g) of that regulation, that the Commission is highly likely to reiterate if there is a further request for internal review of an administrative act under environmental law.

30 In that regard, first, the applicant stated that, in accordance with the objects set out in its governing documents and its objectives, it would submit requests for internal review in the future if the Commission took debatable decisions concerning the approval of glyphosate or other active substances. The applicant therefore announced in its reply to the Court's question concerning the consequences of renewal of the approval of glyphosate by Implementing Regulation 2017/2324, that it would request an internal review of that regulation, by 26 January 2018 at the latest.

31 Secondly, it is apparent from the Commission's observations that the latter takes the view that a regulation extending the approval of an active substance under the first paragraph of Article 17 of Regulation No 1107/2009, in the same way as a regulation first approving such a substance under Article 13(2) of that regulation and as a regulation renewing approval under Article 20 of that regulation, entails legal effects for categories of persons regarded generally and in the abstract and therefore constitutes a measure of general application, and not an administrative act within the meaning of Article 10(1) of Regulation No 1367/2006, read in conjunction with Article 2(1)(g) of that regulation. It follows that it is likely that the Commission will give that interpretation again if a request is made for internal review of a regulation approving an active substance for the first time or a regulation renewing the approval of an active substance, such as Implementing Regulation 2017/2324.

32 In the light of the foregoing, the Court must find that the applicant has maintained its interest in bringing proceedings for annulment of the contested decision, without the need to examine the applicant's other arguments in that regard.

Admissibility

33 By its second head of claim, the applicant seeks an order from the Court instructing the Commission to assess the substance of its request for internal review. By that head of claim, the applicant therefore requests, in essence, that the Court issue a direction to the Commission. However, according to settled case-law, in an action for annulment, the jurisdiction of the EU Courts is limited to reviewing the legality of the contested measure and the Court may not, in the exercise of its jurisdiction, issue directions to EU institutions. It is for the institution concerned to adopt, under Article 266 TFEU, the measures necessary to implement a judgment given in proceedings for annulment (see, to that effect, order of 12 March 2014, *PAN Europe* v *Commission*, T-192/12, not published, EU:T:2014:152, paragraph 15 and the case-law cited).

34 The second head of claim is therefore manifestly inadmissible.

35 That finding is not affected by the applicant's arguments in the reply, in which, whilst acknowledging that under the current case-law of the EU Courts its second head of claim is not admissible, it nonetheless contends that the consequence of this is that the effective exercise of its right to an internal review and to effective judicial protection is likely to be delayed in an unacceptable manner, and ultimately be made impossible. According to the applicant, it is therefore appropriate, in the interests of the effective application of Regulation No 1367/2006 and in order to protect its rights, that examination of the merits of its complaints against Implementing Regulation 2016/1056 should be the subject of the present proceedings before the Court. That argument must be rejected. By giving the party making the request the right to institute proceedings before the Court of Justice of the European Union, Article 12 of Regulation No 1367/2006 relates only to the decision which the Commission adopted in response to the request for internal review. Contrary to what the applicant maintains, the judgment of 15 December 2016, *TestBioTech and Others* v *Commission* (T-177/13, not published, EU:T:2016:736), relied on by the applicant in that regard, confirms that, although it is inherent in a request for internal review of an administrative act that the party requesting the review is challenging the lawfulness or merits of the measure, that does not mean that the party making the request is entitled, in the course of its action for annulment of the refusal to conduct a review, to put forward arguments directly challenging the lawfulness or merits of the measure (judgment of 15 December 2016, *TestBioTech and Others* v *Commission*, T-177/13, not published, EU:T:2016:736, paragraph 56).

36 In the reply, the applicant stated that it envisaged applying to the Court for interim measures, corresponding to its second head of claim, on the basis of Article 279 TFEU. In that regard, suffice it to say that no application to that effect was made to the Court.

Application for a measure of organisation of procedure

37 In the reply, the applicant requested the Court to call on the Commission, by way of a measure of organisation of procedure under Article 89(2)(b) and (3)(b) of the Rules of Procedure, to take a decision on the merits of its request for internal review or, at least, to comment on that point.

38 That application must be rejected as inadmissible.

39 As the Commission rightly pointed out, the applicant cannot use a measure of organisation of procedure to circumvent the legal principle that the EU Courts cannot issue directions to the EU institutions.

Substance

40 In support of its action, the applicant puts forward a single plea, alleging infringement of Article 10(1) of Regulation No 1367/2006, read in conjunction with Article 2(1)(g) of that regulation, and of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, signed at Aarhus on 25 June 1998 ('the Aarhus Convention').

41 The single plea raised in the application comprises, in essence, two parts, the first of which alleges infringement of Article 10(1) of Regulation No 1367/2006, read in conjunction with Article 2(1)(g) of that regulation, and the second alleges infringement of the Aarhus Convention.

First part: infringement of Article 10(1) of Regulation No 1367/2006, read in conjunction with Article 2(1)(g) of that regulation

42 The applicant maintains that Implementing Regulation 2016/1056 constitutes a measure of individual scope within the meaning of Article 2(1)(g) of Regulation No 1367/2006, which may therefore be the subject of a request for internal review according to Article 10(1) of that regulation.

43 The applicant notes in that regard that it is necessary to distinguish between measures of individual scope and measures of general application, the latter being measures which apply to situations which are determined objectively and entail legal effects for categories of persons regarded generally and in the abstract.

44 The applicant maintains that extension of the approval period of an active substance under Article 17 of Regulation No 1107/2009 is part of an approval procedure during which a decision is taken on the application for renewal of the approval of the substance in question. That extension of the approval period produces a legal effect with regard to the applicant, who is thus authorised to carry on marketing the substance in question. According to the applicant, the fact that Implementing Regulation 2016/1056 was adopted in the context of an approval procedure relating to an individual application is, in the light of case-law, an important argument supporting the conclusion that that implementing regulation is a measure of individual scope.

45 According to the applicant, those characteristics distinguish the approval of an active substance on the basis of Regulation No 1107/2009 from a regulation setting the maximum limits applicable to residues of certain products on the basis of Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Directive 91/414 (OJ 2005 L 70, p. 1). Such maximum contents are fixed for any person who puts such products on the market or processes them. Extension of the approval period of an active substance under Article 17 of Regulation No 1107/2009 is, on the other hand, only for the person who applied for and currently holds the approval.

46 The applicant acknowledges that approval of an active substance also has beneficial effects for potential manufacturers of the plant protection products concerned and for other operators. In its view, that is, however, a typical situation with regard to marketing authorisation for a product, which is granted to one undertaking but is of indirect benefit to other users of the product, who can use it for the purposes for which it is authorised. The fact that approval of a product, which is afforded to a particular authorisation holder, is of subsequent benefit to a large number of economic operators makes no difference, however, to the fact that the approval itself constitutes a measure of individual scope.

47 The applicant also maintains that other beneficial effects of approval, in particular with regard to the placing on the market and use of plant protection products containing that active substance, do not result from the approval of the active substance, but from the relevant provisions, inter alia Regulation No 1107/2009.

48 According to the applicant, approval of an active substance under Regulation No 1107/2009 is comparable to a marketing authorisation for genetically modified organisms under Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (OJ 2003 L 268, p. 1), as last amended by Regulation (EC) No 298/2008 of the European Parliament and of the Council of 11 March 2008 (OJ 2008 L 97, p. 64), which constitutes a measure of individual scope within the meaning of Article 2(1)(g) of Regulation No 1367/2006.

49 In the reply, the applicant contends that Implementing Regulation 2016/1056 constitutes merely an interim decision issued during the course of the renewal procedure, which is intended to protect the individual rights of the applicant for the renewal. According to the wording of the first paragraph of Article 17 of Regulation No 1107/2009, it is a decision taken in respect of an individual case, which is intended to have an effect with regard to the applicant and relates to the examination of that person's application for renewal.

50 The applicant also contends that the approval of an active substance does not constitute an abstract and general set of rules, since it does not lay down requirements which the substance in question must meet but authorises that substance. It is, rather, a typical implementing measure, namely an instance of the application to a specific case of the requirements laid down in Article 4 et seq. of Regulation No 1107/2009.

51 Lastly, the applicant contends that approval of the active substance is a preliminary stage and a component of the authorisation of the plant protection product. Moreover, there is no reason to consider that, whilst the authorisation of a plant protection product is an administrative act, the approval of the active substance covered by that authorisation, for its part, constitutes a measure of general application. It is only because of the division of competences, due to substantive considerations, between the European Union and the Member States that in Regulation No 1107/2009 the EU legislature subdivided the authorisation procedure into more than one stage.

52 The Commission disputes those arguments.

53 As a preliminary point, it should be noted that Article 10(1) of Regulation No 1367/2006, read in conjunction with Article 2(1)(g) of that regulation, makes clear that any non-governmental organisation which meets the criteria set out in Article 11 of that regulation is entitled to make a request for internal review to the EU institution or body that has adopted an administrative act under environmental law. The Commission does not deny that the applicant is a non-governmental organisation which meets the criteria set out in Article 11 of Regulation No 1367/2006. Nor does it deny that Implementing Regulation 2016/1056, which was referred to in the applicant's request for internal review, constitutes an act adopted under environmental law.

54 On the other hand, the two parties take opposing views on whether Implementing Regulation 2016/1056 should be regarded as an administrative act within the meaning of Article 2(1)(g) of Regulation No 1367/2006. According to that provision, an administrative act is a measure of individual scope. It is therefore necessary to examine whether Implementing Regulation 2016/1056 is of individual scope or whether it is a measure of general application.

55 In that regard, it should be noted that, according to case-law, in order to determine the scope of a measure, the EU Court cannot restrict itself to considering the official title of the measure, but must first take into account its object and content (see, to that effect, judgment of 14 December 1962, *Confédération nationale des producteurs de fruits et légumes and Others* v *Council*, 16/62 and 17/62,

EU:C:1962:47, p. 471, at p. 478). An act is regarded as being of general application if it applies to objectively determined situations and entails legal effects for categories of persons regarded generally and in the abstract (judgments of 21 November 1989, *Usines coopératives de déshydratation du Vexin and Others* v *Commission*, C-244/88, EU:C:1989:588, paragraph 13, and of 15 January 2002, *Libéros* v *Commission*, C-171/00 P, EU:C:2002:17, paragraph 28).

56 In the present case, it should be noted that Implementing Regulation 2016/1056 was adopted on the basis of the first paragraph of Article 17 of Regulation No 1107/2009. It is clear from that provision that the measure for which it provides is to be taken in the context of a procedure for the renewal of the approval of an active substance. According to Article 15(1) of Regulation No 1107/2009, the application for renewal is to be submitted by the producer of the active substance in question. It should also be noted that, according to the first paragraph of Article 17 of Regulation No 1107/2009, a measure postponing the expiry of the approval 'for that applicant' is to be taken where, for reasons 'beyond the control of the applicant' it appears that the approval will expire before a decision has been taken on renewal. It is therefore clear from the wording of the first paragraph of Article 17 of Regulation No 1107/2009 that the measure provided for in that provision is intended to protect the interests of the applicant for renewal of approval of the active substance, which the Commission moreover accepted in the rejoinder. The fact that such a measure is taken without it being necessary for the applicant for renewal to submit an application to that effect does not alter that finding.

57 It should be noted, however, that the object and content of the measure provided for in the first paragraph of Article 17 of Regulation No 1107/2009 do not merely confer on the applicant for renewal of the approval of the active substance protection against the risk that the renewal procedure in question might be delayed for reasons beyond the control of that applicant.

58 An implementing regulation adopted on the basis of the first paragraph of Article 17 of Regulation No 1107/2009 extends the approval of the active substance in question for a certain period. That measure therefore has the same consequences as an implementing regulation approving such a substance for the first time under Article 13(2) of that regulation or a regulation renewing approval under Article 20 of that regulation.

59 In that regard, it should be noted that Regulation No 1107/2009 distinguishes between, on the one hand, procedures for approval and for renewal of approval of an active substance, which are the subject of the provisions of Chapter II (Articles 4 to 27) and, on the other hand, the procedure for the authorisation of plant protection products containing an active substance, which is governed by the provisions of Chapter III (Articles 28 to 57). Article 28(1) of Regulation No 1107/2009 provides that, in principle, a plant protection product is not to be placed on the market or used unless it has been authorised in the Member State concerned in accordance with Regulation No 1107/2009. Article 29(1)(a) of Regulation No 1107/2009 makes clear that a plant protection product may be authorised only where the active substance it contains has been approved.

60 Consequently, approval of an active substance on the basis of Regulation No 1107/2009 not only entails legal effects for the person who has applied for such approval, but also for any operator whose activities require such approval, in particular producers of plant protection products containing that substance, and for any competent public authority, inter alia the public authorities of the Member States in charge of authorising those products, as the applicant acknowledged moreover in the reply.

61 Therefore, first, so far as producers of plant protection products are concerned, they may, once the active substance has been approved, apply to the competent national authorities for authorisation of a plant protection product containing that active substance, without the need for them to have taken part in the procedure for approval of that active substance.

62 Secondly, so far as the competent authorities of Member States are concerned, the Court has held that the approval of an active substance has the legal consequence of enabling them, subject to a series of additional conditions set out in Article 29 of Regulation No 1107/2009, to authorise the placing on the market of plant protection products containing that active substance, if a request to that effect is made (order of 28 September 2016, *PAN Europe and Others* v *Commission*, T-600/15, EU:T:2016:601, paragraph 25).

63 It must therefore be held that Implementing Regulation 2016/1056 is of general application in that it applies to objectively determined situations and it produces legal effects with respect to a category of persons envisaged in general and in the abstract (see, to that effect and by analogy, judgment of 25 October 2011, *Microban International and Microban (Europe)* v *Commission*, T-262/10, EU:T:2011:623, paragraph 23).

64 An implementing regulation approving, extending the approval period or renewing the approval of an active substance on the basis of Regulation No 1107/2009 does not set out the requirements that use of that substance should meet and is therefore different from a regulation setting the maximum limits applicable to residues of certain products on the basis of Regulation No 396/2005, as the applicant rightly observed. However, that difference does not alter the fact that Implementing Regulation 2016/1056 is of general application.

65 Consequently, an implementing regulation extending the approval of an active substance under Article 17 of Regulation No 1107/2009, such as Implementing Regulation 2016/1056 at issue in the present case, must be regarded as being a measure of general application and, therefore, does not constitute an administrative act within the meaning of Article 2(1)(g) and Article 10(1) of Regulation No 1367/2006.

66 That finding is not affected by the applicant's other arguments.

67 First, as was noted in paragraph 55 above, in order to determine the scope of a measure it is not enough to merely consider its official title, it is necessary above all to take into account its object and content. Consequently, the fact that the first paragraph of Article 17 of Regulation No 1107/2009 refers to a 'decision' postponing the expiry of the approval period does not in any way call into question the fact that the measure thus described constitutes, with regard to its object and content, a measure of general application and not a measure of individual scope.

68 However, it is clear from the wording of the first paragraph of Article 17 of Regulation No 1107/2009, and its context, that the term 'decision' is used in that provision in the broad sense of a measure entailing legal effects, including measures such as Implementing Regulation 2016/1056.

69 Second, contrary to what the applicant maintains, a measure taken in order to extend the approval period of an active substance, under the first paragraph of Article 17 of Regulation No 1107/2009, is not addressed solely to the person who applied for and currently holds the approval. Implementing Regulation 2016/1056 does not state to whom it is addressed but merely provides in Article 2 that it is binding in its entirety and directly applicable in all Member States, as the applicant acknowledged in the reply. The applicant's argument that approval of an active substance does not need to be addressed to anyone because no marketing authorisation is needed for active substances does not call into question the fact that that approval is not addressed to one or more persons as individuals but to categories of persons envisaged in general and in the abstract, such as in particular producers of plant protection products containing that substance and the competent national authorities.

70 Third, since Regulation No 1107/2009 distinguishes clearly between, on the one hand, procedures for the approval, for extending the approval period and for renewing the approval of an active substance and, on the other hand, the procedure for the authorisation of plant protection products containing

that active substance (see paragraph 59 above), approval of the active substance cannot, contrary to what the applicant maintains, be regarded as a component of the authorisation of the plant protection product.

71 Fourth, even if the distinction drawn in Regulation No 1107/2009 between the procedures referred to in paragraph 70 above was only, as the applicant claims, the result of the division of competences, due to substantive considerations, between the European Union and the Member States, the fact remains that measures approving, extending the approval period or renewing the approval of an active substance on the basis of Regulation No 1107/2009 are of general application.

72 Fifth, contrary to what the applicant maintains, this is not a typical situation concerning marketing authorisation of a product that is granted to one undertaking but is of indirect benefit to other users of the product, who can use it for the purposes for which it has been authorised. As explained in paragraph 59 above, approval of an active substance does not mean that a plant protection product containing that substance can be placed on the market on the basis of that fact alone.

73 Sixth, the effects of approval of an active substance on the basis of Regulation No 1107/2009 are not comparable to those of authorisation for placing genetically modified organisms on the market under Regulation No 1829/2003. Such authorisation, according to Article 4(2) and Article 16(2) of Regulation No 1829/2003, enables the product in question to be placed on the market, whereas approval of an active substance on the basis of Regulation No 1107/2009 does not include authorisation of plant protection products containing that substance, such authorisation is the subject of a separate procedure.

74 Seventh, the applicant's argument that the effects of approval of an active substance, as regards persons other than the applicant for the approval in question, stem from the provisions of Regulation No 1107/2009 and not from the approval of the active substance as such is based on a misinterpretation of the content of that approval. It is the approval of an active substance, or the extension of the approval or renewal of such approval, which entails effects, inter alia, for producers of plant protection products and Member States. The fact that those effects are provided for by Regulation No 1107/2009 does not alter that finding.

75 Eighth, the mere fact that a measure adopted on the basis of the first paragraph of Article 17 of Regulation No 1107/2009 is involved in the procedure for renewal of the approval of an active substance, in which participation by the applicant for the renewal features, does not mean that it should be regarded as a measure of individual scope.

76 Lastly, contrary to what the applicant maintains in that regard, the fact that approval of an active substance may, according to Article 6 of Regulation No 1107/2009, be subject to conditions and restrictions does not show that it is a measure of individual scope as regards the legal effects entailed by that approval for persons other than the applicant. Article 4(5) of Regulation No 1107/2009, which the applicant relies on also in that context, merely provides that the requirements laid down in paragraphs 1, 2 and 3 of that article which an active substance must satisfy in order to be approved are deemed to be satisfied where it has been established that that is the case as regards one or more representative uses of at least one plant protection product containing that substance. That provision is therefore irrelevant as regards the question whether a measure approving an active substance is of general or individual scope.

77 It follows from the foregoing that the first part of the single plea in law must be rejected.

Second part: infringement of the Aarhus Convention

78 In that regard, the applicant contends that a broad interpretation of what measures may be subject to review under Article 10(1) of Regulation No 1367/2006 is required also in the light of public international law. The Aarhus Convention, which is directly binding on the European Union, does not provide that only decisions of individual scope are concerned. According to Article 9(3) of the Aarhus Convention, without prejudice to the review procedures referred to in paragraphs 1 and 2 of that article, each Contracting Party is to ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment. The purpose of Regulation No 1367/2006 is precisely to implement the Aarhus Convention. The internal review procedure should therefore apply to all measures within the meaning of the Aarhus Convention. The divergent approach of the EU Courts cannot be maintained in the light of the draft findings and recommendations of the Aarhus Convention Compliance Committee concerning compliance by the European Union, adopted at the 53rd meeting of that committee between 21 and 24 June 2016 ('the findings and recommendations of the Aarhus Convention Compliance Committee').

79 In any event, according to the applicant, although Article 9(3) of the Aarhus Convention does not have direct effect, that does not alter the fact that Article 10(1) and Article 2(1)(g) of Regulation No 1367/2006 must be interpreted in accordance with Article 9(3) of the Aarhus Convention. Therefore, Article 10(1) of Regulation No 1367/2006 cannot be interpreted so strictly, with regard to the interpretation of the concept of 'measure of individual scope', that it would preclude the challenging of acts under environment law, like measures extending the approval period of an active substance, adopted on the basis of Article 17 of Regulation No 1107/2009.

80 The Commission challenges those arguments.

81 It is clear, in essence, from the applicant's arguments that it seeks to maintain that a request for internal review, within the meaning of Article 10(1) of Regulation No 1367/2006, should also be possible, in the light of Article 9(3) of the Aarhus Convention, where the measure at issue does not constitute a measure of individual scope but a measure of general application.

82 It should be noted that, according to Article 9(3) of the Aarhus Convention, each Contracting Party is to ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

83 It should also be noted that, according to recital 4 of Regulation No 1367/2006, that regulation was adopted in order to apply the requirements of the Aarhus Convention to the institutions and bodies of the European Union. In particular, it is clear from recitals 18 and 19 of that regulation that the introduction of an internal review procedure is designed to assist the effective implementation of Article 9(3) of the Aarhus Convention. Moreover, as stated above, under Article 10(1) of Regulation No 1367/2006, read in conjunction with Article 2(1)(g) of that regulation, non-governmental organisations may make a request for such a review only in respect of acts of individual scope.

84 Article 9(3) of the Aarhus Convention does not specify that the opportunity it provides for bringing administrative procedures relates only to cases where the acts at issue are of individual scope.

85 However, it is clear from case-law that Article 9(3) of the Aarhus Convention is not directly applicable within the EU legal order, nor can it be relied upon as a criterion for assessing the legality of EU acts. It is also clear from that case-law that it follows from Article 9(3) of the Aarhus Convention that the Contracting Parties thereto have a broad margin of discretion when defining the rules for the

implementation of the 'administrative or judicial procedures' referred to in that provision (judgment of 13 January 2015, *Council and Commission* v *Stichting Natuur en Milieu and Pesticide Action Network Europe*, C-404/12 P and C-405/12 P, EU:C:2015:5, paragraphs 47 to 53).

86 The applicant's argument that that case-law cannot be maintained in the light of the recommendations of the Aarhus Convention Compliance Committee must be rejected. In any event, assuming that those recommendations are binding on the Contracting Parties to the Aarhus Convention, they are, as the Commission rightly observed, only a draft and, as the applicant acknowledged in the reply, that draft was not adopted by that committee until 17 March 2017, which was after the date on which the contested decision was adopted. It is not necessary therefore to answer the question whether, as the Commission maintains, making reference to the Aarhus Convention Implementation Guide, the recommendations of the Aarhus Convention Compliance Committee were to be adopted by the meeting of the Parties, provided for in Article 10 of the Aarhus Convention, or whether that was not necessary, as the applicant maintains.

87 With regard to the applicant's argument that an interpretation is required of Article 10(1) and Article 2(1)(g) of Regulation No 1367/2006 in accordance with international law, the consequence of which would be that acts such as measures extending the approval period of an active substance, adopted on the basis of Article 17 of Regulation No 1107/2009, would be regarded as falling within those provisions, it should be noted that an interpretation in accordance with international law of a provision of secondary EU law is not possible unless that provision allows such an interpretation and cannot serve as the basis for an interpretation of that law *contra legem*. Given that, under Article 10(1) of Regulation No 1367/2006, only 'administrative act[s]', which are defined in Article 2(1)(g) of that regulation as being 'measure[s] of individual scope', may form the subject of a request for internal review, it is not possible to interpret those provisions as meaning that the administrative acts referred to in them encompass measures of general application, since such an interpretation would be *contra legem* (see, to that effect, order of 17 July 2015, *EEB* v *Commission*, T-565/14, not published, EU:T:2015:559, paragraphs 31 to 33).

88 In the light of the foregoing, the second part of the single plea in law must be rejected and, consequently, the action must be dismissed in its entirety.

Costs

89 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the applicant has been unsuccessful, the latter must be ordered to bear its own costs and to pay those incurred by the Commission.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Dismisses the action;**

2. **Orders Mellifera eV, Vereinigung für wesensgemäße Bienenhaltung to bear its own costs and to pay those incurred by the European Commission.**

Gratsias Dittrich Xuereb

Delivered in open court in Luxembourg on 27 September 2018.

[Signatures]