Reports of Cases

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

4 October 2023*

(Plant protection products – Regulation (EC) No 1107/2009 – Implementing Regulation (EU) 2020/17 – Non-renewal of approval of the active substance chlorpyrifos-methyl – Action for annulment – Standing to bring proceedings – Admissibility – Obligation to examine all the conditions and criteria set out in Regulation No 1107/2009 – Absence of an EFSA conclusion – Transparency obligation – Right to be heard – Obligation to state reasons – Divergent risk assessments by the rapporteur Member State and EFSA – Obligation to take into account all the relevant factors of the case – Interim report on an ongoing study – Precautionary principle – Burden of proof and matter to be proved – Manifest error of assessment – Applicability of the read-across approach and of the weight-of-evidence approach – Possibility of relying on the ECHA and EFSA guidelines)

In Case T-77/20,

Ascenza Agro, SA, established in Setúbal (Portugal),

Industrias Afrasa, SA, established in Paterna (Spain),

represented by K. Van Maldegem, P. Sellar, M. Ombredane, lawyers, and V. McElwee, Solicitor,

applicants,

supported by

European Crop Care Association (ECCA), established in Overijse (Belgium), represented by S. Pappas and A. Pappas, lawyers,

intervener,

v

European Commission, represented by A. Dawes, F. Castilla Contreras and M. ter Haar, acting as Agents,

defendant,

supported by

Kingdom of Denmark, represented by M. Søndahl Wolff and J. Kronborg, acting as Agents,

* Language of the case: English.

by

French Republic, represented by A.-L. Desjonquères, acting as Agent,

and by

Health and Environment Alliance (HEAL), established in Brussels (Belgium), represented by A. Bailleux, lawyer,

interveners,

THE GENERAL COURT (Seventh Chamber, Extended Composition),

composed, at the time of the deliberations, of R. da Silva Passos, President, V. Valančius, I. Reine, L. Truchot (Rapporteur) and M. Sampol Pucurull, Judges,

Registrar: S. Spyropoulos, Administrator,

having regard to the orders of 8 June 2020, *Ascenza Agro* v *Commission* (T-77/20 R, not published, EU:T:2020:246), and of 8 June 2020, *Industrias Afrasa* v *Commission* (T-77/20 RII, not published, EU:T:2020:247),

having regard to the written part of the procedure,

further to the hearing on 8 September 2022,

having regard, following the cessation of Judge Valančius' duties on 26 September 2023, to Article 22 and Article 24(1) of the Rules of Procedure of the General Court,

gives the following

Judgment

1 By their action brought under Article 263 TFEU, the applicants, Ascenza Agro, SA ('Ascenza') and Industrias Afrasa, SA, seek the annulment of Commission Implementing Regulation (EU) 2020/17 of 10 January 2020 concerning the non-renewal of the approval of the active substance chlorpyrifos-methyl, in accordance with Regulation (EC) 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 (EU) No 540/2011 (OJ 2020 L 7, p. 11; 'the contested regulation').

I. Background to the dispute

2 Chlorpyrifos-methyl ('CHP-methyl') is an active substance used in plant protection products to control pests and to treat stored cereal grain and empty warehouses against such organisms. It belongs to a group of chemicals called organophosphates. Chlorpyrifos is another active substance belonging to this group.

3 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) established the legal regime for authorising the placing of plant protection products on the market in the European Union. It contained provisions applying to plant protection products and to the active substances contained in those products.

4 Article 4 of Directive 91/414, entitled 'Granting, review and withdrawal of authorisations of plant protection products', provided as follows:

'1. Member States shall ensure that a plant protection product is not authorised unless:

(a) its active substances are listed in Annex I …'

5 Article 5 of Directive 91/414, entitled 'Inclusion of active substances in Annex I', provided as follows:

'1. In the light of current scientific and technical knowledge, an active substance shall be included in Annex I for an initial period not exceeding 10 years, if it may be expected that plant protection products containing the active substance will fulfil the following conditions:

(a) their residues, consequent on application consistent with good plant protection practice, do not have any harmful effects on human or animal health or on groundwater or any unacceptable influence on the environment, and the said residues, in so far as they are of toxicological or environmental significance, can be measured by methods in general use;

(b) their use, consequent on application consistent with good plant protection practice, does not have any harmful effects on human or animal health or any unacceptable influence on the environment as provided for in Article 4(1)(b)(iv) and (v).

…'

6 CHP-methyl was included in Annex I to Directive 91/414 by Commission Directive 2005/72/EC of 21 October 2005 amending Directive 91/414 to include chlorpyrifos, chlorpyrifos-methyl, mancozeb, maneb, and metiram as active substances (OJ 2005 L 279, p. 63). Directive 2005/72 entered into force on 1 July 2006.

7 Directive 91/414 was replaced 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 (OJ 2009 L 309, p. 1), which entered into force on 14 December 2009 and became applicable on 14 June 2011.

8 Under Article 78(3) of Regulation No 1107/2009, the active substances included in Annex I to Directive 91/414 were deemed to have been approved. They are now listed in Part A of the Annex to 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).

9 Article 14 of Regulation No 1107/2009, entitled 'Renewal of approval', is worded as follows:

'1. On application the approval of an active substance shall be renewed where it is established that the approval criteria provided for in Article 4 are satisfied.

…’

10 Article 4 of Regulation No 1107/2009, entitled ‘Approval criteria for active substances’, provides as follows:

‘1. An active substance shall be approved in accordance with Annex II if it may be expected, in the light of current scientific and technical knowledge, that, taking into account the approval criteria set out in points 2 and 3 of that Annex, plant protection products containing that active substance meet the requirements provided for in paragraphs 2 and 3.

The assessment of the active substance shall first establish whether the approval criteria set out in points 3.6.2 to 3.6.4 and 3.7 of Annex II are satisfied. If these criteria are satisfied the assessment shall continue to establish whether the other approval criteria set out in points 2 and 3 of Annex II are satisfied.

…’

11 Annex II to Regulation No 1107/2009, entitled ‘Procedure and criteria for the approval of active substances, safeners and synergists pursuant to Chapter II’, provides as follows:

‘…

3.6. Impact on human health

…

3.6.4. An active substance, safener or synergist shall only be approved if, on the basis of assessment of reproductive toxicity testing carried out in accordance with the data requirements for the active substances, safeners or synergists and other available data and information, including a review of the scientific literature, reviewed by the [European Food Safety Authority], it is not or has not to be classified, in accordance with the provisions of Regulation (EC) No 1272/2008, as toxic for reproduction category 1A or 1B, unless the exposure of humans to that active substance, safener or synergist in a plant protection product, under realistic proposed conditions of use, is negligible, that is, the product is used in closed systems or in other conditions excluding contact with humans and where residues of the active substance, safener or synergist concerned on food and feed do not exceed the default value set in accordance with point (b) of Article 18(1) of Regulation (EC) No 396/2005.

…’

12 On 18 September 2012, the Commission adopted Implementing Regulation (EU) No 844/2012 setting out the provisions necessary for the implementation of the renewal procedure for active substances, as provided for in Regulation No 1107/2009 (OJ 2012 L 252, p. 26).

13 In June 2013, two companies producing CHP-methyl – Ascenza, then known as Sapec Agro SA, and Dow AgroSciences Ltd (together ‘the applicants for renewal’) – each submitted an application for renewal of the approval of CHP-methyl.

14 The Commission's approval of CHP-methyl, which was initially due to expire on 30 June 2016, was extended on three occasions and finally expired on 31 January 2020.

15 On 9 February 2017, the Kingdom of Spain, as the rapporteur Member State ('the RMS'), in consultation with the Republic of Poland, which was the co-rapporteur Member State, sent Ascenza a draft assessment report relating to the renewal of the approval of CHP-methyl ('the draft assessment report').

16 In the draft assessment report, the RMS did not conclude that CHP-methyl had any harmful effects on human health, or in particular that it had genotoxic potential or developmental neurotoxicity. It proposed that the approval of CHP-methyl be renewed.

17 The draft assessment report was supplemented following observations submitted by Ascenza. It was then sent to the European Food Safety Authority (EFSA) and to the Commission on 3 July 2017, and then to Ascenza on 21 September 2017. The RMS maintained its proposal that the approval of CHP-methyl be renewed.

18 In July 2017, EFSA communicated the draft assessment report to the Member States and to the applicants for renewal for comments.

19 EFSA carried out a public consultation which began on 18 October 2017.

20 The RMS summarised the comments made in response in a reporting table, which was sent to Ascenza on 8 January 2018.

21 In that reporting table, no comments were made regarding the genotoxic potential of CHP-methyl. However, the table did contain critical comments from the public relating to the developmental neurotoxicity study submitted in the dossier for the renewal of the approval of CHP-methyl ('the developmental neurotoxicity study'). It was stated, inter alia, that the developmental neurotoxicity study '[was] not acceptable due to the lack of data for cerebellum height, in conjunction with demonstrated effect of the closely related substance chlorpyrifos on cerebellum height at low doses'.

22 On 4 July 2018, EFSA requested that the applicants for renewal provide additional information.

23 After receiving the replies of the applicants for renewal, the RMS updated the draft assessment report which it then sent to EFSA as it was updated during February and March 2019. In the draft assessment report, the RMS did not conclude that CHP-methyl had any harmful effects on human health or, in particular, that it had genotoxic potential or developmental neurotoxicity and it still proposed the renewal of the approval of that substance.

24 Between 1 and 5 April 2019, EFSA organised consultations with experts in order to examine certain elements relating to mammalian toxicity.

25 On 1 July 2019, the Commission sent a letter to EFSA requesting that it provide, by 31 July 2019, a 'statement' containing a summary of the main findings of the human health assessment of CHP-methyl and an indication as to whether that substance could be expected to meet the approval criteria which are applicable to human health as laid down in Article 4 of Regulation No 1107/2009 (see paragraph 10 above).

26 In the same letter, the Commission pointed out that the approval of CHP-methyl would expire on 31 January 2020 following three extensions to the approval period. It added that a further extension should be avoided if there were 'clear' indications from the work completed by EFSA up to that point that the approval conditions might no longer be met.

27 On 31 July 2019, EFSA sent the Commission and the Member States a 'statement' on the available outcomes of the human health assessment, which was approved on the same date ('the statement of 31 July 2019'). EFSA published that statement on its website on 28 August 2019.

28 In the statement of 31 July 2019, EFSA stated that it had been mandated by the Commission 'prior to completion of the full peer review process'. It stated that the risk assessment of CHP-methyl had been discussed during the expert consultations held in April 2019 (see paragraph 24 above) and that the approach adopted by the experts was largely based on the structural similarities between that active substance and chlorpyrifos. It added that, after the consultations in April 2019, it had reconsidered the application of the read-across approach, which allowed for account to be taken, for the purposes of the risk assessment, of data from studies carried out with an active substance other than that at issue, and that it had been decided that that issue would be discussed in a subsequent experts' meeting.

29 EFSA stated that the regulatory data submitted concerning the genotoxicity of CHP-methyl had not raised any concern, but that the experts had noted that there was no public literature available concerning the genotoxic potential of CHP-methyl whereas several publications were available for chlorpyrifos. Since concerns had been raised for chlorpyrifos with regard to chromosome aberrations and deoxyribonucleic acid (DNA) damage, the experts had concluded that there were data gaps for CHP-methyl. All the experts had agreed that those uncertainties should be considered in the hazard assessment of CHP-methyl and that it therefore could not be excluded that there was a potential risk of damage to DNA.

30 With regard to developmental neurotoxicity, according to EFSA, the experts had considered that the developmental neurotoxicity study (see paragraph 21 above), which did not show any appreciable effect, had some limitations related to the controls, making a reliable statistical analysis impossible.

31 Consequently, according to EFSA, the experts had agreed that no reference value could be set for either genotoxicity or developmental neurotoxicity, which made it impossible to perform a risk assessment for consumers, operators, workers, bystanders and residents.

32 The experts had also taken into account the epidemiological data revealing the existence of a link between chlorpyrifos or CHP-methyl exposure and adverse neurodevelopmental outcomes in children.

33 Furthermore, EFSA stated, in the statement of 31 July 2019, that the experts had taken a conservative approach in considering that CHP-methyl would also meet the criteria for classification as toxic for reproduction, category 1B (see paragraph 11 above).

34 On 12 August 2019, the Commission sent the applicants for renewal a renewal report taking into account the statement of 31 July 2019 and proposing the non-renewal of approval of CHP-methyl ('the renewal report'). It gave them the opportunity to submit comments.

35 On 14 August 2019, the Commission also invited the applicants for renewal to submit comments on the statement of 31 July 2019.

36 On 23 and 30 August 2019, Ascenza submitted comments on the statement of 31 July 2019 and on the renewal report.

37 On 5 September 2019, experts from EFSA and the Member States met again.

38 On 9 and 16 September 2019, Ascenza submitted further comments on the renewal report.

39 On 24 September 2019, the Commission sent EFSA a letter requesting that it update, by 31 October 2019, the statement of 31 July 2019 in order to take account of the meeting of 5 September 2019. The Commission stated that that updated statement had to contain a summary of the main findings of the human health assessment of CHP-methyl and an indication of whether that substance could be expected to meet the approval criteria applicable to human health as laid down in Article 4 of Regulation No 1107/2009.

40 On 15 October 2019, the RMS sent Ascenza an updated draft assessment report. Concerns about genotoxicity were expressed in that draft. In conclusion, it stated the following:

'The proposal for the renewal of the approval of the active substance [CHP-methyl] can be made when the concerns on the genotoxicity [have] been clarified and the peer review of the active substance [has] been finalised.'

41 On 15 October 2019, the Commission replied to the comments Ascenza had sent to it on 16 September 2019 (see paragraph 38 above). In its reply, it stated that, since significant concerns had been identified for human health and while the environmental assessment was delayed, it had considered it appropriate to ask EFSA to confirm, in a statement, the concerns identified for human health.

42 On 21 and 22 October 2019, the Standing Committee on Plants, Animals, Food and Feed ('the standing committee') met and had, inter alia, an exchange of views on the matter of the renewal of CHP-methyl.

43 On 11 November 2019, EFSA sent the Commission and the Member States its updated statement approved on 8 November 2019 ('the statement of 8 November 2019'). On 26 November 2019, EFSA published that statement on its website.

44 In the statement of 8 November 2019, EFSA reiterated that the regulatory genotoxicity data submitted for CHP-methyl did not raise any concerns. It also noted that the experts had considered, when they met in April, that there was no public literature available concerning the genotoxic potential of CHP-methyl whereas several publications were available for chlorpyrifos. Since genotoxicity concerns had been raised in relation to chlorpyrifos, it was considered that, given the similarity between the two substances, the application of the read-across approach was justified.

45 EFSA added that, at the experts' meeting in September 2019 dedicated to the application of the read-across approach, the experts had considered, with regard to the molecular structure of the two active substances, that the differences observed did not justify concluding that there was a difference in their genotoxic potential.

46 In addition, the RMS, after conducting additional literature searches, found scientific studies on CHP-methyl which provided evidence that was consistent with the concerns raised in relation to chlorpyrifos. The majority of experts had therefore considered that the literature indications, although presenting some limitations, had to be considered in a weight-of-evidence approach and that they raised, on the basis of a conservative approach, concerns relating to the DNA damage that could be caused by CHP-methyl. The experts had therefore concluded that the concerns raised for chlorpyrifos with regard to the risk of chromosome aberration and DNA damage may apply to CHP-methyl, resulting in an unclear genotoxicity potential.

47 Moreover, according to EFSA, the experts had found insufficiencies in the developmental neurotoxicity study (see paragraph 21 above), while a study on chlorpyrifos revealed a reduction in cerebellum height on exposure to the latter substance. In addition, they had taken into account the epidemiological data revealing the existence of a link between chlorpyrifos or CHP-methyl exposure and adverse neurodevelopmental outcomes in children.

48 EFSA also indicated in the statement of 8 November 2019 that the experts agreed that no reference values could be set for either genotoxicity or developmental neurotoxicity, which made it impossible to perform a risk assessment of CHP-methyl for consumers, operators, workers, bystanders and residents.

49 EFSA added that the experts had indicated that CHP-methyl met the criteria for classification as toxic for reproduction, category 1B, a conclusion in respect of which EFSA expressed some reservations.

50 On the basis of the considerations set out in paragraphs 44 to 49 above, EFSA considered that the 'approval criteria which are applicable to human health as laid down in Article 4 of Regulation … No 1107/2009 [were] not met'.

51 On 11 November 2019, Ascenza was sent the statement of 8 November 2019 and the updated renewal report. On the same date, the Commission invited Ascenza to comment on those two documents.

52 On 22 November 2019, Ascenza submitted comments on the renewal report and on the statement of 8 November 2019.

53 At a standing committee meeting on 6 December 2019, the Member States issued a positive opinion by qualified majority on a draft regulation which did not renew the approval of CHP-methyl.

54 On 10 January 2020, the Commission adopted the contested regulation, in which the following was stated:

> '(10) … [EFSA] sent [the statement of 31 July 2019] to the Commission on the available outcomes of the human health assessment. On 11 November 2019, [EFSA] sent [the statement of 8 November 2019] to the Commission following an additional expert discussion held in September 2019. In [that latter statement, EFSA] confirmed its conclusions on the human health assessment that critical areas of concerns exist. A genotoxic potential of [CHP]-methyl cannot be ruled out, when taking into account the concerns raised for chlorpyrifos and the available scientific open literature on [CHP]-methyl in a weight of evidence approach. During the peer review, experts considered a read-across approach

between the two substances justified as they are structurally similar and have similar toxicokinetic behaviour. Consequently, it is not possible to establish health-based reference values for [CHP]-methyl and to conduct the relevant consumer and non-dietary risk assessments. Furthermore, concerns were identified concerning developmental neurotoxicity (DNT) for which epidemiological evidence exists, showing an association between exposure to chlorpyrifos and/or chlorpyrifos-methyl during development and adverse neurodevelopmental outcomes in children. Moreover, the peer review experts indicated that it may be appropriate to classify [CHP]-methyl as toxic for reproduction, category 1B, in accordance with the criteria established under Regulation (EC) No 1272/2008 of the European Parliament and of the Council.

(11) The Commission invited the applicants [for renewal] to submit their comments on the statements of [EFSA]. Furthermore, in accordance with the third subparagraph of Article 14(1) of Implementing Regulation (EU) No 844/2012, the Commission invited the applicants [for renewal] to submit comments on the … renewal report. The applicants [for renewal] submitted their comments, which have been carefully examined.

(12) However, despite the arguments put forward by the applicants [for renewal], the concerns regarding the active substance could not be eliminated.

(13) Consequently, it has not been established, with respect to one or more representative uses of at least one plant protection product that the approval criteria provided for in Article 4 of Regulation (EC) No 1107/2009 are satisfied. The environmental risk assessment, although not finalised, cannot alter this conclusion since the approval criteria related to the effects on human health are not satisfied and should therefore not delay further the decision-making on the renewal of the approval of the active substance. It is therefore appropriate not to renew the approval of the active substance [CHP]-methyl in accordance with Article 20(1)(b) of that Regulation.'

55 Moreover, on 10 January 2020, the Commission also adopted Implementing Regulation (EU) 2020/18 concerning the non-renewal of the approval of the active substance chlorpyrifos, in accordance with Regulation No 1107/2009, and amending the Annex to Implementing Regulation No 540/2011 (OJ 2020 L 7, p. 14).

56 Recital 10 of Regulation 2020/18 states as follows:

'On 31 July 2019, [EFSA] sent its statement to the Commission. In its statement, [it] confirmed that its conclusions on the human health asses[s]ment indicate that critical areas of concerns exist. Based on the information available, it cannot be excluded that chlorpyrifos has a genotoxic potential, since positive results were found in a number of *in vitro* and *in vivo* studies. Consequently, it is not possible to establish health-based reference values for chlorpyrifos and to conduct the relevant consumer and non-dietary risk assessments. Furthermore, developmental neurotoxicity (DNT) effects were observed in the available study on developmental neurotoxicity in rats and epidemiological evidence exists showing an association between exposure to chlorpyrifos and/or [CHP]-methyl during development and adverse neurodevelopmental outcomes in children. Moreover, it is indicated that the peer review experts considered it appropriate to classify chlorpyrifos as toxic for reproduction, category 1B, in accordance with the criteria established under Regulation (EC) No 1272/2008 of the European Parliament and of the Council.'

II. Forms of order sought and procedure

57 The applicants claim that the Court should:

– annul the contested regulation;

– order the Commission to pay the costs.

58 The Commission contends that the Court should:

– dismiss the action;

– order the applicants to pay the costs, including those relating to the proceedings for interim measures;

– order the European Crop Care Association (ECCA) to pay the costs relating to its intervention.

59 ECCA claims that the Court should:

– annul the contested regulation;

– order the applicants to pay the costs incurred by ECCA.

60 The Health and Environment Alliance (HEAL) contends that the Court should:

– dismiss the action;

– order the applicants to pay the costs incurred by it.

61 The Kingdom of Denmark contends that the Court should dismiss the action.

62 The French Republic contends that the Court should dismiss the action.

63 The Court, pursuant to the second paragraph of Article 24 of the Statute of the Court of Justice of the European Union, put a number of questions to EFSA and to the parties. They replied within the period prescribed.

III. Admissibility of the action and of the documents produced in the course of the proceedings

64 It is appropriate to assess the admissibility of the action, followed by the admissibility of certain documents in the file.

A. Admissibility of the action

65 Under the fourth paragraph of Article 263 TFEU, any natural or legal person may, under the conditions laid down in the first and second paragraphs of that article, institute proceedings against an act addressed to that person or which is of direct and individual concern to that person, and against a regulatory act which is of direct concern to that person and does not entail implementing measures.

66 Since the contested regulation is not addressed to the applicants, it must be determined whether it is of direct and individual concern to them.

67 It is necessary, first of all, to consider whether Ascenza has standing to bring proceedings.

68 With regard to the condition of direct concern, it should be noted that that condition requires that the measure at issue directly affect the legal situation of the individual and that it leave no discretion to the addressees of the measure who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from the contested rules without the application of other intermediate rules (see judgment of 17 May 2018, *BASF Agro and Others* v *Commission*, T-584/13, EU:T:2018:279, paragraph 33 and the case-law cited.)

69 In the present case, the contested regulation amends the list of active substances approved for use in plant protection products that is set out in the Annex to Implementing Regulation No 540/2011. Under Article 3 of the contested regulation, Member States that have granted authorisations for plant protection products containing CHP-methyl are required to withdraw those authorisations by 16 April 2020. It follows from that provision that the Member States have no discretion in that regard.

70 As a result, the contested regulation directly affects the legal position of Ascenza, which produces and markets CHP-methyl (see, to that effect, judgments of 17 May 2018, *BASF Agro and Others* v *Commission*, T-584/13, EU:T:2018:279, paragraphs 35 and 36, and of 19 December 2019, *Probelte* v *Commission*, T-67/18, EU:T:2019:873, paragraph 51).

71 As regards the condition of individual concern, it should be borne in mind that persons other than those to whom an act is addressed may claim to be individually concerned within the meaning of the fourth paragraph of Article 263 TFEU only if that act 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 thereby distinguishes them individually just as in the case of the person addressed (judgment of 15 July 1963, *Plaumann* v *Commission*, 25/62, EU:C:1963:17, p. 223).

72 It follows from settled case-law that the applicant for approval of an active substance, having submitted the dossier and participated in the assessment procedure, is individually concerned as much by a measure authorising the active substance subject to conditions as by a measure refusing authorisation (see judgment of 17 May 2018, *BASF Agro and Others* v *Commission*, T-584/13, EU:T:2018:279, paragraph 45 and the case-law cited). Such case-law also applies to an applicant for renewal of the approval of an active substance where the act in question rejects that application.

73 In the present case, it is common ground that Ascenza, at the time known as Sapec Agro, was the applicant for the renewal of CHP-methyl and subsequently participated in the renewal procedure. Therefore, Ascenza is individually concerned by the contested regulation (see, to that effect, judgments of 17 May 2018, *BASF Agro and Others* v *Commission*, T-584/13, EU:T:2018:279, paragraph 46, and of 19 December 2019, *Probelte* v *Commission*, T-67/18, EU:T:2019:873, paragraph 64).

74 It follows from the considerations set out in paragraphs 65 to 73 above that Ascenza has standing to challenge the contested regulation, as the Commission has indeed expressly acknowledged.

75 As regards Industrias Afrasa, the Commission expresses doubts as to its standing to bring proceedings.

76 In that regard, it should be borne in mind that, for reasons of procedural economy, if the same decision is challenged by several applicants and it is established that one of them has standing, there is no need to consider whether the others have standing (see, to that effect, judgments of 24 March 1993, *CIRFS and Others* v *Commission*, C-313/90, EU:C:1993:111, paragraph 31, and of 9 June 2011, *Comitato 'Venezia vuole vivere' and Others* v *Commission*, C-71/09 P, C-73/09 P and C-76/09 P, EU:C:2011:368, paragraphs 36 and 37).

77 As was found in paragraph 74 above, Ascenza has standing to bring proceedings against the contested regulation.

78 As a result, the present action must be held to be admissible without there being any need to examine whether Industrias Afrasa has standing to bring proceedings.

B. Admissibility of three studies published by EFSA in 2013, 2016 and 2017 and produced in the course of the proceedings by the applicants

79 Under Article 85(2) of the Rules of Procedure of the General Court, 'in reply or rejoinder a main party may produce or offer further evidence in support of his arguments, provided that the delay in the submission of such evidence is justified'.

80 The applicants produced, in annex to the reply, three studies published by EFSA in 2013, 2016 and 2017, which, in their view, help to establish that CHP-methyl has no genotoxic risk.

81 The applicants stated that they had become aware of these three studies from another study, relating to the genotoxicity of chlorpyrifos, published on 21 May 2020, after their action had been brought.

82 In order to justify their failure to produce those studies prior to that publication and prior to the submission of the reply, they maintain, in response to a measure of organisation of procedure taken by the Court, that Ascenza was not required to submit those three studies to the dossier for the renewal of the approval of CHP-methyl.

83 However, that fact, even if established, does not lead to the conclusion that they were unable to produce those studies at the date on which they brought their action. As is apparent from paragraph 80 above, those three studies had been published before the adoption of the contested regulation and, a fortiori, before the present action was brought.

84 As a result, the applicants cannot be regarded as justifying the delay in presenting those studies as evidence.

85 The studies must therefore be declared inadmissible pursuant to Article 85(2) of the Rules of Procedure (see, to that effect, judgments of 6 April 2017, *Alkarim for Trade and Industry* v *Council*, T-35/15, not published, EU:T:2017:262, paragraphs 28 and 29, and of 18 September 2017, *Uganda Commercial Impex* v *Council*, T-107/15 and T-347/15, not published, EU:T:2017:628, paragraphs 73 and 74).

IV. Examination as to the merits of the action

86 The applicants rely on eight pleas in law, alleging, first, infringement of essential procedural requirements, second, infringement of the transparency obligation, third, infringement of the right to be heard, fourth, infringement of the precautionary principle, fifth, breach of the obligation to take into account all relevant factors and circumstances of the situation which the contested regulation was intended to regulate, sixth, infringement of the principle of sound administration, seventh, a manifest error of assessment with regard to the risk assessment adopted by EFSA and subsequently by the Commission and, eighth, a manifest error of assessment and infringement of the principle of proportionality.

87 In addition, ECCA puts forward three further pleas, the ninth and tenth pleas alleging breach of the obligation to state reasons and the eleventh plea alleging infringement of Article 14 of Implementing Regulation No 844/2012.

A. The first plea in law, alleging infringement of essential procedural requirements

88 The applicants allege infringement of essential procedural requirements.

89 First, they state that the contested regulation was based, incorrectly, on two statements that were limited to a single part of the risk assessment, being the part relating to human health.

90 In addition, Article 4 of Regulation No 1107/2009 refers to Annex II to that regulation, which lists a series of criteria. According to the applicants, each of those criteria must be examined by EFSA when it adopts a conclusion, but that examination was not carried out in the present case.

91 Furthermore, according to the applicants the Commission could not rely on the fact that CHP-methyl should be classified as toxic for reproduction, category 1B, in order to 'discontinue' the procedure for the renewal of approval of that substance without carrying out a full assessment of the substance.

92 Second, the applicants submit that the procedure for the adoption of the contested regulation is unlawful on the ground that EFSA did not adopt a conclusion, contrary to the provisions of Article 13(1) of Implementing Regulation No 844/2012. In this regard, they rely on an EFSA document entitled 'Definitions of EFSA Scientific Outputs and Supporting Publications', which was made available on the EFSA website.

93 Moreover, the applicants note that the second subparagraph of Article 13(1) of Implementing Regulation No 844/2012 provides for the possibility for the Commission to inform EFSA that a conclusion is not necessary. Yet the Commission did not duly inform EFSA in that respect.

94 In addition, the applicants state that, even if there were a conclusion, it would be unlawful because it is incomplete.

95 Third, according to the applicants, the time limits laid down in Article 13 of Implementing Regulation No 844/2012 were not respected.

96 They add that the failure to respect those time limits necessarily had an effect on the content of the contested regulation, since, in the absence of that failure, the vote in the standing committee would have taken place before one of the Member States adopted a rule of conduct unconnected to the case in hand which led it to vote in favour of the contested regulation.

97 ECCA submits that the fact that a statement was produced did not relieve EFSA of its obligation to adopt a conclusion.

98 ECCA states that the conclusion EFSA must adopt must address all of the criteria listed in Annex II to Regulation No 1107/2009 and that the Commission could not adopt the renewal report before EFSA had completed the risk assessment.

99 ECCA submits that, because there is no mention of the read-across approach in Regulation No 1107/2009, the application of that approach by EFSA and subsequently by the Commission entails an infringement of essential procedural requirements.

100 The present plea consists of three complaints, the first alleging that the Commission was prohibited from discontinuing the procedure for the renewal of CHP-methyl without having examined all the conditions and criteria set out in the legislation, the second alleging that EFSA did not submit a conclusion and the third alleging that the time limits laid down in the legislation were not complied with.

1. The Commission is prohibited from discontinuing the renewal procedure for CHP-methyl without having examined all the conditions and criteria set out in Regulation No 1107/2009

101 In the first place, it must be determined whether the Commission was wrong not to examine all the conditions laid down in Article 4(2) and (3) of Regulation No 1107/2009.

102 In that regard, it should be borne in mind that Article 4 of Regulation No 1107/2009 is applicable in the present case, in accordance with the provisions of the first subparagraph of Article 14(1) of that regulation (see paragraph 9 above).

103 Under the first subparagraph of Article 4(1) of Regulation No 1107/2009, an active substance is to be approved in accordance with Annex II to that Regulation if it may be expected that, taking into account the approval criteria set out in points 2 and 3 of that annex, plant protection products containing that active substance meet the requirements provided for in Article 4(2) and (3) of that regulation.

104 Article 4(2) and (3) of Regulation No 1107/2009 provides as follows:

'2. The residues of the plant protection products, consequent on application consistent with good plant protection practice and having regard to realistic conditions of use, shall meet the following requirements:

(a) they shall not have any harmful effects on human health, including that of vulnerable groups, or animal health, taking into account known cumulative and synergistic effects where the scientific methods accepted by [EFSA] to assess such effects are available, or on groundwater;

(b) they shall not have any unacceptable effect on the environment.

…

3. A plant protection product, consequent on application consistent with good plant protection practice and having regard to realistic conditions of use, shall meet the following requirements:

(a) it shall be sufficiently effective;

(b) it shall have no immediate or delayed harmful effect on human health, including that of vulnerable groups, or animal health, directly or through drinking water (taking into account substances resulting from water treatment), food, feed or air, or consequences in the workplace or through other indirect effects, taking into account known cumulative and synergistic effects where the scientific methods accepted by [EFSA] to assess such effects are available; or on groundwater;

(c) it shall not have any unacceptable effects on plants or plant products;

(d) it shall not cause unnecessary suffering and pain to vertebrates to be controlled;

(e) it shall have no unacceptable effects on the environment …'

105 It must be noted, first, that the conditions laid down in Article 4(2) of Regulation No 1107/2009, to which Article 4(1) of that regulation refers, concern the residues of the plant protection product containing the active substance in question.

106 Thus, while Article 4(1) of Regulation No 1107/2009 does not refer to the residues of plant protection products, it must be interpreted as meaning that, in order for an active substance to be approved, it must be foreseeable that both the plant protection products containing that substance and their residues meet a number of requirements.

107 Second, Article 4(1) of Regulation No 1107/2009 provides that 'the requirements' laid down in Article 4(2) and (3) of that regulation are to be met, and not one of those requirements. The same is true of the introductory subparagraph of each of those provisions.

108 In the light of the considerations set out in paragraphs 105 to 107 above, the requirements laid down in Article 4(2) and (3) of Regulation No 1107/2009 must be regarded as cumulative.

109 It is therefore sufficient, contrary to what the applicants maintain, that a single one of these conditions not be met for the application for approval of an active substance to be rejected.

110 In the present case, in adopting the contested regulation, the Commission referred to Article 4 of Regulation No 1107/2009. In that regard it relied on the effects of CHP-methyl on human health and, specifically, on three grounds, the first of which was that 'a genotoxic potential of [CHP]-methyl cannot be ruled out', the second that 'concerns were identified concerning developmental neurotoxicity' and the third that 'it may be appropriate to classify [CHP]-methyl as toxic for reproduction, category 1B' (see paragraphs 266 and 267 below).

111 Since the Commission thus considered that harmful effects on human health of the plant protection product containing CHP-methyl and its residues could not be ruled out, it was fully entitled not to carry out an examination of that substance in the light of all the requirements set out in Article 4(2) and (3) of Regulation No 1107/2009.

112 As a result, the argument that the Commission should have examined all the requirements laid down in Article 4(2) and (3) of Regulation No 1107/2009 must be rejected.

113 In the second place, it must be determined whether the Commission was wrong not to examine all the criteria set out in Annex II to Regulation No 1107/2009.

114 In that regard, Article 4 of Regulation No 1107/2009, entitled 'Approval criteria for active substances', lays down the requirements and criteria for the approval of such a substance.

115 As was stated in paragraph 103 above, under the first subparagraph of Article 4(1) of Regulation No 1107/2009, an active substance is to be approved in accordance with Annex II to that regulation if it may be expected that, taking into account the approval criteria set out in points 2 and 3 of that annex, plant protection products containing that active substance meet the requirements provided for in Article 4(2) and (3) of that regulation.

116 Although the first subparagraph of Article 4(1) of Regulation No 1107/2009 refers to the approval criteria in Annex II to that Regulation, which must be taken into account, it does not provide that an active substance is to be approved if the criteria set out in points 2 and 3 of that annex are fulfilled or, a fortiori, if any of those criteria are met.

117 Similarly, Annex II to Regulation No 1107/2009 does not provide, in respect of any of the criteria set out in points 2 and 3 thereof, that, where that criterion is fulfilled, approval of the substance at issue must be granted.

118 According to the sole criterion, referred to in point 3.6.4 of Annex II to Regulation No 1107/2009, expressly relied on by the applicants in support of their line of argument, an active substance 'shall only be approved if' that substance 'is not or has not to be classified … as toxic for reproduction category 1A or 1B'.

119 It follows that an active substance is not to be approved if it is, or has to be, classified as toxic for reproduction category 1A or 1B.

120 It should be noted that the criteria set out in points 3.6.2, 3.6.3 and 3.6.5 of Annex II to Regulation No 1107/2009, which relate to genotoxicity, carcinogenicity and endocrine disrupting effects, respectively, are worded and must be interpreted in the same way as the criterion set out in point 3.6.4 of that annex (see paragraph 118 above).

121 It is on that basis that reference can be made, as the applicants and the Commission do in their written submissions, to the 'exclusion criteria', as opposed to the requirements in Article 4(2) and (3) of Regulation No 1107/2009, in respect of which Article 4(1) of the same regulation provides that, where it may be expected that they will be met, the substance in question is to be approved.

122 Having regard to the considerations set out in paragraphs 114 to 121 above, the criteria set out in points 2 and 3 of Annex II to Regulation No 1107/2009, in particular those set out in points 3.6.2 to 3.6.5 of that annex, cannot be regarded as approval criteria for an active substance which would be additional to the requirements for approval provided for in Article 4(2) and (3) of that regulation. A fortiori, those criteria cannot be regarded as alternative approval criteria for such a substance.

123 As a result, the Commission was not required to examine each of those criteria, since it considered that one of the cumulative requirements for approval of an active substance set out in Article 4(2) and (3) of Regulation No 1107/2009 was not met.

124 Accordingly, the argument that EFSA should have examined CHP-methyl in the light of all the criteria set out in Annex II to Regulation No 1107/2009 must be rejected.

125 In the third place, the applicants submit that the Commission, in order to 'justify "discontinuing" the risk assessment procedure' by rejecting the application for renewal of the approval of CHP-methyl, wrongly relied, in the contested regulation, on the indication, made by the peer review experts, that it may be appropriate to classify CHP-methyl as toxic for reproduction, category 1B.

126 The applicants rely on there being a 'reservation' in relation to the criterion set out in point 3.6.4 of Annex II to Regulation No 1107/2009. That provision states that an active substance cannot be approved when it is classified as toxic for reproduction category 1B or when it should be, unless the exposure of humans to that active substance, under realistic proposed conditions of use, is negligible (see paragraph 11 above).

127 It is true that, in the present case, neither EFSA nor the Commission has examined the exception, described as a 'reservation' by the applicants, referred to in paragraph 126 above.

128 However, it is only when the Commission intends to base a refusal to approve an active substance on point 3.6.4 of Annex II to Regulation No 1107/2009, that is to say when it considers itself obliged, irrespective of the other elements contained in the dossier of the application for approval of the active substance in question, to reject that application by virtue of the classification of that substance or the need for such classification, that this exception must be examined.

129 According to the contested regulation, it cannot be ruled out that the plant protection product containing CHP-methyl and its residues have harmful effects on human health. The contested regulation does not therefore rely on the classification of that substance as toxic for reproduction category 1B or on the need for such classification (see paragraphs 110 and 111 above).

130 It should be pointed out in that regard that, according to the third ground of the contested regulation, it 'may be appropriate to classify [CHP]-methyl as toxic for reproduction, category 1B'. That ground is therefore not based on a finding that such a classification exists or that it is necessary.

131 As a result, the Commission was not required to rule on the exception provided for in point 3.6.4 of Annex II to Regulation No 1107/2009.

132 Thus, the Commission did not err in law in interpreting point 3.6.4 of Annex II to Regulation No 1107/2009.

133 In the light of the considerations set out in paragraphs 125 to 132 above, it must be concluded that the Commission was not required to examine whether the exposure of humans to that active substance under realistic proposed conditions of use is negligible before refusing to renew the approval of that active substance.

134 The argument based on the failure to carry out such an examination must therefore be rejected.

135 It follows from all the foregoing that the present complaint must be rejected.

2. The absence of a conclusion

136 The applicants submit that the procedure for the adoption of the contested regulation is unlawful on the ground that EFSA did not adopt a conclusion, contrary to the provisions of Article 13(1) of Implementing Regulation No 844/2012.

137 It should be noted, as a preliminary point, that Implementing Regulation No 844/2012 was adopted to lay down the provisions necessary for the implementation of the renewal procedure provided for in Subsection 3, entitled 'Renewal and Review', of Regulation No 1107/2009.

138 Under Article 12 of Regulation No 1107/2009, entitled 'Conclusion by [EFSA]':

'…

2. [EFSA], where appropriate shall organise a consultation of experts, including experts from the rapporteur Member State.

Within 120 days of the end of the period provided for the submission of written comments, [EFSA] shall adopt a conclusion in the light of current scientific and technical knowledge using guidance documents available at the time of application on whether the active substance can be expected to meet the approval criteria provided for in Article 4 and shall communicate it to the applicant, the Member States and the Commission and shall make it available to the public. …

4. The conclusion of [EFSA] shall include details concerning the evaluation procedure and the properties of the active substance concerned.

…'

139 Article 13 of Implementing Regulation No 844/2012 is also entitled 'Conclusion by [EFSA]'. The first subparagraph of Article 13(1), which reproduces *mutatis mutandis* the definition in the second subparagraph of Article 12(2) of Regulation No 1107/2009, provides as follows:

'Within five months from the expiry of the period referred to in Article 12(3), [EFSA] shall adopt a conclusion in the light of current scientific and technical knowledge using guidance documents applicable at the date of the submission of the supplementary dossiers on whether the active substance can be expected to meet the approval criteria provided for in Article 4 of Regulation (EC) No 1107/2009. [EFSA] shall, where appropriate, organise a consultation of experts, including experts from the rapporteur Member State and co-rapporteur Member State. [EFSA] shall communicate its conclusion to the applicant [for renewal], the Member States and the Commission.'

140 It is in the light of those provisions that the concept of a 'conclusion' adopted by EFSA must be defined.

141 In the present case, it should be noted that there is no definition of a 'conclusion' in the applicable legislation.

142 Nevertheless, it follows from the provisions referred to in paragraphs 138 and 139 above that, from a procedural point of view, the conclusion must be adopted by EFSA and communicated to the applicant for renewal, the Member States and the Commission.

143 It is true that, in the present case, it is noteworthy that, contrary to what is required by the provisions cited above, the statement of 31 July 2019 was not communicated to Ascenza.

144 However, as was pointed out in paragraph 43 above, the declaration of 8 November 2019 merely updates that of 31 July 2019. In those circumstances, communication of the statement of 8 November 2019 entails, in substance, communication of the updated statement of 31 July 2019.

145 In so far as the statement of 8 November 2019 was communicated in accordance with the first subparagraph of Article 13(1) of Implementing Regulation No 844/2012, the procedural criterion set out in paragraph 142 above was met by EFSA.

146 Furthermore, as regards the content of the conclusion, it is apparent from the relevant provisions of Regulation No 1107/2009 and Implementing Regulation No 844/2012 that, in the conclusion which it adopts, in addition to 'details' concerning the evaluation procedure and the properties of the active substance concerned, EFSA is to adopt a conclusion 'on whether the active substance can be expected to meet the approval criteria provided for in Article 4' of Regulation No 1107/2009.

147 Thus, the decisive factor to be taken into account for the purposes of establishing the existence of a conclusion is the expression of an opinion by EFSA as to the potential of an active substance to meet the requirements and fulfil the criteria of Article 4 of Regulation No 1107/2009.

148 In the present case, EFSA took the view, both in its statement of 31 July 2019 and in its statement of 8 November 2019, that CHP-methyl did not satisfy the approval criteria provided for in Article 4 of Regulation No 1107/2009 with regard to human health.

149 It must therefore be held that EFSA adopted a conclusion within the meaning of Article 13 of Implementing Regulation No 844/2012, a matter that cannot be called into question by the following considerations.

150 First, it is true that EFSA, in a document entitled 'Definitions of EFSA Scientific Outputs and Supporting Publications', which has been made available on its website, has provided the following definitions:

'A.2.1 Statement of EFSA

A Statement of EFSA is a document addressing an issue of concern and prepared as advice or [a] factual statement for consideration by the European Commission, European Parliament, Council of the European Union, Member States or stakeholders. A Statement of EFSA is prepared normally within a relatively short time frame. EFSA may consult the Scientific Committee, a Scientific Panel, or an EFSA network during the process.

…

A.2.3 Conclusion on Pesticides Peer Review

An EFSA Conclusion is a comprehensive scientific evaluation providing the conclusions from the peer review process of the risk assessment on whether the active substance used in a plant protection product is expected to meet the approval criteria, as foreseen in the relevant legislative framework.'

151 Accordingly, taking into account the information contained in the abovementioned definitions, it could be concluded, as the applicants maintain (see paragraph 92 above), that the statement of 31 July 2019 and that of 8 November of the same year do not constitute conclusions but statements.

152 However, the document entitled 'Definitions of EFSA Scientific Outputs and Supporting Publications', which has no normative value, cannot be taken into account for the purposes of defining the concept of a 'conclusion' within the meaning of Article 13 of Implementing Regulation No 844/2012.

153 Second, it is true that the Commission itself described the documents it was requesting as 'statements' in the requests it made to EFSA on 1 July 2019 and 24 September 2019 (see paragraphs 25 and 39 above). Although the legal basis for such requests is not specified, it is clear from Article 29(1)(a) of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1) that the Commission may request EFSA to issue a scientific opinion in respect of any matter within its mission. EFSA, for its part, responded to these requests by producing documents which it also described as 'statements' (see paragraphs 27 and 43 above).

154 However, establishing the existence of a 'conclusion' is dependent, in the first place, on the content of the document in question and not on what it is called.

155 As has been pointed out in paragraph 148 above, in the 'statements' at issue, EFSA took the view that CHP-methyl did not satisfy the approval criteria provided for in Article 4 of Regulation No 1107/2009 as regards human health.

156 As a result, the argument based on failure to have regard to the provisions of the second subparagraph of Article 13(1) of Implementing Regulation No 844/2012 (paragraph 93 above), which provide that the Commission is to inform EFSA where it considers that a conclusion is not necessary, must be rejected as having no factual basis, since it is based on the premiss that EFSA did not adopt a conclusion.

157 Moreover, the applicants also submit that, even if EFSA's statements could be regarded as a conclusion, they would in any event be unlawful, since they do not contain a full assessment of CHP-methyl (see paragraph 94 above).

158 In that regard, it is sufficient to refer to the grounds of the present judgment set out in paragraphs 112 and 124 above.

159 It is true that EFSA, in the document entitled 'Definitions of EFSA Scientific Outputs and Supporting Publications', provides that an EFSA conclusion is a comprehensive scientific evaluation (see paragraph 150 above).

160 However, that document cannot be regarded as constituting guidelines within the meaning of the case-law.

161 In that regard, the Court of Justice has held that guidelines set out rules of practice from which an institution may not depart in an individual case without giving reasons that are compatible with the principle of equal treatment. By adopting such rules of conduct and announcing by publishing them that they will henceforth apply to the cases to which they relate, the institution in question imposes a limit on the exercise of its discretion (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, paragraphs 209 to 211).

162 However, it follows from the submissions made to the General Court by EFSA in response to the measure of organisation of procedure adopted on the basis of Article 24 of the Statute of the Court of Justice of the European Union that EFSA did not intend to give binding force to the document entitled 'Definitions of EFSA Scientific Outputs and Supporting Publications'.

163 As a result, the argument that EFSA's conclusion is unlawful must also be rejected.

164 It follows from all of the above that the present complaint must be rejected.

3. Failure to observe the time limits laid down in the regulations

165 The applicants submit that EFSA's failure to adopt a conclusion within the time limits laid down by the applicable legislation constitutes an infringement of essential procedural requirements.

166 In that regard, Article 13(1) of Implementing Regulation No 844/2012 provides that EFSA has a period of five months, from the expiry of the 60-day period during which comments may be submitted on the draft renewal assessment report, within which to adopt its conclusion. It follows from Article 13(3) of the same regulation that this time limit may be extended to take into account the time granted to the applicant for renewal to submit additional information and to the rapporteur Member State to send its evaluation of that information.

167 In the present case, it is common ground that the time limit referred to in paragraph 166 above was not complied with.

168 However, failure to observe such a time limit is not subject to any penalty under the legislation.

169 Moreover, annulling a regulation such as the contested regulation, despite there being no legal sanction and solely because that time limit has been exceeded, would merely cause the administrative procedure to be reopened, thereby extending its duration on the ground that it has already been too long (see, to that effect and by analogy, judgment of 19 January 2010, *Co-Frutta* v *Commission*, T-355/04 and T-446/04, EU:T:2010:15, paragraphs 70 and 71).

170 As a result, observance of the time limit laid down in Article 13 of Implementing Regulation No 844/2012 is governed solely by a rule of sound administration, non-compliance with which, while it cannot be ruled out that it might render the European Union liable for the damage caused to applicants for renewal by the institution concerned, is not such as to affect, in itself, the legality of the contested regulation (see, to that effect and by analogy, judgment of 27 November 2001, *Z* v *Parliament*, C-270/99 P, EU:C:2001:639, paragraph 21).

171 In the light of the foregoing, it is necessary to reject the present complaint.

172 As to ECCA's argument that it was unlawful to use the read-across approach, when that method is not mentioned in Regulation No 1107/2009 (see paragraph 99 above), this will be examined as to its substance in the context of the seventh plea, alleging a manifest error of assessment with regard to the risk assessment adopted by EFSA and subsequently by the Commission.

173 In addition, ECCA's argument that the Commission lacked competence to adopt the contested regulation must also be rejected as lacking foundation in law. Indeed it is apparent from the provisions of Article 14(2) of Implementing Regulation No 844/2012 that the Commission is competent to adopt a regulation such as the contested regulation, which relates to the renewal of the approval of an active substance.

174 The first plea must therefore be rejected in its entirety.

B. The eleventh plea in law, alleging infringement of Article 14 of Implementing Regulation No 844/2012

175 ECCA claims that Article 14 of Implementing Regulation No 844/2012 was infringed, since the Commission may not submit the renewal report to the standing committee before EFSA's assessment is finalised.

176 Article 14(1) of Implementing Regulation No 844/2012 provides that the Commission is to present to the standing committee a renewal report within six months from the date of receipt of EFSA's conclusion and that that report is to take into account that conclusion.

177 In the present case, the Commission did indeed send the renewal report to the applicants for renewal on 12 August 2019. In addition, the standing committee had an initial exchange of views on the renewal of CHP-methyl on 21 and 22 October 2019 (see paragraph 42 above), that is to say before EFSA adopted the statement of 8 November 2019.

178 However, since the renewal report is based on the statement of 31 July 2019 (see paragraph 34 above), the Commission had taken account of EFSA's conclusion (see paragraphs 148 and 149 above) before adopting an initial version of this report.

179 In addition, the Commission subsequently updated the renewal report to take account of the statement of 8 November 2019 (see paragraph 51 above). It is not alleged that the standing committee, when it took its decision on 6 December 2019 (see paragraph 53 above), did not rule on the basis of the updated report.

180 As a result, the renewal report presented to the standing committee when it issued its opinion did not predate the last assessment carried out by EFSA, contrary to what ECCA maintains.

181 It follows from all the foregoing that the present plea, put forward by ECCA, should be rejected as unfounded, without there being any need first to rule on its admissibility.

C. The second plea in law, alleging infringement of the transparency obligation

182 The applicants allege infringement of the transparency obligation.

183 They submit that, between Ascenza submitting the additional information requested by EFSA (see paragraph 22 above) and the beginning of April 2019, when the consultations with experts were held (see paragraph 24 above), neither the Commission nor EFSA acted in a transparent manner towards Ascenza. They add that Ascenza was surprised by the emergence of concerns about genotoxicity and developmental neurotoxicity which, in their view, had not been raised before.

184 In addition, the applicants rely on the fact that Ascenza was not informed of the holding of the experts' meetings in April 2019, of EFSA's failure to adopt a conclusion and of the Commission's request to EFSA to issue statements.

185 Lastly, the applicants add that Ascenza was not informed of the existence of a study on the genotoxicity of chlorpyrifos, which had been contracted out by EFSA to a research institute to carry out in February 2019.

186 In that regard, the applicants state that that study was not communicated to Ascenza during the procedure for the adoption of the contested regulation, and it was not communicated to the experts who met during the consultations in April and September 2019. The applicants also refer to the existence of an interim report. Following a measure of inquiry ordered by the Court, EFSA sent that interim report, which it had received on 30 April 2019, to the Court.

187 It should be borne in mind that it is incumbent on an affected party who invokes before the Court infringement of a transparency obligation in support of an action for annulment brought against an act of the European Union of general application to rely on an express provision conferring on it a procedural right and falling within the legal framework governing the adoption of that act (see, by analogy, judgment of 19 December 2019, *Probelte* v *Commission*, T-67/18, EU:T:2019:873, paragraph 87 and the case-law cited).

188 In the first place, it is necessary to examine whether the contested regulation constitutes an act of general application.

189 In that regard, it has been held that measures approving, extending or renewing the approval of active substances on the basis of Regulation No 1107/2009 are of general application (see, to that effect, judgment of 27 September 2018, *Mellifera* v *Commission*, T-12/17, EU:T:2018:616, paragraph 71).

190 The contested regulation relates to the non-renewal of the approval of the active substance CHP-methyl, in accordance with Regulation No 1107/2009, and therefore concerns, in abstract and general terms, anyone intending to produce, market or use that substance and anyone holding authorisations for plant protection products containing that substance (see, to that effect, judgments of 17 May 2018, *Bayer CropScience and Others* v *Commission*, T-429/13 and T-451/13, EU:T:2018:280, paragraph 54; of 27 September 2018, *Mellifera* v *Commission*, T-12/17, EU:T:2018:616, paragraphs 56 to 65; and of 9 February 2022, *AMVAC Netherlands* v *Commission*, T-317/19, not published, EU:T:2022:62, paragraph 59).

191 It follows that the contested regulation can be classified as an act of general application, without the fact that Ascenza is individually affected by that act (see paragraphs 71 to 74 above) being liable to call into question such a classification.

192 Indeed, a distinction must be drawn between, on the one hand, the question of the general or individual application of an act, which depends on the act as such, and, on the other hand, the question of whether an ordinary applicant is individually concerned, which depends on the applicant's situation in relation to that act.

193 In that regard, although, in the light of the criteria laid down in the fourth paragraph of Article 263 TFEU, certain measures are, as regards their nature and their scope, of a legislative character, inasmuch as they apply to all the economic operators concerned, they may, without losing their regulatory character, in certain circumstances, concern individually certain economic operators who, if they are also directly affected by those measures, have standing to bring an action for annulment against them (see, by analogy, judgments of 21 February 1984, *Allied Corporation and Others* v *Commission*, 239/82 and 275/82, EU:C:1984:68, paragraph 11, and of 16 May 1991, *Extramet Industrie* v *Council*, C-358/89, EU:C:1991:214, paragraphs 13 and 14).

194 It follows from the foregoing that the contested regulation constitutes an act of general application.

195 In the second place, it should be determined whether the transparency obligation invoked by the applicants falls within the legal framework governing the adoption of the contested regulation.

196 In this case, the legal framework consists, first, of Regulation No 1107/2009 laying down general provisions relating, in particular, to the procedure for renewal of the approval of an active substance, and, second, of Implementing Regulation No 844/2012 laying down specific provisions relating to the implementation of the procedure for renewal of the approval of an active substance.

197 In particular, in the field of the authorisation of plant protection products and their active substances, EFSA carries out scientific risk assessment functions, as is apparent from recital 12 of Regulation No 1107/2009 and from Article 12 of that regulation, concerning EFSA's conclusion.

198 Recital 40 of Regulation No 178/2002, which established EFSA, states that the confidence of the institutions of the European Union, the general public and interested parties in EFSA is essential, and therefore it is vital to ensure, inter alia, its transparency.

199 In that regard, recital 12 of Regulation No 1107/2009, like recital 11 of Implementing Regulation No 844/2012, states that provisions should be laid down to ensure the transparency of the active substance evaluation process.

200 Compliance with the transparency requirement in the field of plant protection is therefore guaranteed by specific provisions.

201 As a result, in the present case, it falls to the applicants to rely on an express provision of the legal framework governing the adoption of the contested regulation and conferring on them a procedural right linked to compliance with a transparency obligation.

202 In that regard, the applicants raise three complaints in support of the present plea. Those complaints are based, first, on the late emergence of concerns regarding the genotoxicity and developmental neurotoxicity of CHP-methyl, second, on the failure to comply with the obligation to inform Ascenza of events which occurred during the procedure for the adoption of the contested regulation and, third, on the failure to comply with the obligation to inform Ascenza that a study was in progress when the contested regulation was adopted.

1. Late concerns regarding the genotoxicity and developmental neurotoxicity of CHP-methyl

203 The applicants claim that Ascenza was surprised by the emergence of reservations relating to the genotoxicity and developmental neurotoxicity of CHP-methyl, which, according to the applicants, were not expressed until April 2019.

204 In the present case, it was only during the consultations of experts organised by EFSA in April 2019 that concerns about the genotoxicity of CHP-methyl were raised.

205 However, the applicants do not rely on any express provision conferring a procedural right on Ascenza and falling within the legal framework governing the adoption of the contested regulation, even though it is incumbent on them to do so (see paragraphs 187 and 201 above).

206 Furthermore, as indicated in paragraphs 139 and 166 above, it follows from Article 13(1) and (3) of Implementing Regulation No 844/2012 that EFSA, when adopting a conclusion, is to take into account new data resulting from developments in scientific and technical knowledge, from any consultation of experts or from any request for additional information addressed to the applicant for renewal.

207 As a result, on the basis, inter alia, as in the present case, of the results of a consultation of experts, EFSA was entitled to raise new objections as regards the renewal of the approval of the active substance at issue when it was preparing its conclusion.

208 Moreover, as regards developmental neurotoxicity, contrary to what the applicants maintain, concerns had been expressed by the public with regard to the developmental neurotoxicity study, but the RMS did not conclude, at that stage, that CHP-methyl had developmental neurotoxic potential (see paragraphs 16 to 33 above).

209 In the light of the considerations set out in paragraphs 205 to 208 above, a circumstance such as that mentioned in paragraph 204 above cannot be regarded as constituting an infringement of any transparency obligations on the Commission or EFSA.

210 The present complaint must therefore be rejected.

2. Failure to comply with the obligation to inform Ascenza about various events that occurred during the procedure for the adoption of the contested regulation

211 The applicants argue that Ascenza was not informed, first, of the holding of the experts' meeting in April 2019, second, of EFSA's failure to adopt a conclusion and, lastly, of the Commission's request to EFSA to issue statements.

212 It should be noted that the applicants do not rely on any rule of law in support of this complaint. Furthermore, the relevant provisions of the legal framework governing the adoption of the contested regulation do not lay down an obligation to inform the applicant for renewal of those various matters.

213 First, according to Article 12(1) of Implementing Regulation No 844/2012, EFSA is to communicate the draft renewal assessment report to the applicant for renewal. Second, under Article 13(1) of that regulation, it must communicate its conclusion to the applicant for renewal. Third, in accordance with the third subparagraph of Article 14(1) of the same regulation, the applicant for renewal is to be given the opportunity to submit comments on the renewal report, which presupposes that the report has been communicated to it.

214 Since it falls to the party invoking before the Court infringement of a transparency obligation, in support of an action for annulment brought against an act of the European Union, to rely on an express provision which confers on it a procedural right and comes within the legal framework governing the adoption of that act (see paragraph 187 above), no infringement of a transparency obligation can be found in the present case.

215 In addition, it should be noted, in the first place, that a conclusion was adopted by EFSA (see paragraph 149 above).

216 As a result, the argument based on the failure to comply with the obligation to provide information to Ascenza relating to the lack of a conclusion must, in any event, be rejected as lacking in fact.

217 In the second place, as regards the argument concerning the failure to inform Ascenza of the Commission's request of 1 July 2019 to EFSA to issue a statement (see paragraph 25 above), it should be noted that Ascenza became aware of this statement on 14 August 2019, when the Commission invited it to submit comments on it (see paragraph 35 above). On that date, therefore, it was aware of the decision taken by the Commission to request EFSA to produce a statement. It could also assume that a second statement would be adopted, since the statement of 31 July 2019 referred to a consultation of experts on the application of the read-across approach which was to take place at a later date (see paragraph 28 above).

218 As a result, even if an information obligation had existed in that regard, there was no failure to comply therewith.

219 That argument must therefore, in any event, be rejected.

3. Failure to comply with the obligation to inform Ascenza that a study was in progress when the contested regulation was adopted

220 The applicants submit that Ascenza was not informed of the existence of a study the results of which were approved on 14 May 2020 on EFSA's website ('the study of 14 May 2020').

221 In that regard, it must be borne in mind that, according to settled case-law, in the context of an application for annulment brought under Article 263 TFEU, the legality of the contested measure must be assessed on the basis of the facts and law as they stood at the time when the measure was adopted (judgments of 7 February 1979, *France* v *Commission*, 15/76 and 16/76, EU:C:1979:29, paragraph 7; of 17 May 2001, *IECC* v *Commission*, C-449/98 P, EU:C:2001:275, paragraph 87; and of 10 September 2019, *HTTS* v *Council*, C-123/18 P, EU:C:2019:694, paragraph 37).

222 In the present case, the study of 14 May 2020 postdates the contested regulation.

223 As a result, that study cannot be relied on in support of the present plea.

224 As regards the arguments concerning the failure to inform Ascenza that a study was underway during the procedure for the adoption of the contested regulation and to disclose that the interim report, submitted to EFSA on 30 April 2019, had been generated, it should be noted that there is no provision in Regulation No 1107/2009 or in Implementing Regulation No 844/2012 requiring the applicant for renewal to be informed in this regard.

225 As a result, the arguments in question must be rejected in the light of the considerations set out in paragraphs 187 and 201 above.

226 It follows from all the foregoing that the present complaint and the second plea as a whole must be rejected.

D. The third plea in law, alleging infringement of the right to be heard

227 The applicants claim that Ascenza did not have the opportunity to submit full comments on the value, quality and usefulness of three scientific studies on which EFSA relied in the statement of 8 November 2019 in respect of its assessment of the genotoxicity of CHP-methyl.

228 The applicants are of the view that the short report of those studies given in the statement of 8 November 2019 was too brief.

229 They add that Ascenza's comments on the renewal report and the statement of 8 November 2019 were submitted after the RMS, EFSA and the Commission had completed their review and the only body that could have taken those comments into account was the standing committee, which is not a risk assessment body.

230 Lastly, they rely on the fact that Ascenza became aware of the generation of the study of 14 May 2020 and of the interim report submitted to EFSA on 30 April 2019 only when it was too late. It also became aware of the three studies published by EFSA in 2013, 2016 and 2017 only when it was too late, by the reference made to those studies in the study of 14 May 2020.

231 According to Article 41(2)(a) of the Charter of Fundamental Rights of the European Union, the right to good administration and respect for the rights of the defence include the right of every person to be heard before any individual measure which would affect him or her adversely is taken. Respect for the right to be heard is, in all proceedings initiated against a person which are liable to culminate in a measure adversely affecting that person, a fundamental principle of EU law which must be guaranteed even in the absence of rules governing the proceedings in question. That principle requires that the addressees of decisions significantly affecting their interests should be placed in a position in which they can effectively make known their views on the accusation made against them forming the basis of the contested measure (see judgments of 15 June 2006, *Dokter and Others*, C-28/05, EU:C:2006:408, paragraph 74 and the case-law cited, and of 19 December 2019, *Probelte* v *Commission*, T-67/18, EU:T:2019:873, paragraph 86 and the case-law cited).

232 By contrast, in the case of acts of general application, neither the process of drafting them nor those acts themselves require, in accordance with the general principles of EU law, such as the right to be heard, consulted or informed, the participation of the persons affected. That is not the case if an express provision of the legal context governing the adoption of that act confers a procedural right on a person affected (see judgment of 19 December 2019, *Probelte* v *Commission*, T-67/18, EU:T:2019:873, paragraph 87 and the case-law cited).

233 In the present case, as has been stated in paragraphs 71 to 74 and 191 to 194 above, Ascenza is individually affected by the contested regulation, which is of general application.

234 The applicants may therefore rely on an infringement of Ascenza's right to be heard, even though the contested regulation constitutes an act of general application, in so far as an express provision of the legal context governing the adoption of that regulation confers on it such a procedural right.

235 In that regard, it should be borne in mind, first, that, according to Article 12(1) and (3) of Implementing Regulation No 844/2012, EFSA is to communicate the draft renewal assessment report to the applicant for renewal and allow a period of 60 days for written comments to be submitted, second, that, according to Article 13(1) of that regulation, it is to communicate its conclusion to the applicant for renewal and, third, under the third subparagraph of Article 14(1) of the same regulation, the applicant for renewal is to be given the opportunity to submit comments on the renewal report, which must itself take into account the draft renewal assessment report and EFSA's conclusion.

236 The applicants do not claim that the safeguards thus provided for by Implementing Regulation No 844/2012 have not been complied with in the present case.

237 It is therefore appropriate to assess whether, in the application of those provisions and guarantees, the complaints raised by the applicants could give rise to a finding of an infringement of the right to be heard.

238 In that regard, those complaints are based, first, on the insufficiently comprehensive nature of the short report contained in the statement of 8 November 2019 on three scientific studies relating to genotoxicity (see paragraphs 227 and 228 above), second, on the fact that it was not possible for Ascenza to submit comments on the statement of 8 November 2019 and on the renewal report before the RMS, EFSA and the Commission had completed their review of the substance in question (see paragraph 229 above) and, third, that Ascenza was unable to comment on the study of 14 May 2020 and on other studies (see paragraph 230 above).

1. The insufficiently complete nature of the short report in the statement of 8 November 2019 of three scientific studies relating to genotoxicity

239 In the present case, the statement of 8 November 2019 was communicated to Ascenza on 11 November 2019 and the references of the studies in question, together with a hyperlink to them, appear at the end of that statement.

240 In addition, the Commission states, without being contradicted by the applicants, that those studies were public.

241 Accordingly, the applicants cannot rely on the insufficiently complete nature of the short report contained in the statement of 8 November 2019 of three scientific studies relating to genotoxicity.

242 As a result, the present complaint must be rejected.

2. Ascenza not being able to submit comments on the statement of 8 November 2019 and on the renewal report before the RMS, EFSA and the Commission had completed their assessment of CHP-methyl

243 On 22 November 2019, Ascenza submitted comments on the renewal report and on the statement of 8 November 2019 and, on 6 December 2019, at a meeting of the standing committee, the Member States issued, by qualified majority, an opinion in favour of a draft regulation not renewing the approval of CHP-methyl. It is not apparent from the documents in the file that, in the meantime, the RMS had amended the draft assessment report, EFSA had amended the statement of 8 November 2019 or the Commission had amended the renewal report (see paragraphs 52 and 53 above).

244 It is therefore true that Ascenza's comments on the renewal report and on the statement of 8 November 2019 were submitted after the RMS, EFSA and the Commission had completed their review (see paragraph 229 above).

245 However, that fact does not lead to the conclusion that there has been an infringement of the right to be heard.

246 Indeed, the second subparagraph of Article 14(1) of Implementing Regulation No 844/2012 states that the draft regulation 'shall take into account' the draft renewal assessment report issued by the rapporteur Member State and the conclusion of EFSA.

247 Thus, when adopting a regulation relating to the renewal of the approval of an active substance, the Commission and the standing committee are not bound by the findings made by EFSA or the rapporteur Member State and may therefore take into account, when giving their decision,

comments, including critical comments, subsequently submitted by an applicant for renewal on those findings (see, to that effect and by analogy, judgment of 9 September 2011, *Dow AgroSciences and Others* v *Commission*, T-475/07, EU:T:2011:445, paragraph 87 and the case-law cited).

248 Furthermore, the right to be heard, which is not intended to protect the rights of the administration and advisory bodies, does not require that an advisory body, such as EFSA or the Member State in its capacity as rapporteur, be able to have at its disposal the applicant for renewal's comments relating to the proposal or opinion which it has submitted, or that it be able to amend that proposal or opinion as a result of those comments. It is only necessary for the decision-making authority to have those comments.

249 As a result, the present complaint must be rejected.

3. Ascenza not being able to submit comments on the study of 14 May 2020 and on other studies

250 The right to be heard requires that persons concerned are able effectively to make known their views as regards the information on which the authorities intend to base their decision (judgments of 18 December 2008, *Sopropé*, C-349/07, EU:C:2008:746, paragraph 37; of 3 July 2014, *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, paragraph 30; and of 14 July 2021, *Griba* v *CPVO (Stark Gugger)*, T-181/20, not published, EU:T:2021:440, paragraph 65).

251 It thus follows from the case-law that only the matters which form the basis of the contested measure, in the sense that they were taken into account by the institution concerned (see, by analogy, judgment of 3 February 2021, *Moi* v *Parliament*, T-17/19, EU:T:2021:51, paragraph 118), must be communicated to the persons concerned.

252 In the present case, the Commission did not intend to base the contested regulation on the study of 14 May 2020, on the interim report submitted to EFSA on 30 April 2019 or on the three studies published by EFSA in 2013, 2016 and 2017 (see paragraph 230 above).

253 In that regard, it should be noted that those documents are referred to neither in the contested regulation nor in EFSA's statements of 31 July and 8 November 2019. Indeed, those statements contain an exhaustive list of all the studies taken into account in EFSA's assessment of CHP-methyl.

254 As a result, unless the applicants are able demonstrate that the content of these various studies were taken into account by EFSA or the Commission, there can be no obligation to communicate them to Ascenza.

255 The applicants have not produced any evidence in this regard, with the result that this complaint must be rejected.

256 In addition, as regards the applicants' reliance on three studies published by EFSA in 2013, 2016 and 2017, it should be noted that those studies have been declared inadmissible (see paragraph 85 above).

257 This complaint must therefore, in any event, be rejected.

258 It follows from all of the above that the present plea must be rejected in its entirety.

E. The ninth plea in law, alleging breach of the obligation to state reasons in so far as concerns the adoption by the Commission of a regulation based on a scientific assessment that differs from that contained in the draft assessment report adopted by the RMS

259 According to ECCA, in the event of a discrepancy between the scientific assessments of the rapporteur Member State and those of EFSA, it is incumbent on the Commission to provide detailed and specific justifications for its decision to rely on one assessment rather than the other.

260 It adds that the contested regulation does not contain a 'statement of reasons' relating to the additional literature search carried out by the RMS prior to the statement of 8 November 2019.

261 The applicants claim that the rapporteur Member State plays a leading role in the procedure for the renewal of approval of an active substance.

262 In this regard, it should be noted that, although ECCA invokes an obligation on the Commission to provide an enhanced statement of reasons, the application of such an obligation in a situation such as that in the present case does not follow either from the applicable legislation or from the case-law.

263 As regards the obligation on the Commission to state reasons, it should be borne in mind that, according to settled case-law, the statement of reasons required by the second paragraph of Article 296 TFEU must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Court to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of the case and it is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons for a measure meets the requirements of the second paragraph of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question. In particular, the Commission is not obliged to adopt a position on all the arguments relied on before it by the parties concerned, but it is sufficient if it sets out the facts and the legal considerations having decisive importance in the context of the decision in question (see judgment of 6 September 2013, *Sepro Europe* v *Commission*, T-483/11, not published, EU:T:2013:407, paragraph 101 and the case-law cited).

264 Moreover, it is settled case-law that the scope of the obligation to state reasons depends on the nature of the measure in question and that, in the case of measures of general application, as in the case of the contested regulation (see paragraph 194 above), the statement of reasons may be confined to indicating the general situation which led to the adoption of that measure, on the one hand, and the general objectives which it is intended to achieve, on the other. Against that background, the EU Courts have repeatedly confirmed that, if the contested measure clearly discloses the essential objective pursued by the institution, it would be excessive to require a specific statement of reasons for the various technical choices made (judgments of 21 July 2011, *Etimine*, C-15/10, EU:C:2011:504, paragraph 115, and of 28 May 2020, *Agrochem-Maks* v *Commission*, T-574/18, EU:T:2020:226, paragraph 59).

265 It is in the light of the case-law cited in the paragraphs above that it is necessary to examine the present plea.

266 In that regard, it is apparent from recital 10 of the contested regulation (see paragraph 54 above), that the Commission relied on three grounds for refusing to renew the approval of CHP-methyl.

267 First, the fact that 'a genotoxic potential of CHP-methyl cannot be ruled out', second, that 'concerns were identified concerning developmental neurotoxicity' and, third, that 'it may be appropriate to classify [CHP]-methyl as toxic for reproduction, category 1B'. Those reasons are consistent with the conclusions expressed by the experts at the September 2019 meeting, which are set out in the statement of 8 November 2019 (see paragraphs 44 to 49 above).

268 The Commission added that, despite the arguments put forward by the applicants for renewal, the concerns regarding CHP-methyl could not be eliminated. It concluded that it had therefore not been established that the approval criteria set out in Article 4 of Regulation No 1107/2009 were satisfied (see recitals 12 and 13 of the contested regulation, which are set out in paragraph 54 above).

269 Moreover, it follows from recital 10 of the contested regulation that, in adopting that regulation, the Commission relied on the two statements published by EFSA on 31 July and 8 November 2019, according to which CHP-methyl gave rise to concerns for human health.

270 In so far as, as indicated in paragraph 43 above, the statement of 8 November 2019 updates that of 31 July 2019, the Commission more specifically based its justification for the contested regulation on that updated declaration, the content of which it reproduced. That latter statement must therefore be taken into account when examining the reasoning provided in the contested regulation.

271 In that regard, the statement of 8 November 2019, states, first, with regard to the genotoxic potential of CHP-methyl, that, during the meeting held in April 2019 (see paragraph 24 above), the experts had discussed the structural similarity between the molecule of each of the two substances and had agreed to apply the read-across approach. In addition, the experts had noted that there was no public literature available concerning the genotoxic potential of CHP-methyl whereas several publications were available for chlorpyrifos. In so far as concerns had been raised for chlorpyrifos with regard to chromosome aberrations and DNA damage, the experts had concluded that there were data gaps for CHP-methyl. They had therefore agreed that those uncertainties had to be taken into account in the CHP-methyl risk assessment and that, therefore, it could not be ruled out that this substance could cause DNA damage (see paragraph 44 above).

272 As regards the experts' meeting that took place in September 2019 (see paragraph 37 above), which concerned the possibility of applying the read-across approach, it is mentioned in the statement of 8 November 2019 that the experts had considered, as regards the molecular structure of the two active substances, that their differences did not justify a difference in their genotoxic potential (see paragraph 45 above).

273 In addition, it is mentioned in that statement that the RMS, after conducting additional literature searches, found scientific studies on CHP-methyl which provided evidence along the same lines as those relating to chlorpyrifos. The majority of experts had therefore considered that the literature indications, although presenting some limitations, had to be considered in a weight-of-evidence approach and that they raised, on the basis of a conservative approach, concerns relating to the DNA damage that could be caused by CHP-methyl. The experts – and subsequently EFSA – had

therefore concluded from that that the concerns raised for chlorpyrifos with regard to the risk of chromosome aberration and DNA damage may apply to CHP-methyl, resulting in an unclear genotoxicity potential (see paragraph 46 above).

274 Second, it is apparent from the statement of 8 November 2019 that the experts meeting in September 2019 relied on three considerations in order to reach the conclusion that there were concerns regarding the developmental neurotoxicity of CHP-methyl. Those considerations related to (i) the allegedly insufficient nature of the study on developmental neurotoxicity (see paragraph 47 above), which was carried out on rats, (ii) three scientific studies which revealed a link between exposure to chlorpyrifos or CHP-methyl or more generally organophosphate insecticide exposure and adverse effects on the neurological development of children and, lastly, (iii) other scientific studies which also contributed to demonstrating the developmental neurotoxicity of CHP-methyl.

275 Third, it is apparent from the statement of 8 November 2019 that the experts who met in September 2019 indicated that CHP-methyl may be expected to meet the criteria for classification as toxic for reproduction, category 1B, a conclusion in respect of which EFSA expressed some reservations.

276 It should be noted that the considerations set out in paragraphs 266 to 275 above are detailed and show clearly and unequivocally the reasoning of the institution in question.

277 It is true, in the first place, that, in several successive versions of the draft assessment report, the RMS proposed the renewal of the approval of CHP-methyl.

278 In addition, it did not conclude, in those versions, that CHP-methyl had any harmful effects on human health, or in particular that it had genotoxic potential or developmental neurotoxicity (see paragraphs 16, 17 and 23 above).

279 However, in the last version of the draft assessment report, the RMS sated that two additional *in vitro* studies relating to CHP-methyl, as well as a new epidemiological study, demonstrated the genotoxic potential of this substance. It then noted that, using a weight-of-evidence approach, the examination of the genotoxicity of CHP-methyl had been inconclusive. It added that it had not been possible to propose reference values and on that basis concluded that the proposal for renewal of approval of CHP-methyl could be made when the concerns about genotoxicity had been clarified (see paragraph 40 above).

280 Thus, even if it the Commission were required, in the event of divergence between the scientific assessments of the RMS and those of EFSA, to provide detailed and specific justifications for choosing one assessment over the other, it must be held that the existence of a sufficient divergence on which such an obligation to state reasons would depend has not been established in the present case.

281 It must be added that, at the date of adoption of the contested regulation, the applicants had available to them not only EFSA's statements but also the various versions of the draft assessment report. They were therefore in a position to challenge the lawfulness of the contested regulation on the basis of any contradiction between the content of those various documents.

282 In the second place, it is also true that the contested regulation does not contain any statement of reasons relating to the literature search carried out by the RMS before the experts' meeting of 5 September 2019 (see paragraph 46 above).

283 However, the detailed information set out in points 266 to 275 above was sufficient, in the light of the case-law cited in paragraphs 263 and 264 above, to enable the applicants to challenge the lawfulness of the contested regulation.

284 Moreover, it follows from the considerations set out in paragraph 271 above, which are not disputed by the applicants, that, at the meeting held in April 2019, the experts had concluded that there were gaps in the data for CHP-methyl. In such a context, the RMS may have been led to carry out additional literature searches.

285 Lastly, as can be seen from the considerations set out in paragraph 46 above, the statement of 8 November 2019 includes a set of explanations as to how the additional studies produced by the RMS for the meeting of 5 September 2019 were used.

286 The explanations in the statement of 8 November 2019 are, moreover, supplemented in detail by the RMS on page 82 of the updated version of the draft assessment report sent to Ascenza on 15 October 2019.

287 It follows from all the foregoing that the reasons given for the contested regulation, having regard to its nature as an act of general application and to the context in which it was adopted, which, in the present case, is characterised by the fact that the applicants had access, on the date of adoption of that regulation, to the EFSA statements on which that regulation is based, as well as to successive versions of the draft assessment report, are sufficient.

288 As a result, the present plea, put forward by ECCA, should be rejected as unfounded, without there being any need first to rule on its admissibility.

F. The fifth plea in law, alleging breach of the obligation to take into account all relevant factors and circumstances of the situation which the contested regulation was intended to regulate

289 The applicants claim that neither the Commission nor the standing committee may take into account irrelevant factors when taking a decision on the renewal of the approval of an active substance.

290 However, according to the applicants, the standing committee's vote in favour of the contested regulation was obtained only as a result of the vote in favour of the contested regulation cast by the Republic of Finland on behalf of the United Kingdom of Great Britain and Northern Ireland. According to the applicants the Republic of Finland voted on the basis of a voting instruction given by the United Kingdom which was based on political considerations unconnected to the conditions relating to the renewal of the approval of an active substance.

291 In the reply, the applicants also raise a new complaint alleging that EFSA and subsequently the Commission failed to take relevant factors into account, namely the study of 14 May 2020 and three studies published by EFSA in 2013, 2016 and 2017.

292 It should be noted that two separate complaints are raised in the present plea. The first alleges that the taking into account – by a Member State, then by the standing committee and, lastly, by the Commission – of an irrelevant factor played a decisive role in the adoption of the contested regulation. The second alleges that EFSA, followed by the Commission, failed to take relevant factors into account, namely the study of 14 May 2020 and three other studies.

1. The decisive role of the irrelevant factor consisting of the instruction given by the United Kingdom in respect of its vote within the standing committee

293 In the present case, it is common ground that a favourable opinion from the standing committee was obtained with the United Kingdom's vote. That vote in support of the measures provided for in the contested regulation made it possible to achieve a qualified majority, as required by the legislation.

294 It is also common ground that the United Kingdom did not want an abstention on its part to prevent the adoption of the draft act in question.

295 The applicants submit that, accordingly, an irrelevant factor was taken into account for the adoption of the standing committee's opinion and for the adoption of the contested regulation.

296 More specifically, the applicants are of the view that, since the favourable vote of the standing committee could only be obtained with the equally favourable vote of the United Kingdom, the taking into account of an irrelevant factor in the casting of that State's vote necessarily had the consequence of that same factor being taken into account for the purposes of issuing the opinion of the standing committee and for the adoption of the contested regulation, which is therefore unlawful.

297 The plea is therefore directed against the grounds of the contested regulation and not against the procedure for its adoption.

298 While it is true that the United Kingdom's vote made it possible for the standing committee to issue an opinion in favour of the draft regulation, which subsequently enabled the contested regulation to be adopted, the grounds on which that regulation was adopted are those set out in paragraphs 266 to 268 above.

299 It is clear from those grounds that the factors taken into account by the United Kingdom in relation to its vote were not taken into account by the Commission when it adopted the contested regulation and that the same applies to the vote within the standing committee.

300 As a result, in the absence of any link between the alleged illegality, which concerns the grounds of the contested regulation, and the facts relied on in support of that illegality, namely the factors taken into account by the United Kingdom in its voting choice, the present complaint must be rejected as ineffective.

2. Failure to take account of the relevant factor consisting of the study of 14 May 2020 and three other studies

301 The applicants allege that EFSA, and subsequently the Commission, failed to take into account the study of 14 May 2020 and three studies published by EFSA in 2013, 2016 and 2017.

302 It should be borne in mind that in cases where an institution has a broad discretion, as in the present case (see paragraphs 414 to 416 below), the review of observance of guarantees conferred by the EU legal order in administrative procedures is of fundamental importance. These guarantees include the duty of the competent institution to examine, carefully and impartially, all the relevant elements of the individual case and to give an adequate statement of the reasons for its decision. Only in this way can the EU Courts verify whether the factual and legal elements upon which the exercise of the power of appraisal depends were present (judgments of 21 November 1991, *Technische Universität München*, C-269/90, EU:C:1991:438, paragraph 14; of 7 September 2006, *Spain* v *Council*, C-310/04, EU:C:2006:521, paragraphs 121 and 122; and of 6 November 2008, *Netherlands* v *Commission*, C-405/07 P, EU:C:2008:613, paragraph 56).

303 In the first place, as regards the study of 14 May 2020, it should be borne in mind that, according to settled case-law, in an action for annulment under Article 263 TFEU, the legality of the contested measure must be assessed on the basis of the facts and law as they stood at the time when the measure was adopted (see paragraph 221 above).

304 In the present case, the study of 14 May 2020 was still in progress on the date EFSA produced its statements and on the date the contested regulation was adopted. That study could therefore not be taken into account by EFSA, the Commission or the standing committee.

305 In the second place, as regards the information that a study was ongoing during the procedure for the adoption of the contested regulation and that the interim report was available to EFSA at the time it was conducting its assessment of CHP-methyl, it should be noted that EFSA, in response to a measure of organisation of procedure adopted by the General Court on the basis of Article 24 of the Statute of the Court of Justice of the European Union, stated that, prompted by the recommendations contained in the scientific opinion of the EFSA Panel on Plant Protection Products and their Residues, adopted on 14 December 2016 and entitled 'Investigation into experimental toxicological properties of plant protection products having a potential link to Parkinson's disease and childhood leukaemia', it had started to consider the possibility of commissioning a study to explore the effect of two pesticides, permethrin and chlorpyrifos, in human stem cells at different ontogeny stages and investigating in animal models the ability of those two pesticides to induce childhood leukaemia.

306 It added that a negotiated procedure had been launched on 12 December 2018 and that the contract resulting from that tender procedure had been entered into with a Spanish research institute on 1 February 2019, with a deadline for completion of the study of 24 July 2020.

307 Lastly, it pointed out that the scientific report produced by that institute had been approved by EFSA on 14 May 2020.

308 The details mentioned above have not been contested by the applicants or by ECCA.

309 It follows from the above that the study of 14 May 2020 had been commissioned in a context unconnected with the procedure for adopting the contested regulation.

310 In addition, EFSA also stated, without being challenged by the applicants or ECCA, that the methods used in the study of 14 May 2020 were those used at a scientific exploration phase and not those used in a risk assessment of an active substance imposed by the applicable regulations.

311 Similarly, it should be pointed out that the interim report sent to EFSA on 30 April 2019 was merely a provisional report.

312 Thus, while the institute responsible for the study had planned to set up *in vitro* and *in vivo* tests, the report presented, at this stage, only the results of the *in vitro* tests, the *in vivo* tests being underway. The authors of the report specified, in that respect, that they would not be making any recommendations or adopting any conclusions until the *in vivo* tests had been completed and analysed.

313 Lastly, the purpose of the study of 14 May 2020 was to analyse the possible contribution of chlorpyrifos to the emergence of certain genetic alterations specifically associated with childhood leukaemia. Its scope, and accordingly that of the interim report, was thus limited in relation to the more general question of the assessment of the genotoxic potential of chlorpyrifos.

314 As a result, EFSA was not required to take into account, for the purposes of the assessment of CHP-methyl, the interim report received on 30 April 2019 nor, a fortiori, to take into account the fact that a study, namely the study of 14 May 2020, was in progress during the procedure for the adoption of the contested regulation.

315 Furthermore, as regards the applicants' reliance on three studies published by EFSA in 2013, 2016 and 2017, it is sufficient to point out that those studies have been declared inadmissible (see paragraph 85 above).

316 It follows from all the foregoing that the present plea must be rejected.

G. The sixth plea in law, alleging infringement of the principle of sound administration

317 The applicants submit that, contrary to what appears to be stated in recital 9 of the contested regulation, according to which new concerns for human health were raised during the expert discussion organised in April 2019 (see paragraph 24 above), there is nothing in the dossier to support the emergence of such concerns at that stage of the procedure for the adoption of the contested regulation.

318 According to the applicants, the developmental neurotoxicity study had already been submitted to and reviewed by the RMS. As regards the studies communicated by the RMS concerning the genotoxicity of CHP-methyl, these were taken into account by EFSA only in the statement of 8 November 2019.

319 Moreover, the applicants are of the view that the Commission failed to take account of evidence not supporting non-renewal of the approval of CHP-methyl, namely the RMS's position in the draft assessment report or at the standing committee meeting, the doubts and reservations expressed by EFSA in the statements of 31 July and 8 November 2019 and the methodological limitations of certain scientific studies taken into account by EFSA (see paragraph 46 above).

320 The applicants deduce from this that the Commission did not wish to renew the approval of CHP-methyl and that it was therefore seeking evidence to justify that position.

321 It should be borne in mind that EU law requires administrative procedures to be conducted in compliance with the guarantees conferred by the principle of sound administration, enshrined in Article 41 of the Charter of Fundamental Rights. Those guarantees include the obligation on the competent institution to examine carefully and impartially all the relevant elements of the case (judgment of 25 October 2018, *KF* v *SatCen*, T-286/15, EU:T:2018:718, paragraph 176).

322 In that regard, it should be borne in mind that, under Implementing Regulation No 844/2012, EFSA is entitled, on the basis, inter alia, as in the present case, of the results of an expert consultation, to raise new objections to the renewal of the approval of the active substance in question when it is preparing its conclusion (see paragraphs 206 to 207 above).

323 Furthermore, in the statement of 8 November 2019, which is not contested in that regard, it is stated, as regards the genotoxic potential of CHP-methyl, that, during the meeting held in April 2019, the experts had discussed the structural similarity between the molecule of each of the two substances and had agreed to apply the read-across approach.

324 In addition, the experts had noted that there was no public literature available concerning the genotoxic potential of CHP-methyl whereas several publications were available for chlorpyrifos.

325 Since concerns had been raised for chlorpyrifos with regard to chromosome aberrations and DNA damage, the experts had concluded that there were data gaps for CHP-methyl. They had therefore agreed that those uncertainties had to be taken into account in the CHP-methyl risk assessment and that, therefore, it could not be ruled out that this substance could cause DNA damage (see paragraph 44 above).

326 As regards the concerns about developmental neurotoxicity, the developmental neurotoxicity study had been criticised during the public consultation that began in October 2017 (see paragraph 21 above).

327 Moreover, in the statement of 8 November 2019, it was noted that the experts had found the developmental neurotoxicity study to be inadequate, whereas a study on chlorpyrifos revealed a reduction in cerebellum height on exposure to the latter substance. They had also taken into account the epidemiological data revealing the existence of a link between exposure to chlorpyrifos or CHP-methyl, or more generally to organophosphate insecticides, and adverse neurodevelopmental outcomes in children (see paragraphs 30 to 32 above).

328 Those matters are not disputed by the applicants.

329 It follows from the foregoing that, even though no new scientific data appear to have been added to the dossier for the renewal of the approval of CHP-methyl in April 2019, the experts' reflections during the meeting that took place that month led them to express doubts as to CHP-methyl not being harmful for health, and it is not possible to identify, having regard to the abovementioned matters, an infringement of the principle of sound administration.

330 That conclusion is not liable to be called into question by the other factors relied on by the applicants (see paragraph 319 above).

331 First, as regards the content of the draft assessment report, in its last version the RMS stated that two additional *in vitro* studies relating to CHP-methyl, as well as a new epidemiological study, demonstrated the genotoxic potential of that substance.

332 It then recalled that, using a weight-of-evidence approach, the examination of the genotoxicity of CHP-methyl had been inconclusive. It added that reference values had not been proposed and concluded that the proposal for renewal of approval of CHP-methyl could be made when the concerns about genotoxicity had been clarified (see paragraph 279 above).

333 Thus, the RMS's position, even if it is not identical in all respects to that of EFSA, cannot, in the light of all the considerations set out in paragraphs 323 to 327 above, lead to a finding that the principle of sound administration has been breached.

334 As for the position expressed by the RMS at the standing committee, it was transformed into a vote which was taken into account when the votes were counted. In addition, that position cannot, in itself, lead to a finding that the principle of sound administration has been breached.

335 Second, although the applicants submit that EFSA considered that the results relating to the genotoxicity of CHP-methyl were negative (see paragraph 319 above), that is to say that the substance did not present a risk to human health, the applicants' interpretation of the statement of 8 November 2019 is, in that respect, incorrect.

336 Third, the methodological limitations of certain scientific studies relating to the genotoxicity of CHP-methyl taken into account by the experts and subsequently by EFSA (see paragraph 319 above), assuming that they were established, would not be capable of calling into question the conclusion set out in paragraph 329 above.

337 Indeed, exploratory studies are regularly conducted with the specific aim of verifying a particular scientific hypothesis, with the result that they serve, in complementarity with standard studies, to identify the properties of the substances concerned. Consequently, an approach which, as a general rule, excludes the use of non-standard or exploratory studies would make it impossible to identify substances which pose a risk (see, to that effect and by analogy, judgments of 11 May 2017, *Deza* v *ECHA*, T-115/15, EU:T:2017:329, paragraph 185, and of 16 December 2020, *PlasticsEurope* v *ECHA*, T-207/18, EU:T:2020:623, paragraph 88).

338 Moreover, in its statement of 8 November 2019, on which the Commission particularly relied in adopting the contested regulation, EFSA also took into account evidence other than the scientific studies at issue, namely publications relating to chlorpyrifos that raised concerns as to the genotoxicity of that substance, which enabled it, by applying the read-across approach, to conclude that there were concerns as to the genotoxicity of CHP-methyl (see paragraph 44 above).

339 It follows from all the foregoing that the present plea must be rejected.

H. The fourth plea in law, alleging infringement of the precautionary principle

340 The applicants claim that EFSA misapplied the precautionary principle.

341 They put forward three complaints, the first alleging that the precautionary principle was improperly applied at the risk assessment stage, the second alleging that the requirements of the precautionary principle were 'exhausted' after a full assessment of the substance at issue raised no concerns, and the third, alleging that the considerations on which the statement of 8 November 2019 was based were purely hypothetical.

1. Incorrect application of the precautionary principle at the risk assessment stage

342 The applicants submit that, even though the precautionary principle is not applicable during the risk assessment phase, it only being applicable during the risk management phase, EFSA applied that principle in the present case during the assessment of CHP-methyl, when it applied the read-across approach.

343 The applicants state that EFSA noted in the statement of 8 November 2019 that most of the experts had decided as a 'precautionary' measure to apply to CHP-methyl the same conclusions as for chlorpyrifos in respect of genotoxicity. They also refer to other extracts from that statement, relating to developmental neurotoxicity, which indicate that EFSA and the experts consulted had applied the read-across approach on the basis of the precautionary principle.

344 ECCA argues that, in the statement of 8 November 2019, EFSA relied on the precautionary principle and not merely a 'prudent approach' to justify the application of the read-across approach. It relies on Commission Communication of 2 February 2000 on the precautionary principle (COM(2000) 1 final; 'the communication on the precautionary principle').

345 In that regard, it follows from the precautionary principle that, where there is uncertainty as to the existence or extent of risks to human health, protective measures may be taken without having to wait until the reality and seriousness of those risks become fully apparent (judgments of 22 December 2010, *Gowan Comércio Internacional e Serviços*, C-77/09, EU:C:2010:803, paragraph 73, and of 1 October 2019, *Blaise and Others*, C-616/17, EU:C:2019:800, paragraph 43).

346 According to the case-law of the Court of Justice, a correct application of the precautionary principle presupposes, inter alia, a comprehensive assessment of the risk to health based on the most reliable scientific data available and the most recent results of international research (judgment of 22 December 2010, *Gowan Comércio Internacional e Serviços*, C-77/09, EU:C:2010:803, paragraph 75).

347 Where it proves to be impossible to determine with certainty the existence or extent of the alleged risk because the results of studies conducted are insufficient, inconclusive on imprecise, but the likelihood of real harm to human health persists should the risk materialise, the precautionary principle justifies the adoption of restrictive measures (judgments of 22 December 2010, *Gowan Comércio Internacional e Serviços*, C-77/09, EU:C:2010:803, paragraph 76, and of 1 October 2019, *Blaise and Others*, C-616/17, EU:C:2019:800, paragraph 43).

348 In accordance with the case-law cited in paragraphs 345 to 347 above, it is for the authorities responsible for the risk assessment, such as EFSA, to inform the Commission not only of the firm conclusions reached, but also of any remaining uncertainties, so that it can adopt restrictive measures if necessary.

349 In the present case, in the statement of 8 November 2019, it is stated, with regard to the genotoxic potential of CHP-methyl, that, during the meeting held in April 2019, the experts had discussed the structural similarity between the molecule of each of the two substances and had agreed to apply the read-across approach. In addition, the experts had noted that there was no public literature available concerning the genotoxic potential of CHP-methyl whereas several publications were available for chlorpyrifos. Since concerns had been raised for chlorpyrifos with regard to chromosome aberrations and DNA damage, the experts had concluded that there were data gaps for CHP-methyl. They had therefore agreed that those uncertainties had to be taken into

account in the risk assessment for CHP-methyl and that, therefore, it could not be ruled out that that substance could cause DNA damage. Subsequently, during the experts' meeting that took place in September 2019, which concerned the application of the read-across approach, the experts had considered, with regard to the molecular structure of the two active substances, that their differences did not justify concluding that there was a difference in their genotoxic potential (see paragraphs 271 and 272 above).

350 Moreover, it is also apparent from the statement of 8 November 2019 that the experts that met in September 2019 relied on three considerations in order to reach the conclusion that there were concerns regarding the developmental neurotoxicity of CHP-methyl. Those are, first, the alleged shortcomings of the developmental neurotoxicity study, second, three scientific studies which revealed the existence of a link between exposure to chlorpyrifos or CHP-methyl exposure, or more generally to organophosphate insecticides, and adverse neurodevelopmental outcomes in children and, third, other scientific studies which also contributed to demonstrating the developmental neurotoxicity of CHP-methyl (see paragraph 274 above).

351 Lastly, it is apparent from the statement of 8 November 2019 that the experts who met in September indicated that CHP-methyl may be expected to meet the criteria for classification as toxic for reproduction, category 1B, a conclusion in respect of which EFSA expressed some reservations (see paragraph 275 above). EFSA stated that the experts had applied the same approach in this respect as for chlorpyrifos.

352 Consequently, the experts who met in April and September 2019, and, subsequently, EFSA, carried out an assessment of the health risk of the proposed use of CHP-methyl revealing the remaining uncertainties in that regard (see paragraphs 349 to 351 above).

353 In the light of the considerations set out in paragraphs 345 to 348 above, such an approach is consistent with the precautionary principle, which requires the authorities responsible for the risk assessment, such as EFSA, to communicate to the Commission also the findings of uncertainty they have reached, in order to enable it to adopt restrictive measures if necessary.

354 Moreover, the fact that the experts who met in September 2019, and subsequently EFSA, rely, as a precautionary measure, in relation to the assessment of the risks for human health associated with CHP-methyl, on the read-across approach and, as such, on the data available in that regard for chlorpyrifos does not lead to the conclusion that the precautionary principle was applied twice. The implementation of this principle involves the adoption of protective measures where there is uncertainty as to the existence or the extent of risks to human health (see paragraph 345 above). However, only the Commission – and not EFSA, which is not competent to do so – has adopted protective measures in this case.

355 Furthermore, the conclusion that the precautionary principle has been infringed cannot be drawn from a mere formal check of the grounds of the contested regulation and the statements on which it is based and, in that respect, from the use of certain terms such as 'precautionary' or 'conservatively'. Only an examination of the content of those grounds, as was just undertaken in paragraphs 349 to 352 above, would make it possible to reach such a conclusion, where appropriate.

356 As a result, in the present case, the applicants' argument based on the use of the term 'precautionary' in the statement of 8 November 2019 to which the contested regulation refers cannot lead to the conclusion that the precautionary principle has been infringed.

357 It follows from all the foregoing that the precautionary principle was not infringed in the present case.

358 The conclusion set out in paragraph 357 above cannot be called into question by ECCA's argument, which relies on the communication on the precautionary principle.

359 In that regard, it should be emphasised that ECCA does not allege that the contested regulation is unlawful on the ground that the Commission has disregarded guidelines which it adopted and by which it imposes a limit on the exercise of its discretion (see, to that effect, 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, paragraphs 209 to 211).

360 ECCA merely relies on the communication on the precautionary principle in support of the applicants' plea alleging infringement of the precautionary principle and relies on that communication for the purpose of determining the obligations the Commission must fulfil under that principle.

361 The precautionary principle constitutes a general principle of law which is binding on the EU legislature (judgments of 1 October 2019, *Blaise and Others*, C-616/17, EU:C:2019:800, paragraphs 41 and 42, and of 26 November 2002, *Artegodan* v *Commission*, T-74/00, T-76/00, T-83/00 to T-85/00, T-132/00, T-137/00 and T-141/00, EU:T:2002:283, paragraph 184).

362 As regards a general principle of law and the determination of the obligations which the EU institutions must respect by virtue of such a principle, the General Court is not bound by the considerations set out in the guidelines adopted by those institutions (see, to that effect and by analogy, judgment of 30 May 2013, *Quinn Barlo and Others* v *Commission*, C-70/12 P, not published, EU:C:2013:351, paragraph 53).

363 Thus, even if the communication on the precautionary principle could be regarded as producing binding legal effects on the Commission, it is necessary to determine, not on the basis of that communication but on the basis of the case-law of the Court of Justice and of the General Court, the obligations directly imposed on the Commission by virtue of the precautionary principle in order to examine the extent to which the contested regulation could be regarded as unlawful. However, that examination, which was carried out in paragraphs 345 to 356 above, did not lead to such a finding of unlawfulness.

364 It follows from all the foregoing considerations that the present complaint must be rejected.

2. 'Exhaustion' of the requirements of the precautionary principle following a full assessment of the substance at issue which raised no concerns

365 According to the applicants, the requirements of the precautionary principle are satisfied if all the 'regulatory data' are submitted by the applicant for renewal.

366 The applicants rely on an extract from the statement of 8 November 2019, relating to genotoxicity, according to which 'the available regulatory genotoxicity data set submitted for chlorpyrifos-methyl did not show any concern'. That extract confirms that the applicants for renewal had submitted the relevant data set, that that data set had been assessed and that the results were 'negative'.

367 Therefore, according to the applicants, the requirements of the precautionary principle were met and those requirements were definitively 'exhausted'. It was thus no longer possible for EFSA to apply the precautionary principle, in particular by applying the read-across approach.

368 In that regard, it should be noted, in the first place, that the concept of 'regulatory data' used by EFSA in the statements of 31 July and 8 November 2019 is not defined either by Regulation No 1107/2009 or by Implementing Regulation No 844/2012.

369 In addition, it is not defined in Commission Regulation (EU) No 283/2013 of 1 March 2013 setting out the data requirements for active substances, in accordance with Regulation No 1107/2009 (OJ 2013 L 93, p. 1) or Commission Regulation (EU) No 284/2013 of 1 March 2013 setting out the data requirements for plant protection products, in accordance with Regulation No 1107/2009 (OJ 2013 L 93, p. 85).

370 Accordingly, the General Court, by way of a measure of organisation of procedure adopted on the basis of Article 24 of the Statute of the Court of Justice of the European Union, questioned EFSA on the meaning of that term, in the context of the statements of 31 July and 8 November 2019.

371 EFSA stated, without being challenged by the applicants, that the term 'regulatory data' used in the statements of 31 July and 8 November 2019 referred to all tests and studies submitted by the applicants for renewal pursuant to the applicable regulations. It added that, in addition to the tests and studies thus produced, the applicants for renewal were also required to provide evidence from publicly available scientific literature.

372 Article 6(1) of Implementing Regulation No 844/2012 provides that the applicant for renewal is to submit the supplementary dossiers.

373 Under Article 7 of Implementing Regulation No 844/2012, entitled 'Contents of supplementary dossiers':

> '1. The supplementary summary dossier shall include the following:
>
> …
>
> (d) data and risk assessments which were not part of the approval dossier or subsequent renewal dossiers and which are necessary …
>
> (e) for each point of the data requirements for the active substance, as set out in a Regulation setting out data requirements for active substances under Regulation (EC) No 1107/2009, for which new data are necessary in accordance with point (d), the summaries and results of tests and studies, the name of their owner and of the person or institute that has carried them out and the reason why each test or study is necessary;
>
> (f) for each point of the data requirements for the plant protection product, as set out in a Regulation setting out data requirements for plant protection products under Regulation (EC) No 1107/2009, for which new data are necessary in accordance with point (d), the summaries and results of tests and studies, the name of their owner and of the person or institute that has carried out the tests and studies, for one or more plant protection products which are representative of the supported uses, and the reason why each test or study is necessary;

…

(m) the summaries and results of scientific peer-reviewed open literature …

3. The supplementary complete dossier shall contain the full text of each test and study report referred to in paragraph 1(e), (f) and (m).

…’

374 Thus, in stating that the ‘regulatory data’ submitted by the applicants for renewal concerning the genotoxicity of CHP-methyl had not raised any concerns, EFSA merely found that the tests and studies produced by the applicants for renewal under Article 7(1)(e) and (f) of Implementing Regulation No 844/2012 did not lead to establishment of the existence of risks to human health. It therefore did not refer to scientific peer-reviewed open literature, within the meaning of Article 7(1)(m) of Implementing Regulation No 844/2012.

375 In the second place, EFSA mentioned, in the statements of 31 July and 8 November 2019, that the experts had noted that there was no public literature available concerning the genotoxic potential of CHP-methyl whereas several publications were available for chlorpyrifos. It added that, since concerns had been raised for chlorpyrifos with regard to chromosome aberrations and DNA damage, the experts had concluded that there were data gaps for CHP-methyl. It thus stated that the experts had agreed that the resulting uncertainties had to be taken into account in the risk assessment of CHP-methyl and that it therefore could not be ruled out that there was a potential risk of DNA damage (see paragraphs 29 and 44 above).

376 In the statement of 8 November 2019, EFSA pointed out that, at the experts’ meeting in September 2019 devoted to the application of the read-across approach, the experts had considered, with regard to the molecular structure of the two active substances, that their differences did not justify concluding that there was a difference in their genotoxic potential (see paragraph 45 above).

377 Lastly, it is also apparent from the statement of 8 November 2019 that the RMS, having conducted additional literature searches, had found scientific studies on CHP-methyl which provided evidence that was consistent with the concerns raised in relation to chlorpyrifos. The majority of experts had therefore considered that the literature indications, although presenting some limitations, had to be considered in a weight-of-evidence approach and that they raised, on the basis of a conservative approach, concerns relating to the DNA damage that could be caused by CHP-methyl. The experts had therefore concluded that the concerns raised for chlorpyrifos with regard to the risk of chromosome aberration and DNA damage may apply to CHP-methyl, resulting in an unclear genotoxicity potential (see paragraph 46 above).

378 As a result, the examination of the genotoxicity of CHP-methyl set out by EFSA in the statement of 8 November 2019 led it to the conclusion that the concerns raised by chlorpyrifos regarding the risks of chromosomal aberration and DNA damage could also apply to CHP-methyl, resulting in an unclear genotoxic potential for the latter substance (see paragraphs 44 and 45 above).

379 EFSA also mentioned in the statement of 8 November 2019 that the experts agreed that no reference values could be set, inter alia for genotoxicity, which made it impossible to perform a risk assessment of CHP-methyl for consumers, operators, workers, bystanders and residents (see paragraph 48 above).

380 A review of the grounds of the statements of 31 July and 8 November 2019, as set out in paragraphs 375 to 379 above, results in a finding that the extract from the statement of 8 November 2019 cited in paragraph 366 above, when placed in its context, does not lead to the conclusion, contrary to the applicants' contention, that EFSA had taken the view in that statement that the results relating to the genotoxicity of CHP-methyl were 'negative', that is to say that that substance did not present a risk to human health, but only that the tests and studies produced by the applicants for renewal under Article 7(1)(e) and (f) of Implementing Regulation No 844/2012 did not make it possible to establish the existence of risks to human health.

381 It should be borne in mind that a correct application of the precautionary principle presupposes, inter alia, a comprehensive assessment of the risk to health based on the most reliable scientific data available and the most recent results of international research (see paragraph 346 above).

382 Moreover, as regards the risk assessment, since that assessment must be, in particular, independent and objective, it is imperative to take into account relevant evidence other than the tests, analyses and studies submitted by the applicant for renewal which might contradict the latter. With that in mind, it is necessary not only to take account of the most reliable scientific data available and the most recent results of international research, but also not to give in all cases preponderant weight to the studies submitted by the applicant for renewal (judgment of 1 October 2019, *Blaise and Others*, C-616/17, EU:C:2019:800, paragraphs 93 and 94).

383 It follows from the case-law cited in paragraphs 381 and 382 above, as well as from the provisions cited in paragraphs 372 and 373 above, that the assessment of the risks associated with an active substance must not be based solely on the tests and studies which the regulations require the applicant for renewal to submit, but must also be based on the relevant, recent and reliable scientific literature available.

384 That conclusion is confirmed by recital 24 of Regulation (EU) 2019/1381 of the European Parliament and of the Council of 20 June 2019 on the transparency and sustainability of the EU risk assessment in the food chain and amending Regulations (EC) No 178/2002, (EC) No 1829/2003, (EC) No 1831/2003, (EC) No 2065/2003, (EC) No 1935/2004, (EC) No 1331/2008, (EC) No 1107/2009, (EU) 2015/2283 and Directive 2001/18/EC (OJ 2019 L 231, p. 1). That regulation, in so far as it amended not only Regulation No 178/2002 establishing EFSA but also Regulation No 1107/2009, on the basis of which the contested regulation was adopted, is relevant to the present case.

385 Recital 24 of Regulation 2019/1381 states:

'There are certain public concerns about [EFSA]'s assessment in the area of authorisation procedures being primarily based on industry studies. It is of utmost importance that [EFSA] carry out searches in scientific literature to be able to consider other data and studies existing on the subject matter submitted to its assessment. In order to provide an additional level of guarantee to ensure that [EFSA] can have access to all relevant scientific data and studies available on a subject matter of an application or a notification for an authorisation or a renewal of an authorisation or an approval, it is appropriate to provide for consultation of third parties in order to identify whether other relevant scientific data or studies are available …'

386 Thus, the fact that the tests and studies submitted by the applicants for renewal concerning CHP-methyl had not raised any concerns does not lead to the conclusion, contrary to the applicants' submission, that the assessment of the risks involved in the use of that active substance had been definitively carried out.

387 It follows from all of the foregoing that the present complaint must be rejected.

3. The statement of 8 November 2019 is based on considerations of a purely hypothetical nature

388 The applicants submit that the statement of 8 November 2019 is based on purely hypothetical considerations, with regard to both EFSA's assessment of genotoxicity and its assessment of developmental neurotoxicity.

389 By the present complaint, the applicants must be regarded as challenging the merits of the assessment of the health risks associated with the use of CHP-methyl.

390 In that regard, the applicants merely quote two extracts from the statement of 8 November 2019 in which the terms 'precautionary' and 'conservatively' are used.

391 As stated in paragraph 355 above, the conclusion that the precautionary principle has not been complied with cannot be drawn from a mere formal examination of the grounds of the contested regulation and the statements on which it is based and, as such, from the use of certain terms such as 'precautionary' or 'conservatively'.

392 Thus, reliance on the extracts in question is not sufficient, in the absence of any argument relating to the content of those grounds, to establish the hypothetical nature of EFSA's assessment.

393 It follows from all the foregoing considerations that the present complaint, and thus the plea alleging infringement of the precautionary principle as a whole, should be rejected.

I. The seventh plea in law, alleging a manifest error of assessment with regard to the risk assessment adopted by EFSA and subsequently by the Commission

394 The applicants challenge each of the three grounds on which the contested regulation is based, the first relating to the genotoxic potential of CHP-methyl, the second relating to the existence of concerns regarding the developmental neurotoxicity of that substance, and the third relating to the fact that it 'may be appropriate' to classify it as toxic for reproduction, category 1B (see paragraphs 266 and 267 above).

395 Since these grounds concern the assessment of risks to human health, it is appropriate, before examining in turn the objections relating to each of them, to recall the legal regime applicable to risk assessment and, in particular, to the assessment of risks to human health.

1. The legal regime governing risk assessment

396 With regard to the legal regime governing risk assessment, it is worth recalling, first, the rules relating to the burden of proof and the matter to be proved and, second, the scope of the applicable judicial review.

(a) The burden of proof and the matter to be proved

397 In the first place, with regard to an application for approval of an active substance, it should be borne in mind that, under Article 7 of Regulation No 1107/2009, entitled 'Application':

'1. An application for the approval of an active substance or for an amendment to the conditions of an approval shall be submitted by the producer of the active substance to a Member State, (the rapporteur Member State), together with a summary and a complete dossier as provided for in Article 8(1) and (2) or a scientifically reasoned justification for not providing certain parts of those dossiers, demonstrating that the active substance fulfils the approval criteria provided for in Article 4.

…'

398 Moreover, under Article 8 of Regulation No 1107/2009, entitled 'Dossiers':

'1. The summary dossier shall include the following:

(a) information with respect to one or more representative uses on a widely grown crop in each zone of at least one plant protection product containing the active substance, demonstrating that the approval criteria provided for in Article 4 are met; where the information submitted does not cover all zones or concern a crop which is not widely grown, justification for this approach;

(b) for each point of the data requirements for the active substance, the summaries and results of tests and studies, the name of their owner and of the person or institute that has carried out the tests and studies;

(c) for each point of the data requirements for the plant protection product, the summaries and results of tests and studies, the name of their owner and of the person or institute that carried out the tests and studies, relevant to the assessment of the criteria provided for in Article 4(2) and (3) for one or more plant protection products which are representative of the uses referred to in point (a), taking into account the fact that data gaps in the dossier, as provided for in paragraph 2 of this Article, resulting from the proposed limited range of representative uses of the active substance, may lead to restrictions in the approval;

(d) for each test or study involving vertebrate animals, a justification of the steps taken to avoid animal testing and duplication of tests and studies on vertebrate animals;

(e) a checklist demonstrating that the dossier provided for in paragraph 2 of this Article is complete in view of the uses applied for;

(f) the reasons why the test and study reports submitted are necessary for first approval of the active substance or for amendments to the conditions of the approval;

(g) where relevant, a copy of an application for a maximum residue level as referred to in Article 7 of Regulation (EC) No 396/2005 or a justification for not supplying such information;

(h) an assessment of all information submitted.

2. The complete dossier shall contain the full text of the individual test and study reports concerning all the information referred to in points (b) and (c) of paragraph 1. It shall not contain any reports of tests or studies involving the deliberate administration of the active substance or the plant protection product to humans.

…'

399 In that regard, the Court of Justice ruled that it was apparent from Article 7(1) and Article 8(1) and (2) of Regulation No 1107/2009 that the tests, studies and analyses required to permit the approval of an active substance had to be provided by the applicant for approval and that that rule constituted the corollary of the principle, set out in Article 7(1) of that regulation, that it was for the applicant for approval to prove that the active substance that was the subject of an application for approval fulfilled the relevant criteria laid down by that regulation (judgment of 1 October 2019, *Blaise and Others*, C-616/17, EU:C:2019:800, paragraphs 78 and 79).

400 The Court of Justice held that such an obligation contributed to achieving compliance with the precautionary principle by ensuring that there was no presumption that active substances and plant protection products have no harmful effects (judgment of 1 October 2019, *Blaise and Others*, C-616/17, EU:C:2019:800, paragraph 80).

401 Moreover, it should be borne in mind, first, that where the rapporteur Member State and EFSA consider that the information provided by the applicant for approval is insufficient, it is their responsibility to request, pursuant to Articles 11(3), 12(3) and 37(1) of Regulation No 1107/2009, the provision of additional information by the applicant for approval and, second, that the other Member States and the public may submit comments on the draft assessment report pursuant to Article 12(1) of that regulation.

402 In addition, the Court of Justice has stated that the Commission was of necessity bound to take into account relevant evidence other than the tests, analyses and studies submitted by the applicant for approval that might contradict the latter and that such an approach is compatible with the precautionary principle (see, to that effect, judgment of 1 October 2019, *Blaise and Others*, C-616/17, EU:C:2019:800, paragraph 93).

403 It added that it is the duty of the Commission to take account of the most reliable scientific data available and the most recent results of international research and not to give in all cases preponderant weight to the studies provided by the applicant for approval (see, to that effect, judgment of 1 October 2019, *Blaise and Others*, C-616/17, EU:C:2019:800, paragraph 94).

404 It concluded from this that, if the Commission had come to the conclusion that, having regard to all the information at their disposal, an applicant had not established to the required standard that the conditions governing the approval or authorisation applied for were satisfied, it was bound to

decide that the application should be rejected, there being no need, in order to reach that conclusion, to undertake a second assessment (judgment of 1 October 2019, *Blaise and Others*, C-616/17, EU:C:2019:800, paragraph 95).

405 In the second place, the provisions applicable to the approval of active substances and those applicable to the renewal of that approval, provided for by Regulation No 1107/2009 and Implementing Regulation No 844/2012, are analogous.

406 Article 14 of Regulation No 1107/2009, entitled 'Renewal of approval', provides that 'on application the approval of an active substance shall be renewed where it is established that the approval criteria provided for in Article 4 [of that regulation] are satisfied', wording which is similar to that used in the last sentence of the first subparagraph of Article 7(1) of Regulation No 1107/2009.

407 In addition, as in the case of an application for approval of an active substance, Article 15 of Regulation No 1107/2009 provides that an application for renewal of such approval is to be submitted by a producer of the substance in question.

408 Furthermore, Article 7 of Implementing Regulation No 844/2012, entitled 'Contents of supplementary dossiers', sets out a list of items which corresponds, *mutatis mutandis*, to the list in Article 8(1) of Regulation No 1107/2009 (see paragraphs 373 and 398 above).

409 In the third place, given the analogous nature of the provisions applicable to applications for approval of an active substance and those applicable to the renewal of such approval, the considerations set out in paragraphs 399 to 404 above also apply to the renewal of the approval of an active substance.

410 Accordingly, it is for the applicant for renewal of the approval of an active substance to produce all of the items set out in Article 7 of Implementing Regulation No 844/2012 in order to prove that the substance in question satisfies the conditions laid down in Article 4 of Regulation No 1107/2009 (see paragraph 399 above).

411 The Commission will grant the application if it is clear from the evidence submitted, and from the other factors taken into account, where appropriate, by the authorities responsible for the assessment of the active substance in question, that that substance satisfies those conditions (see paragraphs 401 to 404 above), which are cumulative (see paragraph 108 above).

412 In that regard, it must be foreseeable, in particular, that both the plant protection products containing that substance and their residues do not have harmful effects on human health (see paragraph 106 above).

413 On the contrary, in order for the application to be rejected, that is, in order for a measure to be adopted which both restricts the rights of the producer applying for renewal of the approval of an active substance and protects human health, it is sufficient for a mere uncertainty as to the presence of a risk concerning that substance to be identified (see paragraphs 345 to 347 above).

(b) The scope of judicial review

414 In view of the complex scientific assessments which must be made when, pursuant to the provisions of Regulation No 1107/2009, the risks posed by the use of substances are assessed, the Commission must be allowed a wide discretion in that regard (see, to that effect and by analogy, judgments of 18 July 2007, *Industrias Químicas del Vallés* v *Commission*, C-326/05 P, EU:C:2007:443, paragraphs 74 and 75, and of 22 December 2010, *Gowan Comércio Internacional e Serviços*, C-77/09, EU:C:2010:803, paragraph 55).

415 It should be stated that the review by the EU Courts of the assessment of the facts made by the Commission, the author of the contested measure, is also carried out indirectly on the assessment made by EFSA where, as in the present case, the Commission relies on EFSA's assessment for the purposes of determining the existence of a risk.

416 It is necessary to add that, in order to establish that the Commission committed a manifest error of assessment in its assessment of complex facts such as to justify the annulment of the contested act, the evidence adduced by the applicant must be sufficient to make the factual assessments used in the act implausible. Subject to that review of plausibility, it is not the Court's role to substitute its assessment of complex facts for that made by the institution which adopted the act (see judgment of 17 May 2018, *BASF Agro and Others* v *Commission*, T-584/13, EU:T:2018:279, paragraph 94 and the case-law cited; see also, to that effect, judgment of 7 May 2020, *BTB Holding Investments and Duferco Participations Holding* v *Commission*, C-148/19 P, EU:C:2020:354, paragraph 72).

2. The genotoxic potential

417 One of the grounds relied on by the Commission in the contested regulation is based on the finding, made by the experts that met in September 2019, and subsequently by EFSA, that the genotoxic potential of CHP-methyl cannot be ruled out (see paragraph 267 above).

418 As can be seen from the considerations set out in paragraphs 44 to 46 above, this finding is based on the application of both the read-across approach and the weight-of-evidence approach (together, 'the two approaches').

419 In the present plea, the applicants challenge the manner in which the two approaches were applied in the present case by the experts who met in September 2019, and subsequently by EFSA.

(a) General considerations relating to the two approaches

420 It is necessary, first, to clarify what the two approaches entail and what their purposes are and, second, to examine the lawfulness of the use of those approaches by EFSA in the domain of plant protection products, that having been challenged by ECCA at the hearing.

(1) What the two approaches entail and what their purposes are

421 Reference is made to the two approaches, first, in 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), which establishes the criteria for

classification and labelling of substances, some of which are taken into account for the purposes of establishing whether an active substance is eligible for authorisation under Regulation No 1107/2009 (see paragraph 11 above), and, second, in Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1; 'the REACH Regulation').

422 First, as regards what the two approaches entail, the read-across approach is described in Section 1.5 of Annex XI to the REACH Regulation as a method under which the properties of certain substances may be predicted from existing data relating to reference substances which are structurally similar to the first substances.

423 With regard to the weight-of-evidence approach, also referred to using the terms 'probative value' or 'evidentiary effect', it is apparent from Section 1.1.1.3 of Annex I to Regulation No 1272/2008 that the properties of certain substances may, under this approach, be predicted on the basis of data from several independent sources of information, such as results from *in vitro* tests, data from animal tests, information from the application of the category approach (grouping, read-across), human experience, for example occupational data and data from accident databases, epidemiological and clinical studies, and well-documented case reports and observations.

424 Second, with regard to the purpose of the two approaches, Article 13(1) of the REACH Regulation provides that, with regard to human toxicity, information is to be generated as far as possible by means other than vertebrate animal tests, that is to say, by recourse to alternative methods, for example use of information from structurally related substances (grouping or read-across). More generally, that provision provides that information on intrinsic properties of substances may be generated by means other than tests, provided that the conditions set out in Annex XI to that regulation are met.

425 The use of studies and tests can thus be avoided by using the methods listed in Section 1, entitled 'Testing does not appear scientifically necessary', of Annex XI to the REACH Regulation, that annex itself entitled 'General rules for adaptation of the standard testing regime set out in Annexes VII to X', which include the read-across approach and the weight-of-evidence approach.

426 In Section 1.5 of Annex XI to the REACH Regulation, which concerns the read-across approach, it is stated that this approach avoids the need to test every substance for every end point.

427 It may thus be used where there are no data on the substances subject to risk assessment (judgment of 21 July 2011, *Nickel Institute*, C-14/10, EU:C:2011:503, paragraph 63).

428 Section 1.2 of Annex XI to the REACH Regulation, which concerns the weight-of-evidence approach, states that that approach, where it makes it possible to gather sufficient evidence to confirm the existence or absence of a particular dangerous property, leads to the omission of further testing on animals, in particular vertebrate animals.

429 The weight-of-evidence approach thus makes it possible, like the read-across approach, to avoid testing every substance for every endpoint (see paragraph 426 above).

430 It follows from the considerations set out in paragraphs 424 to 429 above that both methods are intended, in particular, to limit the use of testing on vertebrate animals.

(2) The lawfulness of EFSA's use of the two approaches for assessing active substances in plant protection products

431 It must be determined whether the two approaches may be used by EFSA when carrying out an assessment of an active substance.

432 It should be borne in mind that, according to the relevant provisions of Regulation No 1107/2009 and Implementing Regulation No 844/2012, in the conclusion that it is to adopt, EFSA is to state 'whether the active substance can be expected to meet the approval criteria provided for in Article 4' of Regulation No 1107/2009.

433 Thus, the EU legislature has conferred on EFSA competence to evaluate active substances for the purpose of legally classifying, in the light of the provisions of Article 4 of Regulation No 1107/2009, the facts submitted to it and, therefore, for the purpose of arriving at a decision on those facts.

434 Furthermore, it must be noted that Regulation No 1107/2009 and Implementing Regulation No 844/2012 do not require EFSA to apply precise assessment procedures.

435 The only provisions providing details in this regard are, first, the second subparagraph of Article 12(2) of Regulation No 1107/2009, which provides that EFSA is to adopt a conclusion 'in the light of current scientific and technical knowledge', second, the first subparagraph of Article 13(1) of Implementing Regulation No 844/2012, which, with regard to the evaluation of an active substance for the purposes of renewing that approval, also provides that EFSA is to adopt conclusions 'in the light of current scientific and technical knowledge', and, third, point 1.2 of Annex II to Regulation No 1107/2009, which states that EFSA's evaluation must be based on scientific principles and be made with the benefit of expert advice.

436 As a result, the applicable provisions leave EFSA a wide margin of discretion in the choice of assessment methods which it applies, the only condition imposed on it being the scientific nature of its assessment.

437 Moreover, it should be borne in mind that, in view of the complex scientific assessments that have to be made when, pursuant to the provisions of Regulation No 1107/2009, the risks posed by the use of substances are assessed, the Commission must be recognised as enjoying broad discretion (see paragraphs 414 and 415 above).

438 Since the Commission relied, in the present case, on the risk assessment carried out by EFSA (see paragraph 269 above), the Court's review of that assessment must also be limited to manifest errors of assessment.

439 It is in the light of the considerations set out in paragraphs 432 to 438 above that it must be determined whether ECCA's complaint is well-founded.

440 As is clear from paragraphs 421 to 428 above, use of the two approaches is provided for in both Regulation No 1272/2008 and the REACH Regulation. Thus, the EU legislature considered that those approaches were sufficiently reliable, from a scientific point of view, to be used for the purposes of assessing chemical substances in fields other than that of plant protection products.

441 Moreover, the Court of Justice stated, as regards the read-across approach, that it was a method of assessing substances which was widely recognised by the scientific community (see, to that effect and by analogy, judgment of 21 July 2011, *Nickel Institute*, C-14/10, EU:C:2011:503, paragraph 71).

442 Lastly, while ECCA maintains that the read-across approach cannot be used for the assessment of active substances under Regulation No 1107/2009, because the purpose of that regulation, unlike that of the REACH Regulation, 'requires legal certainty', it should be borne in mind that, for an application for approval of an active substance or for renewal of such approval to be rejected, it is sufficient that mere uncertainty as to the presence of a risk to health can be identified (see paragraph 413 above).

443 As a result, ECCA is not entitled to maintain that EFSA's use of the two approaches in the context of the assessment of an active substance alone vitiates its assessment by a manifest error of assessment.

444 This argument must therefore be rejected, without there being any need to rule on its admissibility.

445 Moreover, not only is the use of the two approaches for the assessment of active substances not manifestly erroneous, it is justified.

446 Indeed, recital 11 of Regulation No 1107/2009 provides that the development of non-animal test methods should be promoted (i) in order to produce safety data relevant to humans and (ii) to replace animal studies currently in use. Recital 40 of that regulation adds, first, that the use of non-animal test methods and other risk assessment strategies should be promoted, second, that animal testing for the purposes of that regulation should be minimised and, third, that tests on vertebrates should be undertaken as a last resort.

447 The two approaches, which make it possible to avoid testing every substance for every effect, help thus to reduce animal testing (see paragraphs 424 to 430 above).

448 In those circumstances, the use of the two approaches for the assessment of active substances contributes to the achievement of one of the objectives pursued by Regulation No 1107/2009 and, consequently, by its implementing regulation, Implementing Regulation No 844/2012.

449 It follows from the considerations set out in paragraphs 431 to 448 above that EFSA is fully entitled to use the two approaches for the purpose of assessing an active substance (see, to that effect and by analogy, judgment of 21 July 2011, *Nickel Institute*, C-14/10, EU:C:2011:503, paragraphs 36 to 42 and 61 to 75).

450 It is on the basis of the considerations set out in paragraphs 421 to 449 above that it is appropriate to examine, in the first place, the complaints and arguments relating to the read-across approach and, in the second place, those relating to the weight-of-evidence approach. In addition, the

applicants, in their reply, in support of the present plea, refer to the study of 14 May 2020 (see paragraph 220 above) as well as three other studies. The complaints and arguments relating to those studies will be examined in the third place.

(b) The read-across approach

451 The applicants criticise the Commission's application in the present case of the read-across approach. In support of this complaint they put forward three arguments, the first alleging inconsistency between the conclusion reached by EFSA in the statement of 8 November 2019 and recital 10 of the contested regulation, the second alleging disregard for the provisions of the REACH Regulation relating to the read-across approach, and the third alleging disregard for a document of the European Chemicals Agency (ECHA), entitled 'Read-Across Assessment Framework', which it published on its website in March 2017.

(1) Inconsistency between the conclusion allegedly reached by EFSA in the statement of 8 November 2019 and recital 10 of the contested regulation

452 It is apparent from recital 10 of the contested regulation that, in that regulation, the Commission based its assessment of the risks posed by CHP-methyl as regards genotoxicity on an application of the read-across approach which made it possible to take into account the data relating to chlorpyrifos (see paragraphs 266 to 268 above).

453 The applicants rely on an extract from the statement of 8 November 2019 which shows that several differences between CHP-methyl and chlorpyrifos could contribute to differences in toxicity and that different effects, in terms of toxicity, are observed between the two substances.

454 The applicants submit, on the basis of that extract, that EFSA considered that the mammalian toxicological properties of chlorpyrifos and CHP-methyl were 'manifestly' different, and they deduce from that that there is an inconsistency between the conclusion allegedly reached by EFSA in the statement of 8 November 2019 and recital 10 of the contested regulation.

455 In that regard, it should be noted, first, that the extract relied on by the applicants appears in the part of the statement of 8 November 2019 dealing with mammalian toxicity and not in the part dealing with genotoxicity. Accordingly, no definitive conclusion as to EFSA's assessment of the genotoxicity of CHP-methyl can be drawn solely on the basis of such an extract, particularly since the part of the statement of 8 November 2019 dealing with genotoxicity follows that dealing with mammalian toxicity.

456 Second, in the part of the statement of 8 November 2019 dealing with genotoxicity, it is stated, with regard to the experts' meeting held in April 2019 (see paragraph 24 above), that the experts had discussed the structural similarity between the molecule of each of the two substances and had agreed to apply the read-across approach. In addition, it is stated that the experts had noted that there was no public literature available concerning the genotoxic potential of CHP-methyl whereas several publications were available for chlorpyrifos. Since concerns had been raised for chlorpyrifos with regard to chromosome aberrations and DNA damage, the experts had concluded that there were data gaps for CHP-methyl. They had accordingly agreed that those uncertainties had to be considered in the risk assessment and that, therefore, it could not be ruled out that CHP-methyl could cause DNA damage (see paragraph 29 above).

457 With regard to the experts' meeting held in September 2019 (see paragraph 37 above), which focused on, in particular, the appropriateness of applying the read-across approach (see paragraph 28 above), it is stated, in the same part of the statement of 8 November 2019 dealing with genotoxicity, that the experts had taken into account the differences between the two substances in question, as identified in the previous part, dealing with mammalian toxicity, and that they had considered that those differences would not justify, in view of the molecular structure of those substances, a difference in their genotoxic potential.

458 In the light of the factors referred to in paragraphs 455 to 457 above, it must be noted that the experts, after taking into account the differences between CHP-methyl and chlorpyrifos in terms of mammalian toxicity, considered that, despite these differences, it was appropriate to apply the read-across approach.

459 That reasoning was subsequently taken up by EFSA.

460 The applicants are therefore wrong to submit that there is an inconsistency between the conclusion reached by EFSA in the statement of 8 November 2019 and recital 10 of the contested regulation.

461 Accordingly, the present argument must be rejected.

(2) Infringement of the provisions of the REACH Regulation relating to the read-across approach

462 The applicants claim that the conditions referred to in the REACH Regulation for applying the read-across approach have not been satisfied in the present case. In their view, CHP-methyl and chlorpyrifos cannot be regarded as 'structurally related' substances within the meaning of Article 13(1) of the REACH Regulation. Nor can they be regarded as substances whose properties are 'likely to be similar' or 'follow a regular pattern as a result of [their] structural similarity' as provided for in Section 1.5 of Annex XI to the REACH Regulation.

463 It should be borne in mind in this regard that, in the judgment of 12 December 2014, *Xeda International* v *Commission* (T-269/11, not published, EU:T:2014:1069, paragraphs 49 and 75), the General Court held that there was no obligation on the Commission to apply to the legal framework established by Directive 91/414, which had been replaced by Regulation No 1107/2009 (see paragraph 7 above), the approach developed in the REACH Regulation, in particular with regard to the assessment methods provided for in that regulation.

464 That also applies in the present case.

465 It is true that, in order to assess CHP-methyl, the experts and subsequently EFSA made use of the read-across approach provided for, as is apparent from paragraphs 421 to 426 above, by the REACH Regulation.

466 However, a regulation such as the contested regulation, which concerns the approval of an active substance contained in a plant protection product and not the registration, evaluation and authorisation of chemical substances, is not adopted on the basis of the provisions of the REACH Regulation, but of those of Regulation No 1107/2009 and Implementing Regulation No 844/2012.

467 Consequently, the complaint alleging infringement of Article 13(1) of the REACH Regulation, the provisions of which are not applicable in the present case, is ineffective.

468 Nevertheless, the applicants could be regarded as relying, not on an infringement of the texts referred to in paragraph 421 above, but on the manifest error allegedly committed by EFSA in wrongly applying the read-across approach, in a situation in which that approach is not relevant on the ground that the two substances in question do not, contrary to what would be necessary for the application of that approach to be appropriate from a scientific point of view, display structural similarity.

469 In that regard, according to the applicants, the lack of similarity between the two substances is apparent from the information contained in the statement of 8 November 2019. The applicants thus refer to the 'different length of the two alkoxy groups attached to the phosphorus atom', the 'differences in the steric orientation of the moiety attached to the enzyme', the 'differences in the rates of reactivation or ageing', the differences in respect of 'acute toxicity', the 'differences in potency upon short-term exposure', the 'additional critical effects [of CHP-methyl] in short-term and long-term toxicity studies on the adrenals', the 'minor structural difference [that] may contribute to quantitative differences in the [acetylcholinesterase-]inhibitory effect' and a difference in acetylcholinesterase ageing.

470 The applicants add that, while chlorpyrifos was the subject of Council Decision (EU) 2021/592 of 7 April 2021 on the submission, on behalf of the European Union, of a proposal for the listing of chlorpyrifos in Annex A to the Stockholm Convention on Persistent Organic Pollutants (OJ 2021 L 125, p. 52), CHP-methyl has not been the subject of a similar proposal.

471 Nevertheless, it is not disputed that the two substances in question belong to the same group of chemical substances known as organophosphates and that, overall, they have a similar chemical structure.

472 Accordingly, even if the applicants intended to call into question the reasoned conclusion reached by the experts after taking into account the differences between the two substances in question (see paragraph 457 above), the factors they rely on (see paragraphs 469 and 470 above) do not lead to the conclusion that a finding of similarity between the two substances would be manifestly devoid of any plausibility (see paragraph 416 above).

473 In addition, as regards more specifically the reliance on Decision 2021/592, it should be borne in mind that, in an action for annulment under Article 263 TFEU, the legality of the contested measure must be assessed on the basis of the facts and the law as they stood at the time the measure was adopted (see paragraph 221 above). Accordingly, that decision, which was adopted after the contested regulation was adopted, cannot usefully be relied on.

474 The present argument must therefore be rejected.

(3) Failure to take account of the ECHA document entitled 'Read-Across Assessment Framework'

475 The applicants rely on the ECHA document entitled 'Read-Across Assessment Framework' to demonstrate that the conditions for applying the read-across approach were not met in the present case. In particular, they rely on a condition set out in that document relating to the provision of a hypothesis justifying the application of that approach.

476 In this respect, it is necessary to assess the extent to which the ECHA document entitled 'Read-Across Assessment Framework' is likely to be binding on EFSA or the Commission, which are not its authors.

477 As was stated in paragraph 161 above, by adopting rules of conduct and announcing by publishing them that they will henceforth apply to the cases to which they relate, the institution in question imposes a limit on the exercise of its discretion (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, paragraph 211).

478 That case-law is intended to apply only to the author of the rules of conduct in question.

479 As a result, it cannot validly be maintained that EFSA or the Commission, which are not the authors of the document entitled 'Read-Across Assessment Framework', cannot depart from the rules set out in that document on pain of being penalised, where appropriate, on the ground of a breach of general principles of law such as equal treatment or the protection of legitimate expectations.

480 Furthermore, the applicants do not establish, or even allege, that EFSA mentioned, in the statement of 8 November 2019, in the previous statement or in any other document, that it intended to rely on the ECHA document entitled 'Read-Across Assessment Framework'.

481 Even if the document entitled 'Read-Across Assessment Framework' could be regarded as applying to EFSA and the Commission, it is stated on the page of the document preceding that on which the table of contents is set out that the document is intended to assist users in complying with their obligations under the REACH Regulation. It also points out that that regulation is the only legal reference and that the information in that document does not constitute legal advice.

482 Thus, the document entitled 'Read-Across Assessment Framework' is not intended for the ECHA itself, but for the users of the document, that is to say persons wishing to submit an application for registration of a chemical substance. Moreover, it is not intended to impose obligations on those persons, but to provide assistance to them.

483 As a result, it cannot be concluded that, by means of the document entitled 'Read-Across Assessment Framework', the ECHA intended to limit itself in the exercise of its discretion. Such a document cannot, therefore, limit the discretion of EFSA or the Commission, even if it were applicable to them.

484 In the light of the considerations set out in paragraphs 476 to 483 above, the applicants cannot usefully rely on the provisions of the document entitled 'Read-Across Assessment Framework' in order to establish the unlawfulness of the contested regulation.

485 The present argument must therefore be rejected.

486 The complaint relating to the objection to the application by EFSA and the Commission of the read-across approach must therefore be dismissed in its entirety.

(c) The weight-of-evidence approach

487 In support of the present complaint, the applicants rely on three arguments, the first of which alleges disregard of a condition for the application of the weight-of-evidence approach requiring, in their view, that each individual source of data be insufficient to draw adequate conclusions, the second of which alleges an erroneous assessment by the experts, who wrongly considered that two

scientific studies, despite the methodological limitations that affected them, should have a greater impact on their conclusions than all of the elements relating to genotoxicity contained in the 'regulatory data' and the third of which alleges a failure to have regard to EFSA's guidance, published in August 2017, on the use of the weight-of-evidence approach in scientific assessments ('the weight-of-evidence guidance').

(1) Disregard of a condition for the application of the weight-of-evidence approach

488 According to the applicants, the weight-of-evidence approach may be used only where each individual source of data is insufficient to reach an appropriate conclusion. Yet EFSA acknowledged, in its statement of 8 November 2019, that all of the regulatory data produced by Ascenza was complete. Thus, a weight-of-evidence approach was not applicable in the present case.

489 In the first place, in support of that argument, the applicants rely on Section 1.2 of Annex XI to the REACH Regulation, which provides, inter alia, that 'there may be sufficient weight of evidence from several independent sources of information leading to the assumption/conclusion that a substance has or has not a particular dangerous property, while the information from each single source alone is regarded insufficient to support this notion'.

490 On the basis of the considerations set out in paragraphs 463 to 467 above, it is necessary to reject the present argument as ineffective in so far as it is based on an infringement of the provisions of the REACH Regulation.

491 In the second place, the applicants also base the present argument on a failure to have regard to the weight-of-evidence guidance.

492 They refer to an extract from the weight-of-evidence guidance, according to which that approach is applicable where 'integration of evidence' is necessary.

493 Yet, according to the applicants, the 'regulatory data' that Ascenza had produced in the dossier of the application for renewal of the approval of CHP-methyl had been described as complete by EFSA and should therefore be regarded as sufficient, without there being a need to resort to the weight-of-evidence approach.

494 Even if the applicants could usefully rely on the extract in question from the weight-of-evidence guidance in support of their claim for annulment (see paragraphs 521 to 535 below), it should be borne in mind that by stating, in the statement of 8 November 2019, that the 'regulatory data' submitted by the applicants for renewal concerning the genotoxicity of CHP-methyl had not raised any concerns, EFSA merely found that the tests and studies produced by the applicants for renewal under Article 7(1)(e) and (f) of Implementing Regulation No 844/2012 did not make it possible to establish the existence of risks to human health. It did not thereby intend to refer to scientific peer-reviewed open literature, within the meaning of Article 7(1)(m) of Implementing Regulation No 844/2012 (see paragraph 374 above).

495 EFSA did not therefore consider, contrary to what the applicants maintain, that the data produced by the applicants for renewal were sufficient to enable it to draw adequate and definitive conclusions and, in particular, to enable it to conclude that CHP-methyl posed no genotoxic risk.

496 On the contrary, EFSA noted in the statements of 31 July and 8 November 2019 that the experts had stated that there was no public literature available concerning the genotoxic potential of CHP-methyl whereas several publications were available for chlorpyrifos. It added that, since concerns had been raised for chlorpyrifos with regard to chromosome aberrations and DNA damage, the experts had concluded that there were data gaps for CHP-methyl. It then stated that the experts had agreed that the resulting uncertainties had to be taken into account in the risk assessment of CHP-methyl and that it therefore could not be excluded that there was a potential risk of DNA damage (see paragraph 375 above).

497 On the basis of the considerations set out in paragraphs 491 to 496 above, it is necessary to reject the applicants' argument as lacking in fact in so far as it concerns disregard for the weight-of-evidence guidance.

498 It follows from all the foregoing that the first argument relied on by the applicant must be rejected.

(2) Erroneous assessment by the experts concerning the consideration of scientific studies relating to the genotoxicity of CHP-methyl

499 In the first place, the applicants submit that the experts considered, incorrectly, that two scientific studies relating to the genotoxicity of CHP-methyl, despite presenting methodological limitations, should have a greater impact on their conclusions than all of the evidence relating to the genotoxicity of CHP-methyl contained in the 'regulatory data'.

500 It should be borne in mind that EFSA, in stating that the 'regulatory data' submitted by the applicants for renewal concerning the genotoxicity of CHP-methyl had not raised any concerns, merely found that the tests and studies produced by the applicants for renewal under Article 7(1)(e) and (f) of Implementing Regulation No 844/2012 did not lead to a finding that there were risks to human health. It thus did not refer to scientific peer-reviewed open literature, within the meaning of Article 7(1)(m) of Implementing Regulation No 844/2012 (see paragraph 374 above).

501 Yet it follows from the case-law and the applicable provisions that the assessment of the risks associated with an active substance must not be based solely on the tests and studies that the regulations require the applicant for renewal to submit, but must also be based on all the relevant scientific literature available (see paragraph 383 above).

502 In that regard, EFSA noted, in the statement of 8 November 2019, that the experts, when they met in April 2019, had submitted that there was no publicly available literature concerning the genotoxic potential of CHP-methyl, whereas several publications were available for chlorpyrifos, and that, in those publications, concerns had been raised as regards genotoxicity (see paragraph 29 above).

503 The RMS, after conducting additional literature searches, found scientific studies on CHP-methyl which provided evidence along the same lines as those relating to chlorpyrifos (see paragraph 46 above).

504 The majority of the experts that met in September 2019 had therefore been of the view that the literature indications, although presenting some limitations, had to be considered in a weight-of-evidence approach and that they raised, on the basis of a conservative approach, concerns relating to the DNA damage that could be caused by CHP-methyl (see paragraph 46 above).

505 The experts – and subsequently EFSA – therefore concluded that the concerns raised for chlorpyrifos with regard to the risk of chromosome aberration and DNA damage may apply to CHP-methyl, resulting in an unclear genotoxicity potential (see paragraph 46 above).

506 Thus, the experts and EFSA did not consider that the scientific studies relating to the genotoxicity of CHP-methyl communicated by the RMS should have a greater impact on their conclusions than all the other information relating to the genotoxicity of CHP-methyl. In accordance with the case-law and the provisions referred to in paragraph 501 above, they merely did not base the assessment of the risks associated with CHP-methyl solely on the tests and studies which the regulations required the applicant for renewal to submit, but also took account of all the relevant scientific literature available.

507 Moreover, in concluding that there was uncertainty as to the genotoxic risk despite the results of the tests and studies produced by the applicants for approval under Article 7(1)(e) and (f) of Implementing Regulation No 844/2012, the experts did not rely solely on the scientific studies relating to the genotoxicity of CHP-methyl communicated by the RMS. They also took into account the available publications on chlorpyrifos referred to in paragraph 502 above.

508 Lastly, contrary to what the applicants maintain, the experts took account of the limitations of the scientific studies relating to the genotoxicity of CHP-methyl (see paragraph 504 above).

509 Furthermore, it should be borne in mind that it is for the authorities responsible for the risk assessment to inform the Commission not only of the firm conclusions they have reached, but also of any remaining uncertainties (see paragraph 348 above), which is what the experts and EFSA did in the present case.

510 As a result, the applicants' argument must be rejected in so far as it concerns the alleged excessive weight which was given in the experts' assessment to scientific studies relating to the genotoxicity of CHP-methyl communicated by the RMS.

511 In the second place, the applicants criticise, more generally, the non-compliant nature of those two studies. They rely on an extract from the draft assessment report according to which the scientific studies in question had not been 'performed under [good laboratory practice]s' and had 'used new techniques which were not included in the standard guidelines'.

512 In that regard, first, it should be noted that, in the extract in question, the RMS states that, 'although both studies were not performed under [good laboratory practices] and they used new techniques which were not included in the standard guidelines, the concerns arising from these findings could not be discarded with the … studies [provided by the applicants for renewal], as [those studies] were not approp[r]iate to anal[y]se a wide range of types of DNA damage'.

513 As a result, it is not apparent from the extract relied on that the RMS considered that the two studies in question could not be taken into account in view of the methodological limitations that it noted.

514 Second, although the plea alleging infringement of the provisions of the REACH Regulation is ineffective in the present case (see paragraphs 463 to 467 above), the relevant provisions of that regulation may validly be taken into account, by way of indication, for the purposes of determining whether the Commission, in endorsing an EFSA assessment applying one of the two approaches, committed a manifest error of assessment.

515 It should be noted that the use of newly developed test methods is not excluded by Section 1.2 of Annex XI to the REACH Regulation, in which it is even envisaged that such methods may provide sufficient evidence to make it possible to conclude that a substance possesses a particular dangerous property or, on the contrary, that it does not.

516 Third, exploratory studies are regularly conducted with the specific aim of verifying a particular scientific hypothesis, with the result that they serve, in complementarity with standard studies, to identify the properties of the substances concerned. Therefore, an approach which, as a general rule, excludes the use of non-standard or exploratory studies would make it impossible to identify substances which pose a risk (see the case-law cited in paragraph 337 above).

517 As a result, the applicants' argument must also be rejected in so far as it concerns the non-compliant nature of the studies communicated by the RMS.

518 It follows from the considerations set out in paragraphs 500 to 517 above that the matters relied on by the applicants do not lead to the conclusion that manifestly incorrect use was made of the studies in question with the result that the assessments of EFSA and the Commission in that regard are devoid of any plausibility (see paragraph 416 above).

519 The second argument put forward by the applicant must therefore be rejected.

(3) Failure to have regard to the weight-of-evidence guidance

520 The applicants invoke several extracts from the weight-of-evidence guidance, which they allege were disregarded by EFSA.

521 In that regard, it should be noted that while, under Article 12 of Regulation No 1107/2009 and Article 13 of Implementing Regulation No 844/2012, EFSA participates in the evaluation of active substances, it is not competent to decide on the approval of those substances or on the renewal of that approval. Only the Commission, which, under Article 79(1) of Regulation No 1107/2009, is assisted by the standing committee, is competent to do that.

522 As a result, the reliance, in support of a claim for the annulment of a regulation such as the contested regulation, on an alleged failure to have regard to the guidelines adopted by EFSA, is, in principle, ineffective (see paragraphs 477 and 478 above).

523 However, in the present case, the Commission based its reasoning for the contested regulation on EFSA's assessment as set out in its two statements (see paragraph 269 above). As a result, any failure by EFSA to have regard to guidelines which it adopted for the purpose of providing a framework for the assessment it carries out of active substances would have an impact on the lawfulness of the grounds of the contested regulation.

524 It must therefore be determined whether the weight-of-evidence guidance constitutes guidelines.

525 The Court of Justice has held that guidelines set out rules of practice from which an institution may not depart in an individual case without giving reasons that are compatible with the principle of equal treatment. In adopting such rules of conduct and announcing by publishing them that they will henceforth apply to the cases to which they relate, the institution in question imposes a limit on the exercise of its discretion and cannot depart from those rules under pain of being found, where appropriate, to be in breach of the general principles of law, such as equal treatment or the protection of legitimate expectations (see the case-law cited in paragraph 161 above).

526 By virtue of the provisions of the second subparagraph of Article 12(2) of Regulation No 1107/2009 and the first subparagraph of Article 13(1) of Implementing Regulation No 844/2012, which provide that EFSA is to state in its conclusion whether the active substance in question can be expected to meet the approval criteria provided for in Article 4 of Regulation No 1107/2009, the scientific assessment of the risks entailed by the use of an active substance comes within EFSA's discretion (see paragraph 433 above), the exercise of which it may therefore decide to limit.

527 Moreover, contrary to the document entitled 'Read-Across Assessment Framework' (see paragraph 479 above), the weight-of-evidence guidance is liable, in so far as EFSA is its author, to impose on that authority obligations of a legal nature which an applicant could usefully rely on in a situation such as that in the present case, where the Commission based the reasoning for the contested regulation on EFSA's assessment.

528 Lastly, the weight-of-evidence guidance differs in another respect from the document entitled 'Read-Across Assessment Framework' (see paragraphs 481 and 482 above). In point 1.5 of the weight-of-evidence guidance, entitled 'Audience and degree of obligation', it is stated that the guidance is aimed at all those contributing to EFSA's assessments and provides a harmonised, but flexible, framework that is applicable to all areas of EFSA's work and all types of scientific assessment, including risk assessment. It is added that, in line with improving transparency, the Scientific Committee, which is the author of the weight-of-evidence guidance, considers the application of that guidance to be unconditional for EFSA.

529 Thus, by adopting such rules of conduct and announcing by publishing them, in August 2017, that they will henceforth apply to the cases to which they relate, EFSA imposed a limit on the exercise of its discretion (see the case-law cited in paragraph 161 above).

530 It follows from the foregoing that the weight-of-evidence guidance is liable to be binding on EFSA. That is the case of the provisions of those guidelines the wording of which indicates the existence of an obligation the application of which may be reviewed.

531 As a result, and having regard also to the considerations set out in paragraph 523 above, the argument alleging failure to have regard to the weight-of-evidence guidance may usefully be relied on in support of the applicants' claim for annulment.

532 However, Article 13 of Implementing Regulation No 844/2012 provides that EFSA is to adopt a conclusion using guidance documents 'applicable at the date of the submission of the supplementary dossiers'.

533 It is common ground that the supplementary dossiers in support of the application for renewal of the approval of CHP-methyl were submitted in July 2015, whereas the weight-of-evidence guidance was not published until August 2017 (see paragraph 487 above).

534 It follows from the foregoing that the weight-of-evidence guidance was not applicable to EFSA when it adopted the two statements or to the Commission when it adopted the contested regulation.

535 For this reason, the applicants cannot usefully rely on that guidance.

536 Even if the provision cited in paragraph 532 above were not applicable to the weight-of-evidence guidance, the application of that guidance only to applications for approval of chemical substances or for renewal of such approval made after the publication of that guidance is consistent with the principles of legal certainty and non-retroactivity.

537 As a general rule, the principle of legal certainty precludes an EU measure from taking effect from a point in time before its publication. It is true that it may exceptionally be otherwise, where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected (see, to that effect, judgment of 25 January 1979, *Racke*, 98/78, EU:C:1979:14, paragraph 20).

538 However, there is nothing in the file to suggest that those two conditions are met.

539 As a result, the applicants' third argument and the complaint as a whole relating to the challenge to the weight-of-evidence approach adopted by EFSA in its two statements and subsequently by the Commission in the contested regulation must, in any event, be rejected.

(d) New matters raised in the reply

540 The applicants invoke the study of 14 May 2020 (see paragraph 220 above). In their view, the results of that study lead to the conclusion that chlorpyrifos has no genotoxic potential and the same therefore applies to CHP-methyl. According to the applicants it must therefore be held that there has been a manifest error of assessment in that regard.

541 The applicants' argument relates to, first, the study of 14 May 2020 as such, second, the fact that that study was in progress during the course of the procedure for adoption of the contested regulation, third, the interim report relating to that study sent to EFSA on 30 April 2019 (see paragraph 186 above) and, fourth, other studies referred to in the study of 14 May 2020.

542 First, as regards the applicants' reliance on the study of 14 May 2020, which postdates the adoption of the contested regulation, it is sufficient to point out that it could not be taken into account, for the reasons set out in paragraphs 220 to 223 above.

543 Second, as regards the existence of an ongoing study, the results of which were not yet known during the procedure for the adoption of the contested regulation, that circumstance alone would suggest a possible manifest error of assessment vitiating the contested regulation only in so far as it would require the Commission to postpone the adoption of that regulation pending the availability of the results of that study.

544 Yet the applicants do not invoke any provision or principle which would require the Commission to postpone the adoption of a measure such as the contested regulation on the sole ground that a study is underway.

545 In that regard, it should be borne in mind that the Court of Justice, after noting that the provisions of Regulation No 1107/2009 are based on the precautionary principle and do not prevent the Commission from applying that principle where there is scientific uncertainty as to the risks to human health posed by active substances subject to review in accordance with Article 21 of that regulation, held that the precautionary principle did not require the adoption of a regulation withdrawing or amending the approval of an active substance to be deferred solely on the ground that studies are underway which may call into question the available scientific and technical data (judgment of 6 May 2021, *Bayer CropScience and Bayer* v *Commission*, C-499/18 P, EU:C:2021:367, paragraphs 79 and 82).

546 Such a solution adopted in the context of a procedure whereby the Commission may re-examine at any time the still valid approval of an active substance also applies in respect of, as in the present case, a procedure for the renewal of the approval of such a substance, which concerns the approval of an active substance whose period of validity has expired or is about to expire.

547 Third, as regards the interim report that was available to EFSA at the time it was carrying out the assessment of CHP-methyl, having regard to the factors set out in paragraphs 305 to 314 above, the existence of the interim report sent to EFSA on 30 April 2019 cannot lead to a finding of a manifest error of assessment on the part of EFSA, and subsequently the Commission, when they concluded that the genotoxic potential of CHP-methyl could not be ruled out (see paragraphs 266 to 268 above).

548 Fourth, as regards the applicants' reliance on three studies published by EFSA in 2013, 2016 and 2017, it is sufficient to note that those studies have been declared inadmissible (see paragraph 85 above).

549 The complaint relating to the new matters relied on by the applicants in the reply should therefore be dismissed in its entirety.

550 In the light of the considerations set out in paragraphs 417 to 549 above, it is necessary to conclude that it is not apparent that the risk approach adopted by the Commission in the contested regulation concerning the genotoxicity of CHP-methyl is based on assessments which are devoid of any plausibility (see paragraph 416 above). The complaint relating to the genotoxic potential of CHP-methyl should therefore be rejected in its entirety.

3. Developmental neurotoxicity

551 The applicants claim that the Commission, following EFSA, was wrong to rely on three scientific studies referred to in the statement of 8 November 2019 in order to conclude that there were 'concerns … concerning developmental neurotoxicity' of CHP-methyl.

552 They state that the studies in question are not directly related to CHP-methyl. They dispute the link which EFSA finds between exposure to CHP-methyl and the adverse health effects identified in those studies. In that regard, they rely on a footnote in the statement of 8 November 2019

which, in their view, calls into question the consideration of exposure to CHP-methyl in those studies. They also claim that CHP-methyl was not used in the region where one of those studies was carried out.

553 The applicants also dispute the reliability and relevance of three other studies referred to by EFSA in the statement of 8 November 2019.

554 In addition, they state, as they did in relation to genotoxicity (see paragraph 475 above), that the Commission used the read-across approach between all organophosphate pesticides and CHP-methyl without providing a hypothesis for that use and justification.

555 As a preliminary point, it is appropriate to reiterate the factors on which the Commission relied in order to conclude, in the contested regulation, that there were 'concerns …. concerning [the] developmental neurotoxicity' of CHP-methyl.

556 In that regard, the Commission stated, in recital 10 of the contested regulation, that the concerns regarding the developmental neurotoxicity of CHP-methyl were supported by 'epidemiological evidence … showing an association between exposure to chlorpyrifos and/or [CHP]-methyl during development and adverse neurodevelopmental outcomes in children'.

557 Furthermore, as stated in paragraph 269 above, the Commission based its reasoning for the contested regulation on the two EFSA statements and, in particular, on the statement of 8 November 2019, the content of which it reproduced.

558 In the statement of 8 November 2019, EFSA relied on three factors in order to reach the conclusion that there were concerns regarding the developmental neurotoxicity of CHP-methyl. They are, first, the alleged shortcomings of the study on developmental neurotoxicity (see paragraph 21 above), second, three scientific studies that reveal a link between exposure to chlorpyrifos or CHP-methyl or more generally organophosphate insecticides and adverse effects on the neurological development of children and, third, other scientific studies which also contribute to demonstrating the developmental neurotoxicity of CHP-methyl.

559 It must therefore be determined to what extent the arguments relied on by the applicants are capable of calling into question EFSA's decision to rely on the three elements mentioned in paragraph 558 above in order to conclude that there are concerns regarding the developmental neurotoxicity of CHP-methyl.

560 With regard to the first factors referred to in paragraph 558 above, namely the developmental neurotoxicity study, which concerned rats, it is mentioned in the statement of 8 November 2019 that the cerebellum height of pups could not be evaluated since only three control samples in females were available on post-natal day 72. Given that statistical weakness, no reliable analysis could be performed. The experts then agreed that the insufficient data related to cerebellum height should be regarded as an important deficiency, since a study on chlorpyrifos showed a reduction in cerebellum height during exposure to that substance. In addition, it is stated in the same statement that a 'no observed adverse effect level', that is to say the highest dose at which there was not an observed toxic or adverse effect, could not be set.

561 In that regard, the applicants merely rely on a lack of comparability between the study on developmental neurotoxicity and the study on chlorpyrifos which is also referred to in the statement of 8 November 2019 (see paragraph 560 above). In support of this argument, they rely on the fact that a period of more than 15 years had elapsed between the two studies and on the fact that 10 times higher dose levels were applied in the developmental neurotoxicity study.

562 However, such factors and, more generally, the argument based on the lack of comparability between the two studies in question are not capable of calling into question, as such, either the finding made by EFSA as to the lack of intrinsic reliability of the study on developmental neurotoxicity or the finding as to the appearance of a reduction in the height of the cerebellum on exposure to chlorpyrifos emerging from the study relating to that substance. Indeed, those findings constitute the terms of the comparison and the applicants' argument relates solely to the relationship between those terms (see paragraphs 560 and 561 above).

563 Yet those two findings are sufficient for the existence of uncertainty as to the presence of a developmental neurotoxicity risk linked to the use of CHP-methyl not to be ruled out.

564 In those circumstances, having regard to the considerations set out in paragraph 413 above, the arguments put forward by the applicants do not make it possible to consider manifestly erroneous the experts' conclusion that, since a study on chlorpyrifos showed a reduction in the height of the cerebellum on exposure to that substance, the insufficient data relating to the height of the cerebellum had to be regarded as an important deficiency in the study on developmental neurotoxicity.

565 Indeed, the applicants point out that it would have been possible to request an additional study concerning CHP-methyl in order to assess the effect of that substance on the height of the cerebellum.

566 However, it should be borne in mind that, in the case of an application for renewal of the approval of an active substance, it is for the applicant for renewal to produce all of the items set out in Article 7 of Implementing Regulation No 844/2012 in order to prove that the substance in question satisfies the conditions laid down in Article 4 of Regulation No 1107/2009 (see paragraph 410 above).

567 Therefore, the statistical weakness of a study submitted by the applicant for renewal cannot lead to a finding that EFSA carried out an inadequate assessment of the substance in question.

568 In addition, while the provisions of Article 13(3) of Implementing Regulation No 844/2012 allow EFSA to request additional information from the applicant for renewal, they leave a certain amount of discretion to that authority. Indeed, that provision provides that EFSA is to request additional information from the applicant for renewal 'where [it] considers [it] is necessary'.

569 Accordingly, by merely stating that the authorities 'could have' requested an additional specific study and that they 'had a choice', the applicants do not demonstrate a manifest error of assessment.

570 As regards the second factor referred to in paragraph 558 above, consisting of the three scientific studies cited in the statement of 8 November 2019, according to EFSA, those studies showed that prenatal exposure to organophosphate insecticides, which included CHP-methyl, produced a consistent pattern of early cognitive and behavioural deficits.

571 It should be noted that those studies were thus based on a correlation between exposure to organophosphate insecticides in the human populations studied and negative effects on the health of the members of those populations.

572 The applicants dispute one of the elements of that correlation, namely the exposure to CHP-methyl of the human populations studied.

573 In this regard, it should be borne in mind that, under Article 3(32) of Regulation No 1107/2009, a metabolite is a degradation product of an active substance that is formed either in organisms or in the environment.

574 Although the three scientific studies referred to in paragraph 570 above do not specifically concern exposure to CHP-methyl, in two of them a metabolite of both CHP-methyl and chlorpyrifos was measured in maternal urine within the population studied.

575 It is true that, as is apparent from a footnote to the statement of 8 November 2019, it is possible that a significant proportion of that metabolite present in urine samples resulted from direct intake of that metabolite, preformed in the environment, and not as a result of ingestion of CHP-methyl or chlorpyrifos. However, the footnote in question does not rule out the possibility that the presence of this metabolite in the urine is due, at least in part, to such ingestion.

576 Similarly, the fact that CHP-methyl was not used for agricultural purposes in the region in which one of the studies took place or that, in that region, there was an 'additional burden of precursor pesticide exposure compared with the national sample', does not lead to the conclusion that the subjects studied were not exposed to CHP-methyl. The applicants have not provided any evidence to exclude the possibility that food is a significant source of exposure to this substance for the population studied.

577 Moreover, the three scientific studies referred to in paragraph 570 above also took into account the presence in maternal or child urine of other metabolites which, even if they are not specific to organophosphate insecticides, may be produced from their degradation. The presence of these other metabolites, noted in those studies, therefore supports the existence of exposure of the populations studied to organophosphate insecticides and therefore of a correlation between that exposure and the early cognitive and behavioural deficits observed.

578 In the light of the considerations set out in paragraphs 570 to 577 above, the arguments put forward by the applicants do not lead to the conclusion that the finding that the results set out in the three scientific studies referred to in paragraph 570 above contribute to raising concerns about the developmental neurotoxicity of CHP-methyl by showing that prenatal exposure to organophosphate insecticides correlate with the presence of early cognitive and behavioural deficits is manifestly erroneous.

579 As regards the third factor referred to in paragraph 558 above, consisting of the three additional scientific studies which also helped to demonstrate the developmental neurotoxicity of CHP-methyl, those studies, as the applicants maintain, do not relate specifically to CHP-methyl, but to organophosphate insecticides. However, that fact alone does not invalidate the conclusion that the results of those studies support the existence of a link between exposure to organophosphate insecticides, of which CHP-methyl is one, and the risk of developmental neurotoxicity.

580 Those studies therefore constitute corroborating evidence adding to the other two factors already taken into account by EFSA in order to reach the conclusion that there were concerns regarding the developmental neurotoxicity of CHP-methyl.

581 It should be added, with regard to the last two factors referred to in paragraph 558 above, that the Commission rightly emphasised that the applicants had not adduced any evidence capable of supporting the implied premiss on which they based their argument, namely that CHP-methyl constituted an exception to the link observed between exposure to organophosphate insecticides and the existence of early cognitive and behavioural deficits.

582 It follows from all the considerations set out in paragraphs 555 to 581 above that it cannot be concluded, as regards the developmental neurotoxicity of CHP-methyl, that the statement of 8 November 2019 and, consequently, the contested regulation, the reasoning for which is based, in particular, on the assessment contained in that statement, are based on assessments which lack any plausibility (see paragraph 416 above).

583 Furthermore, even if the applicants could be regarded as arguing that it is impossible to apply the read-across approach in relation to the developmental neurotoxicity of CHP-methyl, the only specific argument put forward by the applicants is the absence of any mention of a hypothesis, accompanied by the necessary justification, on which the application of that approach is based.

584 Such an argument, which is based implicitly but necessarily on the invocation of provisions of the ECHA document, can be rejected on the basis of the considerations set out in paragraphs 476 to 483 above.

585 Moreover, that absence of any mention of a hypothesis and the alleged absence of any 'cogent explanation' produced by EFSA or the Commission regarding the application of the read-across approach cannot render implausible the finding that there are concerns about the developmental neurotoxicity of CHP-methyl, since that finding is based on three factors which have not been validly called into question by the applicants.

586 It follows from all the foregoing that the present complaint must be rejected in its entirety.

4. Classification as toxic for reproduction, category 1B

587 The applicants claim that EFSA's recommendations for classifying an active substance as toxic under Regulation No 1272/2008 do not, in general, lead to such classification. Thus, CHP-methyl was not, subsequently, classified as toxic for reproduction, category 1B. That was also the case for other active substances for which EFSA had proposed such classification.

588 Furthermore, according to the applicants, the read-across approach was applied unlawfully and inappropriately, and EFSA itself expressed reservations in this regard.

589 It should be borne in mind in that regard that, in the contested regulation, the Commission, in refusing to renew the approval of CHP-methyl, relied on three grounds, namely, first, the fact that 'a genotoxic potential of [CHP]-methyl cannot be ruled out', second, that 'concerns were identified concerning [its] developmental neurotoxicity' and, third, that 'it may be appropriate to classify [CHP]-methyl as toxic for reproduction, category 1B' (see paragraph 267 above).

590 Yet the applicants' complaint relates only to the third ground relied on by the Commission in the contested regulation.

591 Where some of the grounds in a decision on their own provide a sufficient legal basis for the decision, any errors in the other grounds of the decision have no effect on its operative part. Moreover, where the operative part of a Commission decision is based on several pillars of reasoning, each of which would in itself be sufficient to justify that operative part, that decision should, in principle, be annulled by the Court only if each of those pillars is vitiated by an illegality. In such a case, an error or other illegality which affects only one of the pillars of reasoning cannot be sufficient to justify annulment of the decision at issue because that error could not have had a decisive effect on the operative part adopted by the Commission (see judgment of 14 December 2005, *General Electric* v *Commission*, T-210/01, EU:T:2005:456, paragraphs 42 and 43 and the case-law cited).

592 In the present case, the facts that 'a genotoxic potential of [CHP]-methyl cannot be ruled out' and that 'concerns were identified concerning [its] developmental neurotoxicity' are grounds that were not validly challenged by the applicants in the context of the objections specifically directed against them (see paragraphs 417 to 586 above). Those grounds, taken together, are such as to justify to the requisite legal standard the adoption of the contested regulation.

593 In order for an application for renewal to be rejected, that is to say for a measure to be adopted which both restricts the rights of the producer applying for renewal of the approval of an active substance and protects health, it is sufficient, as in the present case, for a mere uncertainty as to the presence of a risk to health to be identified (see paragraph 413 above).

594 Moreover, the third ground, that it 'may be appropriate' to classify CHP-methyl as toxic for reproduction, category 1B, was considered by the Commission itself to be a ground included for the sake of completeness, since it was mentioned only in the third place, was introduced by the expression 'moreover' and was presented as being based on a hypothetical classification of CHP-methyl as toxic for reproduction, category 1B (see paragraph 54 above).

595 As a result, any error rendering the third ground unlawful would not affect the operative part of the Commission's decision.

596 It follows from all the foregoing that the present complaint must be rejected as ineffective (see, to that effect, judgment of 17 March 2021, *FMC* v *Commission*, T-719/17, EU:T:2021:143, paragraphs 35, 147 and 148).

597 The plea alleging a manifest error of assessment on the part of the Commission in relying on the risk assessment carried out by EFSA must therefore be rejected in its entirety.

J. The eighth plea in law, alleging a manifest error of assessment and infringement of the principle of proportionality

598 The applicants claim that the contested regulation infringes the principle of proportionality since an alternative measure renewing the approval of CHP-methyl subject to the submission of confirmatory information was conceivable.

599 The applicants rely on three arguments, namely that the 'regulatory data' were complete, that the RMS did not conclude that the renewal of the approval of CHP-methyl should be refused and, lastly, that Ascenza proposed clarifying the uncertainties identified during the procedure which led to the adoption of the contested regulation.

600 They invoke, first of all, the fact that concerns about the genotoxicity of CHP-methyl were raised only at a late stage in the procedure, next, the study of 14 May 2020 and, lastly, the provisions of point 3.6.4 of Annex II to Regulation No 1107/2009 (see paragraph 11 above).

601 They also refer to arguments which they put forward in support of other pleas which were examined and rejected above, such as infringement of the transparency requirement and the manifest error of assessment as regards the risk assessment adopted by EFSA and subsequently by the Commission.

602 It should be borne in mind that, in the event that the Commission comes to the conclusion that, in the light of all the evidence available to it, the applicant has not established to the required standard that the conditions governing the approval or authorisation applied for are satisfied, it is bound to decide that the application should be rejected, there being no need, in order to reach that a conclusion, to undertake a second assessment (judgment of 1 October 2019, *Blaise and Others*, C-616/17, EU:C:2019:800, paragraph 95).

603 In such an event, since the Commission is bound to reject the application in question, the plea alleging that the measure it adopted is disproportionate is ineffective.

604 In the present case, the Commission concluded that the applicants for renewal had not sufficiently established that the conditions to which the renewal of the approval of CHP-methyl were subject were satisfied.

605 Such a conclusion has not been validly challenged by the applicants (see paragraph 597 above).

606 As a result, the applicants cannot usefully rely on the possibility for the Commission to adopt a less restrictive alternative measure.

607 Moreover, even if the discretion the Commission enjoys as manager of the risks identified during the scientific assessment were taken into account, the set of circumstances relied on by the applicants (see paragraphs 598 to 601 above) are not sufficient to lead to the conclusion that the Commission, in choosing not to renew the approval of CHP-methyl rather than renewing that approval subject to the submission of confirmatory data, committed a manifest error of assessment.

608 It is true that Article 6(f) of Regulation No 1107/2009 provides that approval of a substance may be subject to conditions and restrictions such as the submission of further confirmatory information to Member States, the Commission and EFSA, where 'new requirements are established during the evaluation process or as a result of new scientific and technical knowledge'.

609 However, the aforementioned provisions leave the Commission a wide margin of discretion, since they do not require it to grant approval subject to conditions and restrictions rather than to refuse approval or its renewal.

610 Moreover, it should be borne in mind that, according to settled case-law, in an action for annulment under Article 263 TFEU, the lawfulness of the contested measure must be assessed on the basis of the facts and the law as they stood at the time the measure was adopted (see paragraph 221 above).

611 As a result, the study of 14 May 2020, invoked by the applicants, cannot be taken into account, since it postdates the adoption of the contested regulation (see paragraphs 222 and 223 above).

612 As regards the interim report relating to that study, which predates the adoption of the contested regulation, and the information that a study was in progress during the procedure for the adoption of the contested regulation, in the light of the considerations set out in paragraphs 305 to 314 above, those factors cannot lead to a finding of a manifest error of assessment on the part of EFSA, and subsequently on the part of the Commission, when they concluded that the genotoxic potential of CHP-methyl could not be ruled out.

613 Furthermore, the study of 14 May 2020 is unrelated to the second ground relied on by the Commission in the contested regulation, which is based on concerns about the developmental neurotoxicity of CHP-methyl.

614 Accordingly, it cannot be concluded from the foregoing that the Commission committed a manifest error of assessment when it decided not to renew the approval of CHP-methyl rather than renewing that approval subject to the submission of confirmatory information.

615 Moreover, none of the other arguments relied on by the applicants (see paragraphs 599 to 601 above) is relevant for the purposes of establishing, first, that the conditions laid down in Article 6(f) of Regulation No 1107/2009 are fulfilled and, second, that the Commission committed a manifest error of assessment by not renewing the approval of CHP-methyl subject to the submission of confirmatory information.

616 Furthermore, those arguments are unfounded.

617 First, the fact that the tests and studies submitted by the applicants for renewal concerning CHP-methyl had not raised any concerns does not lead to the conclusion that the assessment of the risks involved in the use of that active substance had been definitively carried out (see paragraph 386 above).

618 Second, as is apparent from paragraph 280 above, a sufficient divergence between the draft assessment report and EFSA's conclusion has not been established in the present case.

619 Third, the fact that Ascenza proposed to clarify the uncertainties identified during the procedure leading to the adoption of the contested regulation does not establish a manifest error of assessment.

620 In that regard, by merely stating that the authorities 'could have' requested an additional specific study and that they 'had a choice', the applicants do not demonstrate that there has been an infringement of Article 13(3) of Implementing Regulation No 844/2012 (see paragraphs 568 and 569 above) or of the principle of proportionality.

621 Fourth, the fact that it was not until after the expert consultations held in April 2019 (see paragraph 24 above) that EFSA raised in the statement of 31 July 2019 concerns with respect to human health (see paragraphs 28 to 33 above) does not lead to the conclusion that there has been a manifest error of assessment.

622 That is all the more the case given that the applicable provisions provide that, on the basis, inter alia, as in the present case, of the results of a consultation of experts, EFSA is entitled to raise new objections to the renewal of the approval of the active substance in question when it is preparing its conclusion (see paragraphs 206 to 207 above), that is to say in a phase subsequent to that in which it may, together with the Member States other than the rapporteur Member State and the public, submit comments on the draft assessment report.

623 Furthermore, with regard to the ground of the contested regulation relating to developmental neurotoxicity, it should be borne in mind that, when the draft assessment report was made available, as of 18 October 2017, criticism had already been expressed by members of the public with regard to the study on developmental neurotoxicity (see paragraph 21 above).

624 Fifth, the applicants rely on the provisions of point 3.6.4 of Annex II to Regulation No 1107/2009.

625 In that regard, it should be borne in mind that, under those provisions, an active substance is to be approved only if it is not or has not to be classified as toxic for reproduction category 1A or 1B in accordance with the provisions of Regulation No 1272/2008, unless the exposure of humans to that active substance, under realistic proposed conditions of use, is negligible (see paragraph 11 above).

626 The applicants submit that, in view of the 'reservation' thus provided for by that provision, the finding that the condition, laid down by that provision, that the substance at issue is classified or must be classified as toxic for reproduction, category 1B, is fulfilled is not sufficient to preclude approval or renewal of approval of the substance at issue.

627 It should be noted, however, that the applicants' argument is directed against the second ground of the contested regulation, which is based on the 'concerns … identified concerning [the] developmental neurotoxicity' of CHP-methyl.

628 That ground does not relate to the criterion based on the possibility of classifying CHP-methyl as toxic for reproduction category 1A or 1B in accordance with the provisions of Regulation No 1272/2008, but to the existence of concerns as to the developmental neurotoxicity of the substance in question.

629 That argument must therefore be rejected as ineffective.

630 It follows from all the considerations set out in paragraphs 607 to 629 above that the applicants have not, in any event, established that the contested regulation is manifestly disproportionate.

631 The present plea must therefore be rejected.

K. The tenth plea in law, alleging breach of the obligation to state reasons for the application of the read-across approach

632 ECCA claims that the Commission is under an enhanced obligation to state reasons on account of the fact that, following EFSA, it relied on the read-across approach with regard to the genotoxicity of CHP-methyl.

633 ECCA adds that there is a contradiction within the statement of 8 November 2019 in that several differences between CHP-methyl and chlorpyrifos are identified.

634 Furthermore, ECCA states that, during the procedure leading to the adoption of the contested regulation, Ascenza put forward detailed arguments as to why the use of the read-across approach was unlawful.

635 ECCA relies, lastly, on the fact that the Commission, for the first time, had reduced the length of the procedure for examining a renewal application by requesting EFSA to submit statements. It should therefore have given more detailed reasons for the requests made to EFSA in that regard.

636 The applicants submit that the Commission did not sufficiently set out the extent to which the read-across approach was applicable to chlorpyrifos and CHP-methyl.

637 They also claim that insufficient reasons were given in respect of its decision to request EFSA to submit statements.

638 They add that the Commission failed to give adequate reasons for its decision to assign more weight to three non-compliant studies than to the 'regulatory data' (see paragraphs 365 to 374 above).

639 In that regard, it should be noted as a preliminary point that, although ECCA invokes an obligation on the part of the Commission to provide an 'enhanced statement of reasons', the application of such an obligation in a situation such as that in the present case does not follow either from the applicable legislation or from the case-law.

640 Moreover, reference must be made to the case-law cited in paragraphs 263 and 264 above, in the light of which the present plea must be examined.

641 In the present case, in the words of recital 10 of the contested regulation:

'… A genotoxic potential of [CHP]-methyl cannot be ruled out, when taking into account the concerns raised for chlorpyrifos and the available scientific open literature on [CHP]-methyl in a weight of evidence approach. During the peer review, experts considered a read-across approach between the two substances justified as they are structurally similar and have similar toxicokinetic behaviour. Consequently, it is not possible to establish health-based reference values for [CHP]-methyl and to conduct the relevant consumer and non-dietary risk assessments …'

642 In examining the statement of reasons given for the contested regulation, account should also be taken of the two EFSA statements, in particular the statement of 8 November 2019, the content of which the Commission specifically reproduced in recital 10 of the contested regulation (see paragraphs 269 and 270 above).

643 However, that statement states, with regard to the experts' meeting held in April 2019 (see paragraph 24 above), that the experts discussed the structural similarity between the two molecules and agreed to apply the read-across approach. With regard to the experts' meeting held in September 2019 (see paragraph 37 above), which dealt, inter alia, with the possibility of applying the read-across approach (see paragraph 28 above), it is stated that the experts took into account the differences between the two substances in question that they had identified in the part of the statement of 8 November 2019 dealing with mammalian toxicity and that they considered that those differences would not justify, in view of the molecular structure of those substances, a difference in their genotoxic potential (see paragraphs 451 to 457 above).

644 In the light of the considerations set out in paragraphs 641 to 643 above, it must be concluded, contrary to what ECCA and the applicants maintain, that the statement of reasons provided in the contested regulation is sufficiently detailed as to the reasons the read-across approach was applied.

645 It should be added, first, that, contrary to what ECCA maintains (see paragraph 633 above), there is no contradiction within the statement of 8 November 2019, since EFSA stated that the experts had concluded that it was possible to apply the read-across approach for CHP-methyl and chlorpyrifos despite the differences between the two substances that they had previously identified.

646 Second, with regard to the complaint raised by ECCA concerning the detailed arguments as to why the use of the read-across approach was unlawful, which Ascenza put forward during the procedure leading to the adoption of the contested regulation (see paragraph 634 above), it must be borne in mind that, under Article 21 of the Statute of the Court of Justice of the European Union and Article 76 of the Rules of Procedure of the General Court, an application must indicate the subject matter of the proceedings and include a brief statement of the grounds relied on. The information given must be sufficiently clear and precise to enable the defendant to prepare its defence and the General Court to decide the case, if appropriate without any other further supporting information (judgment of 30 January 2007, *France Télécom* v *Commission*, T-340/03, EU:T:2007:22, paragraph 166).

647 It should also be borne in mind that, even though the body of the application may be supported and supplemented, in regard to specific points, by references to extracts of documents appended thereto, the annexes have a purely evidential and instrumental function. They cannot therefore serve as a basis for developing a plea set out in summary form in the application by putting forward complaints or arguments which are not contained in that application. The applicant must indicate in its application the specific complaints on which the Court is asked to rule and, at the very least in summary form, the legal and factual particulars on which those complaints are based (judgment of 30 January 2007, *France Télécom* v *Commission*, T-340/03, EU:T:2007:22, paragraph 167).

648 Yet in the present case, ECCA, in its written pleadings, merely refers to a set of annexes to the application and emphasises the 'relevance and importance of [the] arguments' contained therein without providing the slightest detail as to those arguments.

649 As a result, the complaint referred to in paragraph 646 above must be rejected as inadmissible.

650 Third, with regard to the reasoning given in respect of the Commission requesting EFSA to issue statements (see paragraph 637 above), it should be noted that, in the present case, the claim for annulment submitted by the applicants does not relate to those statements but to the contested regulation. Besides, the applicants do not invoke a plea of illegality in their regard. As a result, a complaint such as the present one, which alleges a defect inherent in the statements, must be regarded as ineffective.

651 As regards the reasoning for the contested regulation itself, in so far as it concerns the requests in question, it should be borne in mind that, in recital 9 of the contested regulation, the Commission stated as follows:

'[EFSA] organised an expert discussion in April 2019, to discuss certain elements related to the human health risk assessment. Due to concerns about genotoxicity and developmental neurotoxicity raised during that discussion, on 1 July 2019 the Commission sent a mandate to [EFSA] requesting a statement on the available outcomes of the human health assessment and an indication whether the active substance can be expected to meet the approval criteria which are applicable to human health as laid down in Article 4 of Regulation (EC) No 1107/2009.'

652 In the light of the case-law cited in paragraphs 263 and 264 above, the Commission did not need to set out in greater detail than it did in recital 9 of the contested regulation the reasons why it had made the requests in question during the procedure for the adoption of that regulation.

653 Fourth, with regard to the reasoning relating to the allegedly greater weight given to the additional studies provided by the RMS during the second expert consultation held in September 2019 rather than to the 'regulatory data' (see paragraph 638 above), as follows from the considerations set out in paragraph 506 above, such an argument has no basis in fact.

654 It follows from the considerations set out in paragraphs 639 to 653 above that it is necessary to reject the present plea, put forward by ECCA, without there being any need first to rule on its admissibility.

655 The action must therefore be dismissed in its entirety.

Costs

656 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 applicants have been unsuccessful, they must be ordered to pay the costs, including the costs of the proceedings for interim relief, in accordance with the forms of order sought by the Commission and HEAL.

657 Under Article 138(1) of the Rules of Procedure, Member States which have intervened in the proceedings are to bear their own costs. Consequently, the Kingdom of Denmark and the French Republic must be ordered to bear their own costs.

658 Under Article 138(3) of the Rules of Procedure, the Court may order an intervener other than those referred to in paragraphs 1 and 2 of that article to bear its own costs. In the present case, ECCA, intervener in support of the form of order sought by the applicants, must be ordered to bear its own costs.

On those grounds,

THE GENERAL COURT (Seventh Chamber, Extended Composition)

hereby:

1. **Dismisses the action;**

2. **Orders Ascenza Agro, SA and Industrias Afrasa, SA, to bear their own costs, to pay those incurred by the European Commission, including those relating to the proceedings for interim measures, and to pay the costs incurred by the Health and Environment Alliance (HEAL);**

3. **Orders the Kingdom of Denmark, the French Republic and the European Crop Care Association (ECCA) to bear their own costs.**

da Silva Passos Reine Truchot

Delivered in open court in Luxembourg on 4 October 2023.

V. Di Bucci
Registrar

M. van der Woude
President