



## Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

13 March 2018\*

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

In Case C-384/16 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 11 July 2016,

**European Union Copper Task Force**, established in Essex (United Kingdom), represented by C. Fernández Vicién, C. Vila Gisbert, I. Moreno-Tapia Rivas, abogadas, and by M. Miserendino, abogado,

appellant,

the other party to the proceedings being:

**European Commission**, represented by A. Lewis and P. Ondrůšek, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, T. von Danwitz, J.L. da Cruz Vilaça, A. Rosas, C.G. Fernlund and C. Vajda, Presidents of Chambers, C. Toader, M. Safjan, D. Šváby, M. Berger, A. Prechal, E. Jarašiūnas and E. Regan (Rapporteur), Judges,

Advocate General: M. Wathelet,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 6 June 2017,

after hearing the Opinion of the Advocate General at the sitting on 6 September 2017,

gives the following

\* Language of the case: English.

## Judgment

- 1 By its appeal, the appellant, European Union Copper Task Force, seeks the annulment of the order of the General Court of the European Union of 27 April 2016, *European Union Copper Task Force v Commission* (T-310/15, not published, ‘the order under appeal’, EU:T:2016:265), by which the General Court rejected as inadmissible its action seeking the partial annulment of Commission Implementing Regulation (EU) 2015/408 of 11 March 2015 on implementing Article 80(7) of Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market and establishing a list of candidates for substitution (OJ 2015 L 67, p. 18) (‘the regulation at issue’).

### Legal context

#### *Directive 91/414*

- 2 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), as last amended by Commission Directive 2011/34/EU of 8 March 2011 (OJ 2011 L 62, p. 27) (‘Directive 91/414’), provided, in Annex I, a list of active substances the inclusion of which was authorised in plant protection products.
- 3 In accordance with Article 1 and the Annex to Commission Directive 2009/37/EC of 23 April 2009 amending Council Directive 91/414/EEC to include chlormequat, copper compounds, propaquizafop, quizalofop-P, teflubenzuron and zeta-cypermethrin as active substances (OJ 2009 L 104, p. 23), the list in Annex I to Directive 91/414 was amended to add, inter alia, copper compounds.

#### *Regulation (EC) No 1107/2009*

- 4 Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ 2009 L 309, p. 1), provides, in Article 14, entitled ‘Renewal of approval’, which is in subsection 3, entitled ‘Renewal and review’, of Section 1, entitled ‘Active substances’ of Chapter II of that regulation, entitled ‘Active substances, safeners, synergists and co-formulants’:

‘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.

...

2. The renewal of the approval shall be for a period not exceeding 15 years. ...’

- 5 Article 20, entitled ‘Renewal Regulation’, which is also in subsection 3 of Regulation No 1107/2009 is worded as follows:

‘1. A Regulation shall be adopted in accordance with the regulatory procedure referred to in Article 79(3), providing that:

- (a) the approval of an active substance is renewed, subject to conditions and restrictions where appropriate; or
- (b) the approval of an active substance is not renewed.

...'

- 6 Article 24, entitled 'Candidates for substitution', which is in subsection 4, entitled 'Derogations', of Section 1 of Chapter II of Regulation No 1107/2009, provides:

'1. ... By way of derogation from Article 14(2), the approval may be renewed once or more for periods not exceeding seven years.

2. Without prejudice to paragraph 1, Articles 4 to 21 shall apply. Candidates for substitution shall be listed separately in the Regulation referred to in Article 13(4).'

- 7 Article 41, entitled 'Authorisation', which is in subsection 3, entitled 'Mutual recognition of authorisations', of Section 1, entitled 'Authorisation', of Chapter III of that regulation, entitled 'Plant protection products', provides as follows:

'1. The Member State to which an application under Article 40 is submitted shall, having examined the application and the accompanying documents referred to in Article 42(1), as appropriate with regard to the circumstances in its territory, authorise the plant protection product concerned under the same conditions as the Member State examining the application, except where Article 36(3) applies.

2. By way of derogation from paragraph 1, the Member State may authorise the plant protection product where:

...

(b) it contains a candidate of substitution;

...'

- 8 Article 50, entitled 'Comparative assessment of plant protection products containing candidates for substitution', which is in subsection 5, entitled 'Special cases', of Section 1 of Chapter III of the regulation provides:

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

...

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

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

...'

- 9 Article 80, entitled ‘Transitional measures’, which is in Chapter XI of the same regulation entitled ‘Transitional and final provisions’, provides, in paragraph 7:

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

### ***Implementing regulations***

#### *Implementing Regulation (EU) No 540/2011*

- 10 According to recital 1 and Article 1 of 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), active substances included in Annex I to Directive 91/414 are to be deemed to have been approved under Regulation No 1107/2009.

#### *Implementing Regulation (EU) No 2015/232*

- 11 Recital 8 of Commission Implementing Regulation (EU) 2015/232 of 13 February 2015 amending and correcting Implementing Regulation No 540/2011 as regards the conditions of approval of the active substance copper compounds (OJ 2015 L 39, p. 7) is worded as follows:

‘It is confirmed that the active substance copper compounds is to be deemed to have been approved under [Regulation No 1107/2009]. ...’

#### *The regulation at issue*

- 12 Article 1 of the regulation at issue, entitled ‘Candidates for substitution’, is worded as follows:

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

...’

- 13 The list in the annex to that regulation includes ‘copper compounds (variants copper hydroxide, copper oxychloride, copper oxide, Bordeaux mixture and tribasic copper sulphate)’.

### **The proceedings before the General Court and the order under appeal**

- 14 By application lodged at the Registry of the General Court on 5 June 2015, the appellant, an association of producers of copper compounds, some of which are holders of marketing authorisations for plant protection products containing copper compounds, commenced an action for the partial annulment of the regulation at issue.

- 15 By the order under appeal, the General Court dismissed that action as inadmissible, on the grounds, first, that the appellant could not prove an interest of its own and, second, that its members did not have standing to bring proceedings. In the latter regard, the General Court held, in the first place, that the appellant’s members were not individually concerned by the regulation at issue and, in the second place, that that regulation was a regulatory act that entailed with regard to its members implementing

measures within the meaning of the final limb of the fourth paragraph of Article 263 TFEU. The General Court also dismissed the appellant's argument that, if its action were rejected as inadmissible, it would be denied effective judicial protection.

### **Forms of order sought**

- 16 By its appeal, the appellant claims that the Court should:
- set aside the order under appeal;
  - declare its action for annulment brought against the regulation at issue to be admissible;
  - refer the case back to the General Court for judgment; and
  - order the Commission to pay the costs relating to the appeal proceedings.
- 17 The Commission asks the Court to dismiss the appeal and order the appellant to pay the costs.

### **The appeal**

#### *The first ground of appeal*

##### *Arguments of the parties*

- 18 By its first ground of appeal, the appellant contests paragraphs 42 to 44, 46 to 48, 50 to 52, 60 and 61 of the order under appeal and criticises the General Court for having concluded that the regulation at issue entails implementing measures within the meaning of the final limb of the fourth paragraph of Article 263 TFEU.
- 19 According to the appellant, in order to assess whether a regulatory act entails implementing measures it is necessary to assess it by reference to, first, the position of the person pleading the right to bring proceedings under the fourth paragraph of Article 263 TFEU and, second, the subject matter of the action. In the latter regard, in the event that an applicant seeks only the partial annulment of an act, it is appropriate to take into consideration solely any implementing measures of the part of the act of which annulment is sought.
- 20 As regards, first, the position of the appellant, the latter was, before the Commission during the procedure for the inclusion of copper compounds in Annex I to Directive 91/414, the only representative of all the producers of copper compounds used in plant protection products operating in the European Union.
- 21 As regards, second, the subject matter of the action brought before the General Court, the appellant recalls that it sought the partial annulment of the regulation at issue in so far as it includes copper compounds in the list of candidates for substitution, thus submitting them to the regime applicable to such substances laid down in Regulation No 1107/2009. The appellant also raised the plea of the illegality of certain provisions of that regulation.
- 22 According to the appellant, the order under appeal, in particular in paragraphs 26, 38 and 39, contains too short a description of the subject matter of the action which is based on an equally limited description of the regulation at issue. The purpose of the latter is not only to establish a list of candidates for substitution, but also to subject those substances to the substantive provisions

contained in Regulation No 1107/2009, which is, according to the appellant, an immediate and direct effect of the application of the regulation at issue and does not require any implementing measure. In other words, that regulation would produce, by itself, in a manner which is both definite and immediate, concrete effects on the legal situation of the appellant and of its members.

- 23 In that regard, the appellant points out that, first, as is clear from paragraphs 42 to 44 of the order under appeal, it is true that the renewal of the approval of copper compounds under Regulation No 1107/2009 requires that it submits an application to that effect and that the Commission adopts an act on that application. It submits, however, that that act will be an implementing measure not of the regulation at issue but of Article 14 et seq. of Regulation No 1107/2009, which govern the procedure for the renewal of approval of an active substance.
- 24 The appellant emphasises that that act will have no effect of completing or changing the legal status of candidates for substitution and will not contribute to defining or clarifying the substantive rules applicable to them.
- 25 The appellant also highlights the fact that the regulation at issue has the effect of subjecting copper compounds to approval every 7 years at least, and not every 15 years as is the case for active substances which are not candidates for substitution. Therefore, copper compounds would be the subject, in principle, of twice as many approval renewal applications, which increases the costs associated with maintaining approval for those compounds. That effect is direct and does not require any implementing measure on the part of the Commission or Member States.
- 26 The appellant submits, secondly, that as regards the national authorisation of plant protection products containing copper compounds, the regulation at issue has the immediate effect of subjecting those products and their use to the comparative assessment referred to in Article 50 of Regulation No 1107/2009. In that regard, contrary to the General Court's finding made in paragraph 48 of the order under appeal, Member States make the companies concerned bear the costs not only of the comparative assessment but also of carrying out the assessment itself, while the national authorities restrict themselves to adopting a decision on the application for renewal of the authorisation for the plant protection product in question. Thus, the appellant and its members are required to meet the obligations resulting from the comparative assessment irrespective of the final result of that assessment.
- 27 In finding, in paragraph 46 of the order under appeal, that the performance of that comparative assessment has no bearing on the fact that marketing authorisations are granted or refused, renewed, withdrawn or amended by the Member States, the General Court fails to take account of the fact that the effect of the regulation at issue is unconnected with any decision taken by a national authority. Article 50(4) of Regulation No 1107/2009 requires Member States to perform the comparative assessment regularly and, at the latest, at renewal or amendment of the authorisation. Therefore, no application for authorisation or renewal of an authorisation would be necessary for the Member State concerned to carry out a comparative assessment of copper compounds, which would be the direct consequence of their classification as candidates for substitution.
- 28 Thirdly, in the appellant's opinion, a similar conclusion must be reached as regards the principle of mutual recognition, between Member States, of plant protection products. As a result of the adoption of the regulation at issue, mutual recognition of a product containing a candidate for substitution is no longer automatic, as is the case by contrast for all other active substances.
- 29 Fourthly, in the same way as the Commission's act on the renewal of approval of copper compounds, measures adopted by Member States on a request for mutual recognition or national authorisation have no effect either on the classification of copper compounds as candidates for substitution or on the regime applicable to it under Regulation No 1107/2009.

30 The appellant adds that, in the same way as the acts that will be adopted by the Commission, those that will be adopted by Member States in order to implement the specific rules applicable to copper compounds will be implementing measures not of the regulation at issue, but of Regulation No 1107/2009.

31 The Commission contends that the first ground of appeal should be rejected.

### *Findings of the Court*

32 It must be recalled at the outset that the admissibility of an action brought by a natural or legal person against an act which is not addressed to them, in accordance with the fourth paragraph of Article 263 TFEU, is subject to the condition that they be accorded standing to bring proceedings, which arises in two situations. First, such proceedings may be instituted if the act is of direct and individual concern to those persons. Second, such persons may bring proceedings against a regulatory act not entailing implementing measures if that act is of direct concern to them (see, inter alia, judgment of 17 September 2015, *Mory and Others v Commission*, C-33/14 P, EU:C:2015:609, paragraphs 59 and 91).

33 In the context of the examination of the second situation, made in paragraphs 33 to 51 of the order under appeal, the General Court found, in paragraphs 34 to 36 of that order, that the regulation at issue is a regulatory act within the meaning of the final limb of the fourth paragraph of Article 263 TFEU, which is not contested by the parties in the present appeal.

34 Consequently, the question that must be examined is whether, as the appellant submits, the General Court erred in law in finding, in paragraphs 37 to 51 of the order under appeal, that the regulation at issue entails implementing measures in respect of the members of the appellant.

35 In that regard, it must be recalled that the expression ‘which ... does not entail implementing measures’, within the meaning of the final limb of the fourth paragraph of Article 263 TFEU, must be interpreted in the light of the objective of that provision, which is, as is apparent from its drafting history, to ensure that individuals do not have to break the law in order to have access to a court. Where a regulatory act directly affects the legal situation of a natural or legal person without requiring implementing measures, that person could be denied effective judicial protection if he did not have a legal remedy before the European Union judicature for the purpose of challenging the legality of the regulatory act. In the absence of implementing measures, natural or legal persons, although directly concerned by the act in question, would be able to obtain a judicial review of that act only after having infringed its provisions, by pleading that those provisions are unlawful in proceedings initiated against them before the national courts (judgment of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission*, C-456/13 P, EU:C:2015:284, paragraph 29 and the case-law cited).

36 By contrast, where a regulatory act entails implementing measures, judicial review of compliance with the European Union legal order is ensured irrespective of whether those measures were adopted by the European Union or the Member States. Natural or legal persons who are unable, because of the conditions governing admissibility laid down in the fourth paragraph of Article 263 TFEU, to challenge a regulatory act of the European Union directly before the European Union judicature are protected against the application to them of such an act by the ability to challenge the implementing measures which the act entails (judgment of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission*, C-456/13 P, EU:C:2015:284, paragraph 30 and the case-law cited).

37 Where responsibility for the implementation of such acts lies with the institutions, bodies, offices or agencies of the European Union, natural or legal persons are entitled to bring a direct action before the European Union judicature against the implementing acts under the conditions stated in the

fourth paragraph of Article 263 TFEU, and to plead in support of that action, pursuant to Article 277 TFEU, the illegality of the basic act at issue. Where that implementation is a matter for the Member States, those persons may plead the invalidity of the basic act at issue before the national courts and tribunals and cause the latter to request a preliminary ruling from the Court of Justice, pursuant to Article 267 TFEU (judgment of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission*, C-456/13 P, EU:C:2015:284, paragraph 31 and the case-law cited).

- 38 As the Court has already held, whether a regulatory act entails implementing measures should be assessed by reference to the position of the person pleading the right to bring proceedings under the final limb of the fourth paragraph of Article 263 TFEU. It is therefore irrelevant whether the act in question entails implementing measures with regard to other persons (judgment of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission*, C-456/13 P, EU:C:2015:284, paragraph 32 and the case-law cited).
- 39 Furthermore, in the context of that assessment, it is necessary to refer exclusively to the subject matter of the action and, where an applicant seeks only the partial annulment of an act, it is solely any implementing measures which that part of the act may entail that must, as the case may be, be taken into consideration (judgment of 10 December 2015, *Kyocera Mita Europe v Commission*, C-553/14 P, not published, EU:C:2015:805 paragraph 45 and the case-law cited).
- 40 Moreover, it is entirely irrelevant, in that regard, whether those measures are of a mechanical nature (judgments of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission*, C-456/13 P, EU:C:2015:284, paragraphs 41 and 42, and of 10 December 2015, *Kyocera Mita Europe v Commission*, C-553/14 P, not published, EU:C:2015:805 paragraph 46).
- 41 In the present case, it is necessary, in the first place, to reject the appellant's argument that the General Court did not properly take into consideration the subject matter of the action brought before it, in particular the fact that that action sought the annulment of the regulation at issue in that it subjects copper compounds to certain substantive rules laid down by Regulation No 1107/2009, as unfounded.
- 42 It is clear from paragraphs 38 to 41 of the order under appeal that, after recalling that the purpose of the regulation at issue was to establish a list of candidates for substitution, the General Court noted that Regulation No 1107/2009 provided for the application, to those substances, of particular rules that derogate from those applicable to other active substances. The General Court stated, in paragraph 41 of the order under appeal, that those particular rules concern, first, the approval of candidates for substitution and the renewal of that approval, secondly, the marketing authorisations for plant protection products containing such substances and the renewal and amendment of those authorisations and, thirdly, the mutual recognition between Member States of those authorisations.
- 43 It is also clear from paragraphs 42 to 51 of the order under appeal that the General Court carried out a detailed examination of those particular rules and concluded that they were only capable of producing their effects on the legal situation of the members of the appellant through acts adopted by the Commission or the Member States.
- 44 In the second place, it is necessary to examine the appellant's arguments challenging the correctness of that conclusion.
- 45 In that regard, it must be observed that the fact that a regulatory act of the European Union entails implementing measures, within the meaning of the final limb of the fourth paragraph of Article 263 TFEU, such that certain legal effects of the regulation only materialise through those measures, does not exclude that that regulation produces, in the legal situation of a natural or legal person, other legal effects, which do not depend on the adoption of implementing measures.

- 46 In the present case, it is necessary therefore to take into account the three categories of particular rules applicable to copper compounds that are set out in paragraph 42 above and upon which the appellant relies in support of its appeal, in order to determine whether the regulation at issue, owing to the fact that it subjects copper compounds to those rules, produces effects on the legal situation of the members of the appellant which do not depend upon any sort of implementing measure.
- 47 As regards, first, the rules in respect of the approval of candidates for substitution and renewal of that approval, it is necessary, first, to recall, as the General Court observed in paragraph 42 of the order under appeal, that copper compounds were the object of an approval before the adoption of the regulation at issue. Second, as the Commission submitted at the hearing before the Court of Justice, the expiry date of that approval was not affected by the regulation at issue.
- 48 It follows, as the General Court also noted in paragraph 42 of the order under appeal, without that point being challenged in this appeal, that only the procedure for the renewal of approval of candidates for substitution, as provided for in Regulation No 1107/2009, is relevant as regards the members of the appellant.
- 49 In that regard, as is stated in paragraph 42 of the order under appeal, without the appellant contesting the point, Article 24(1) of Regulation No 1107/2009 provides that the approval of a candidate for substitution is renewable for a maximum period of seven years, unlike the approval of other active substances which may be renewed for a maximum period of 15 years, pursuant to Article 14(2) of that regulation. Therefore, the fact of including copper compounds in the list annexed to the regulation at issue, as a candidate for substitution, the renewal of its approval could be granted for a period of only seven years and not for a longer maximum period, as would have been the case if that substance were not included in that list.
- 50 However, the legal effects of the regulation at issue on the duration of the validity of the renewal of approval of copper compounds will only materialise, in respect of the members of the appellant, through the intermediary of implementing measures.
- 51 It follows from the provisions of Regulation No 1107/2009, in particular, Article 24(2) thereof, that, as the General Court stated in paragraphs 42 and 43 of the order under appeal without it being contested in the appeal, the classification of copper compounds as a candidate for substitution, by the regulation at issue, is without prejudice to the application of the procedure for the renewal of approval of that substance. That procedure requires, in the same way as the procedure for the renewal of approval of an active substance which is not included on the list annexed to the regulation at issue, the adoption of a regulation by the Commission, pursuant to Article 20(1) of Regulation No 1107/2009.
- 52 It follows, as the General Court correctly held in paragraph 44 of the order under appeal, that the effects of the regulation at issue on the duration of the validity of the renewal of approval of copper compounds will be deployed with respect to the members of the appellant only by the possible adoption on the basis of Article 20(1) of Regulation No 1107/2009, referred to in Article 24(2) of that regulation, of a regulation renewing for a maximum period of seven years the approval of that substance.
- 53 Thus, if the potential additional burden on the appellant and its members connected with the necessity of renewing the approval of copper compounds more frequently may be regarded as an effect of the adoption of the regulation at issue, that effect will materialise not by the adoption of that regulation, but by the adoption, should it occur, by the Commission of a regulation on the renewal of approval of that substance.

- 54 Therefore the General Court did not commit any error of law in finding, in paragraph 44 of the order under appeal, that a Commission regulation on the renewal of approval of candidates for substitution such as copper compounds, is an implementing measure of the regulation at issue, within the meaning of the final limb of the fourth paragraph of Article 263 TFEU.
- 55 As regards, secondly, the rules on marketing authorisations for plant protection products containing candidates for substitution and on renewal and amendment of those authorisations, it is true, as the appellant observes, that the regulation at issue has the effect of subjecting those plant protection products containing copper compounds to the comparative assessment procedure, laid down in Article 50 of Regulation No 1107/2009, in the context of which the health or environmental risks of the plant protection product concerned are compared with risks of same nature connected with a replacement product or a non-chemical pest control or prevention method.
- 56 However, the appellant cannot successfully submit that it and its members bear the responsibility of performing that comparative assessment, and the potential costs incurred in carrying out the assessment, in order to demonstrate that the adoption of the regulation at issue had effects on them irrespective of the adoption of implementing measures. As the General Court correctly held in paragraph 45 of the order under appeal, it is clear from Article 50(1) and (4) of Regulation No 1107/2009 that it is the Member States that are required to perform the comparative assessment.
- 57 As regards the appellant's argument that the national authorities of certain Member States require the proprietors of national registrations of plant protection products containing copper compounds to provide them with a comparative assessment, there is no support for its thesis that the regulation at issue would produce effects on its legal situation that do not depend upon implementing measures. The obligations alleged to be borne by those proprietors are the result, not of the regulation at issue but of a decision by the competent national authorities.
- 58 Moreover, as the General Court correctly held in paragraph 46 of the order under appeal, without it being contested by the appellant, the performance of the comparative assessment referred to in Article 50 of Regulation No 1107/2009 has 'no influence on the fact that, pursuant to Article 36(2), Article 43(1), Article 44(3) and Article 45(1) of Regulation No 1107/2009, marketing authorisations for plant protection products containing active substances may, as appropriate, be granted or refused, renewed, withdrawn or amended by the Member States'.
- 59 In those circumstances, the General Court also did not err in law in holding, in paragraph 47 of that order, that the effects of the regulation at issue in respect of the performance, by the Member States, of a comparative assessment of the health or environmental risks of plant protection products containing copper compounds compared with a substitute product or a non-chemical method of pest control or prevention 'will not be made with respect to the members of the [appellant] except through the intermediary of measures taken by the competent authorities of the Member States' and that 'such acts constitute, therefore, implementing measures within the meaning of the final limb of the fourth paragraph of Article 263 TFEU'.
- 60 Thirdly, as regards the rules on mutual recognition between Member States of marketing authorisations of plant protection products containing candidates for substitution, it is true that Article 41(2)(b) of Regulation No 1107/2009 provides that a Member State that receives, under the mutual recognition procedure, an application for marketing authorisation for plant protection products containing a candidate for substitution may authorise those plant protection products, whereas, outside the other hypotheses covered by Article 41(2), and without prejudice to the application of Article 36(3) of that regulation, the Member State is required, under Article 41(1) of that regulation, to issue such an authorisation in accordance with the conditions laid down in that latter provision.

- 61 However, even if the adoption of the regulation at issue had the effect of reducing the likelihood that a Member State would grant an application for marketing authorisation of a plant protection product containing copper compounds under the mutual recognition procedure, it remains the case that the Member State before which such an application is brought is required to make a decision on it. In that regard, it must be recalled, as follows from paragraph 40 above, that it is irrelevant whether such a decision is mechanical or not.
- 62 Consequently, the General Court was correct to hold, in paragraph 50 of the order under appeal, that the effects of the regulation at issue in respect of the procedure for the mutual recognition of marketing authorisations for plant protection products containing a candidate for substitution ‘concern only the margin of discretion available to Member States in ruling on an application to that effect’ and that ‘those effects will not arise, if they do arise, as regards the members of the applicant except by the intermediary of measures by national authorities ruling on the applications for mutual recognition lodged by those members’.
- 63 Having regard to paragraphs 45 to 62 above, it is necessary to conclude that, while it is certainly true that by including copper compounds in the list of candidates for substitution the regulation at issue subjected that substance to specific rules set out in paragraph 42 above and therefore produced legal effects in that it alters the EU legal regime applicable to copper compounds, it remains the case that the appellant has not demonstrated that that alteration had, on the legal situation of its members, effects that did not depend upon the adoption of implementing measures, within the meaning of the final limb of the fourth paragraph of Article 263 TFEU. Therefore, the General Court was correct in law to hold that the appellant did not have standing to bring an action on that basis.
- 64 That conclusion is not called into question by the appellant’s argument, set out in paragraphs 23 and 30 above, that the measures adopted by the Commission or the Member States in order to implement the specific rules applicable to copper compounds, in particular the act by which the Commission will renew the approval of that substance, are implementing measures not of the regulation at issue but of Regulation No 1107/2009.
- 65 Contrary to what the appellant appears to imply in its submissions, the wording of the final limb of the fourth paragraph of Article 263 TFEU does not require, for a measure to be classified as an implementing measure of a regulatory act, that that act is the legal base of that measure. The same measure may be an implementing measure both of the act the provisions of which constitute its legal base and of a different act, such as, in the present case, the regulation at issue, where all or part of the legal effects of the latter act will be produced, vis-à-vis the applicant, only through the intermediary of that measure (see, by analogy, judgment of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission*, C-456/13 P, EU:C:2015:284, paragraph 40).
- 66 In the present case, it is clear from paragraphs 47 to 63 above that the acts that will be adopted by the Commission or by the Member States in order to implement the specific rules applicable to copper compounds, laid down in Regulation No 1107/2009, will produce the legal effects of the regulation at issue vis-à-vis the members of the appellant and will therefore constitute implementing measures of the latter regulation.
- 67 The conclusion set out in paragraph 63 above is also not called into question by the argument, recalled in paragraph 19 above, that, before the Commission, during the procedure for inclusion of copper compounds in Annex I to Directive 91/414, the appellant was the sole representative of all the producers of copper compounds used in plant protection products operating in the European Union. While it is true that, in accordance with the case-law cited in paragraph 38 above, it is necessary to take into account the position of the person pleading the right to bring proceedings under the fourth paragraph of Article 263 TFEU, for the purposes of assessing whether the contested regulatory act entails implementing measures, the fact put forward by the appellant is not such as to show that the regulation at issue does not entail such measures.

- 68 The conclusion reached in paragraph 63 of this judgment is also not undermined by the argument set out in paragraphs 24 and 29 above, that the measures that may be adopted by the Commission or by the Member States in order to give effect to the application, to copper compounds, of the specific rules set out in paragraph 42 above, will have no effect either on the classification of copper compounds as a candidate for substitution or on the legal regime applicable to that substance established by Regulation No 1107/2009.
- 69 That argument is not capable of overturning the finding that the effects of the application to copper compounds of the specific rules laid down by Regulation No 1107/2009 will only be produced, vis-à-vis the legal situation of the members of the appellant, through the intermediary of the implementing measures of the regulation at issue.
- 70 Having regard to all the foregoing considerations, the General Court was fully entitled to conclude in paragraph 51 of the order under appeal that the regulation at issue entails, vis-à-vis the members of the appellant, implementing measures within the meaning of the final limb of the fourth paragraph of Article 263 TFEU.
- 71 Consequently, the first ground of appeal must be rejected as unfounded.

### ***The third ground of appeal***

#### *Arguments of the parties*

- 72 By its third ground of appeal, which it is appropriate to examine second, the appellant challenges the General Court's ruling, in paragraphs 22, 31 and 32 of the order under appeal, that it and its members were not individually concerned by the regulation at issue.
- 73 In the first place, the appellant submits that it is individually concerned by the regulation at issue and submits, first, that several factors differentiate it from any other person for the purposes of the line of case-law following the judgment of 15 July 1963, *Plaumann v Commission* (25/62, EU:C:1963:17).
- 74 The appellant submits that it was the only author of a notification to the Commission seeking the inclusion of copper compounds in Annex I to Directive 91/414. It also recalls that, according to Article 78(3) of Regulation No 1107/2009, the active substances included in that annex are deemed to be approved on the basis of that regulation. The appellant deduces from that that it was the sole cause of the inclusion of copper compounds in the list of active substances in that annex for the purposes of the application of Regulation No 1107/2009. The appellant was, moreover, the sole applicant for the renewal of approval for copper compounds as an active substance and the only party to submit an active substance dossier on behalf of all producers.
- 75 Secondly, the appellant took part in the procedure which resulted in the rules applicable to copper compounds until the regulation at issue was adopted. In particular, Implementing Regulation No 2015/232 was adopted on the basis of studies and documents submitted by the appellant and, as follows from recital 6 of that regulation, after the Commission had invited it to submit its observations on the review report on copper compounds.
- 76 Thirdly, the appellant submits that the list of candidates for substitution established by the regulation at issue was drawn up exclusively on the basis of the results of a document that was based on the final review report for copper compounds, which was adopted by the Commission with the exclusive intervention of the appellant as the applicant.

- 77 Fourthly, the appellant was the Commission's interlocutor throughout the entire drafting process of the regulation at issue and exchanged letters and took part in a meeting with representatives of that institution concerning, in particular, the classification of copper compounds as a candidate for substitution.
- 78 The appellant concludes that, having regard to the judgment of 17 January 1985, *Piraiiki-Patraiki and Others v Commission* (11/82, EU:C:1985:18, paragraphs 17 to 32), it should have been recognised as having standing to bring proceedings in so far as, in the light of the particular circumstances of the present case, the Commission knew that the regulation at issue was of direct and individual concern to it.
- 79 In the second place, the appellant submits that its members are also individually concerned by the regulation at issue.
- 80 On the one hand, the appellant represents all producers of copper compounds for use in plant protection products operating in the European Union. Hence, the General Court was wrong to find, in paragraph 31 of the order under appeal, that the appellant and its members were concerned by the regulation at issue in the same way as any other economic operator.
- 81 The appellant adds that Article 15(1) of Regulation No 1107/2009 provides that the application for the renewal of approval of an active substance is to be submitted by a producer of the active substance concerned. Therefore, only the appellant and its members, which are the only producers of copper compounds used in plant protection products operating in the European Union could apply for the renewal of their approval. The appellant recalls, in that regard, that it was the sole applicant for the renewal of approval for copper compounds as an active substance and the only party to submit an active substance dossier on behalf of all producers.
- 82 Second, the fact that copper compounds would be the only inorganic substance appearing on the list of candidates for substitution further distinguishes the appellant and its members.
- 83 The appellant considers therefore that the regulation at issue, even though it is formally an implementing regulation, is in reality a Commission decision, in view of its effects on copper compounds and, therefore, on the appellant and its members as the sole producers of that active substance. The appellant submits that it is therefore individually concerned by that regulation.
- 84 Consequently, the appellant considers that the order under appeal must, therefore, be set aside, and that the Court has all the information necessary to examine whether it is, moreover, directly concerned by the regulation at issue.
- 85 In that regard, the appellant submits, first, that the submission of copper compounds to the substantive provisions laid down in Regulation No 1107/2009 requires the application to that substance of more restrictive conditions than those applicable to active substances that are not candidates for substitution. It observes, second, that that fact is the direct result of the regulation at issue and that neither the Commission nor the national authorities have any margin of discretion, when adopting measures implementing the specific rules applicable to copper compounds, as regards the classification of copper compounds as a candidate for substitution.
- 86 The Commission contends that the third ground of appeal is unfounded.

### *Findings of the Court*

- 87 As a preliminary observation, it should be recalled that, as the General Court noted in paragraph 19 of the order under appeal, an association, such as the appellant, which is responsible for protecting the collective interests of producers of copper compounds, is, as a rule, entitled to bring an action for annulment under the fourth paragraph of Article 263 TFEU only if the undertakings which it represents or some of those undertakings themselves have *locus standi* (see, to that effect, judgment of 22 June 2006, *Belgium and Forum 187 v Commission*, C-182/03 and C-217/03, EU:C:2006:416, paragraph 56 and the case-law cited).
- 88 As regards, in the first place, the question whether the applicant can prove an interest of its own, it should be noted, first, that it is settled case-law, as the General Court observed in paragraph 21 of the order under appeal, that the role played by an association in a procedure which led to the adoption of an act within the meaning of Article 263 TFEU may justify the admissibility of the action brought by the association, even though its members are not directly and individually concerned by that act, in particular where its position as negotiator has been affected by the latter (order of 8 December 2006, *Polyelectrolyte Producers Group v Commission and Council*, C-368/05 P, not published, EU:C:2006:771, paragraph 59 and the case-law cited).
- 89 In the present case, it is necessary however to observe that, by the arguments it advances under this ground, the appellant has not shown that it played a role in the drawing up of the regulation at issue that allows it to plead an interest of its own, within the meaning of the case-law set out in the preceding paragraph of this judgment. Moreover, when questioned by the Court at the hearing on that point, the appellant did not establish the existence of specific rights granted to it in the context of the process of that regulation being drawn up.
- 90 Second, having regard to the case-law following the judgment of 17 January 1985, *Piraiiki-Patraiki and Others v Commission* (11/82, EU:C:1985:18, paragraphs 17 to 32), the appellant's argument that, because of certain factual circumstances specific to it, it must be regarded as being individually concerned, must be rejected as unfounded.
- 91 It is true that, according to the case-law, the fact that the Council of the European Union or the Commission was obliged, pursuant to specific provisions, to take into account the consequences of the act that they proposed to adopt on the situation of certain individuals could be capable of distinguishing those persons, where it is proven that they are prejudiced by that act owing to a factual situation that differentiates them from all other persons (see, to that effect, judgment of 10 April 2003, *Commission v Nederlandse Antillen*, C-142/00 P, EU:C:2003:217, paragraphs 71 to 76 and the case-law cited).
- 92 However, the appellant has not identified the existence of such an obligation which is capable of distinguishing it, within the meaning of that case-law as regards the regulation at issue.
- 93 In the second place, as regards the question of whether the members of the appellant or some of them are individually concerned by the regulation at issue, it must be recalled, as stated in paragraph 28 of the order under appeal, that, according to settled case-law, persons other than those to whom a decision is addressed may claim to be individually concerned, within the meaning of the fourth paragraph of Article 263 TFEU, only if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of those factors distinguishes them individually just as in the case of the person addressed by such a decision (see, inter alia, judgments of 15 July 1963, *Plaumann v Commission*, 25/62, EU:C:1963:17, p. 223, and of 17 September 2015, *Mory and Others v Commission*, C-33/14 P, EU:C:2015:609, paragraph 93).

- 94 In that regard, it is also clear from established case-law, recalled by the General Court in paragraph 29 of the order under appeal, that the possibility of determining more or less precisely the number, or even the identity, of the persons to whom a measure applies by no means implies that it must be regarded as being of individual concern to them as long as that measure is applied by virtue of an objective legal or factual situation defined by it (judgment of 19 December 2013, *Telefónica v Commission*, C-274/12 P, EU:C:2013:852, paragraph 47 and the case-law cited).
- 95 In the present case, it should be noted that the appellant does not specifically challenge paragraph 27 of the order under appeal, in which the General Court held that the regulation at issue is an act of general application because, first, it applies to situations determined objectively, which in the present case means by virtue of their active substance characteristics and, secondly, it produces legal effects with respect to categories of persons envisaged in general and in the abstract, that is to say, any operator whose activity is linked to one of the substances on the list annexed to that regulation.
- 96 The appellant has also not claimed that, in paragraph 30 of the order under appeal, the General Court erred in law or distorted the facts in finding that:
- ‘... it is apparent from recital 4 in the preamble to the regulation [at issue] that the list annexed to that regulation was established on the basis of information contained in the review report, [the European Food Safety Authority’s (EFSA)] conclusions, the draft assessment report and accompanying addenda and peer review reports, or the classification established under Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (OJ 2008 L 353 p. 1). Furthermore, the adoption of the regulation [at issue] was provided for under Article 80(7) of Regulation No 1107/2009, according to which the Commission had to establish, by 14 December 2013 at the latest, the list of substances that are candidates for substitution. In that regard, as is clear from its very title, the regulation [at issue] relates to the application of that provision.’
- 97 In those circumstances the appellant has not demonstrated that the General Court erred in law in concluding, in paragraphs 31 and 32 of the order under appeal, that the members of the appellant were concerned by the regulation at issue only in their objective capacity as producers of copper compounds, and thus in the same capacity as any other economic operator actually or potentially in an identical situation, and that they were not therefore individually concerned by the regulation at issue.
- 98 None of the particular circumstances relied on by the appellant in connection with this ground of appeal to demonstrate that its members are individually concerned by the regulation at issue is capable of calling that conclusion into question.
- 99 First, having regard to the case-law cited in paragraph 94 above, the fact that the appellant represents all producers of copper compounds used in plant protection products operating in the European Union and that those producers can be quantified or identified, has no bearing on the fact that its members are only concerned by the regulation at issue in their objective capacity as producers of copper compounds. Furthermore, to accept the argument put forward by the appellant in that regard would largely defeat the purpose of the condition relating to individual concern, since it would be sufficient for the economic operators, who are only concerned by a European Union act because they meet an objective legal or factual situation defined by that measure, to group themselves within a representative association, such as the one in question in the present case, in order for them to be recognised as having *locus standi* within the meaning of the fourth paragraph of Article 263 TFEU.
- 100 Secondly, having regard to the case-law cited in paragraph 93 above, the appellant does not demonstrate at all, by the matters referred to in paragraph 81 above, that its members, or some of them, are prejudiced by the regulation at issue in a manner analogous to the way the addressee of

that regulation is affected. In particular, such elements, taken individually or as a whole, are not capable of calling into question the soundness of the conclusion reached by the General Court in paragraph 31 of the order under appeal, according to which the legal effects of the regulation at issue only apply to members of the appellant owing to their objective capacity as producers of copper.

101 It is also common ground that, when the regulation at issue was adopted, the inclusion of copper compounds in the list of candidates for substitution was decided not by taking into account the particular qualities of the members of the appellant, but, as is clear from paragraph 6 of the order under appeal, on the ground that that substance fulfilled the conditions to be met to be regarded as a persistent and toxic substance, within the meaning of point 4 of Annex II to Regulation No 1107/2009 (see, by analogy, judgment of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission*, C-456/13 P, EU:C:2015:284, paragraph 66).

102 Thirdly, the fact, assuming it to be proven, that copper compounds are the only inorganic substance appearing on the list in question is irrelevant in that it does not call into question the merits of the General Court's finding in paragraph 31 of the order under appeal.

103 Finally, given that, first, the General Court did not err in law in finding, in paragraph 32 of the order under appeal, that the members of the appellant were not individually concerned by the regulation at issue and, second, the conditions of both direct concern and individual concern by the European Union regulatory act of which annulment is sought are cumulative (see, to that effect, judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 76), the arguments set out in paragraphs 84 and 85 above, on the question of whether the appellant and its members are directly concerned by the regulation at issue, are ineffective and must therefore be rejected.

104 It follows that the third ground of appeal must be rejected as in part unfounded and in part ineffective.

### ***The second ground of appeal***

#### *Arguments of the parties*

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

106 It follows from the order under appeal that the members of the appellant are not able to challenge a national measure implementing the regulation at issue or to call into question the effects of that regulation. In particular, for so long as the substitution for copper compounds is not decided by a national authority, that substance will be the subject of periodic comparative assessments that the members of the appellant will not be able to contest. The appellant states, in that regard, that a national decision renewing the authorisation of a plant protection product containing copper compounds would not alter the legal situation of the members of the appellant and will not therefore be open to challenge. The Tribunal Supremo (Supreme Court, Spain) and the Tribunal Constitucional (Constitutional Court, Spain) have held that an applicant has no interest or standing to bring proceedings, where the decision that he contests causes him no prejudice.

107 The members of the appellant would therefore be forced to provoke the adoption of a negative decision by the national authorities in order to be able to bring an action against that decision and to challenge, in the context of that action, the classification of copper compounds as a candidate for

substitution. According to the appellant, recourse to the preliminary ruling procedure, referred to by the General Court in the order under appeal, would also require the prior adoption of a negative decision by those authorities.

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

109 The Commission contends that the second ground of appeal is inadmissible, since the applicant merely repeats the plea alleging breach of the right to effective judicial protection, relied on at first instance, without finding any error of law vitiating the order under appeal. It contends that, in any event, the present ground of appeal is unfounded.

#### *Findings of the Court*

110 As a preliminary point, the plea of inadmissibility raised by the Commission against the second ground of appeal must be rejected. Contrary to what the latter contends, by the present ground the appellant does not merely reiterate the plea put forward, at first instance, alleging infringement of its right to effective judicial protection, but contests the assessment made by the General Court in that regard, stating precisely the elements criticised in the order under appeal.

111 As regards the merits of the present ground, it must be recalled that the conditions for admissibility laid down in the fourth paragraph of Article 263 TFEU must be interpreted in the light of the fundamental right to effective judicial protection without, however, setting aside those conditions, which are expressly laid down in that Treaty (judgment of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission*, C-456/13 P, EU:C:2015:284, paragraph 44 and the case-law cited).

112 However, judicial review of compliance with the European Union legal order is ensured, as can be seen from Article 19(1) TEU, not only by the Court of Justice but also by the courts and tribunals of the Member States. The FEU Treaty has established, by Articles 263 and 277, on the one hand, and Article 267, on the other, a complete system of legal remedies and procedures designed to ensure judicial review of the legality of European Union acts, and has entrusted such review to the European Union judicature (judgment of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission*, C-456/13 P, EU:C:2015:284, paragraph 45 and the case-law cited).

113 In that context, it must be emphasised that, in proceedings before the national courts, individual parties have the right to challenge before the courts the legality of any decision or other national measure relative to the application to them of a European Union act of general application, by pleading the invalidity of such an act (judgment of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission*, C-456/13 P, EU:C:2015:284, paragraph 46 and the case-law cited).

114 It follows that references on validity constitute, like actions for annulment, means for reviewing the legality of European Union acts (judgment of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission*, C-456/13 P, EU:C:2015:284, paragraph 47 and the case-law cited).

- 115 In that regard, it must be borne in mind that where a national court or tribunal considers that one or more arguments for invalidity of a European Union act, put forward by the parties or, as the case may be, raised by it of its own motion, are well founded, it is incumbent upon it to stay proceedings and to make a reference to the Court for a preliminary ruling on the act's validity, the Court alone having jurisdiction to declare a European Union act invalid (judgment of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission*, C-456/13 P, EU:C:2015:284, paragraph 48 and the case-law cited).
- 116 As regards persons who do not fulfil the requirements of the fourth paragraph of Article 263 TFEU for bringing an action before the Courts of the European Union, it is for the Member States to establish a system of legal remedies and procedures which ensure respect for the fundamental right to effective judicial protection (judgment of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission*, C-456/13 P, EU:C:2015:284, paragraph 49 and the case-law cited).
- 117 That obligation of the Member States was reaffirmed by the second subparagraph of Article 19(1) TEU, which states that Member States 'shall provide remedies sufficient to ensure effective judicial protection in the fields covered by Union law'. Such an obligation also follows from Article 47 of the Charter of Fundamental Rights of the European Union as regards measures taken by the Member States to implement Union law within the meaning of Article 51(1) of that Charter (judgment of 28 April 2015, *T & L Sugars and Sidul Açúcares v Commission*, C-456/13 P, EU:C:2015:284, paragraph 50 and the case-law cited).
- 118 In the present case, as follows from paragraphs 41 to 70 above, the General Court was fully entitled to conclude that the regulation at issue entails, vis-à-vis the members of the appellant, implementing measures within the meaning of the final limb of the fourth paragraph of Article 263 TFEU.
- 119 Consequently, and having regard to the case-law recalled in paragraphs 111 to 117 above and set out by the General Court in paragraphs 53 to 59 of the order under appeal, the General Court also did not err in law in deciding, in paragraph 60 of that order, that the appellant's argument that the rejection, as inadmissible, of its action for annulment of the regulation at issue would infringe its right, and the right of its members, to effective judicial protection. Even if, owing to the conditions for admissibility laid down in the fourth paragraph of Article 263 TFEU, the appellant cannot directly attack the regulation at issue before the European Union judicature, it can, by contrast, in the context of an action brought before a national court against an act by a Member State which is an implementing measure of the regulation, plead the invalidity of the latter and cause that court to refer questions to the Court of Justice pursuant to Article 267 TFEU (see, by analogy, judgment of 19 December 2013, *Telefónica v Commission*, C-274/12 P, EU:C:2013:852, paragraph 59).
- 120 Moreover, the appellant could challenge a Commission regulation on renewal of the approval of copper compounds before the European Union courts under the conditions laid down in the fourth paragraph of Article 263 TFEU, and, in the context of that action, challenge the validity of the regulation at issue by means of an objection of illegality pleaded against the latter, in accordance with the case-law cited in paragraph 37 above, with a view inter alia to challenging the duration of the validity of the renewal of approval of copper compounds.
- 121 The second ground of appeal must therefore be rejected as unfounded.
- 122 In view of all the foregoing considerations, the appeal must be dismissed in its entirety.

## Costs

- <sup>123</sup> Under Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to costs. Under Article 138(1) of those rules, applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.
- <sup>124</sup> Since the Commission has applied for costs to be awarded against the appellant and the latter has been unsuccessful, the appellant must be ordered to pay the costs.

On those grounds, the Court (Grand Chamber) hereby:

**1. Dismisses the appeal;**

**2. Orders European Union Copper Task Force to pay the costs.**

Lenaerts	Tizzano	Silva de Lapuerta
von Danwitz	Da Cruz Vilaça	Rosas
Fernlund	Vajda	Toader
Safjan	Šváby	Berger
Prechal	Jarašiūnas	Regan

Delivered in open court in Luxembourg on 13 March 2018.

A. Calot Escobar  
Registrar

K. Lenaerts  
President