Provisional text

JUDGMENT OF THE COURT (First Chamber)

3 December 2020 (*)

(Appeal – Regulation (EC) No 1107/2009 – Placing of plant protection products on the market – Implementing Regulation (EU) 2017/2324 – Renewal of the approval of the active substance glyphosate – Article 263 TFEU – Standing to bring proceedings of a regional body – Whether directly concerned)

In Case C–352/19 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 1 May 2019,

Région de Bruxelles-Capitale (Belgium), represented by A. Bailleux, avocat,

appellant,

the other party to the proceedings being:

European Commission, represented by X. Lewis, F. Castillo de la Torre, I. Naglis and F. Castilla Contreras, acting as Agents,

defendant at first instance,

THE COURT (First Chamber),

composed of J.-C. Bonichot (Rapporteur), President of the Chamber, L. Bay Larsen, C. Toader, M. Safjan and N. Jääskinen, Judges,

Advocate General: M. Bobek,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 16 July 2020,

gives the following

Judgment

1 By its appeal, the Région de Bruxelles-Capitale (the Brussels Capital Region, Belgium) asks the Court to set aside the order of the General Court of the European Union of 28 February 2019, *Région de Bruxelles-Capitale* v *Commission* (T–178/18, not published, 'the order under appeal', EU:T:2019:130), whereby the General Court dismissed as inadmissible its action for annulment of Commission Implementing Regulation (EU) 2017/2324 of 12 December 2017 renewing the approval of the active substance 'glyphosate' 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 2017 L 333, p. 10) ('the act at issue').

Legal context

2 Recitals 10, 23, 24 and 29 of 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) state:

‘(10) Substances should only be included in plant protection products where it has been demonstrated that they present a clear benefit for plant production and they are not expected to have any harmful effect on human or animal health or any unacceptable effects on the environment. In order to achieve the same level of protection in all Member States, the decision on acceptability or non-acceptability of such substances should be taken at Community level on the basis of harmonised criteria. These criteria should be applied for the first approval of an active substance under this Regulation. For active substances already approved, the criteria should be applied at the time of renewal or review of their approval.

…

(23) Plant protection products containing active substances can be formulated in many ways and used on a variety of plants and plant products, under different agricultural, plant health and environmental (including climatic) conditions. Authorisations for plant protection products should therefore be granted by Member States.

(24) The provisions governing authorisation must ensure a high standard of protection. In particular, when granting authorisations of plant protection products, the objective of protecting human and animal health and the environment should take priority over the objective of improving plant production. Therefore, it should be demonstrated, before plant protection products are placed on the market, that they present a clear benefit for plant production and do not have any harmful effect on human or animal health, including that of vulnerable groups, or any unacceptable effects on the environment.

…

(29) The principle of mutual recognition is one of the means of ensuring the free movement of goods within the Community. To avoid any duplication of work, to reduce the administrative burden for industry and for Member States and to provide for more harmonised availability of plant protection products, authorisations granted by one Member State should be accepted by other Member States where agricultural, plant health and environmental (including climatic) conditions are comparable. Therefore, the Community should be divided into zones with such comparable conditions in order to facilitate such mutual recognition. However, environmental or agricultural circumstances specific to the territory of one or more Member States might require that, on application, Member States recognise or amend an authorisation issued by another Member State, or refuse to authorise the plant protection product in their territory, where justified as a result of specific environmental or agricultural circumstances or where the high level of protection of both human and animal health and the environment required by this Regulation cannot be achieved. It should also be possible to impose appropriate conditions having regard to the objectives laid down in the National Action Plan adopted in accordance with Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve a sustainable use of pesticides [(OJ 2009 L 309, p. 71)].’

3 Article 20(1) and (2) of that regulation provides:

‘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.

2. …

In the case of a withdrawal of the approval or if the approval is not renewed because of the immediate concerns for human health or animal health or the environment, the plant protection products concerned shall be withdrawn from the market immediately.'

4 Article 36 of that regulation provides:

'1. The Member State examining the application shall make an independent, objective and transparent assessment in the light of current scientific and technical knowledge using guidance documents available at the time of application. It shall give all Member States in the same zone the opportunity to submit comments to be considered in the assessment.

…

2. The Member States concerned shall grant or refuse authorisations accordingly on the basis of the conclusions of the assessment of the Member State examining the application as provided for in Articles 31 and 32.

3. By way of derogation from paragraph 2 and subject to Community law, appropriate conditions may be imposed with respect to the requirements referred to in Article 31(3) and (4) and other risk mitigation measures deriving from specific conditions of use.

Where the concerns of a Member State relating to human or animal health or the environment cannot be controlled by the establishment of the national risk mitigation measures referred to in the first subparagraph, a Member State may refuse authorisation of the plant protection product in its territory if, due to its specific environmental or agricultural circumstances, it has substantiated reasons to consider that the product in question still poses an unacceptable risk to human or animal health or the environment.

…'

5 Article 40 of that regulation, under the heading 'Mutual recognition,' provides, under the conditions set out therein, for the opportunity for the holder of an authorisation granted in accordance with Article 29 to apply for an authorisation for the same plant protection product in another Member State.

6 Article 41(1) of Regulation No 1107/2009 provides:

'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.'

7 Article 43 of that regulation provides:

'1. An authorisation shall be renewed upon application by the authorisation holder, provided that the requirements referred to in Article 29 are still met.

2. Within 3 months from the renewal of the approval of an active substance, safener or synergist contained in the plant protection product, the applicant shall submit the following information:

…

5. Member States shall decide on the renewal of the authorisation of a plant protection product at the latest 12 months after the renewal of the approval of the active substance, safener or synergist contained therein.

6. Where, for reasons beyond the control of the holder of the authorisation, no decision is taken on the renewal of the authorisation before its expiry, the Member State in question shall extend the authorisation for the period necessary to complete the examination and adopt a decision on the renewal.'

8 Article 78(3) of that regulation provides that a regulation is to be adopted containing the list of active substances included in Annex I to Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1), since those substances are deemed to have been approved under that regulation.

Background to the dispute

The approval of the active substance glyphosate by the European Union

9 Commission Implementing Regulation (EU) No 540/2011 of 25 May 2011 implementing Regulation No 1107/2009 as regards the list of approved active substances (OJ 2011 L 153, p. 1) adopted the list provided for in Article 78(3) of Regulation No 1107/2009. Glyphosate appeared on that list, with an expiry date for the approval period of 31 December 2015.

10 By its Implementing Regulations (EU) 2015/1885 of 20 October 2015 amending Implementing Regulation No 540/2011 extending the approval periods of the following active substances: … glyphosate … (OJ 2015 L 276, p. 48), and (EU) 2016/1056 of 29 June 2016 amending Implementing Regulation No 540/2011 as regards the extension of the approval period of the active substance 'glyphosate' (OJ 2016 L 173, p. 52), the Commission successively extended the approval period of the active substance glyphosate until 30 June 2016, and then until 15 December 2017.

11 By the act at issue, adopted on 12 December 2017, the Commission renewed, subject to certain conditions, the approval period of the active substance glyphosate until 15 December 2022.

The competences of the Brussels Capital Region concerning plant protection products

12 The competences of the Brussels Capital Region concerning plant protection products were described in paragraphs 9 to 17 of the order under appeal. Those paragraphs, which are not contested in the context of the present appeal, are worded as follows:

'9 The appellant, the Brussels Capital Region, is one of the three regions to which certain competences are assigned by law under Article 39 of the Constitution of Belgium.

10 According to the first subparagraph of Article 6(1)(II) of the Loi spéciale de réformes institutionnelles (Special Law on Institutional Reforms) of 8 August 1980 (*Moniteur Belge* of 15 August 1980, p. 9434) ("the Special Law"), "the protection of the environment, in particular that of the soil, subsoil, water and air against pollution and aggression …" appears among those competences. Under that provision, the appellant is competent to regulate the use of plant protection products in its territory.

11 Under the first subparagraph of Article 6(1)(II) of the Special Law, the federal authority is, however, competent to "establish product standards". It is therefore the federal authority which examines applications for authorisations to place plant protection products on the market and issues such authorisations in Belgium, in accordance with Article 28(1) of Regulation No 1107/2009. According to the first subparagraph of Article 6(4) of the Special Law, the regions are, however, involved in the exercise of this competence.

12 Article 7 of the Arrêté royal relatif à la conservation, à la mise sur le marché et à l'utilisation des pesticides à usage agricole (Belgian Royal Decree on the conservation, placing on the market and use of pesticides for agricultural use) of 28 February 1994 (*Moniteur Belge* of 11 May 1994, p. 12504) stipulates that it is prohibited to place on the market, prepare, transport, import, offer, display, offer for sale, hold, acquire or use a pesticide for agricultural use which has not been previously approved by the Minister. According to Article 8 of that decree, "the Minister or an official designated for this purpose by the Minister shall grant the approval on the advice of the Approval Committee referred to in Article 9". Under Article 9 thereof, the Approval Committee is composed of 12 members appointed by the Minister ("the Approval Committee"), including "an expert from the Brussels Region, presented by the Minister-President of the Brussels Capital Region".

13 On 20 June 2013, the appellant adopted the ordonnance relative à une utilisation des pesticides compatible avec le développement durable en Région de Bruxelles-Capitale (Order on the sustainable use of pesticides in the Brussels Capital Region) (*Moniteur Belge* of 21 June 2013, p. 40062) ("the Order of 20 June 2013"). According to the first paragraph of Article 1 thereof, that order transposes Directive [2009/128].

14 According to the third paragraph of Article 1 of the Order of 20 June 2013, the appellant "may identify pesticides whose use is prohibited because of the risks they pose to human health or the environment".

15 On 10 November 2016, the appellant adopted, on the basis of the Order of 20 June 2013, the Arrêté interdisant l'utilisation de pesticides contenant du glyphosate en Région de Bruxelles-Capitale (Decree prohibiting the use of pesticides containing glyphosate in the Brussels Capital Region) (*Moniteur Belge* of 2 December 2016, p. 79492) ("the Decree of 10 November 2016").

16 It is apparent from the application that the Decree of 10 November 2016 is the subject of an action for annulment brought before the section du contentieux administratif du Conseil d'État (Administrative Litigation Division of the Council of State, Belgium). The action essentially concerns the alleged infringement of certain provisions of Regulation No 1107/2009 and Articles 34, 35 and 36 TFEU. In that case, the appellant takes the view that the European Union-wide approval of glyphosate and the authorisation by the Belgian federal authority of certain plant protection products containing that substance cannot be compromised by a total ban on the use of those products in the territory of the Brussels Capital Region.

17 Lastly, it should be noted that the appellant is involved in the works of the comitology committees at the European Union level and in turn represents the Kingdom of Belgium in those committees. As part of that assignment, it took part in a consultation with the other Belgian regions prior to the works on the active substance glyphosate carried out by the Standing Committee on Plants, Animals, Food and Feed through the Coordination Committee for International Environmental Policy, set up by the Cooperation Agreement of 5 April 1995 between the Federal State, the Flemish Region, the Walloon Region and the [appellant] on international environmental policy (*Moniteur belge* of 13 December 1995, p. 33436).'

The action before the General Court and the order under appeal

13 By application lodged at the Registry of the General Court on 8 March 2018, the Brussels Capital Region sought the annulment of the act at issue.

14 By separate document, the Commission raised an objection of inadmissibility based on the appellant's lack of standing under Article 130 of the Rules of Procedure of the General Court.

15 By the order under appeal, the General Court upheld that objection and dismissed the action as inadmissible, on the ground that the Brussels Capital Region is not directly concerned by the act at issue,

for the purposes of the fourth paragraph of Article 263 TFEU.

Forms of order sought by the parties to the appeal

16 By its appeal, the Brussels Capital Region claims that the Court should:

– set aside the order under appeal;

– declare the action for annulment admissible and refer the case back to the General Court;

– order the Commission to pay the costs of both sets of proceedings.

17 The Commission contends that the Court should:

– dismiss the appeal;

– order the appellant to pay the costs.

The appeal

Preliminary observations

18 It should be borne in mind that an action by a local or regional entity cannot be treated in the same way as an action by a Member State and must therefore satisfy the conditions of admissibility laid down in the fourth paragraph of Article 263 TFEU (see, to that effect, judgment of 2 May 2006, *Regione Siciliana* v *Commission*, C–417/04 P, EU:C:2006:282, paragraphs 21 to 24).

19 That provision makes the admissibility of an action brought by a natural or legal person against a decision which is not addressed to him or her, as is the case here for the Brussels Capital Region, subject to the condition that the decision is of direct and individual concern to that person or, if it is a regulatory act, that that act is of direct concern to that person and that the regulatory act does not entail implementing measures.

20 In the present case, the General Court, hearing an objection of inadmissibility on the basis of the Brussels Capital Region's lack of standing to seek the annulment of the act at issue, limited its examination to the question whether the Brussels Capital Region was directly concerned by that act and ruled, in the order under appeal, that that condition was not satisfied.

21 In support of its appeal against that order, the Brussels Capital Region raises two grounds of appeal, alleging, first, the failure to have regard to the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1) ('the Aarhus Convention') and, second, that the General Court erred in finding that it was not directly affected by the act at issue.

The first ground of appeal, alleging failure to have regard to the Aarhus Convention

Arguments of the parties

22 By the first part of the first ground of appeal, the Brussels Capital Region complains that the General Court refused, in paragraphs 34 to 36 of the order under appeal, to take into account Article 9 of the Aarhus Convention, when examining the admissibility of its action. It takes the view that, since that action falls within the scope of that convention, the conditions of admissibility laid down in the fourth paragraph

of Article 263 TFEU must be interpreted in the light of Article 9 of the Aarhus Convention, which relates to access to justice.

23 By the second part of the first ground of appeal, the appellant criticises the General Court for finding, in paragraph 37 of the order under appeal, that it had insufficiently explained how a reference to the Aarhus Convention could influence the assessment of whether the appellant is directly and individually concerned in the present case.

24 The Commission contends that the ground of appeal should be dismissed in its entirety.

Findings of the Court

25 With regard to the first part of the first ground of appeal, it should be borne in mind that, although, under the second paragraph of Article 216 TFEU, agreements concluded by the European Union bind its institutions and therefore prevail over the acts laid down by those institutions (judgments of 3 June 2008, *Intertanko and Others*, C−308/06, EU:C:2008:312, paragraph 42; of 21 December 2011, *Air Transport Association of America and Others*, C−366/10, EU:C:2011:864, paragraph 50 and the case-law cited; and of 13 January 2015, *Council and Commission* v *Stichting Natuur en Milieu and Pesticide Action Network Europe*, C−404/12 P and C−405/12 P, EU:C:2015:5, paragraph 44), those international agreements cannot prevail over EU primary law.

26 It follows that Article 9 of the Aarhus Convention cannot have the effect of modifying the conditions of admissibility of actions for annulment laid down in the fourth paragraph of Article 263 TFEU.

27 In those circumstances, the first part of the first ground of appeal, alleging that the General Court assessed the admissibility of the action without taking account of the Aarhus Convention, must be dismissed.

28 In addition, since the argument based on the General Court's refusal to take account of Article 9 of the Aarhus Convention must be rejected, the criticism of the grounds on which, in paragraph 37 of the order under appeal, the General Court disregarded that argument is ineffective. Consequently, the second part of the first ground of appeal must be dismissed.

29 It follows from the foregoing that the first ground of appeal must be dismissed.

The second ground of appeal, alleging that the General Court erred in finding that the appellant was not directly concerned by the act at issue

30 At the outset, it should be borne in mind that it is settled case-law of the Court that the condition of 'direct concern' means that the measure must, first, directly affect the legal situation of the individual and, second, leave no discretion to the addressees of that measure who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules alone without the application of other intermediate rules (see, to that effect, judgments of 5 May 1998, *Glencore Grain* v *Commission*, C−404/96 P, EU:C:1998:196, paragraph 41, and of 5 November 2019, *ECB and Others* v *Trasta Komercbanka and Others*, C−663/17 P, C−665/17 P and C−669/17 P, EU:C:2019:923, paragraph 103).

31 It is in the light of that case-law that the second ground of appeal, which is subdivided into four parts, must be examined.

The first part of the second ground of appeal

– *Arguments of the parties*

32 By the first part of the second ground of appeal, the Brussels Capital Region claims that the General Court erred in taking the view, in paragraphs 50 to 55 of the order under appeal, that the act at issue did not have the effect of preserving the validity of existing authorisations to place on the market plant protection

products containing the active substance glyphosate. According to the appellant, that act allowed such authorisations to continue to have effect, whereas, in the absence of a renewal of approval of that active substance, those authorisations would *ipso facto* have lapsed.

33 The Commission contends that the first part of the second ground of appeal should be dismissed.

– *Findings of the Court*

34 It is apparent from the second subparagraph of Article 20(2) of Regulation No 1107/2009 that, if the approval of an active substance is not renewed by the EU legislature because of the immediate concerns for human health or animal health or the environment, the authorisations to place plant protection products on the market containing that active substance issued by Member States lapse and those products are to be withdrawn from the market immediately.

35 However, the renewal of the approval of an active substance does not have an effect comparable to the absence of renewal. It does not lead to the confirmation, extension or renewal of authorisations to place on the market plant protection products which contain that active substance, since their holders must, under Article 43(2) of Regulation No 1107/2009, apply for renewal of the approval within 3 months from the approval of the active substance, an application on which the Member States themselves must decide within 12 months under Article 43(5) thereof.

36 Consequently, by holding that the act at issue did not have the effect of confirming the validity of authorisations to place on the market plant protection products containing the active substance glyphosate, the General Court did not err in law.

The second part of the second ground of appeal

– *Arguments of the parties*

37 By the second part of the second ground of appeal, the Brussels Capital Region criticises the grounds on which the General Court rejected, in paragraphs 56 to 59 of the order under appeal, its argument alleging that it is directly concerned by the act at issue, since it is required by the latter to decide on the renewal of authorisations to place on the market plant protection products containing glyphosate at the latest 12 months after its entry into force, under Article 43(5) of Regulation No 1107/2009.

38 According to the appellant, in the first place, the General Court erred, in paragraph 57 of the order under appeal, by holding that the obligation to decide on applications for the renewal of authorisations to place plant protection products on the market falls on the Belgian federal authority and not on the Brussels Capital Region. That region necessarily participates in the decision-making procedure since, under national law, it sits on the Approval Committee, the opinion of which the minister responsible for renewing those authorisations is required to obtain.

39 In the second place, the General Court also erred in law by holding, in paragraph 58 of the order under appeal, that the participation of the Brussels Capital Region in the examination of applications for renewal of authorisations to place on the market products containing glyphosate is a direct effect of Article 43(5) and (6) of Regulation No 1107/2009 and not of the act at issue. In several cases, it has been accepted that an applicant was directly concerned, even though the act which he or she was contesting affected him or her only through another act of the European Union (see, to that effect, judgment of 11 May 2017, *Deza* v *ECHA*, T−115/15, EU:T:2017:329, paragraphs 30 to 35).

40 The Commission contends that the second part of the second ground of appeal should be dismissed.

– *Findings of the Court*

41 In the first place, it is common ground that the obligation on Member States under Article 43(5) and (6) of Regulation No 1107/2009 (i) to decide on an application for renewal of the authorisation to place a plant protection product on the market at the latest 12 months from the renewal of the approval of the active substance contained therein, which must be submitted within 3 months from the renewal of the approval of that active substance, and (ii) where no decision is taken on the renewal of the authorisation before its expiry, to extend the authorisation for the necessary period, is a matter for the federal authority in Belgium, which is competent under national law to 'establish product standards', and not for regions such as the appellant.

42 While it is true that national law provides that the regions are to be 'involved in drawing up federal regulations on product standards' and that, in particular, under Article 7 of the Royal Decree of 28 February 1994, the marketing and use of a pesticide for agricultural use may be approved by the competent federal minister only after the opinion of a committee in which the Brussels Capital Region is represented by an expert, that advisory competence does not constitute a direct effect of Article 43(5) and (6) of Regulation No 1107/2009. In those circumstances, the criticism raised by the appellant against paragraph 57 of the order under appeal must be rejected.

43 In the second place, it must be noted that, contrary to what the appellant maintains, the General Court did not state, in paragraph 58 of the order under appeal, that the participation of the Brussels Capital Region in the examination of applications for renewal of authorisations to place on the market products containing glyphosate is a direct effect of Article 43(5) and (6) of Regulation No 1107/2009 and not of the act at issue. The General Court merely observed, in that paragraph, that the appellant's argument, as submitted by it, relied not on the effects of the act at issue itself, but only on those of Article 43(5) and (6) of that regulation. Accordingly, the appellant's criticism of paragraph 58 of the order under appeal is ineffective.

44 Moreover, since the General Court's first ground set out in paragraph 57 of the order under appeal for rejecting the appellant's argument is well founded, as was stated in paragraph 42 of this judgment, the second ground for rejecting that argument appearing in paragraph 58 of the order under appeal is subsidiary. The appellant's criticism of that second ground is therefore also ineffective for that reason (see, by analogy, judgment of 13 September 2007, *Common Market Fertilizers* v *Commission*, C−443/05 P, EU:C:2007:511, paragraph 137) and must accordingly be rejected.

45 It follows from the foregoing that the second part of the second ground of appeal must be dismissed.

Third part of the second ground of appeal

– *Arguments of the parties*

46 By the third part of the second ground of appeal, the appellant criticises the grounds on which the General Court rejected, in paragraphs 60 to 63 of the order under appeal, its argument alleging that, having regard to the mutual recognition procedure provided for in Articles 40 to 42 of Regulation No 1107/2009, the effect of the act at issue is to neutralise to a large extent the capacity of the Approval Committee, and consequently its own capacity, to oppose the authorisation of a plant protection product containing glyphosate, if that product has already been authorised in another Member State.

47 In the first place, the Brussels Capital Region complains that the General Court took the view that the mutual recognition procedure does not create an automatic mechanism and that Article 41(1) and Article 36(3) of Regulation No 1107/2009 leave a discretion to the Member State which receives a request for mutual recognition. Moreover, the General Court did not give reasons for its assessment.

48 In the second place, the Brussels Capital Region takes the view that the General Court manifestly erred in stating, in paragraph 63 of the order under appeal, that the effects of the mutual recognition procedure are not a direct consequence of the act at issue.

49 The Commission contends that the third part of the second ground of appeal should be dismissed.

– *Findings of the Court*

50 In the first place, it follows from the case-law cited in paragraph 30 of this judgment that one of the two cumulative conditions for establishing that a measure directly affects an individual is that it leaves no discretion to the addressees of that measure who are entrusted with the task of implementing it.

51 As the General Court pointed out in paragraph 61 of the order under appeal, where a Member State receives an application for authorisation to place on the market a plant protection product already authorised for that use by another Member State, it is not required to grant it, since, first, Article 41(1) of Regulation No 1107/2009 allows it to take account of the circumstances in its territory and, second, Article 36(3) of that regulation, to which Article 41 of that regulation refers, states (i) that it may impose risk mitigation measures relating to human or animal health or the environment and (ii) that it may even refuse to issue an authorisation where risk mitigation measures cannot meet the concerns of that Member State due to its specific environmental or agricultural circumstances. The General Court therefore rightly held that the mutual recognition procedure does not create an automatic mechanism and leaves a discretion to the Member State which receives a request for mutual recognition.

52 It follows from the foregoing that the appellant is not justified in complaining that, in that regard, the General Court erred in law and vitiated its assessment by a failure to state sufficient reasons.

53 In the second place and in any event, contrary to what the appellant maintains, the General Court rightly held that the effects of the mutual recognition procedure are not themselves the direct consequence of the act at issue. It must be observed that the approval of an active substance is only one of the requirements, listed in Article 29(1) of Regulation No 1107/2009, to which the authorisation to place on the market a plant protection product containing that active substance is subject. Moreover, the issuance of such an authorisation in one Member State does not of itself entail authorisation in other Member States, since Article 40 of that regulation provides, subject to the conditions which it lays down, that the holder of an authorisation granted in one Member State may, under the mutual recognition procedure, apply for an authorisation for the same plant protection product in another Member State. Lastly, and as was explained in the previous paragraph, the latter Member State is not obliged to grant that authorisation in all circumstances.

54 It follows from the foregoing that the third part of the second ground of appeal must be dismissed.

The fourth part of the second ground of appeal

– *Arguments of the parties*

55 By the fourth part of the second ground of appeal, the appellant criticises the grounds, set out in paragraphs 66 to 77 of the order under appeal, on which the General Court rejected its argument based on the effects of the act at issue on the lawfulness of the Decree of 10 November 2016 and, accordingly, on its consequences on the proceedings to which that decree is subject.

56 In the first place, the Brussels Capital Region takes the view that the General Court committed an error of law by applying to the condition of direct concern the test developed in its judgment of 5 October 2005, *Land Oberösterreich and Austria* v *Commission* (T−366/03 and T−235/04, EU:T:2005:347), with regard to the criterion of individual concern, thus confusing the two requirements laid down in the fourth paragraph of Article 263 TFEU.

57 In the second place, the Brussels Capital Region alleges that the General Court failed to assess the risk which the act at issue has on the validity of the ban on the use of pesticides containing glyphosate laid down by its Decree of 10 November 2016.

58 In the third place, the Brussels Capital Region maintains that the adoption, despite an adverse legal context, of the Decree of 10 November 2016 was dictated by public interest concerns of a political nature,

and not only by legal considerations.

59 In the fourth place, according to the Brussels Capital Region, the order under appeal manifestly contradicts the judgment of 13 December 2018, *Ville de Paris, Ville de Bruxelles and Ayuntamiento de Madrid* v *Commission* (T−339/16, T−352/16 and T−391/16, EU:T:2018:927). In that judgment, the General Court held that the applicant cities, which had taken measures to limit air pollution from motor traffic in their territory, were directly concerned by a regulation setting maximum values for emissions of nitrogen oxide under real driving conditions for light passenger and commercial vehicles at a level higher than that laid down by the so-called 'Euro 6' standard. In other words, the General Court held that the mere 'virtual' unlawfulness, that is to say unlawfulness not yet established by a court decision, of such measures in the light of that regulation was sufficient to render the cities in question directly concerned by it. However, in the order under appeal, the General Court found that the 'virtual' unlawfulness of the Decree of 10 November 2016 in the light of the act at issue was not sufficient to demonstrate that the appellant was directly concerned by that decision.

60 In the fifth place, the Brussels Capital Region alleges that the General Court vitiated the order under appeal through a failure to state reasons by refraining from examining the argument that the act at issue directly affects its legal position by maintaining the legal interest in bringing proceedings of the authors of the actions for annulment against the Decree of 10 November 2016.

61 The Commission contends that the fourth part of the second ground of appeal should be dismissed.

– *Findings of the Court*

62 In the first place, the fact that, according to the appellant, the General Court misinterpreted its own case-law does not in itself constitute an error of law on which an appeal could be based. Moreover, the claim alleging a confusion between the criteria of direct concern and individual concern is not accompanied by any details making it possible to assess its merits and therefore must be rejected.

63 In the second place, it should be noted that the legality − contested in the context of an appeal before the Conseil d'État (Council of State) − of the Decree of 10 November 2016 cannot in any event be affected by the act at issue, since that act was adopted after the date of adoption of that decree. In addition, neither the risk of an action for a declaration of failure to fulfil obligations at the initiative of the Commission, alluded to in the appeal, nor doubts as to the validity of the scheme prohibiting the use of pesticides containing glyphosate in the light of the Belgian Constitution, whose link with the act at issue the appellant does not make clear, are such as to establish that it is directly concerned by that act. In those circumstances, the appellant does not establish that the act at issue would pose a risk to that prohibition scheme.

64 In the third place, it is apparent from the case-law of the Court referred to in paragraph 30 of this judgment that the condition of 'direct concern' means inter alia that the measure in question must directly affect the legal situation of the natural or legal person who intends to bring an action under the fourth paragraph of Article 263 TFEU. Thus, such a condition must be assessed only with regard to the legal effects of the measure, the possible political effects of that measure not having any bearing on that assessment. Consequently, such an argument must be rejected.

65 In the fourth place, the appellant's argument based on the judgment of 13 December 2018, *Ville de Paris, Ville de Bruxelles and Ayuntamiento de Madrid* v *Commission* (T−339/16, T−352/16 and T−391/16, EU:T:2018:927), does not explain how the fact, even if it were established, that the solution adopted in the order under appeal contradicts that judgment would in itself be such as to render that order unlawful. This claim must therefore also be rejected.

66 In the fifth place, although the Brussels Capital Region complains that the General Court did not examine its argument that the act at issue directly affects its legal position by maintaining the legal interest in bringing proceedings of the authors of the actions for annulment against the Decree of 10 November 2016, it should be noted that that argument was submitted by the appellant only in its response to the objection of

inadmissibility raised by the Commission. Consequently, it cannot be regarded as a plea which the General Court was required to examine. Accordingly, the complaint must be rejected.

67 It follows from the foregoing that the fourth part of the second ground of appeal and the appeal in its entirety must be dismissed.

Costs

68 Under Article 138(1) of the Rules of Procedure of the Court of Justice, which applies 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. Since the Commission has applied for costs and the Brussels Capital Region has been unsuccessful, the latter must be ordered to pay the costs.

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

1. Dismisses the appeal;

2. Orders the Région de Bruxelles-Capitale to pay the costs.

[Signatures]

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* Language of the case: French.