



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 97/20

Luxembourg, 16 July 2020

Advocate General's Opinion in Case C-352/19 P
Région de Bruxelles-Capitale v Commission

Advocate General Bobek argues in favour of a more open interpretation of the criteria of direct concern

He considers that by denying standing to the Brussels Capital Region concerning the approval of the active substance glyphosate, the General Court erred in law

On 8 March 2018, the Brussels Capital Region brought an action for annulment of Commission Implementing Regulation (EU) 2017/2324¹ renewing the approval of the active substance glyphosate before the General Court. By the order under appeal², the General Court declared the action inadmissible on the ground of lack of standing to bring proceedings. More specifically, the General Court held that the Brussels Capital Region was not *directly concerned* by the contested regulation. In its appeal the Brussels Capital Region asks the Court of justice to set aside the order under appeal, declare the action for annulment admissible and refer the case back to the General Court.

In today's Opinion Advocate General Michal Bobek finds that by denying standing to the Brussels Capital Region, the General Court erred in law, misinterpreting the fourth paragraph of article 263 TFEU, as well as a number of provisions of applicable secondary law.

Advocate General Bobek notes that under the fourth paragraph of Article 263 TFEU, the admissibility of an action brought by a natural or legal person against an act which is not addressed to him or her may arise in two situations. First, such proceedings may be instituted if the act is of direct and individual concern to that person. Second, he or she may bring proceedings against a regulatory act not entailing implementing measures if that act is of direct concern to him or her.

In general remarks on the concept of 'direct concern', Advocate General Bobek recalls that according to settled case-law, the condition of direct concern is satisfied when the existence of a direct causal link between the contested EU act and the alteration in the legal situation of the applicant can be established. The condition of direct concern is not satisfied if there is any additional intervention, by the EU institutions or by the national authorities, which is capable of breaking that link.

Advocate General Bobek highlights the logic underpinning the case-law concerning the principle of direct concern: 'where a Community measure is addressed to a Member State by an institution, if the action to be taken by the Member State in response to the measure is automatic or is, at all events, a foregone conclusion, then the measure is of direct concern to any person affected by that action. If, on the other hand, the measure leaves it to the Member State whether or not to act, it is the action or inaction of the Member State that is of direct concern to the person affected, not the measure itself. In other words, the measure in question must not depend for its effect on the

¹ 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).

² Order of 28 February 2019, Région de Bruxelles-Capitale v Commission ([T-178/18](#)).

exercise of a discretionary power by a third party, unless it is obvious that any such power is bound to be exercised in a particular way.'

Having noted that federated entities of the Member States are, by their nature, simply not just any (private) natural or legal person in their capacity as non-privileged applicants, Advocate General Bobek proceeds to examine how those principles have been applied in respect of regions or other local entities.

In this respect, Advocate General Bobek notes that jurisprudence concerning federated entities suggests that a regional or local entity is concerned by an EU act when it is entrusted with powers that are exercised autonomously within the limits of the national constitutional system of the Member State concerned, and the EU act prevents that entity from exercising those powers as it sees fit.

Advocate General Bobek adds that the mere fact that a region has some competence – as a body competent for economic, social or environmental matters in its territory – with regard to the matter regulated by an EU measure of general application cannot, of itself, be sufficient for that region to be regarded as 'concerned' within the meaning of the fourth paragraph of Article 263 TFEU. In other words, regions are precluded from acting against EU acts which affect their interests in a general manner. Something more than that is required: a direct restriction in the exercise of a specific power attributed to the region at the constitutional level in the Member State.

In that regard, Advocate General Bobek finds that the reasoning of the Brussels Capital Region concerning the fact that some of its arguments on the admissibility of the application were misconstrued is well founded. He notes that rather than examining whether the contested regulation prevented the Brussels Capital Region from exercising some specific powers, the General Court shifted the analysis to the examination of whether the region's participation in the authorisation procedures could be deemed sufficient for a finding of direct concern.

Advocate General Bobek thus finds that Brussels Capital Region is correct in that the General Court did not engage with its arguments concerning the fact that the contested regulation, in and of itself, prevented it from exercising its autonomous powers in the manner it saw fit.

Advocate General Bobek concludes that the General Court has wrongly interpreted article 263 TFEU when assessing the condition of direct concern. He states that the contested implementing regulation produced legal effects which altered the legal position of the Brussels Capital Region in at least four regards. First, Brussels Capital Region could not exercise, in the manner it saw fit, its autonomous powers to regulate the use of plant protection products in its territory. Second, the contested regulation required the Belgian authorities – including Brussels Capital Region – to preserve the validity of existing authorisations for the entirety of the time required to complete the procedures for the renewal of those authorisations. Third, the contested regulation triggered a procedure in which Brussels Capital Region was required to participate, and in which it could neither *de jure* nor *de facto* make use of the prerogatives granted to it under the Belgian constitution. Fourth, the contested regulation also required Brussels Capital Region to recognise, under the mutual recognition system, any authorisation granted by a Member State which belongs to the same zone. Despite the doubts that Brussels Capital Region has concerning the general harmful nature of glyphosate, it is not entitled to refuse recognition, unless it acts in disregard of its EU law obligations.

When considering the role of regions and other federated entities as litigants before the EU Courts, Advocate General Bobek points out that the European regions have an important role to play within the European project. In addition, regions or any other federated entities of the Member States may be responsible for implementing EU law in areas which fall within their competence. In this light, Advocate General Bobek suggests that, whenever, at the first sight, a federated entity of the Member State is given, under the national constitution, specific autonomous powers on a given matter which it cannot exercise as it sees fit as a direct consequence of an EU measure, that entity should have standing to challenge the act at issue.

Advocate General Bobek notes that the overly restrictive tendency in interpreting and applying rules of access to the EU Courts is a cause for concern. He adds that reading the case-law of the EU Courts with a critical eye, in particular the numerous orders of the General Court, one cannot help but be surprised by the zeal and creativity with which the absence of direct concern, or even any interest to act, will be detected.

Advocate General Bobek concludes with two structural points which plead in favour of more open interpretation of the criteria of direct and individual concern at least for certain categories of atypical non-privileged applicants, such as the regions in cases like the present one. Advocate General Bobek invokes the changed architecture of the EU Courts as the first reason. Secondly, Advocate General Bobek argues that cases with complex, regulatory and technical issues, which require a rather extensive collection of evidence, expert opinion, or (scientific) data should be litigated first on merits in depth before a first instance jurisdiction, the General Court, with all the evidence and data collected and interested interveners heard, before potentially proceeding to the Court on appeal.

Having concluded that the General Court erred in declaring the action at first instance inadmissible on the ground that the appellant was not *directly concerned*, Advocate General Bobek proceeds to examine whether the other conditions for the Brussels Capital Region's standing under the fourth paragraph of Article 263 TFEU are fulfilled. He suggests that the Court should find that the Brussels Capital Region was both individually and directly concerned by the challenged measure and, additionally, that the Brussels Capital Region had challenged a regulatory act that does not entail implementing measures.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355