



Reports of Cases

JUDGMENT OF THE GENERAL COURT (Sixth Chamber, sitting with five Judges)

18 March 2026*

(Environment – Aarhus Convention – Rejection of request for internal review – Article 10(1) of Regulation (EC) No 1367/2006 – Delegated Regulation (EU) 2021/2139 – Forest management – Activities relating to the production of fuels and bioenergy from forest biomass – Taxonomy – Requirements for technical screening criteria – Article 19 of Regulation (EU) 2020/852 – Substantial contribution to climate change mitigation and adaptation – Significant harm to environmental objectives)

In Case T-575/22,

Robin Wood – Gewaltfreie Aktionsgemeinschaft für Natur und Umwelt eV, established in Hamburg (Germany), and the other applicants whose names are listed in the annex,¹ represented by C. Baldon, N. Braoudakis, lawyers, and B. Mitchell, Barrister,

applicants,

v

European Commission, represented by G. von Rintelen, G. Gattinara, C. Auvret and B. De Meester, acting as Agents,

defendant,

THE GENERAL COURT (Sixth Chamber, sitting with five Judges),

composed, at the time of the deliberations, of M.J. Costeira, President, M. Kancheva, U. Öberg, P. Zilgalvis and E. Tichy-Fisslberger (Rapporteur), Judges,

Registrar: A. Marghelis, Administrator,

having regard to the written part of the procedure,

further to the hearing on 14 November 2024,

gives the following

* Language of the case: English.

¹ The list of the other applicants is annexed only to the version sent to the parties.

Judgment

- 1 By their action under Article 263 TFEU, the applicants, Robin Wood – Gewaltfreie Aktionsgemeinschaft für Natur und Umwelt eV and the other applicants whose names are listed in the annex seek the annulment of Decision Ares(2022) 4939323 of 6 July 2022, by which the European Commission rejected as unfounded the request for internal review of Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives (OJ 2021 L 442, p. 1; ‘the Delegated Regulation’), as regards certain aspects related to economic activities in the forest management and bioenergy sectors (‘the contested decision’).

Background to the dispute

- 2 On 4 June 2021 the European Commission adopted the Delegated Regulation on the basis, inter alia, of Article 10(3) and Article 11(3) of Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ 2020 L 198, p. 13; ‘the Taxonomy Regulation’).
- 3 On 3 February 2022, the applicants submitted a request for internal review of the Delegated Regulation, pursuant to Article 10(1) of Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13), as amended by Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 (OJ 2021 L 356, p. 1) (‘the Aarhus Regulation’).
- 4 In their request for internal review, the applicants alleged, in essence, that some of the technical screening criteria established in the Delegated Regulation concerning economic activities relating to forest management (Section 1 (entitled ‘Forestry’), Section 1.3 (entitled ‘Forest management’) of Annexes I and II to the Delegated Regulation) and certain activities relating to bioenergy (Section 4, Sections 4.7, 4.8, 4.13, 4.19, 4.20, 4.23 and 4.24 of Annex II to the Delegated Regulation) did not comply with a number of provisions of the Taxonomy Regulation or certain Treaty requirements.
- 5 On 6 July 2022, the Commission adopted the contested decision, by which it rejected the request for internal review. In that decision, to which was attached, as Annexes I and III, a detailed assessment of the grounds for review relied on by the applicants, the Commission held that the Delegated Regulation complied with EU law.

Forms of order sought

- 6 The applicants claim that the Court should:
 - annul the contested decision;

- order the Commission to pay the costs.
- 7 The Commission contends that the Court should:
- dismiss the action;
 - order the applicants to pay the costs.

Law

- 8 The applicants put forward 12 pleas in law in support of their action.
- 9 By the first six pleas in law, the applicants challenge the merits of the responses given by the Commission in the contested decision in relation to the criticisms raised by them in the request for internal review as to the compatibility, with various provisions of the Taxonomy Regulation, of technical screening criteria relating to forest management activities referred to in Section 1 (entitled ‘Forestry’), Section 1.3 (entitled ‘Forest management’) of Annex I to the Delegated Regulation (see paragraphs 35 to 244 below).
- 10 By the other six pleas in law, the applicants challenge the merits of the responses given by the Commission in the contested decision in relation to the criticisms raised by them in the request for internal review as to the compatibility, with various provisions of the Taxonomy Regulation, of technical screening criteria relating to forest bioenergy activities (in particular, biomass), those activities being referred to, inter alia, in Section 4 (entitled ‘Energy’), Sections 4.7, 4.8, 4.19, 4.20, 4.23 and 4.24 of Annex I to the Delegated Regulation (see paragraphs 245 to 461 below).

Preliminary considerations on the Taxonomy Regulation and the Delegated Regulation

- 11 According to the wording of Article 1(1) of the Taxonomy Regulation, that regulation establishes the criteria for determining whether an economic activity qualifies as environmentally sustainable for the purposes of establishing the degree to which an investment is environmentally sustainable. Recital 3 thereof states that that regulation represents a key step in channelling financial flows towards sustainable activities in order to achieve the objective of achieving a climate-neutral European Union by 2050.
- 12 To that end, the Taxonomy Regulation establishes, as is apparent from recitals 6 and 12 thereof, a unified classification system for sustainable activities (called ‘taxonomy’), in order to harmonise at EU level the criteria for determining whether an economic activity qualifies as environmentally sustainable, thereby giving investors and other economic operators a holistic understanding of economic activities that are environmentally sustainable.
- 13 Article 3 of the Taxonomy Regulation provides as follows:
- ‘For the purposes of establishing the degree to which an investment is environmentally sustainable, an economic activity shall qualify as environmentally sustainable where that economic activity:
- (a) contributes substantially to one or more of the environmental objectives set out in Article 9 in accordance with Articles 10 to 16;

(b) does not significantly harm any of the environmental objectives set out in Article 9 in accordance with Article 17;

...; and

(d) complies with technical screening criteria that have been established by the Commission in accordance with Article 10(3) [and Article] 11(3) ...’

14 The six environmental objectives listed in Article 9 of the Taxonomy Regulation are the following:

‘(a) climate change mitigation;

(b) climate change adaptation;

(c) the sustainable use and protection of water and marine resources;

(d) the transition to a circular economy;

(e) pollution prevention and control;

(f) the protection and restoration of biodiversity and ecosystems.’

15 Article 4 of the Taxonomy Regulation provides that the Member States and the European Union are to apply the criteria set out in Article 3 thereof to determine whether an economic activity qualifies as environmentally sustainable for the purposes of any measure setting out requirements for financial market participants or issuers in respect of financial products or corporate bonds that are made available as environmentally sustainable.

16 Article 10(1) of the Taxonomy Regulation lays down the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation.

17 ‘Climate change mitigation’ is defined in point 5 of Article 2 of the Taxonomy Regulation as ‘the process of holding the increase in the global average temperature to well below 2 °C and pursuing efforts to limit it to 1[.]5 °C above pre-industrial levels, as laid down in the Paris Agreement [on Climate Change, approved on 12 December 2015]’.

18 Article 10(2) of the Taxonomy Regulation lays down the conditions applicable to economic activities for which there is no technologically and economically feasible low-carbon alternative, that is to say, ‘transitional’ activities, according to Article 19(1)(h)(ii) of that regulation.

19 Article 10(3) of the Taxonomy Regulation provides that the Commission is to adopt a delegated act in accordance with Article 23 thereof to:

‘(a) supplement paragraphs 1 and 2 of this Article by establishing technical screening criteria for determining the conditions under which a specific economic activity qualifies as contributing substantially to climate change mitigation; and

- (b) supplement Article 17 by establishing, for each relevant environmental objective, technical screening criteria for determining whether an economic activity in respect of which technical screening criteria have been established pursuant to point (a) of this paragraph causes significant harm to one or more of those objectives.’
- 20 Article 11(1) of the Taxonomy Regulation provides that an economic activity is to qualify as contributing substantially to climate change adaptation where that activity:
- ‘(a) includes adaptation solutions that either substantially reduce the risk of the adverse impact of the current climate and the expected future climate on that economic activity or substantially reduce that adverse impact, without increasing the risk of an adverse impact on people, nature or assets; or
 - (b) provides adaptation solutions that, in addition to satisfying the conditions set out in Article 16, contribute substantially to preventing or reducing the risk of the adverse impact of the current climate and the expected future climate on people, nature or assets, without increasing the risk of an adverse impact on other people, nature or assets.’
- 21 Article 11(3) of the Taxonomy Regulation provides that the Commission is to adopt a delegated act in accordance with Article 23 thereof to:
- ‘(a) supplement paragraphs 1 and 2 of this Article by establishing technical screening criteria for determining the conditions under which a specific economic activity qualifies as contributing substantially to climate change adaptation; and
 - (b) supplement Article 17 by establishing, for each relevant environmental objective, technical screening criteria for determining whether an economic activity in respect of which technical screening criteria have been established pursuant to point (a) of this paragraph causes significant harm to one or more of those objectives.’
- 22 Article 17(1) of the Taxonomy Regulation is worded as follows:
- ‘For the purposes of point (b) of Article 3, taking into account the life cycle of the products and services provided by an economic activity, including evidence from existing life-cycle assessments, that economic activity shall be considered to significantly harm:
- (a) climate change mitigation, where that activity leads to significant greenhouse gas emissions;
 - (b) climate change adaptation, where that activity leads to an increased adverse impact of the current climate and the expected future climate, on the activity itself or on people, nature or assets;
 - (c) the sustainable use and protection of water and marine resources, where that activity is detrimental:
 - (i) to the good status or the good ecological potential of bodies of water, including surface water and groundwater; or
 - (ii) to the good environmental status of marine waters;
 - (d) the circular economy, including waste prevention and recycling, where:

- (i) that activity leads to significant inefficiencies in the use of materials or in the direct or indirect use of natural resources such as non-renewable energy sources, raw materials, water and land at one or more stages of the life cycle of products, including in terms of durability, reparability, upgradability, reusability or recyclability of products;
 - (ii) that activity leads to a significant increase in the generation, incineration or disposal of waste, with the exception of the incineration of non-recyclable hazardous waste; or
 - (iii) the long-term disposal of waste may cause significant and long-term harm to the environment;
- (e) pollution prevention and control, where that activity leads to a significant increase in the emissions of pollutants into air, water or land, as compared with the situation before the activity started; or
- (f) the protection and restoration of biodiversity and ecosystems, where that activity is:
- (i) significantly detrimental to the good condition and resilience of ecosystems; or
 - (ii) detrimental to the conservation status of habitats and species, including those of Union interest.'
- 23 Article 19(1) of the Taxonomy Regulation provides that the technical screening criteria established pursuant to, inter alia, Article 10(3) thereof must:
- ‘(a) identify the most relevant potential contributions to the given environmental objective while respecting the principle of technological neutrality, considering both the short- and long-term impact of a given economic activity;
- (b) specify the minimum requirements that need to be met to avoid significant harm to any of the relevant environmental objectives, considering both the short- and long-term impact of a given economic activity;
- (c) be quantitative and contain thresholds to the extent possible, and otherwise be qualitative;
- (d) where appropriate, build upon Union labelling and certification schemes, Union methodologies for assessing environmental footprint, and Union statistical classification systems, and take into account any relevant existing Union legislation;
- (e) where feasible, use sustainability indicators as referred to in Article 4(6) of Regulation (EU) 2019/2088;
- (f) be based on conclusive scientific evidence and the precautionary principle enshrined in Article 191 TFEU;
- (g) take into account the life cycle, including evidence from existing life-cycle assessments, by considering both the environmental impact of the economic activity itself and the environmental impact of the products and services provided by that economic activity, in particular by considering the production, use and end of life of those products and services;
- (h) take into account the nature and the scale of the economic activity, including:
- (i) whether it is an enabling activity as referred to in Article 16; or
 - (ii) whether it is a transitional activity as referred to in Article 10(2);

- (i) take into account the potential market impact of the transition to a more sustainable economy, including the risk of certain assets becoming stranded as a result of such transition, as well as the risk of creating inconsistent incentives for investing sustainably;
 - (j) cover all relevant economic activities within a specific sector and ensure that those activities are treated equally if they contribute equally towards the environmental objectives set out in Article 9 of this Regulation, to avoid distorting competition in the market; and
 - (k) be easy to use and be set in a manner that facilitates the verification of their compliance.
- ...'

- 24 The Delegated Regulation was adopted on the basis of, inter alia, Article 10(3) and Article 11(3) of the Taxonomy Regulation.
- 25 Article 1 of the Delegated Regulation provides that the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation and causing no significant harm to any of the other environmental objectives are laid down in Annex I to that delegated regulation. Under Article 2 of the Delegated Regulation, the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives are set out in Annex II to that delegated regulation.
- 26 Annexes I and II to the Delegated Regulation specify the technical screening criteria for each economic activity covered by that delegated regulation, inter alia in Section 1.3 (forest management) of Annex I and Sections 4.7, 4.8, 4.19, 4.20, 4.23 and 4.24 (various forest bioenergy activities, in particular biomass).

Preliminary considerations relating to the request for internal review and the scope of the Court's review

- 27 Under Article 10(1) of the Aarhus Regulation, any non-governmental organisation which meets the criteria set out in Article 11 of that regulation is entitled to initiate, by means of a reasoned request, an internal review of an administrative act by the EU institution or body which adopted it on the ground that it is contrary to environmental law within the meaning of Article 2(1)(f) of that regulation.
- 28 It is inherent in the system of internal review that the party requesting a review provides concrete and precise grounds which might be able to call into question the assessments on which the administrative act is based (see, to that effect, judgment of 12 September 2019, *TestBioTech and Others v Commission*, C-82/17 P, EU:C:2019:719, paragraph 68). Accordingly, such a party requesting a review is required to put forward the facts or legal arguments of sufficient substance to give rise to serious doubts as to the assessment made in that act by the EU institution or body (see, to that effect, judgments of 12 September 2019, *TestBioTech and Others v Commission*, C-82/17 P, EU:C:2019:719, paragraph 69, and of 6 October 2021, *ClientEarth v Commission*, C-458/19 P, EU:C:2021:802, paragraph 60).

- 29 A request for internal review of an administrative act is thus intended to establish that, as alleged, the act in question is unlawful or that it is not well founded. The party making the request may then, in accordance with Article 12 of the Aarhus Regulation, read in conjunction with Article 10 thereof, bring the matter before the EU judicature by instituting proceedings – on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers – against the decision rejecting the request for internal review as unfounded (judgment of 12 September 2019, *TestBioTech and Others v Commission*, C-82/17 P, EU:C:2019:719, paragraph 38).
- 30 In principle, the scope of the judicial review of a decision rejecting a request for internal review is no different from the scope of judicial review of the administrative act which was the subject of that request if that act were to be challenged before the courts (see, to that effect, judgment of 15 December 2016, *TestBioTech and Others v Commission*, T-177/13, not published, EU:T:2016:736, paragraphs 76 and 81).
- 31 According to the case-law, where an EU institution is called upon to make complex assessments, such as those underlying the development of technical screening criteria in order to determine whether an economic activity is environmentally sustainable, it has broad discretion (see, to that effect and by analogy, judgment of 11 May 2017, *Dyson v Commission*, C-44/16 P, EU:C:2017:357, paragraph 53 and the case-law cited). The judicial review carried out by the Courts of the European Union of the merits of a decision, such as the contested decision, must not lead it to substitute its own assessment for that of the Commission, but must seek to ascertain that such a decision is not based on materially incorrect facts and that it is not vitiated by a manifest error of assessment or misuse of powers (see, to that effect and by analogy, judgment of 4 May 2023, *ECB v Crédit lyonnais*, C-389/21 P, EU:C:2023:368, paragraph 55 and the case-law cited).
- 32 In that regard, it is settled case-law that the Courts of the European Union must, inter alia, establish not only whether the evidence relied on is factually accurate, reliable and consistent but also whether that evidence contains all the relevant information which must be taken into account in order to assess a complex situation and whether it is capable of substantiating the conclusions drawn from it (see judgment of 4 May 2023, *ECB v Crédit lyonnais*, C-389/21 P, EU:C:2023:368, paragraph 56 and the case-law cited). Where an institution enjoys broad discretion, observance of procedural guarantees is of fundamental importance, including the obligation for that institution to examine carefully and impartially all the relevant aspects of the situation in question (see judgment of 4 May 2023, *ECB v Crédit lyonnais*, C-389/21 P, EU:C:2023:368, paragraph 57 and the case-law cited).
- 33 In order to establish that an institution committed a manifest error in the assessment of complex facts such as to justify the annulment of the act adopted by it, the evidence adduced in support of that claim must be sufficient to make the factual assessments used in the act implausible (see, to that effect, judgments of 14 June 2018, *Lubrizol France v Council*, C-223/17 P, not published, EU:C:2018:442, paragraph 39, and of 7 May 2020, *BTB Holding Investments and Duferco Participations Holding v Commission*, C-148/19 P, EU:C:2020:354, paragraph 74).
- 34 It is in the light of those considerations that the pleas in law put forward by the applicants must be examined.

First plea in law: errors of law and manifest errors of assessment in relation to the Commission's response to the criticism put forward by the applicants regarding the technical

screening criteria for determining whether a forest management activity contributes substantially to climate change mitigation

- 35 The first plea in law, which is based on an alleged infringement of Article 10(1) of the Taxonomy Regulation and which, according to the applicants, concerns the existence of errors of law and manifest errors of assessment, is divided into two parts.

First part of the first plea in law: errors of law and manifest errors of assessment in relation to the assessments in the contested decision relating to the use of an ‘as against a business-as-usual’ baseline under the technical screening criteria for determining whether a forest management activity contributes substantially to climate change mitigation

- 36 According to the applicants, the response given by the Commission, found in Section 2.1 (pages 66 to 69) of Annex III to the contested decision, in relation to the criticisms raised in their request for internal review as to the lawfulness of the use of an ‘as against a business-as-usual’ baseline in the assessment of the substantial contribution made by a forestry activity to climate change mitigation, is vitiated by an error of law. That baseline is referred to in point 2.1(a) of Section 2 (entitled ‘Climate benefit analysis’) of Section 1.3 (entitled ‘Forest management’) of Annex I to the Delegated Regulation.
- 37 In the first place, in Section 2.1 (pages 66 to 69) of Annex III to the contested decision, the Commission emphasised the requirement for a forest management plan to be drawn up, stating that the overarching objective of the criteria was to ensure a verified forest management plan or equivalent instrument. That corresponds to the forest management plan referred to in Section 1 (entitled ‘Forest management plan or equivalent instrument’) of Section 1.3 of Annex I to the Delegated Regulation.
- 38 In so doing, the Commission is said to have infringed Article 10(1) and (3) of the Taxonomy Regulation.
- 39 In particular, first, it should be concluded that, by its response, the Commission intended to state that forestry activities necessarily make a positive contribution to climate change mitigation. That is incorrect, however, since forestry activities cannot automatically be assumed to contribute positively thereto. The Taxonomy Regulation itself confirms that those activities do not necessarily make a positive contribution to climate change mitigation.
- 40 Secondly, the Commission simply equated the existence of a forest management plan with the existence of a substantial contribution to climate change mitigation.
- 41 That response is insufficient since it does not alter the fact that neither the technical screening criteria concerned, nor any other provision of the Delegated Regulation, contain a requirement to maintain the forest’s carbon sink, let alone strengthen it, in order to align with the temperature goal of the Paris Agreement. In other words, that response does not alter the fact that the requirement for an activity to be subject to a forest management plan does not, in the applicants’ view, satisfy the requirement laid down in Article 10(1) of the Taxonomy Regulation that the activity must be aligned with the temperature goal of the Paris Agreement.

- 42 In the second place, in the contested decision, the Commission also relied on the obligation for the economic operator with a forest management plan to ensure that that plan complies with the forest biomass sustainability criteria set out in Article 29(7)(b) of Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ 2018 L 328, p. 82; ‘the RED II Directive’).
- 43 That response by the Commission infringes Article 10(1)(f) of the Taxonomy Regulation, which requires the strengthening of land carbon sinks. It is true that the criteria set out in Article 29(7)(b) of the RED II Directive refer to the establishment of a ‘management [system]’ in order to ‘ensure that carbon stocks and sinks levels are maintained, or strengthened over the long term’. However, those criteria do not impose any requirement in respect of the strengthening of carbon stocks and sinks, let alone at a level aligned with the increase in carbon removals by forests, which is essential in order to comply with the temperature goal of the Paris Agreement.
- 44 In the third place, the Commission stated in the contested decision that, in view of the geographical variability specific to the field, it was unable to adopt a fixed criterion for establishing whether a forestry activity made a substantial contribution to climate change mitigation.
- 45 That response is vitiated by an error of law. The complexity of the assessment does not absolve the Commission from ensuring that the Delegated Regulation complies with the mandatory requirements relating to the technical screening criteria set out in the Taxonomy Regulation. In the present case, it would have been possible for the Commission to use multiple criteria or to impose a requirement to make more than a minimal improvement in relation to a business-as-usual scenario.
- 46 In the fourth place, the Commission’s response also constitutes a manifest error of assessment since it does not take into account the availability of more stringent criteria. The Commission did not need to adopt a single ‘pan-European’ threshold. It could, instead, have adopted a range of specific thresholds based on geographical variations or even a more stringent baseline. In so doing, it could have required a more than minimal improvement in relation to that baseline in order for the activity to be regarded as making a substantial contribution to climate change mitigation.
- 47 In the fifth place, the applicants submit that the Commission ‘had no competence to adopt [technical screening criteria] that did not conform to the scope of the Taxonomy Regulation’. In the contested decision, the Commission erred in law ‘in failing to comprehend the scope of [the] requirements [of the Taxonomy Regulation] and/or [its] competence’. In addition, it committed manifest errors of assessment in considering that ‘it was not possible to design sufficiently stringent thresholds’.
- 48 The Commission disputes those arguments.
- 49 It should be noted, as a preliminary point, that under the first part of the first plea in law, the applicants allege the unlawfulness of the response given by the Commission to the concerns expressed in the request for internal review as to the alleged unlawfulness in point 2.1(a) of the table of technical screening criteria entitled ‘Substantial contribution to climate change mitigation’ found in Section 1.3 (entitled ‘Forest management’) of Annex I to the Delegated Regulation.

- 50 In paragraphs 37 and 38 of the application, the applicants seem to go beyond the context of only point 2.1(a) and refer also to point 2.2(a) of that table of technical screening criteria found in Section 1.3 of Annex I to the Delegated Regulation, on the ground that those provisions operate with the same parameter, namely the ‘as against a business-as-usual’ baseline.
- 51 In so far as paragraphs 37 and 38 of the application must be understood as the applicants’ alleging the existence of illegalities vitiating the contested decision as regards the Commission’s response in relation to point 2.2(a) of the table of technical screening criteria found in Section 1.3 of Annex I to the Delegated Regulation, it is clear that, in paragraphs 113 to 142 of the request for internal review, no specific argument was put forward by them in relation to that provision. Their arguments are limited to disputing the lawfulness of only point 2.1(a) of that table, as can be inferred from paragraphs 118 and 121 of the request for internal review. Thus, any argument put forward in support of the present action concerning that provision must be dismissed as inadmissible. An action for the annulment of a decision relating to a request for internal review cannot be founded on new grounds or on evidence not appearing in the request for review, as otherwise the requirement, in Article 10(1) of the Aarhus Regulation, would be made redundant and the object of the procedure initiated by the request would be altered (see, to that effect, judgments of 12 September 2019, *TestBioTech and Others v Commission*, C-82/17 P, EU:C:2019:719, paragraph 39, and of 4 April 2019, *ClientEarth v Commission*, T-108/17, EU:T:2019:215, paragraph 55). The applicant for internal review has the right to have the competent institution state its position on the grounds it put forward in its request. However, it does not have any right to have the Commission state its position on matters that were not referred to, at the very least, in a reasonably recognisable manner in such a request (see, to that effect, judgment of 4 April 2019, *ClientEarth v Commission*, T-108/17, EU:T:2019:215, paragraph 56). In any event, the applicants have not put forward any specific argument directed at that provision, with the result that, in so far as it is directed at point 2.2(a) of that table, the first part of the first plea in law, which is unsubstantiated, must be rejected as unfounded.
- 52 In so far as, by the allegations referred to in paragraphs 38 to 47 above, the applicants dispute, in an admissible manner, the lawfulness of the Commission’s response to the criticisms expressed in the request for internal review concerning point 2.1(a) of the table of technical screening criteria found in Section 1.3 of Annex I to the Delegated Regulation, the Court finds that they have not adduced any evidence establishing that the Commission made an error of law or a manifest error of assessment. In particular, as regards the alleged manifest error of assessment, the applicants have not adduced any evidence showing that the factual assessments in the contested decision are implausible. Hence, all of the allegations referred to in paragraphs 38 to 47 above must be rejected.
- 53 In that regard, in the first place, the argument to the effect that the response, found in Section 2.1 (pages 66 to 69) of Annex III to the contested decision in relation to the impact of the forest management plan, is contrary to the requirement laid down in Article 10(1) of the Taxonomy Regulation, which provides, in essence, that the economic activity must align with the temperature goal of the Paris Agreement (see paragraph 37 above), cannot succeed.
- 54 The applicants are incorrect in stating that, by its response, the Commission intended to state that forestry activities necessarily make a positive contribution to climate change mitigation (see paragraph 39 above). In that regard, first, as is apparent from Article 10(1)(f) of the Taxonomy Regulation, the EU legislature bases itself on the principle that strengthening of land carbon sinks can be achieved through forestry-related measures. The terms ‘avoiding deforestation and forest degradation’, ‘restoration of forests’ and ‘afforestation’ found in that provision show that the EU legislature believes that forestry can contribute to achieving the climate change mitigation

objective. Secondly, nowhere in the contested decision does the Commission state that forest management activities per se, without any nuance and in whichever scenario, make a substantial contribution to climate change mitigation. Rather, it is apparent from the assessments contained in Section 2.1 (pages 66 to 69) of Annex III to the contested decision that the Commission takes the view that only those forest management activities satisfying the technical screening criteria laid down in the Delegated Regulation may be considered to do so.

- 55 Moreover, the applicants' argument relating to the alleged inadequacy of the Commission's response regarding the existence of a forest management plan and the impact of such a plan on the sustainability of a forest economic activity (see Section 2.1 of Annex III (page 67) to the contested decision) is not convincing.
- 56 In alleging that the obligation to subject an economic activity to a forest management plan, relied on by the Commission in the contested decision, changes nothing about the fact that the technical screening criteria concerned do not expressly require the 'strengthening of forest carbon sinks in alignment with the [temperature goals of the Paris Agreement]', the applicants misinterpret not only the scope of the Commission's response, but also the scope of the provision the infringement of which they allege, namely Article 10(1)(f) of the Taxonomy Regulation.
- 57 In alluding to the 'strengthening of forest carbon sinks in alignment with the [temperature goals of the Paris Agreement]' in paragraph 43 of the application, the applicants are clearly referencing the wording relating to 'the long-term temperature goal of the Paris Agreement' referred to in the initial wording of Article 10(1) of the Taxonomy Regulation.
- 58 It is true that Article 10(1)(f) of the Taxonomy Regulation provides that an economic activity may qualify as contributing substantially to climate change mitigation – which is one of the conditions necessary for it to be recognised as environmentally sustainable for the purposes of Article 3(a) of the Taxonomy Regulation – where it concerns, inter alia, 'restoration of forests, sustainable management and restoration of croplands, grasslands and wetlands, afforestation, and regenerative agriculture'. Those are economic activities positively or actively recognised as strengthening land carbon sinks.
- 59 However, contrary to what the applicants suggest by their argument referred to in paragraph 41 above, Article 10(1)(f) of the Taxonomy Regulation does not oblige the Commission to draw up technical screening criteria relating solely to activities focused on strengthening carbon sinks. On the contrary, it is apparent, in essence, from that provision that an economic activity may also be regarded as 'strengthening land carbon sinks', and therefore environmentally sustainable, where it makes it possible to '[avoid] deforestation and forest degradation'. In other words, strengthening land carbon sinks is not done only through measures aimed at increasing carbon sinks, such as restoration of forests and cultivated land, but also through measures which make it possible to avoid deforestation and forest degradation. Similarly, it follows from recital 24 of the Taxonomy Regulation that an economic activity (relating inter alia to forest management) is deemed to pursue the environmental objective of climate change mitigation not only where it aims to contribute substantially to the stabilisation of greenhouse gas emissions by enhancing their removal, but also where it avoids or reduces them. In their line of argument referred to in paragraph 40 above, the applicants fail to take account of the second part of the concept of 'strengthening' as referred to in Article 10(1)(f) of the Taxonomy Regulation.

- 60 The obligation to draw up a forest management plan in accordance with the criteria laid down in point 1.2(f) of the table of technical screening criteria entitled ‘Substantial contribution to climate change mitigation’ found in Section 1.3 of Annex I to the Delegated Regulation necessarily adheres to the concept of ‘strengthening’ referred to in paragraph 59 above. The fact of requiring, under point 1.2(f), that the forest management plan include information on ‘measures deployed to maintain the good condition of forest ecosystems’ is tantamount to requiring information on measures aimed at ‘avoiding [inter alia] deforestation and forest degradation’ as referred to in Article 10(1)(f) of the Taxonomy Regulation.
- 61 As the Commission’s response given in Section 2.1 (pages 66 to 69) of Annex III to the contested decision relates to point 1.2(f) of the table of technical screening criteria entitled ‘Substantial contribution to climate change mitigation’ found in Section 1.3 of Annex I to the Delegated Regulation, that response satisfies the substantive requirements imposed by Article 10(1)(f) of the Taxonomy Regulation. Moreover, that response shows that the Commission attaches great importance to the obligation relating to forest management, imposed in the Delegated Regulation, a fortiori because, as observed by the Commission in Section 2.1 (page 67, second paragraph) of Annex III to the contested decision, the forest management plan ‘is not currently required from all forest holdings outside the Taxonomy framework’.
- 62 In the second place, the argument alleging that the explanations in the contested decision about the impact of the obligation to comply with the sustainability criteria applicable to forest biomass, laid down in Article 29(7)(b) of the RED II Directive, infringe Article 10(1)(f) of the Taxonomy Regulation, must be rejected. The Commission refers to that directive in its assessments in the contested decision (see paragraph 43 above), and also, inter alia, in recital 32 and Article 10(1)(a) of the Taxonomy Regulation. In particular, as regards that directive, it should be borne in mind that Article 1 thereof establishes a common framework for the promotion of energy from renewable sources, sets a binding Union target for the overall share of energy from renewable sources in the Union’s gross final consumption of energy in 2030, lays down inter alia rules on financial support for electricity from renewable sources, on self-consumption of such electricity and the use of energy from renewable sources in certain sectors, and establishes sustainability and greenhouse gas emissions saving criteria for, inter alia, biomass fuels.
- 63 The applicants are incorrect in arguing that the technical screening criteria referred to in point 2.1(a) of the table of technical screening criteria entitled ‘Substantial contribution to climate change mitigation’ found in Section 1.3 of Annex I to the Delegated Regulation ‘do not impose any requirement in respect of the strengthening of carbon stocks and sinks, let alone at a level aligned with the increase in carbon removals by forests which is essential in order to comply with the temperature goal of the Paris Agreement’ (see paragraph 43 above).
- 64 In fact, it is apparent from Section 2.1 (page 67) of the contested decision that the reference to Article 29(7)(b) of the RED II Directive should be read and interpreted in connection with the required climate benefit analysis, which has to demonstrate that the net balance of greenhouse gas emissions and removals generated by the activity over a period of 30 years after the beginning of the activity is lower than the business-as-usual baseline. It is clear that the objective of that analysis, which is set out in points 2.1 and 2.2 of the table of technical screening criteria entitled ‘Substantial contribution to climate change mitigation’ found in Section 1.3 of Annex I to the Delegated Regulation, is precisely to ‘ensure that carbon stocks and sinks levels are maintained, or strengthened over the long term’. The applicants do not explain why the Commission’s affirmation of that objective and the requirement that the net balance of greenhouse gas

emissions and removals generated by the activity must be lower than the business-as-usual baseline is not liable to lead to an increase in carbon removal by forests or a strengthening of carbon stocks and sinks.

- 65 Moreover, as explained by the Commission in Section 2.1 of Annex II (page 67) to the contested decision, one of the EU legal acts which must be taken into account in the application of the technical screening criteria, referred to in point 2.1(a) of the table of technical screening criteria entitled ‘Substantial contribution to climate change mitigation’ found in Section 1.3 of Annex I to the Delegated Regulation, is the implementing act establishing operational guidance for the energy produced from forest biomass, adopted pursuant to Article 29(8) of the RED II Directive. In the present case, that is Commission Implementing Regulation (EU) 2022/2448 of 13 December 2022 on establishing operational guidance on the evidence for demonstrating compliance with the sustainability criteria for forest biomass laid down in Article 29 of [the RED II] Directive (OJ 2022 L 320, p. 4; ‘the Operational Guidance Regulation’).
- 66 As regards the implementation of the risk-based sustainability criteria for the production of biofuels, bioliquids and biomass fuels from forest biomass laid down in Article 29(7) of the RED II Directive (see the objective laid down in Article 1 of the Operational Guidance Regulation), Article 5 of the Operational Guidance Regulation, entitled ‘Assessment of compliance with the LULUCF criteria at national level’, provides, in subparagraph (ii) of the first paragraph thereof, that Member States are to require economic operators to provide evidence that the country or regional economic integration organisation from which the forest biomass originates, is party to the Paris Agreement or that there are national or sub-national laws, applicable to the area of harvest, to conserve and enhance carbon stocks and sinks in forests.
- 67 Moreover, Article 6 of the Operational Guidance Regulation provides that, where evidence of compliance with the land use, land use change and forestry (LULUCF) criteria at national level is not available, Member States are to require economic operators to provide audited information confirming the existence and implementation of management systems at the level of the forest sourcing area, to ensure that carbon stocks and sinks levels in the forest are maintained or strengthened over the long term.
- 68 It follows that, contrary to the applicants’ claims and, in particular, their reductive reading of the contested decision in view of point 1.3(c) of the table of technical screening criteria entitled ‘Substantial contribution to climate change mitigation’ found in Section 1.3 of Annex I to the Delegated Regulation, Article 29(7) of the RED II Directive and the provisions of the Operational Guidance Regulation, in particular Articles 5 and 6 thereof, the technical screening criteria established in point 2.1(a) of the table of technical screening criteria entitled ‘Substantial contribution to climate change mitigation’ found in Section 1.3 of Annex I to the Delegated Regulation indeed require a strengthening of forest carbon sinks. Both in the application and the reply, the applicants fail to address the impact of the Operational Guidance Regulation on the interpretation of the technical screening criteria laid down in said point 2.1(a).
- 69 As regards the applicants’ statement, in paragraph 31 of the reply, to the effect that the criteria laid down in Article 29(6) of the RED II Directive are inadequate, the Court notes that the Commission’s reference to that provision in the contested decision refers to the criteria established in the Operational Guidance Regulation, adopted on the basis of Article 29(8) of the RED II Directive. Accordingly, all of the assessments carried out in paragraphs 65 to 68 above, relating to the impact of the Operational Guidance Regulation on the interpretation of the technical screening criteria established in point 2.1(a) of the table of technical screening criteria

entitled ‘Substantial contribution to climate change mitigation’ found in Section 1.3 of Annex I to the Delegated Regulation also hold true for the complaint relating to Article 29(6) of the RED II Directive.

- 70 In the third place, the applicants’ argument by which they criticise the Commission for having erred in law in stating, in the contested decision, the reasons why it could not adopt a fixed criterion for determining whether a forest activity makes a substantial contribution to climate change mitigation, must be rejected (see paragraph 45 above).
- 71 Under Article 19(1)(c) of the Taxonomy Regulation, the technical screening criteria established pursuant to Article 10(3) thereof are quantitative and contain thresholds to the extent possible, and are otherwise qualitative. As a result, the Commission is not required in any event to establish quantitative criteria.
- 72 In the present case, since the applicants criticise the Commission for having failed to provide sufficient grounds as to why it did not establish a fixed criterion, the Court notes that they have failed to consider the fact that the Commission may adopt qualitative criteria. They have also failed to address the explanations set out in Section 2.1 of Annex II (page 68) to the contested decision. The wording used by the Commission in that part of the contested decision clearly states the following:

‘When defining the criteria in [Section] 1.3. of Annex I to the Delegated [Regulation] as regards substantial contribution to the objective of climate change mitigation in the forestry sector, ... the assessment of the Commission took into consideration the evolving forest policy framework, notably the ongoing processes stemming from the Biodiversity Strategy and the Forest Strategy, and the expectation that future requirements can be integrated into the EU Taxonomy criteria at later stages. ... Considering the diversity of forests in Europe and worldwide, and the diversity of forest management, a list of fixed practices would have run the risk of being inoperative in a large number of specific forest situations. ... The overarching objective is for the criteria to ensure a verified forest management plan, or equivalent, together with other safeguards to obtain a substantial contribution to climate change mitigation in both short term and long term. This approach covered the same main parameters but represented a notable difference with the [technical expert group on sustainable finance] assessment, which was built around the use of Sustainable Forest Management practices. ... It must also be noted that the potential for [greenhouse gas] savings of forestry depends on the geographic location and additional elements characterising the land in question, such as the type and age of forest, and the type of forestry.’

- 73 That wording shows that the Commission’s opting not to establish a fixed criterion was not the consequence of an arbitrary decision on its part, but rather of the diversity of forests in Europe and worldwide, in terms of type and age of forest, type of forestry and the evolving nature of practices and biodiversity diversity strategy and also forest strategy. By the wording referenced in paragraph 72 above, the Commission seeks to highlight that the attribution of a fixed value to the parameters sought would have been impossible or unacceptable from a scientific standpoint. In addition, Article 19(1)(k) of the Taxonomy Regulation provides that the technical screening criteria are to be ‘easy to use’ and ‘set in a manner that facilitates the verification of their compliance’.
- 74 Moreover, the applicants’ line of argument, in paragraph 48 of the application, criticising the Commission for having failed to establish a fixed criterion, is unsubstantiated. In particular, the applicants do not dispute that there is considerable diversity of forests in the European Union and

worldwide, nor do they explain how, given the diversity of forests in the European Union and worldwide, and the dynamic resulting from the evolving nature of practices and biodiversity diversity strategy and also forest strategy, the Commission could have fixed a threshold or other parameter that is measurable or quantifiable in terms of surface, weight or volume applicable to all of the forests referred to in the Delegated Regulation. Since they have not adduced supporting evidence on that point, the applicants' line of argument is too vague to make out proof of an error of law. It is also too vague to render implausible the Commission's statements in the contested decision relating to the non-establishment of a fixed criterion in the technical screening criteria at issue, so that there can be no finding of a manifest error of assessment in that regard.

- 75 It is true that, in paragraph 127 of the request for internal review, the applicants had suggested that the Commission apply an 'additional' fixed criterion of 0.375 tCO₂^e/yr by 2030 for carbon sequestration processes for an 'individual activity'. However, the applicants do not dispute the Commission's statement in Section 2.1 of Annex II (page 68) to the contested decision, to the effect that 'applying a fixed criterion of 0.375 tCO₂^e/yr by 2030, as suggested by the Applicant, could exclude from the EU Taxonomy the management of certain forest types, such as old-growth forests as well as boreal forests'.
- 76 In so doing, the applicants fail to address that finding, which is tantamount to stating that the threshold proposed in the request for internal review excluded much of the European forests, namely old-growth forests as well as boreal forests. In the light of those factors and of the other evidence in the file, the Court finds that the Commission's statements in Section 2.1 of Annex III to the contested decision are not vitiated by a manifest error of assessment, since the criterion proposed by the applicants is not such as to cast doubt on their plausibility, in the light of, *inter alia*, all of the relevant parameters characterising the forests in the European Union, as envisaged by the Commission in the Delegated Regulation. The applicants have likewise failed to demonstrate an infringement of Article 10(1)(f) of the Taxonomy Regulation.
- 77 Lastly, in paragraph 49 of the application and paragraph 33 of the reply, the applicants state, under an 'alternative' line of argument, that the Commission did not need to adopt a single 'pan-EU threshold'; rather, it could have adopted 'a range of thresholds' based on geographical variations or even a 'more stringent baseline', and thus required a more than minimal improvement in relation to that baseline in order for the activity to be regarded as making a substantial contribution to climate change mitigation.
- 78 That line of argument cannot be upheld. Article 19(1)(c) of the Taxonomy Regulation does not require, in all circumstances and without reservation, the establishment of quantitative criteria. The Commission is, subject to certain conditions, empowered to adopt qualitative criteria. That provision thus intends to grant the Commission the necessary latitude to make the appropriate choice in that regard.
- 79 In the fourth place, the applicants' argument, referred to in paragraph 46 above, to the effect that the Commission's response to the issue relating to the fixed criterion amounts to a manifest error of assessment, must be rejected. First, the applicants have failed to provide, in the application, specific evidence enabling the Court to understand which facts were allegedly assessed incorrectly by the Commission in its response. Secondly, with regard to that same question, reference is made to the considerations set out in paragraphs 71 to 78 above.

- 80 In the fifth place, the applicants' argument to the effect that the Commission had no 'competence to adopt technical screening criteria that did not conform to the scope of the Taxonomy Regulation' and erred in law 'in failing to comprehend the scope of the requirements [of the Taxonomy Regulation] and/or [its] competence' must be rejected (see paragraph 47 above).
- 81 First, the Commission did not exceed its competence as provided for in Article 10(3) of the Taxonomy Regulation in adopting the Delegated Regulation.
- 82 The mere allegation to the effect that the Commission might have infringed the substantive requirements laid down in the Taxonomy Regulation, in particular those laid down in Article 19, and therefore might have erred in law or made manifest errors of assessment in failing to comprehend 'the scope of [those substantive] requirements', does not establish that the Commission disregarded the scope of the powers conferred on it by Article 10(3) of the Taxonomy Regulation, read in conjunction with Article 290 TFEU. Any infringement of a provision of relevant substantive law, such as the substantive requirements laid down in the Taxonomy Regulation, does not necessarily constitute an infringement of the scope of the competence conferred by Article 10(3) of the Taxonomy Regulation, read in conjunction with Article 290 TFEU.
- 83 Moreover, apart from their general, unsubstantiated allegation that the Commission failed 'to comprehend the scope of [the substantive] requirements' of the Taxonomy Regulation, the applicants do not indicate which evidence supports a finding, on the basis of reasoning limited strictly to the competence issue – such as reasoning based on a potential incompatibility with Article 290 TFEU – and therefore without having recourse to substantive law requirements, that the Commission infringed the Taxonomy Regulation in adopting the Delegated Regulation.
- 84 Secondly, and in any event, it follows from the foregoing considerations that the applicants have failed to demonstrate that the Commission did not 'comprehend' the scope of the requirements of the Taxonomy Regulation when it adopted the Delegated Regulation.
- 85 Thirdly, as regards the applicants' claim that the Commission '[had] committed manifest errors of assessment in considering that it was not possible to design sufficiently stringent thresholds', the Court finds that that argument, which has no autonomous legal scope, merely reiterates in summarised form arguments already addressed above in paragraphs 36 to 46. As those arguments have been rejected, a reiteration of them herein cannot be upheld.
- 86 In the light of the foregoing, the first part of the first plea in law must be rejected.

Second part of the first plea in law: errors in relation to the Commission's response to the applicants' criticisms to the effect that the technical screening criteria ought to have been quantitative and were not based on conclusive scientific evidence and the precautionary principle

- 87 According to the applicants, all of the Commission's explanations set out in the contested decision with regard to the applicants' complaint put forward in their request for internal review, to the effect that the technical screening criteria for forest management activities laid down in the Delegated Regulation infringe the Taxonomy Regulation because they are not quantitative and are incompatible with the precautionary principle, constitute an infringement of Article 19(1)(c) and (f) of the Taxonomy Regulation.

- 88 The responses which appear in Section 2.1. of Annex III to the contested decision are vitiated by errors of law. Moreover, those responses show that the Commission ‘failed to understand [its] competence’ in relation to the Delegated Regulation. According to the applicants, the Commission had readily available scientific information that allowed for the required decreases in emissions from forestry activities to be quantified. Lastly, the technical screening criteria referred to in point 2.1(a) of the table of technical screening criteria entitled ‘Substantial contribution to climate change mitigation’ found in Section 1.3 of Annex I to the Delegated Regulation require only a minimum reduction compared with the business-as-usual baseline for the activity. They are therefore incompatible with the precautionary principle. In that regard, the Commission merely observed that a more protective approach (including ‘more stringent baselines’) might be used in future. The fact that the contested decision also infringes the precautionary principle may be inferred from the statement concerning the first part of the eighth plea in law (paragraphs 140 to 144 of the application).
- 89 The Commission disputes those arguments.
- 90 By their arguments referred to in paragraphs 87 and 88 above, the applicants have not provided anything demonstrating that the Commission erred in law or made a manifest error of assessment. Those arguments must therefore be rejected as unfounded.
- 91 In particular, as regards the existence of errors of law or manifest errors of assessment vitiating the Commission’s response relating to the absence of quantitative technical screening criteria, reference is made, first of all, to the reasoning set out in paragraphs 70 to 78 above.
- 92 More specifically, in so far as the applicants claim that, at the time the Delegated Regulation was adopted, the Commission had readily available scientific information that allowed for the ‘required’ decreases in emissions from forestry activities to be quantified, it is clear that they do not state in the application what information that might be. They have not provided any study or scientific opinion explaining how, and to what extent, it is possible to quantify the decreases in emissions from forestry activities. Consequently, the applicants’ line of argument is not such as to render implausible the explanations set out in Section 2.1 of Annex III (pages 66 to 69) to the contested decision. The Court accordingly finds that no manifest error of assessment was committed in that regard. For the same reasons, that conclusion holds true for the question whether the explanations given in Section 2.1 of Annex III (pages 66 to 69) to the contested decision are vitiated by an error of law.
- 93 Moreover, the allegation that the Commission ‘failed to understand [its] competence’, which would constitute an error of law or a manifest error of assessment, must be rejected on the same grounds as those set out in paragraphs 81 to 84 above.
- 94 Lastly, the applicants’ claim that the Commission infringed the precautionary principle must be rejected.
- 95 In that regard, the Court notes that it is true that the applicants stated, in paragraph 54 of the application, that the technical screening criteria in question required only a minimum reduction as against the business-as-usual baseline, which made them incompatible with the precautionary principle. In paragraph 54 of the application, the applicants also claimed that the Commission had responded to that argument by observing simply that a more protective approach including ‘more stringent baselines’ might be used in future. According to the applicants, that fact obviously

cannot in any way affect whether the technical screening criteria conform ‘to the requirements of the Taxonomy Regulation’. In so doing, they rely on an alleged incompatibility of the Commission’s response with the Taxonomy Regulation.

- 96 However, it is not clear what, in the applicants’ view, might be the link with the precautionary principle. That principle, referred to *inter alia* in Article 191(2) TFEU, allows the institutions, where there is scientific uncertainty as to the existence or extent of risks to the environment, to take protective measures without having to wait until the reality and seriousness of those risks become fully apparent or until the adverse environmental effects materialise (see, to that effect, judgment of 17 March 2021, *FMC v Commission*, T-719/17, EU:T:2021:143, paragraph 63 and the case-law cited).
- 97 Thus, it is apparent from paragraph 54 of the application that the complaint initially presented as alleging an infringement of the precautionary principle, as defined in paragraph 96 above, has been reformulated by the applicants as an argument relating to whether the Commission’s response complies with the Taxonomy Regulation. It should be noted, however, that that argument is unsubstantiated and must accordingly be rejected, as it is not capable of proving an infringement of the precautionary principle or the existence of an error of law vitiating the contested decision.
- 98 In the light of the foregoing, the second part of the first plea in law must be rejected, as must, therefore, the first plea in law in its entirety.

Second plea in law: errors of law and manifest errors of assessment in relation to the Commission’s response to the applicants’ criticism concerning the exemption from the climate benefit analysis provided for forest holdings under 13 hectares in the criteria for substantial contribution to climate change mitigation

- 99 According to the applicants, the explanations provided in Section 2.2 of Annex III (pages 69 to 71) to the contested decision are incorrect and therefore contrary to Article 10(1)(f) and Article 19(1)(f) of the Taxonomy Regulation. Moreover, they are based on a misinterpretation of the Taxonomy Regulation and a misunderstanding of the Commission’s competence provided for in Article 10(3)(a) of that regulation.
- 100 The second plea is, in essence, divided into three parts.

First part of the second plea: errors of law or manifest errors of assessment in relation to Article 10(1)(f) and Article 19(1)(f) of the Taxonomy Regulation as regards the Commission’s response to the effect that the purpose of the exemption for forest holdings under 13 hectares provided for in Section 2.4 of Annex I to the Delegated Regulation is to ‘minimise the administrative burden for small forest holdings and small-scale forest owners’

- 101 In response to the criticisms expressed by the applicants in the request for internal review, the Commission stated that the exemption was intended to ‘minimise the administrative burden for small forest holdings and small-scale forest owners and thus incentivise them to improve their contribution to climate change adaptation and climate change mitigation’ (Section 2.2 of Annex III (page 69) to the contested decision).

- 102 According to the applicants, that response is ‘incorrect and irrational’ and is therefore vitiated by an error of law. The Commission did not explain how the exemption could incentivise forest owners to increase their contribution to climate change mitigation.
- 103 The applicants add that that response is also vitiated by manifest errors of assessment on the following grounds:
- first, the measure establishing the exemption for holdings under 13 hectares is not a ‘proportionate or necessary measure’, since it does not provide for a proportionate and simplified procedure for small holdings, but merely a ‘free pass’, namely a total exemption from the obligation to demonstrate any climate benefit whatsoever; moreover, reducing the regulatory burden on small operators cannot serve as a justification, since compliance with the criteria of the Taxonomy Regulation relating to an economically sustainable activity is not a matter of regulatory compliance;
 - secondly, that measure could be open to abuse, since it allows forestry operators to ‘game the system’ by registering the forests they own as a series of separate holdings that are just below the 13-hectare threshold;
 - thirdly, the measure aimed at exempting holdings under 13 hectares is not a *de minimis* threshold because it is the average size of forest holdings in the European Union; in fact, excluding all holdings of that size from the main requirement of Section 1.3 of Annex I to the Delegated Regulation is far above any rational *de minimis* threshold.
- 104 The Commission disputes the applicants’ arguments.
- 105 The applicants submit that the Commission’s assessment, set out in Section 2.2 of Annex III (page 69) to the contested decision, to the effect that the exemption for holdings under 13 hectares, provided for in Section 2.4 of the table of technical screening criteria entitled ‘Substantial contribution to climate change mitigation’ found in Section 1.3 of Annex I to the Delegated Regulation, is intended to ‘minimise the administrative burden for small forest holdings and small-scale forest owners’, is vitiated by a manifest error of assessment.
- 106 That line of argument cannot be upheld.
- 107 In the first place, the Court finds at the outset that the applicants have not examined that response by the Commission in the light of the conditions laid down in Article 10(1)(f) and Article 19(1)(f) of the Taxonomy Regulation. What they do allege is a disproportionate effect of the exemption for areas under 13 hectares (see the first indent of paragraph 103 above), the possibility that that measure could be open to abuse (see the second indent of paragraph 103 above), and that the 13-hectare threshold, referred to in point 2.4 in Section 1.3 of Annex I to the Delegated Regulation (see the third indent of paragraph 103 above), is irrational.
- 108 Those arguments must be rejected.
- 109 The applicants do not link the Commission’s response in the contested decision, regarding the question of holdings under 13 hectares, to that of strengthening ‘land carbon sinks’ (Article 10(1)(f) of the Taxonomy Regulation), or to the requirement relating to ‘conclusive scientific evidence’, or to the precautionary principle (Article 19(1)(f) of the Taxonomy

Regulation). It is accordingly unclear how that response from the Commission is contrary to the substantive conditions provided for in Article 10(1)(f) and Article 19(1)(f) of the Taxonomy Regulation.

- 110 Moreover, first, the applicants allege infringement of the principle of proportionality, arguing that the exemption for areas under 13 hectares is not ‘proportionate’ (see the first indent of paragraph 103 above). That principle, which is one of the general principles of EU law, requires that acts of the EU institutions be appropriate for attaining the legitimate objectives pursued by the legislation at issue and not exceed the limits of what is necessary in order to achieve those objectives; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (judgments of 4 May 2016, *Philip Morris Brands and Others*, C-547/14, EU:C:2016:325, paragraph 165, and of 20 January 2021, *ABLV Bank v SRB*, T-758/18, EU:T:2021:28, paragraph 142).
- 111 The applicants’ reference to a procedure aimed at imposing on operators of forest holdings under 13 hectares a ‘proportionate and simplified procedure for small holdings’, rather than a total exemption from the obligation to carry out a climate benefit analysis (see the first indent of paragraph 103 above), is not a less onerous measure (see paragraph 110 above). An administrative procedure, such as that envisaged by the applicants (see paragraph 103 above), seems, in any event, to be more onerous for those operators than a total exemption from the obligation to carry out a climate benefit analysis, as provided for by the Commission in the Delegated Regulation. Thus, the Commission’s response in the contested decision relating to operators of forest holdings under 13 hectares (see paragraph 101 above) does not seem to be contrary to the principle of proportionality.
- 112 Secondly, the applicants claim that the exemption for holdings under 13 hectares could be open to abuse, since it allows forestry operators to register large holdings as a series of separate holdings that are below the 13-hectare threshold (see the second indent of paragraph 103 above).
- 113 Even if that claim – which is, moreover, speculative and unsubstantiated – could relate to the Commission’s assessments in the contested decision (see paragraph 101 above), the Court finds that, in any event, such an artificial, and therefore abusive, division, would be within the remit of the Member States, as referred to in the last sentence of Article 21(1) of the Taxonomy Regulation. The possibility of such abuse as referred to by the applicants concerns the manner in which the Member States discharge the obligations provided for in said Article 21, but is not such as to cast doubt on the Commission’s assessments in the contested decision, which relate to abstract technical screening criteria.
- 114 Thirdly, as regards the applicants’ claim that the exemption for holdings under 13 hectares is not a *de minimis* threshold because 13 hectares is the average size of forest holdings in the European Union, nor is it, in any event, a rational *de minimis* threshold (see the third indent of paragraph 103 above), the Court notes that the fact that an area of 13 hectares corresponds to the average size of forest holdings in the European Union does not preclude it from being a *de minimis* threshold. The applicants do not dispute that that is an average value recognised in the European Union and that that value has not been invented by the Commission or drawn from an arbitrary source. There is accordingly nothing irrational about the 13-hectare threshold.

- 115 Moreover, the fact that operators of forest holdings under 13 hectares are exempt from the obligation to carry out a climate benefit analysis does not mean that those holdings operate ‘in an artificial legal vacuum’ that enables them to have their economic activities recognised as being environmentally sustainable without any technical screening criteria being applied to them.
- 116 On the contrary, in order for an economic activity deployed on a forest holding under 13 hectares to be considered to be an environmentally sustainable investment in accordance with points 1.1 and 1.2 of the table of technical screening criteria for ‘Substantial contribution to climate change mitigation’ found in Section 1.3 of Annex I to the Delegated Regulation, it must still take place in an area subject to a forest management plan, which is a requirement not imposed on all forest holdings, as those over 13 hectares are not subject to it. In the application, the applicants criticise the Commission for having merely taken account of the existing legal situation (‘business as usual’), instead of drawing up ‘ambitious’ technical screening criteria. Yet under the table in Section 1.3 of technical screening criteria entitled ‘Substantial contribution to climate change mitigation’, found in Section 1.3 of Annex I to the Delegated Regulation, the sustainability of forest management systems, as set out in the plan, must be ensured by choosing the most ambitious of the approaches referred to therein, including by demonstrating compliance with the sustainability criteria applicable to forest biomass set out in Article 29(6) of the RED II Directive and in the Operational Guidance Regulation. In their line of argument, the applicants do not take account of those factors, even though they establish the framework for the exemption for operators of forest holdings under 13 hectares and explain, at least in part, the rationale for that exemption.
- 117 The first part of the second plea in law must therefore be rejected.

Second part of the second plea: errors of law or manifest errors of assessment in relation to Article 10(1)(f) and Article 19(1)(f) of the Taxonomy Regulation as regards the Commission’s response to the effect, in essence, that the exemption for forest holdings under 13 hectares, provided for in point 2.4 of the table of technical screening criteria, entitled ‘Substantial contribution to climate change mitigation’, found in Annex I to the Delegated Regulation, is justified in view of all the requirements to be observed for small-scale forest owners

- 118 The applicants state that, in the contested decision, the Commission found that, ‘in view of the overall set of requirements that small-scale foresters need to meet, from the forest management plan to demonstrating their alignment with sustainable forest management, in addition to ensuring non-degradation of carbon stocks in high-carbon land and the [“do no significant harm”] criteria, it [was] reasonable to assume that the criteria for substantial contribution to climate change mitigation were met, without the need for a climate benefit analysis.’
- 119 However, none of those factors listed by the Commission, namely the forest management plan, demonstrating their alignment with sustainable forest management, ensuring non-degradation of carbon stocks in high-carbon land and the ‘do no significant harm’ criteria, can ensure that exempted forest holdings make a substantial contribution to climate change mitigation, so as to take into account the wording of Article 10(1) and (3) of the Taxonomy Regulation. It is true that the Commission’s response amounts to a declaration that an exemption from the requirement to demonstrate the existence of a substantial contribution will nevertheless somehow ‘ensure’ that a substantial contribution will be made. However, that response, which is based, in essence, on equating the requirement to maintain the production capacity of forests with a ‘substantial

contribution’ to climate change mitigation, which is the subject matter of the first part of the first plea in law, is also vitiated by an error of law and a manifest error of assessment, for the following reasons:

- first, the requirement to produce a forest management plan is purely an administrative act; none of the information that such a plan must contain (see point 1.2 of the table of technical screening criteria entitled ‘Substantial contribution to climate change mitigation’ found in Section 1.3 of Annex I to the Delegated Regulation) refers to an ‘actual reduction of net emissions’ aligned with the reductions required to comply with the Paris Agreement temperature goal; hence there is no specific obligation for operators of holdings which are just below the 13-hectare threshold to strengthen the forest’s carbon sink at a level in line with the reductions required to comply with the Paris Agreement temperature goal;
- secondly, the ‘alignment with sustainable forest management’, to which the Commission refers in its response, is a reference to the sustainability criteria for forest bioenergy, set out in Article 29(6) of the RED II Directive; however that requirement is in no way aligned with the Paris Agreement temperature goal;
- thirdly, compliance with the ‘do no significant harm’ technical screening criteria cannot demonstrate compliance with Article 10(1) of the Taxonomy Regulation; the mere assumption that the economic activity in question makes a substantial contribution to climate change mitigation is not sufficient; the Commission was required, under Article 10(3)(a) of the Taxonomy Regulation, to adopt technical screening criteria that are specific to the objective of mitigating climate change that determine conclusively whether an activity achieves that objective.

120 The Commission disputes the applicants’ arguments.

121 The Court finds that the applicants have failed to prove that there has been an error of law or a manifest error of assessment in the Commission’s response in Section 2.2 of Annex III to the contested decision, to the effect that the exemption for 13-hectare holdings, provided for in point 2.4 of the table of technical screening criteria entitled ‘Substantial contribution to climate change mitigation’ found in Annex I to the Delegated Regulation, is justified in view of the overall set of requirements that small-scale foresters need to meet. The arguments referred to in paragraph 119 above are not capable of establishing that the Commission infringed Article 10(1)(f) and Article 19(1)(f) of the Taxonomy Regulation. They do not render implausible the Commission’s assessments in the contested decision, so that there can be no finding of a manifest error of assessment.

122 First, it is true that the applicants claim, correctly, that the requirement to produce a forest management plan referred to in point 1.2 of the table of technical screening criteria entitled ‘Substantial contribution to climate change mitigation’ found in Section 1.3 of Annex I to the Delegated Regulation refers to the adoption of an administrative act. However, they may not successfully claim that, in the absence of an indication of the ‘net emissions’ to be avoided, ‘none of the information that such a plan must contain’ means that ‘there is no specific obligation for operators ... to strengthen the forest’s carbon sink at a level in line with the reductions required to comply with the Paris Agreement temperature goal’ (see the first indent of paragraph 119 above).

- 123 The applicants seem to take the view that the Commission can satisfy the ‘obligation ... to strengthen the forest’s carbon sink’ as referred to *inter alia* in Article 10(1)(f) of the Taxonomy Regulation only by fixing technical screening criteria that provide for a ‘reduction of net emissions’. To that end, according to the applicants, the Commission ought to have provided for parameters that address the reduction in CO₂ emissions in precise figures.
- 124 As observed above in relation to the first plea in law (see paragraph 71 above), under Article 19(1)(c) of the Taxonomy Regulation, the technical screening criteria ‘are quantitative and contain thresholds to the extent possible’, and are otherwise qualitative. The expression of a criterion in the form of a precise figure is accordingly only one of the possible ways of establishing a technical screening criterion, such as those at issue.
- 125 Apart from insisting on the need for the Commission to fix a criterion that takes account of a ‘reduction of net emissions’, the applicants have not shown how the qualitative criterion used by the Commission fails to meet the requirements of the Taxonomy Regulation relating to the ‘obligation ... to strengthen the forest’s carbon sink’.
- 126 Although the applicants claim that ‘none of the information that such a [forest management] plan must contain’ complies with the ‘obligation ... to strengthen the forest’s carbon sink at a level in line with the reductions required to comply with the Paris Agreement temperature goal’, they do not take account of the manner in which a forest management plan, referred to in points 1.2 and 1.3 of the table of technical screening criteria entitled ‘Substantial contribution to climate change mitigation’ found in Section 1.3 of Annex I to the Delegated Regulation, must be drawn up or the content it must comprise.
- 127 As observed in paragraph 115 above, operators of forest holdings under 13 hectares do not operate in a legal vacuum exempting them from the requirement to demonstrate that their activity makes it possible to strengthen forest carbon sinks. On the contrary, under point 1.3(c) of the table of technical screening criteria entitled ‘Substantial contribution to climate change mitigation’ found in Section 1.3 of Annex I to the Delegated Regulation, the sustainability of forest management systems, including holdings of under 13 hectares, must be ensured by choosing the most ambitious of the approaches referred to therein, including by demonstrating compliance with the sustainability criteria applicable to forest biomass set out in Article 29(6) of the RED II Directive and in the Operational Guidance Regulation. As observed in paragraphs 66 and 67 above, the Operational Guidance Regulation provides for information to be given confirming the existence of measures aimed at ensuring that carbon stocks and sinks levels in the forest are maintained or strengthened over the long term.
- 128 Secondly, it is true, as the applicants claim, that the ‘alignment with sustainable forest management’ referred to by the Commission in its response (see paragraph 104 above) is a reference to sustainability criteria for forest bioenergy, set out in Article 29(6) of the RED II Directive.
- 129 However, the applicants have not managed to demonstrate that it was incorrect of the Commission to refer to those sustainability criteria for forest bioenergy in the contested decision.
- 130 Article 19(1)(d) of the Taxonomy Regulation requires the Commission, during the establishment of the technical screening criteria, to take into account ‘any relevant existing Union legislation’. That obligation is also referred to in recitals 43 and 44 of that regulation. Thus, when the Commission analyses the elements on which the adoption of the technical screening criteria

must be based, it must take into account any relevant existing EU legislation, as expressly provided for in Article 19(1)(d) of that regulation and in accordance with its task of overseeing the application of EU law, provided for in Article 17(1) TEU. Accordingly, contrary to what the applicants seem to argue, the Commission cannot be criticised for having taken account of the existing legislation in establishing the technical screening criteria and, in particular, the sustainability criteria laid down in the RED II Directive.

- 131 Moreover, even if the Commission could depart from the sustainability criteria relating to forest bioenergy set out in Article 29(6) of the RED II Directive, it is clear that the applicants have not made out proof that those sustainability criteria relating to forest bioenergy are not ‘aligned’ with ‘the Paris Agreement temperature goal’.
- 132 It is true that, in paragraph 7 of the application, the applicants referred to numerous scientific reports highlighting ‘the inadequacy of [the criteria aimed at limiting the adverse environmental impact of forest bioenergy referred to in the RED II Directive] to protect forests and the climate’. According to the applicants, the impact assessment carried out by the Commission at the time of revision of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (OJ 2009 L 140, p. 16), which led to the adoption of the RED II Directive, led to the same conclusion. Those allegations are unsubstantiated, however. The applicants did produce that impact assessment as Annex A.8 to the application, but it is not clear in which part of that annex the evidence to support their allegations is to be found. Whilst a mere statement pointing to ‘the inadequacy of [the sustainability criteria referred to in the RED II Directive] to protect forests and the climate’ may, as the case may be, be taken into account, it does not by itself establish clearly that those criteria are not ‘aligned’ with ‘the Paris Agreement temperature goal’.
- 133 Thirdly, the applicants may not successfully claim that the alignment of the ‘do no significant harm’ technical screening criteria does not demonstrate compliance with Article 10(1) of the Taxonomy Regulation, or that an assumption that the economic activity in question does make a substantial contribution to climate change mitigation is inadequate (see paragraph 119 above).
- 134 In that regard, the applicants criticise the Commission for something which is not found anywhere in the contested decision, with the result that their argument lacks a factual basis. In Section 2.2 (page 69) of Annex III to the contested decision, the Commission did not refer anywhere to the ‘do no significant harm’ technical screening criteria, either in order to demonstrate the alignment of the technical screening criteria laid down in point 1.3 of the table of technical screening criteria entitled ‘Substantial contribution to climate change mitigation’ found in Annex I to the Delegated Regulation, or on other grounds.
- 135 Consequently, the second part of the second plea in law must be rejected.

Third part of the second plea in law: error of law due to the Commission’s misinterpretation of the competence conferred on it by Article 10(3)(a) of the Taxonomy Regulation

- 136 The applicants allege an error of law in the Commission’s assessment referred to in paragraph 104 above. That error stems from the fact that none of the factors in the set of requirements that small-scale foresters need to meet makes it possible to ensure that exempted forest holdings make a substantial contribution to climate change mitigation. According to the applicants, it is apparent from the Commission’s assessment, which relates to all the requirements to be met by

small-scale foresters, that the Commission misunderstood the competence conferred on it by Article 10(3)(a) of the Taxonomy Regulation. The Taxonomy Regulation does not provide for a *de minimis* exemption and the requirements of Article 10(1) and (3)(a) should in no way be construed as doing so. The adoption of the exemption for holdings of less than 13 hectares therefore falls outside the Commission's competence. The applicants state that they raised that issue in the request for internal review, but the Commission did not examine it in the contested decision. It must therefore, according to the applicants, 'be assumed that the Commission committed an error of law by misdirecting itself as to its own competence to adopt *de minimis* exemptions'.

137 The Commission disputes those arguments.

138 The applicants allege an error of law in the Commission's response in Section 2.2 (page 69) of Annex III to the contested decision, resulting from a misinterpretation by the Commission as to the scope of the competence conferred on it by Article 10(3)(a) of the Taxonomy Regulation. The adoption of the exemption for holdings under 13 hectares does not come within the Commission's competence, as the Taxonomy Regulation does not provide for a *de minimis* exemption. That question was not examined in the contested decision.

139 In alleging the error of law referred to in paragraph 138 above, the applicants follow the same logic as that used in support of the first plea, to the effect that the Commission exceeded the scope of its competence inasmuch as it failed 'to comprehend the scope of [the substantive] requirements' of the Taxonomy Regulation (see paragraph 47 above).

140 As observed in paragraph 82 above, any infringement of a provision of relevant substantive law, such as the substantive requirements laid down in the Taxonomy Regulation, does not necessarily constitute an infringement of the scope of the competence conferred by Article 10(3) of the Taxonomy Regulation, read in conjunction with Article 290 TFEU. In alleging infringement of substantive provisions, the applicants provide no clarification whatsoever as to how the Commission exceeded its authority to adopt the Delegated Regulation, provided for in Article 10(3)(a) of the Taxonomy Regulation.

141 In the light of the foregoing, the third part of the second plea in law must be rejected, as must, therefore, the second plea in law in its entirety.

Third plea in law: errors vitiating the Commission's response to the applicants' criticisms regarding the technical screening criteria for determining whether an activity does no significant harm to climate change adaptation

142 According to the applicants, the considerations set out by the Commission in Section 2.3 (pages 71 to 73) of Annex III to the contested decision in response to the criticisms expressed in the request for internal review as regards Appendix A to Annex I to the Delegated Regulation, which, in the applicants' view, is unlawful, are vitiated by errors of law. In their view, the Commission's considerations are based on a misapplication of Article 17(1)(b) and Article 19(1)(b) of the Taxonomy Regulation, on a misunderstanding of the Commission's competence conferred on it by the Taxonomy Regulation and, in the alternative, on a manifest error of assessment.

143 In Section 2.3 (pages 71 to 73) of Annex III to the contested decision, the Commission stated that:

‘... the criteria were not required to screen out significant adverse impacts from the activity on people, nature or assets, because:

- [s]uch a requirement would make the [“do no significant harm” technical screening criteria] for adaptation more onerous than the “substantial contribution” [technical screening criteria] [referred to in Article 11(1)(a) of the Taxonomy Regulation]; and/or
- [t]he objective is achieved collaterally by virtue of the [technical screening criteria] for substantial contribution to climate change mitigation and/or the adoption of a forest management plan.’

144 In the applicants’ view, those responses are incorrect.

145 In the first place, according to the applicants, the Commission’s reference to Article 11(1) of the Taxonomy Regulation (see the first indent of paragraph 143 above) is not convincing. That provision cannot alter the clear meaning of Article 17(1)(b) of the Taxonomy Regulation. Article 11(1) of the Taxonomy Regulation, which sets out the conditions for concluding that an economic activity makes a substantial contribution to climate change adaptation, requires proof of a substantial reduction for two categories of impact, namely the impact on the activity itself (‘part (a)’ (Article 11(1)(a) of the Taxonomy Regulation)), and the impact on people, nature and assets (‘part (b)’ (Article 11(1)(b) of the Taxonomy Regulation)). That provision further provides that a positive contribution to climate change adaptation can be achieved by addressing either of those parts. These are two categories of impact of equal weight which, moreover, are exclusive in the sense that it is sufficient to satisfy one of them in order to make a substantial contribution to climate change adaptation. Since the requirement relating to the ‘do no significant harm’ technical screening criteria, provided for in Article 17(1)(b) of the Taxonomy Regulation, which incorporates parts (a) and (b) set out in Article 11(1) of that regulation, was worded using the negative, it is legitimate to consider that that article requires both types of harm, thus the harm under both part (a) and part (b) referred to in Article 11, to be avoided. It follows that the Commission was required to establish ‘do no significant harm’ technical screening criteria for both categories of harm. That did not happen in the present case. The ‘do no significant harm’ technical screening criteria in relation to climate change adaptation fail to address one of the aspects of harm to adaptation, identified in Article 17(1)(b) of the Taxonomy Regulation, namely the increased adverse impact of the current climate as a result of the continuation of the activity itself. The Commission’s statement (see the first indent of paragraph 143 above), to the effect that the applicants’ interpretation of Article 17(1)(b) of the Taxonomy Regulation makes it ‘more onerous’ than Article 11(1)(a) of that regulation, is irrelevant. Depending on the activity and impact under consideration, demonstrating the absence of harm might ultimately be more onerous than demonstrating a positive contribution (for example, for inherently harmful activities). In any event, the argument to the effect that their interpretation of Article 17(1)(b) of the Taxonomy Regulation makes it ‘more onerous’ than Article 11(1)(a) of the Taxonomy Regulation cannot be regarded as being necessarily well founded.

146 In the second place, as regards the second part of the Commission’s response (see the second indent of paragraph 143 above), the Taxonomy Regulation expressly states that the Delegated Regulation must lay down, for each relevant environmental objective, criteria for determining whether an activity causes significant harm. However, the Commission considered that ‘the requirement could be discharged by significant contribution [technical screening criteria]

relevant to a different environmental objective – and in any event because the [adaptation-related “do no significant harm” technical screening criteria refer] to the mitigation “significant contribution” [technical screening criteria]’. Moreover, the Commission has not explained how the criteria relating to climate change mitigation or the forest management plan would make it possible to screen out activities which cause harm to people, nature or assets, or which provisions are supposed to have that effect. Lastly, the Commission did not examine at all the applicants’ complaint that Appendix A to Annex I to the Delegated Regulation authorises economic operators to determine themselves whether a climate risk is among ‘the most important’ risks.

147 The Commission disputes those arguments.

148 The arguments put forward under the third plea in law, referred to in paragraphs 144 to 146 above, do not establish that there was a manifest error of assessment vitiating the considerations set out in Section 2.3 of Annex III to the contested decision. In order to establish that an institution committed a manifest error in assessing complex facts such as to justify the annulment of an act, the evidence adduced by the applicant must be sufficient to make the factual assessments used in that act implausible (see judgment of 11 December 2024, *Carmeuse Holding v Commission*, T-554/22, not published, EU:T:2024:895, paragraph 103 and the case-law cited). By their line of argument, the applicants do not state exactly which facts retained in the contested decision were manifestly incorrectly assessed by the Commission. Consequently, those unsubstantiated arguments, alleging a manifest error of assessment, must be rejected.

149 Moreover, nor do the complaints referred to in paragraphs 144 to 146 above establish that the considerations set out in Section 2.3 of Annex III to the contested decision are contrary to Article 17(1)(b) and Article 19(1)(b) of the Taxonomy Regulation.

150 In that regard, it is apparent from Section 2.3 of Annex III to the contested decision that Article 11(1) and Article 17(1)(b) of the Taxonomy Regulation must be given a systematic interpretation, that is to say, the economic activity in question must, first of all, satisfy the established criteria in order to demonstrate that it makes a substantial contribution to climate change adaptation and, secondly, ensure that it does not lead to an increased adverse impact on the current climate and the expected future climate, on the activity itself or on people, nature or assets.

151 The applicants are incorrect in arguing that the contested decision is unlawful inasmuch as the Delegated Regulation does not fix any criterion requiring that an economic activity not lead to an increased adverse impact on the climate. The Delegated Regulation, referred to in the contested decision, fixed ‘do no significant harm’ technical screening criteria, referred to in Article 17(1)(b) of the Taxonomy Regulation. Those are process-based criteria listed in Appendix A to Annex I to the Delegated Regulation, referred to at page 72 of the contested decision.

152 Lastly, the applicants are incorrect in claiming that the technical screening criteria did not lay down any requirements in respect of avoiding adverse impacts on people, nature or assets, as required by Article 17(1)(b) of the Taxonomy Regulation. As observed at page 73 of the contested decision, it follows from Appendix A to Annex I to the Delegated Regulation that the ‘do no significant harm’ criteria require that ‘the adaptation solutions implemented do not adversely affect the adaptation efforts or the level of resilience to physical climate risks of other people, of nature, of cultural heritage, of assets and of other economic activities’.

153 In the light of the foregoing, the third plea in law must be rejected.

Fourth plea in law: errors of law and manifest errors of assessment in relation to the Commission's response to the applicants' criticism regarding the criteria for determining when an activity does no significant harm to the transition to a circular economy

154 According to the applicants, the response given by the Commission in Section 2.4 (page 74) of the contested decision, in relation to the doubts raised in their request for internal review as to the 'do no significant harm' technical screening criteria relating to the transition to a circular economy, as derived from point 4 of the table of 'do no significant harm' criteria found in Section 1.3 of Annex I to the Delegated Regulation, infringes Article 17(1)(d)(i) of the Taxonomy Regulation. In that regard, the contested decision is vitiated by a manifest error of assessment.

155 As set out in point 4 of the table entitled 'Do no significant harm ("DNSH")' found in Section 1.3 of Annex I to the Delegated Regulation, the technical screening criteria relating to the transition to a circular economy set out therein require, as regards forestry activities, that:

'The silvicultural change induced by the activity on the area covered by the activity is not likely to result in a significant reduction of sustainable supply of primary forest biomass suitable for the manufacturing of wood products with long-term circularity potential. This criterion may be demonstrated through the climate benefits analysis referred to in point (2) [of that table].'

156 In Section 2.4 (page 74) of Annex III to the contested decision, the Commission replied that a supply of primary biomass was required to displace other high-carbon materials.

157 According to the applicants, that response is insufficient or even irrational. Maintaining supply at a consistent level can only have the effect of keeping the price of raw materials down compared with more sustainable options, such as reducing consumption or reusing materials. Maintaining the supply, and therefore the use, of 'primary raw materials' will tend to perpetuate the inefficient use of those raw materials. Maintaining supply will screen out activities that promote conservation by reducing harvesting, since they will decrease the supply of primary forest biomass, which is one aspect of the significant harm to the transition to the circular economy identified in Article 17(1)(d)(i) of the Taxonomy Regulation.

158 The Commission further stated, at page 75 of Annex III to the contested decision, that the climate benefit analysis implies that the carbon storage capacity of wood products should not be degraded.

159 That position is, however, incorrect. The climate benefit analysis relates to the carbon stock and sinks levels in the forest. It nevertheless does not take account of wood-based products. Therefore, the climate benefit analysis cannot be used to demonstrate that a forestry activity maintains the supply of primary biomass of a kind suitable for use in the circular economy.

160 The applicants submit that, in so far as the Commission has, in the context of the present dispute, attempted to justify its approach by referring to the cascading principle for wood, that principle does not appear in the Delegated Regulation, with the result that the Commission is not entitled to rely on it or assume it will be applied. That principle does not form part of the requirements of the legislation at issue or of any other legislation.

161 The Commission disputes those arguments.

- 162 By the arguments referred to in paragraphs 157 and 160 above, the applicants, under the guise of alleging an error of law, in reality are alleging the existence of a manifest error of assessment vitiating Section 2.4 (pages 73 and 74) of the contested decision, as regards supply and use of forest biomass. Those arguments are based on insufficient premisses, however, and accordingly do not render the Commission's factual, technical and complex assessments implausible. They must accordingly be rejected as unfounded, for the reasons set out below.
- 163 In the first place, the applicants dispute the well-foundedness of the Commission's response in the contested decision, to the effect that a supply of primary biomass was required to displace other high-carbon materials. In so doing, they assume that point 4 of the table of 'do no significant harm' criteria found in Section 1.3 of Annex I to the Delegated Regulation will entail that forest biomass will continue to be used, which will lead to the prices of other raw materials being kept at low levels. According to the applicants, that will impede the development of more sustainable solutions, such as reducing consumption or reusing materials. Lastly, that situation will amount to the inefficient use of forest biomass, contrary to Article 17(1)(d) of the Taxonomy Regulation (see paragraph 157 above).
- 164 Those assertions must be rejected.
- 165 It is not obvious that maintaining supply of a renewable material such as forest biomass suitable for the manufacturing of wood-based products with long-term circularity potential can be said to be a measure leading to inefficiency in the use of materials or natural resources other than forest biomass or in the use of high-carbon materials, such as those referred to in the Commission's response. Nor is it readily evident that encouraging the maintenance of the recyclability of a renewable material such as forest biomass will give rise to inefficiencies in the development of solutions aimed at reducing consumption or reusing certain raw materials which are less problematic than forest biomass.
- 166 A distinction should be drawn between the promotion of the use of forest biomass suitable for the manufacturing of wood-based products with long-term circularity potential and the development of strategies aimed at preventing the use of certain materials or natural resources. The existence of anticipated inefficiencies in one of those areas does not necessarily entail the occurrence of inefficiencies in another. There is no support for the link drawn by the applicants between the promotion of the use of forest biomass and the reduction in consumption or reuse of certain raw materials.
- 167 In any event, it is not clear on which economic or scientific factors the applicants base the position that the maintenance of the supply of forest biomass – that is to say, its use as a renewable material – could have the effect of keeping the price of certain raw materials low as compared to the costs arising from solutions aimed at reducing consumption or reusing other primary materials.
- 168 It is true that, in order to call into question the well-foundedness of the approach of maintaining the use of primary biomass as an alternative for other high-carbon materials, as alluded to by the Commission in the contested decision, the applicants have stated that certain Commission research demonstrated the negative climate impact of the alternative envisaged by the Commission. In particular, the applicants have cited an extract from Communication COM (2021) 572 final from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, entitled 'New [European Union] Forest Strategy for 2030', of 16 July 2021, which they attached to the

application as Annex A.44, stating that ‘as indicated in recent studies ..., in the short to medium term, i.e. until 2050, the potential additional benefits from harvested wood products and material substitution are unlikely to compensate for the reduction of the net forest sink associated with the increased harvesting.’

- 169 However, there is nothing in that extract to suggest that maintaining forest biomass supply would necessarily have the effect of keeping the price of certain raw materials low as compared to the costs arising from solutions aimed at reducing consumption or reusing certain primary materials. Nor is there anything to suggest that the use of primary biomass facilitates alternatives to other ‘high-carbon’ materials. The extract cited from that document rather casts doubt on the assertion that the use of forest biomass alone could compensate for the reduction in forest carbon sinks. Hence, the applicants’ reference to the Commission Communication, referred to in paragraph 168 above, does not invalidate the Commission’s response about the maintenance of forest biomass supply as an alternative that makes it possible to avoid the use of high-carbon materials.
- 170 Even if maintaining forest biomass suitable for the manufacturing of wood-based products with long-term circularity potential, as envisaged in point 4 of the table of ‘do no significant harm’ criteria found in Section 1.3 of Annex I to the Delegated Regulation, is actually liable to lead to inefficiencies in the development of solutions aimed at reducing consumption or reusing certain raw materials, as claimed by the applicants, it is clear that such a fact is not sufficient to support a finding of infringement of Article 17(1)(d)(i) of the Taxonomy Regulation.
- 171 It is still necessary to prove the existence of a ‘significant’ inefficiency as referred to in Article 17(1)(d)(i) of the Taxonomy Regulation. As the applicants have not adduced any evidence on this point, the Court finds that maintaining the supply of primary biomass as an alternative for preventing the use of high-carbon materials cannot be held to be an inefficiency that could qualify as ‘significant’. In other words, it has not been established, as the applicants suggest, that the increase in the recyclability of a renewable material such as forest biomass will necessarily lead to a significant inefficiency in the use of materials or natural resources, still less in the use of high-carbon materials.
- 172 In the second place, the applicants dispute the Commission’s response to the effect that the climate benefit analysis ‘implies that the carbon storage capacity of wood products should not be degraded by ensuring that the wood in question stems from high-quality wood that stores carbon for as long as possible and that substitutes for high carbon intense sources of materials and energy’. The climate benefit analysis cannot be used to demonstrate that a forest activity maintains the supply of primary biomass of a type suitable for use in a circular economy, as that analysis does not focus on wood-based products, but rather solely on the carbon stock and sinks levels in the forest (see paragraph 159 above).
- 173 Those arguments are unfounded.
- 174 It is true that Article 17(1)(d)(i) of the Taxonomy Regulation requires that an economic activity not lead to significant inefficiencies in the use of materials or in the direct or indirect use of natural resources at one or more stages of the life cycle of products, including in terms of durability, reparability, upgradability, reusability or recyclability of products. The wood-based products which are the subject of the applicants’ line of argument come within the product categories referred to in Article 17(1)(d)(i). It is also true that the climate benefit analysis has an impact on carbon stocks and sinks levels in the forest, as follows from point 2.1 of the table of

technical screening criteria entitled ‘Substantial contribution to climate change mitigation’ found in Section 1.3 of Annex I to the Delegated Regulation, read in conjunction with Article 29(7)(b) of the RED II Directive.

- 175 However, it cannot be inferred therefrom that the reference to the climate benefit analysis found in the contested decision is insufficient and therefore irrelevant for wood-based products, as the applicants claim.
- 176 As observed, in essence, by the Commission in Section 4 of Annex III to the contested decision, that climate benefit analysis is supposed to ensure that the measure in question makes a substantial contribution to climate change mitigation by maintaining or strengthening carbon stocks and sinks over the long term. The climate benefit analysis forms part of the strategy commonly referred to as the ‘cascading principle for wood’. According to that strategy, it is imperative that raw materials, such as wood or other biomass, be used in chronologically sequential steps for as long, as often and as effectively as possible, so that energy is recovered only at the end of the product’s life cycle. Thus, the climate benefit analysis referred to in the Commission’s response is the factor which, together with other parameters, makes it possible to trigger the programme for the cascading use of forest biomass, starting with the processing of the biomass in the forest and finishing at the stage of wood-based products. In other words, the climate benefit analysis has, at the very least, an indirect effect on what happens to wood-based products.
- 177 In the light of the foregoing, the fourth plea in law must be rejected.

Fifth plea in law: errors of law in the Commission’s response to the applicants’ criticism relating to the ‘do no significant harm’ criteria in relation to climate change mitigation

- 178 According to the applicants, the assessments set out in Section 2.5 (pages 74 and 75) of Annex III to the contested decision in response to the concerns expressed in the request for internal review as to the ‘do no significant harm’ technical screening criteria with a view to mitigating climate change, set out in point 1.3 of the table of those criteria found in Section 1.3, entitled ‘Forest management’, of Annex II to the Delegated Regulation, do not satisfy the requirements of Article 17(1)(a) and Article 19(1)(b) of the Taxonomy Regulation.
- 179 In the first place, in Section 2.5 (pages 74 and 75) of Annex III to the contested decision, the Commission stated that the ‘do no significant harm’ technical screening criteria in relation to the climate change mitigation in question are compatible with Article 19(1)(b) of the Taxonomy Regulation since those criteria establish an obligation for operators to have a forest management plan. That plan applies the forest sustainability criteria to all forest management operations as set out in Article 29(6) of the RED II Directive and the Operational Guidance Regulation. Moreover, in its attempt to justify those technical screening criteria, the Commission referred to the requirements of Article 29(7)(b) of the RED II Directive in relation to management systems, which are intended to ‘ensure that carbon stocks and sinks levels in the forest are maintained, or strengthened over the long term’. Lastly, the Commission described compliance with Article 29(7)(b) of the RED II Directive and the existence of a forest management plan as the ‘cornerstone of [its] approach’.
- 180 According to the applicants, the explanations from the Commission in recital 179 are incorrect.

- 181 First, the Commission's arguments relating to the requirements of Article 29(6) of the RED II Directive (see paragraph 74 of the defence) are incorrect. Article 29(6) ensures only the 'forest regeneration of harvested areas' (Article 29(6)(a)(ii) of the RED II Directive) and 'that harvesting maintains or improves the long-term production capacity of the forest' (Article 29(6)(v) of the RED II Directive). Those requirements say nothing about maintaining forest stocks and sinks. Thus, even a clear-cutting area could be described as capable of regeneration. It is conceivable that the 'long-term' production capacity of a clear-cutting area could be maintained if the trees were to regrow at some point. However, the Commission did not give a convincing justification for not specifying the time period for recovery of the carbon lost as a result of clear-cutting. Similarly, the Operational Guidance Regulation, on which the Commission also relies in its defence, is of no use in this context, since that act could not impose more stringent requirements than the primary legislation.
- 182 Secondly, the reliance, in the contested decision, on Article 29(7)(b) of the RED II Directive, which refers to the need to 'ensure that carbon stocks and sinks levels in the forest are maintained, or strengthened over the long term', constitutes an error of law, since the technical screening criteria in question do not contain the requirement that operators must satisfy the criteria laid down in that provision, but refer only to Article 29(6) of the RED II Directive and to the implementing act adopted on the basis of Article 29(8) of that directive. In view of the fact that, according to the Commission, the LULUCF criteria form part of the 'cornerstone of [its] approach', but the technical screening criteria make no mention whatsoever of Article 29(7) of that directive, it must be held that those criteria are based solely on the existence of a forest management plan. That means that one of the two elements forming that 'cornerstone' is non-existent and ultimately demonstrates that the 'do no significant harm' criteria for climate change mitigation are not sufficient, by themselves, to attain the objective set out in Article 17(1)(a) of the Taxonomy Regulation. Moreover, the Commission seems to assume that all forest operators will comply with the criteria of Article 29(7) of the RED II Directive, even though the technical screening criteria do not require them to do so and even though those criteria do not apply to all operators. By not expressly requiring economic operators to comply with the sustainability criteria laid down in Article 29(7)(b) of the RED II Directive and by giving those operators the freedom to weigh up whether they wish to comply with that provision – which could indeed happen if they wish to enjoy the benefits described in Article 29(1) of the RED II Directive – the Commission committed an error of law in its interpretation of both Article 17(1)(a) of the Taxonomy Regulation and Article 19(1)(b) of that regulation.
- 183 In the second place, the Commission addressed the applicants' concerns by referring to point 1.4 of the table of technical screening criteria entitled 'Substantial contribution to climate change mitigation' found in Section 1.3 of Annex II to the Delegated Regulation, in particular the requirement that the activity 'not involve the degradation of land with high carbon stock'. However, as stated in the footnote to point 1.4, the RED II Directive defines 'land with high carbon stock' as being certain specific categories of land. In that context, the term 'degradation' refers to the overall downgrading of land from one category to another. It follows that the requirement referred to in point 1.4 does not apply to all land which is the subject of forest operations and does not cover an activity which causes significant greenhouse gas emissions but without resulting in such downgrading. Hence, by relying on that point 1.4, the Commission failed to comply with the requirements of Article 19(1)(b) of the Taxonomy Regulation.
- 184 The Commission disputes those arguments.

- 185 The arguments referred to in paragraphs 179 to 183 above, by which the applicants allege infringement of Article 17(1)(a) and of Article 19(1)(b) of the Taxonomy Regulation, must be rejected.
- 186 In the first place, none of the arguments put forward by the applicants calling the contested decision into question in so far as the Commission established an obligation for operators to have a forest management plan (see paragraphs 179 to 182 above) is convincing.
- 187 First, the applicants submit, in essence, that the contested decision is vitiated by an error of law inasmuch as therein the Commission, contrary to Article 17(1)(b) of the Taxonomy Regulation, refers to technical screening criteria relating to the existence of a forest management plan, including a reference to Article 29(6) of the RED II Directive, which are not suitable for ‘maintaining forest stocks and sinks’ ‘at least at their current levels’ (see paragraph 181 above).
- 188 To begin with, the applicants’ position, that Article 17(1)(a) of the Taxonomy Regulation requires that the maintenance of forest stocks and sinks be maintained at least at their current levels, seems to be traceable back to Article 10(1)(f) of the Taxonomy Regulation, although the latter provision is aimed at the drawing up of criteria relating to the substantial contribution to climate change mitigation. The conditions laid down in Article 17(1)(a) of the Taxonomy Regulation, however, do not include that of maintaining forest ‘stocks and sinks’ ‘at least at their current levels’. That provision does not expressly require the establishment of technical screening criteria aimed at maintaining forest carbon sinks ‘at least at their current levels’. On the contrary, that provision requires, in essence, that an economic activity not ‘significantly harm’ climate change mitigation, which would be the case *inter alia* ‘where that activity leads to significant greenhouse gas emissions’. That provision does not duplicate the conditions laid down in Article 10(1)(f) of the Taxonomy Regulation. In fact, the rationale behind Article 17 of the Taxonomy Regulation is something different altogether. As is apparent, in particular, from recital 34 of that regulation, the provisions of that regulation relating to the avoidance of significant harm to any of the environmental objectives set out in that regulation, namely the ‘do no significant harm’ criteria laid down in Article 17, are in place ‘in order to avoid that investments qualify as environmentally sustainable in cases where the economic activities benefitting from those investments cause harm to the environment to an extent that outweighs their contribution to an environmental objective’, which environmental objective may be that relating to climate change mitigation or a different one, as follows from Article 3(b) of the Taxonomy Regulation. It cannot be required that a forestry-related economic activity make it possible to avoid environmental harm that exceeds its contribution to one of the environmental objectives.
- 189 As regards the hypothesis put forward by the applicants to the effect that an activity is liable to jeopardise, or even destroy, carbon sinks, the Court notes that that scenario is already governed by Article 17(1)(a) of the Taxonomy Regulation, in the light of which the technical screening criteria in question should be interpreted and applied. Although the removal of existing carbon forest sinks cannot itself be equated with the generation of significant greenhouse gas emissions, the fact remains that the destruction of carbon sinks will reduce the ability of the forest to store CO₂, which itself is a greenhouse gas. In other words, an economic activity that causes significant harm to existing carbon forest sinks causes indirectly, but not necessarily, significant harm to the objective of climate change mitigation within the meaning of Article 17(1)(a) of the Taxonomy Regulation. When the applicants insist, at the stage of the present proceedings, on the fact that the Commission did not provide a response suitable for remedying the failure to make express

reference, in the technical screening criteria in question or in Article 29(6) of the RED II Directive, to maintaining carbon sinks ‘at least at their current levels’, they are referring to matters which are already regulated by Article 17 of the Taxonomy Regulation.

- 190 It follows that the technical screening criteria in question did not have to include a specific reference to the need to avoid the destruction of forest carbon sinks as being a requirement under Article 17(1)(a) of the Taxonomy Regulation.
- 191 Next, the argument aimed at demonstrating that the reference in the contested decision to Article 29(6) of the RED II Directive is inadequate because the Commission failed to provide a convincing justification for not specifying the ‘[time period] for recovery of the carbon lost’ as a result of clear-cutting, which is compatible with that provision, is unfounded.
- 192 Neither Article 17(1)(a) nor Article 19(1)(b) of the Taxonomy Regulation requires a level of detail to the point of encompassing the fixing of ‘time period[s] for recovery of the carbon lost’ as a result of clear-cutting. The clear-cutting scenario, as construed by the applicants, that is to say, the disaster scenario liable to jeopardise (the maintenance of) forest carbon sinks, is the opposite of what could constitute ‘forest regeneration of harvested areas’ referred to in Article 29(6) of the RED II Directive. That latter scenario is also incompatible with the obligation to maintain or improve the long-term production capacity of the forest, as referred to in Article 29(6) of that directive. Consequently, the clear-cutting scenario, relied on by the applicants, does not in any way alter the suitability of the Commission’s reference, in the contested decision, to the application of Article 29(6) of the RED II Directive. Under that provision, clear-cutting, as construed by the applicants under the present plea, is not an economic activity liable to be considered ‘environmentally sustainable’.
- 193 Lastly, the argument to the effect that the Operational Guidance Regulation is of no use in this context, since it could not impose more stringent requirements than the ‘primary’ legislation, is ineffective. It is clear that the utility of that regulation in the context of drawing up the technical screening criteria in question cannot validly be called into question by the mere fact that that regulation does not impose more stringent requirements than those found in other primary or secondary EU legal acts.
- 194 Secondly, although, as the Commission itself acknowledges (see paragraph 73 of the defence), it referred incorrectly in the contested decision to Article 29(7)(b) of the RED II Directive in relation to the ‘do no significant harm’ criterion, whereas the Delegated Regulation refers to that provision as part of the climate benefit analysis and not in relation to that criterion (see paragraph 182 above), that error has no bearing on the lawfulness of the contested decision.
- 195 It is apparent from the contested decision that the Commission’s response to the applicants’ criticisms is not based mainly on Article 29(7)(b) of the RED II Directive, but on the obligation to have a forest management plan or equivalent instrument, in accordance with Article 29(6) of that directive and the Operational Guidance Regulation. It is further apparent from paragraphs 187 to 193 above that the applicants’ arguments directed at the technical screening criteria relating to the existence of a forest management plan, including through a reference to Article 29(6) of the RED II Directive, were rejected.
- 196 Accordingly, that incorrect reference in the contested decision to Article 29(7)(b) of the RED II Directive cannot entail the annulment of that directive.

- 197 In the second place, the applicants' argument to the effect, in essence, that the Commission's statement in the contested decision, requiring that the activity 'not involve the degradation of land with high carbon stock', as provided for in point 1.4 of the table of 'do no significant harm' criteria found in Section 1.3 of Annex II to the Delegated Regulation, was insufficient cannot be upheld (see paragraph 183 above).
- 198 Although the Commission referred to point 1.4, referred to in paragraph 197 above, that statement was not autonomous within the response given to the criticisms expressed in the request for internal review regarding the alleged unlawfulness of the 'do no significant harm' technical screening criteria aimed at mitigating climate change. That was merely an incidental statement to the main line of argument set out in Section 2.5 (pages 74 and 75) of Annex III to the contested decision, which is linked to the obligation, for economic operators, to have a forest management plan. Irrespective of whether or not that incidental statement is well founded, it changes nothing in the Commission's assessments of the obligation of operators wishing to demonstrate that their economic activity is environmentally sustainable to have a forest management plan. The applicants' line of argument is accordingly ineffective.
- 199 In any event, that argument is also unfounded. It is true that the applicants have grounds to view the provision relating to non-degradation provided for in point 1.4 of the 'do no significant harm' criteria as referring only to 'land', defined in greater detail in Article 29(4) of the RED II Directive. It is also true that the latter provision defines 'land with high-carbon stock' as being specific categories of land. Similarly, read in the light of Article 29(4) of the RED II Directive, the term 'degradation' referred to in point 1.4 of the 'do no significant harm' criteria refers to the loss of 'land with high-carbon stock', which amounts to an overall downgrading of land from one category to another.
- 200 However, the fact, criticised by the applicants, that the requirement laid down in point 1.4 of the table of 'do no significant harm' criteria found in Section 1.3 of Annex II to the Delegated Regulation does not apply to all land which is the subject of forest operations and does not cover an activity which causes significant greenhouse gas emissions, but without resulting in such downgrading, is not sufficient to make out proof of an error of law (see paragraph 183 above).
- 201 In that regard, it should be borne in mind that, under Article 17(1)(a) of the Taxonomy Regulation, an economic activity is deemed to significantly harm climate change mitigation 'where that activity leads to significant greenhouse gas emissions'.
- 202 Yet in their line of argument referred to in paragraph 183 above, the applicants omitted to specify which types of economic activities could pose a problem under Article 17(1)(a) of the Taxonomy Regulation, that is to say, would be likely to '[cause] significant [greenhouse gas emissions] but without resulting in ... downgrading' of land and are not proscribed by Article 29(4) of the RED II Directive.
- 203 Such a specification was necessary, as the problematic areas defined in Article 29(4) of the RED II Directive cover a very large part of the sensitive forest areas, that is to say, 'land with high-carbon stock'. That share of the forests is accordingly already protected by that provision. In that regard, it should be borne in mind that the areas defined in Article 29(4) of the RED II Directive cover not only wetlands but also continuously forested areas (Article 29(4)(b) of the RED II Directive) and other land spanning more than one hectare with trees higher than five metres (Article 29(4)(c) of the RED II Directive). The evidence in the case file does not readily enable identification of which economic activity might fall outside the definition of downgrading of 'land with high-carbon

stock' referred to in Section 1.3 of Annex II to the Delegated Regulation, read in conjunction with Article 29(4) of the RED II Directive, but nevertheless might generate greenhouse gas emissions to an extent that justifies categorisation of that economic activity as leading to 'significant' emissions causing '[significant] harm' within the meaning of Article 17(1)(a) of the Taxonomy Regulation.

- 204 In so far as the applicants do not indicate clearly which economic activity, developed in an area other than those the downgrading of which is referred to in Article 29(4) of the RED II Directive, generates significant greenhouse gas emissions and is therefore liable to be problematic from the standpoint of the conditions laid down in Article 17(1)(b) of the Taxonomy Regulation, their argument does not render implausible the Commission's approach, consisting in focusing solely on the downgrading of land from one category to another, as envisaged in Article 29(4) of the RED II Directive. Consequently, the applicants' argument referred to in paragraph 183 does not render implausible the well-foundedness of the Commission's reference in the contested decision to point 1.4 of the table of 'do no significant harm' technical screening criteria found in Section 1.3 of Annex II to the Delegated Regulation.
- 205 Lastly, the arguments referred to in paragraphs 180 to 183 above are not such as to establish an infringement of Article 19(1)(b) of the Taxonomy Regulation, since, in particular, the applicants have not proven the alleged link between those arguments and the specific substantive conditions of that provision. They have not elucidated the impact and scope of their complaints in relation to Article 19(1)(b) of the Taxonomy Regulation by supporting their arguments with relevant evidence.
- 206 In the light of the foregoing, the fifth plea in law must be rejected.

Sixth plea in law: errors of law and manifest errors of assessment vitiating the Commission's response to the applicants' criticism in relation to the criteria for determining whether an activity does no significant harm to the protection and restoration of biodiversity and ecosystems

- 207 According to the applicants, the Commission's response in Section 2.6 (page 76) of Annex III to the contested decision in relation to the issues raised in paragraphs 201 to 227 of the request for internal review as to the 'do no significant harm' technical screening criteria relating to the protection and restoration of biodiversity and ecosystems, set out in point 6 of the table in Section 1.3 of Annex I to the Delegated Regulation, and in point 6 of the table in Section 1.3, entitled 'Forest management', of Annex II to the Delegated Regulation, infringes Article 17(1)(f) and Article 19(1)(a) to (c) of the Taxonomy Regulation. The applicants take the view that that response is vitiated by an error of law and a manifest error of assessment and that the Commission exceeded its competence in adopting the Delegated Regulation.
- 208 The contested decision contains 'flaws in the reasoning'. The Commission did not respond adequately to the criticisms raised in the request for review regarding Section 2.6 (page 76) of Annex III to the contested decision. The Commission merely reiterated, in the contested decision, the provisions of the technical screening criteria which, in its view, relate to the four specific problem areas identified by the applicants.
- 209 In so far as the Commission responded in the contested decision to the criticisms raised, it failed to acknowledge that the technical screening criteria required no more than the mere provision of information on the part of operators, without requiring any tangible outcome. Such technical

screening criteria cannot be regarded as constituting ‘minimum requirements’ to avoid the harm identified in Article 17(1)(f) of the Taxonomy Regulation, which means that those technical screening criteria are contrary to Article 19(1)(b) of that regulation.

- 210 It is true that point 6 of the table of ‘do no significant harm’ criteria found in Section 1.3 of Annexes I and II to the Delegated Regulation requires a tangible outcome, namely the requirement to avoid the conversion of habitats specifically sensitive to biodiversity loss or with high conservation value. However, the concept of ‘conversion’ in that context refers to an overall downgrading from one status to a lower status. While that criterion may prevent such a catastrophic change of that kind, it does not prevent other activities which, although less damaging, can nevertheless cause significant damage to the good condition and the resilience of ecosystems. It follows that, when the Commission referred to point 6 in the contested decision, it committed a further error of law and/or manifest error of assessment.
- 211 In the defence, the Commission pointed to the requirement that, in protected or designated areas, the activity must be in accordance with the conservation objectives for those areas. The applicants acknowledge that that may, ‘in some cases’, meet the requirements of Article 17(1)(f) of the Taxonomy Regulation. However, that is not sufficient, since the conservation objectives are an ‘external standard’ and the requirement in question relates only to protected areas.
- 212 Moreover, according to the applicants, the technical screening criteria set out in point 6 of the table of ‘do no significant harm’ criteria found in Section 1.3 of Annexes I and II to the Delegated Regulation do not comply with a number of detailed rules specified in Article 19(1) of the Taxonomy Regulation. Given the high level of generality of the information to be included in a forest management plan, the mere requirement to include such information is not a criterion that identifies the most relevant potential contributions to the biodiversity objective (Article 19(1)(a) of the Taxonomy Regulation), or one that specifies minimum requirements to be met to avoid significant harm (Article 19(1)(b) of that regulation), or even a quantitative one containing clear thresholds (Article 19(1)(c) of that regulation).
- 213 In the contested decision, the Commission confined itself ‘for the most part’ to referring precisely to the provisions which the applicants had criticised. Thus, with regard to non-native species, the contested decision failed to address the concerns expressed in the request for internal review. It is true that the Commission relied on the provisions of Regulation (EU) No 1143/2014 of the European Parliament and of the Council of 22 October 2014 on the prevention and management of the introduction and spread of invasive alien species (OJ 2014 L 317, p. 35). That regulation is not referred to in the technical screening criteria, however. Therefore, it cannot meet the requirements of the Taxonomy Regulation for the adoption of an adequate technical screening criterion, is concerned only with ‘invasive alien species’, which it defines, and does not include all types of non-native species used in forestry which may nevertheless have a negative impact on the biodiversity objective. As regards pesticides, according to the applicants, the general requirement to include information on ‘promoting biodiversity-friendly practices’, relied on by the Commission in the contested decision, lacks the precision required by Article 19(1) of the Taxonomy Regulation. With regard to pollinators, the requirement, relied on by the Commission in the contested decision, to include the very general information referred to in point 6(a), (g) and (h) of the table of ‘do no significant harm’ criteria found in Section 1.3 of Annexes I and II to the Delegated Regulation, also lacks the precision required by Article 19(1) of the Taxonomy Regulation.

- 214 It must therefore be concluded, according to the applicants, that the Commission erred in law, in the decision, in its interpretation of the requirements of Article 17(1)(f) and Article 19(1)(a), (b) and (c) of the Taxonomy Regulation, or made a manifest error of assessment by relying on provisions which are manifestly inadequate to meet those requirements, or misunderstood the scope of its competence to adopt the Delegated Regulation.
- 215 The Commission disputes those arguments.
- 216 By the present plea in law, the applicants have failed to demonstrate that the Commission's response in Section 2.6 (page 76) of Annex III to the contested decision is unlawful due to infringement of Article 17(1)(f) and Article 19(1)(a) to (c) of the Taxonomy Regulation. All of the arguments put forward by the applicants in support of the sixth plea in law must be rejected, for the following reasons.
- 217 The applicants claim, incorrectly, that the Commission did not respond to the criticism expressed in the request for internal review, to the effect that the technical screening criteria laid down in point 6 of the table of 'do no significant harm' criteria found in Section 1.3 of Annexes I and II to the Delegated Regulation do not require a minimum level of protection or restoration actually to be achieved (see paragraph 209 above). In fact, in Section 2.6 (page 76) of Annex III to the contested decision, the Commission responds in a succinct, but complete, manner to that criticism. That response covers all of the criticisms raised in the request for internal review. In particular, in that part of the contested decision, the Commission expressly referred to the non-native species, pesticides and pollinators referred to in the request for internal review.
- 218 Moreover, Section 2.6 (page 76) of Annex III to the contested decision contains no error of law or manifest error of assessment. In that part of the contested decision, the Commission notes that the applicants had overlooked the fact that the 'do no significant harm' criteria in question included the requirement that 'there [be] no conversion of habitats specifically sensitive to biodiversity loss or with high conservation value, or of areas set aside for the restoration of such habitats in accordance with national law'. It is also apparent from the Commission's response that 'primary and old-growth forests are covered by the reference to "habitats specifically sensitive to biodiversity loss or with high conservation value"'.
- 219 In view of those statements by the Commission, the applicants argue at the stage of the present proceedings that the Commission failed to take account of the fact that the technical screening criteria did not require any 'tangible result' in order to avoid the harm which is the subject of Article 17(1)(f) of the Taxonomy Regulation, with the result that those technical screening criteria are contrary to Article 19(1)(b) thereof (see paragraph 209 above). That argument put forward by the applicants must be rejected. The Commission's response in the contested decision explains that the technical screening criteria in question may actually lead to a tangible outcome and do not merely require information.
- 220 The second criterion referred to in point 6 of the table of 'do no significant harm' criteria found in Section 1.3 of Annexes I and II to the Delegated Regulation requires that 'there [be] no conversion of habitats specifically sensitive to biodiversity loss'. That requirement, expressly referred to in the contested decision, defines a sufficiently 'tangible' level of protection to be attained by the Member States.

- 221 Similarly, in providing that ‘in areas designated by the national competent authority for conservation or in habitats that are protected, the activity is in accordance with the conservation objectives for those areas’, the first criterion laid down in point 6 allows for a definition of a level of habitat protection or restoration to be attained. That wording requires a sufficiently ‘tangible’ outcome.
- 222 The Court further finds that the Commission’s reference in Section 2.6 (page 76) of Annex III to the contested decision, to the requirement that forest management comply with those conservation objectives for protected sites and that the requirement that ‘there [be] no conversion of [specifically sensitive] habitats’, does not infringe Article 17(1)(f) of the Taxonomy Regulation.
- 223 On the contrary, that ‘do no significant harm’ criterion, under which the activity must be in accordance with the ‘conservation objectives’ of areas designated by the requirement that ‘there [be] no conversion of habitats’, crystallises the obligation for economic operators wishing to have their economic activity recognised as being environmentally sustainable to do what is necessary to ensure that that activity is not ‘detrimental to the conservation status of habitats and species’ within the meaning of Article 17(1)(f)(ii) of the Taxonomy Regulation. Similarly, the requirement to include provisions aimed at preserving and, potentially, strengthening biodiversity, which must be proven using the detailed information referred to in point 1.2(i) of the table entitled ‘Substantial contribution to climate change mitigation’ found in Section 1.3 of Annexes I and II to the Delegated Regulation, crystallises the obligation for economic operators wishing to have their economic activity recognised as being environmentally sustainable to do what is necessary to ensure that that activity is not ‘significantly detrimental to the good condition and resilience of ecosystems’ within the meaning of Article 17(1)(f)(i) of the Taxonomy Regulation. Lastly, the Commission’s reference to those criteria is also a measure coming within the concept of ‘minimum requirement’ within the meaning of Article 19(1)(b) of that same regulation.
- 224 It is true that, in that context, the applicants argue that the requirement that, in ‘protected or designated areas’, the activity must be in accordance with the conservation objectives fixed for those areas does not satisfy the requirements of Article 17(1)(f) of the Taxonomy Regulation, since reliance on ‘conservation objectives’ is an ‘external standard’ which is not aligned with that regulation (see paragraph 211 above).
- 225 The argument advanced in paragraph 224 above must be rejected, however. First, it is ‘the conservation status of habitats and species’, as established by the conservation scheme concerned, that must be taken as a reference point under Article 17(1)(f)(ii) of the Taxonomy Regulation. Secondly, as correctly observed by the Commission, the relevance of the reference to such an ‘external standard’ is corroborated by recital 32 of the Taxonomy Regulation, which states that the term ‘sustainable forest management’ should be construed by taking into account ‘practices and uses of forests and forest land’. Moreover, as also correctly observed by the Commission, that requirement goes beyond a mere guarantee that the activity is not ‘significantly detrimental to the good condition and resilience of ecosystems’ or ‘detrimental to the conservation status of habitats and species’ (see Article 17(1)(f)(ii) of the Taxonomy Regulation).

- 226 According to the applicants, the ‘conversion’ of a habitat at which point 6 of the table of ‘do no significant harm’ criteria found in Section 1.2 of Annexes I and II to the Delegated Regulation is directed amounts to an overall downgrading from one status to a lower status, which will have the effect that other activities, which, although less damaging, may nevertheless cause significant damage to the good condition and the resilience of ecosystems (see paragraph 210 above).
- 227 That argument cannot be upheld.
- 228 First, the premiss on which that line of argument is based is, in any event, speculative. Even if the ‘conversion’ referred to by the applicants may be equated with a change of a level of seriousness comparable to that of an overall downgrading of the forest from one status to a lower status, the Court notes that, as observed in paragraphs 199 to 204 above, the applicants refrained from specifying the economic activities which are actually linked to such a conversion and which, as per paragraph 100 of the application, ‘while less damaging [than that conversion], [could still be] significantly detrimental to the good condition and resilience of ecosystems’. Clarification such as this was necessary, as the explanations in the contested decision relating to habitat conversion do not by themselves support a finding that the technical screening criterion in question was incompatible with Article 17(1)(f) of the Taxonomy Regulation. In that regard, the applicants’ argument is unsubstantiated.
- 229 Secondly, the applicants misread the term ‘conversion’, to which they refer in paragraph 100 of the application. The ‘conversion’ in question is not the same thing as the extreme scenario of a downgrading of the forest from one status to a lower status. In that regard, that ‘conversion’ is defined in greater detail in point 6(f) of the table of ‘do no significant harm’ criteria found in Section 1.3 of Annexes I and II to the Delegated Regulation. As defined, that concept is aimed at ‘excluding the conversion of high-biodiverse ecosystems into less biodiverse ones’. Moreover, it cannot be inferred solely on the basis of the applicants’ written pleadings that that definition is per se contrary to Article 17(1)(f) of the Taxonomy Regulation.
- 230 In that same context, the applicants argue that the requirement that, in ‘protected or designated areas’, the activity must be in accordance with the conservation objectives fixed for those areas does not satisfy the requirements of Article 17(1)(f) of the Taxonomy Regulation, since that requirement concerns only protected areas (see paragraph 211 above).
- 231 That argument cannot be upheld. Apart from the first of the criteria laid down in point 6 of the table of ‘do no significant harm’ criteria found in Section 1.3 of Annexes I and II to the Delegated Regulation, all of the other criteria also apply to sites situated outside protected areas, thereby establishing sufficient requirements for avoiding significant harm. That is the case for the criterion relating to non-conversion found in the second and third paragraphs of point 6.
- 232 Nor do any of the arguments set out in paragraph 213 above call into question the well-foundedness of the Commission’s assessments in Section 2.6 (page 76) of Annex III to the contested decision.
- 233 As regards non-native species, the following should be noted.
- 234 The Commission was entitled to rely on the provisions of Regulation No 1143/2014 in its response, even though that regulation is not referred to per se in the technical screening criteria in question. It is not necessary to examine the impact of the absence of reference to that regulation in the technical screening criteria on the Commission’s assessment of those criteria in point 2.6(b) of

Annex III to the contested decision. In the context of an action brought against a decision rejecting as unfounded a request for an internal review, only pleas seeking to demonstrate that that decision was vitiated by errors of law or errors of assessment, and not pleas concerning the administrative act whose internal review had been requested, are admissible (judgment of 6 October 2021, *ClientEarth v Commission*, C-458/19 P, EU:C:2021:802, paragraph 49). Next, the Court shall not examine the lawfulness of those criteria, but rather solely that of the contested decision. It is accordingly clear that the arguments put forward against that part of the contested decision must be rejected. The statement to the effect that Regulation No 1143/2014 concerns only ‘invasive alien species’, which it defines, and does not include ‘all forms of non-native species used in [f]orestry, which may nonetheless have a negative impact on the biodiversity objective’ is based on a misunderstanding of the concepts and parameters of Regulation No 1143/2014. Under Article 4(1) of that regulation, the Commission is empowered to adopt, by means of implementing acts, a list of invasive alien species of Union concern. The latest version of the list is found in Commission Implementing Regulation (EU) 2022/1203 of 12 July 2022 amending Implementing Regulation (EU) 2016/1141 to update the list of invasive alien species of Union concern (OJ 2022 L 186, p. 10). That list is updated regularly and reviewed comprehensively at least every six years, as provided for in Article 4(2) of Regulation No 1143/2014.

- 235 In practice, the application of the concept of ‘invasive alien species’ depends on complex scientific assessments. Contrary to what the applicants seem to suggest, not all alien species arriving in the Union or any species originating from one region of the Union and creating problems in another region of the Union are ‘invasive’ within the meaning of ‘invasive alien species’ referred to by Regulation No 1143/2014 and accordingly will not necessarily be included in the Union list. Hence, as long as an appropriate scientific assessment has not been carried out, it is impossible to determine with certainty whether it is an invasive alien species. The relevant legal context for determining that type of species in the present case is that established by Regulation No 1143/2014, not the contested decision.
- 236 Furthermore, the possibility can in no way be ruled out that, over the course of time, the Commission may be led to add the ‘invasive alien species’ to the Union list. In such a scenario, the lack of specification in the contested decision as to the ‘forms of non-native species used in [f]orestry, which may nonetheless have a negative impact on the biodiversity objective’, criticised by the applicants, could be resolved through an adaptation of the Union list under the procedures provided for by Regulation No 1143/2014.
- 237 In the light of the foregoing, the Commission’s reference in the contested decision to the Union list constitutes a clear, sufficient and correct explanation. The Commission was not required to make an express reference to the Union list for the purposes of the technical screening criteria, since the provisions of Regulation No 1143/2014 are of direct and immediate application, without any express reference to that regulation being necessary and without the relevant technical screening criteria being able to modify the effects of that regulation.
- 238 As regards pesticides, the applicants claim that the general requirement to include information on ‘promoting biodiversity-friendly practices’, relied on by the Commission in the contested decision, lacks the precision required by Article 19(1) of the Taxonomy Regulation (see paragraph 213 above). It should be borne in mind in that regard that, in Section 2.6 (page 76) of Annex III to the contested decision, the Commission gave the following response:

‘... the excessive use of pesticides would not be compatible with point 6(e) of the [“do no significant harm”] criteria referred to in [S]ection 1.3 of Annex I to the Delegated [Regulation] concerning “promoting biodiversity-friendly practices that enhance forests’ natural processes”.’

- 239 What the Commission intended to express in that passage, which the applicants refer to as a ‘general explanation’, is that the excessive use of pesticides, as referred to in the request for internal review, is such a serious scenario that it is the polar opposite of what is apparent from point 6(e) of the table of ‘do no significant harm’ criteria contained in Section 1.3 of Annexes I and II to the Delegated Regulation.
- 240 It is a sufficient response, one not vitiated by unlawfulness, since, in the passage cited in paragraph 238 above, the Commission observes that, under point 6(e) of the table of ‘do no significant harm’ criteria found in Section 1.3 of Annexes I and II to the Delegated Regulation, an economic activity allowing for the excessive use of pesticides cannot be deemed to be ‘environmentally sustainable’ within the meaning of Articles 1 and 3 of the Taxonomy Regulation. In other words, the difficulty raised by the applicants in view of the general criterion providing for the inclusion of information on ‘promoting biodiversity-friendly practices’ is already regulated by the Delegated Regulation, read in conjunction with the Taxonomy Regulation.
- 241 Lastly, as regards pollinators, in Section 2.6 (page 76) of Annex III to the contested decision, the Commission gave the following response:
- ‘Fourth, pollinators are included in [point 6(a), (g) and (h)] of the [“do no significant harm”] criteria referred to in [S]ection 1.3. of Annex I to the Delegated [Regulation].’
- 242 According to the applicants, the requirement, relied on by the Commission in the contested decision, to include the information referred to in point 6(a), (g) and (h) of the table of ‘do no significant harm’ criteria found in Section 1.3 of Annexes I and II to the Delegated Regulation lacks the precision required by Article 19(1) of the Taxonomy Regulation (see paragraph 213 above).
- 243 That argument is not in any way substantiated, as the applicants do not specify which provision of Article 19(1) of the Taxonomy Regulation is allegedly at odds with the contested decision.
- 244 In the light of the foregoing, the sixth plea in law must be rejected.

Seventh plea in law: errors of law and manifest errors of assessment by the Commission in finding, in the contested decision, that the mitigation technical screening criteria relating to forest bioenergy activities are adequate for determining whether an activity makes a substantial contribution to climate change mitigation

- 245 By their seventh plea in law, the applicants claim, in essence, that a whole series of assessments in Section 3.2.1 of Annex III to the contested decision and relating to the concerns expressed in the request for internal review as to the alleged inadequacy of the technical screening criteria relating to climate change mitigation for forest bioenergy activities, are vitiated by error.
- 246 The seventh plea in law is divided into two parts.

First part of the seventh plea in law: errors of law and manifest errors of assessment in that the Commission found that the ‘greenhouse gas emission savings’ criteria were adequate to ensure the contribution of forest bioenergy activities to climate change mitigation

247 The Commission stated the following in Section 3.2.1(b) of Annex III (page 81) to the contested decision:

‘The rules concerning bioenergy-related activities, as laid down in the Delegated [Regulation], should apply in combination with other relevant EU legislation. Biogenic emissions are accounted by Member States under the comprehensive framework constituted by Member States’ obligations as regards their national inventories under [Regulation (EU) 2018/841] and towards their 2030 commitments, while supply chain emissions occurring in the EU (cultivation, transport[,] etc.) are accounted under the EU [Emissions Trading System] and the ... sectors [falling under the scope of the Effort Sharing Regulation]. Therefore, bioenergy emissions are fully accounted.

The [greenhouse gas] emissions savings criteria in Article 29(10) of the RED II [Directive] exclude bioenergy pathways which have high [greenhouse gas] fossil emission associated [with] their supply chain (e.g. long transport, high fossil fuel emissions in harvesting or processing[,] etc.). The 80% threshold thus promotes efficiency along the bioenergy supply chain. ...’

248 In the first place, according to the applicants, is vitiated by an error of law the Commission’s argument to the effect that the accounting of biogenic emissions from forest bioenergy under Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU (OJ 2018 L 156, p. 1; ‘the LULUCF Regulation’) compensates for the failure to take account of the greenhouse gas emission savings criteria, because it infringes Article 10(3)(a) of the Taxonomy Regulation. The Commission is not entitled to refer to other provisions not specified in the RED II Directive or in the Delegated Regulation – in the present case, the LULUCF Regulation – in order to satisfy the requirements laid down in Article 10(3)(a) of the Taxonomy Regulation.

249 In the second place, according to the applicants, the Commission’s argument constitutes a manifest error of assessment. Its approach based on a business-as-usual scenario, such as that underlying the LULUCF Regulation, is incorrect. According to the applicants, the LULUCF Regulation does not make it possible to remedy the shortcomings of the greenhouse gas emission savings criteria. The following grounds cast doubt on any reasoning based on the argument of accounting for forest biogenic emissions under the LULUCF Regulation:

- first, according to the applicants, it is wrong to consider, as the Commission essentially implied, that the accounting of emissions under the LULUCF Regulation is a substitute for emissions reduction and that, solely by virtue of the fact that those emissions are accounted for, the climate impact of forest bioenergy activities is somehow mitigated;
- secondly, the Commission did not explain how emissions from the harvesting and burning of forest biomass are supposed to be ‘compensated’ under the LULUCF Regulation, bearing in mind that ‘compared to crops which regrow over short periods, forest biomass is part of a much longer carbon cycle’; burning forests emits CO₂ quickly, but regrowing forests to ‘sequester’ an equivalent volume of CO₂ takes much longer;

- thirdly, the LULUCF Regulation does not include all biomass carbon emissions in the accounting as it applies a baseline approach that relies on a projection of forest carbon sink levels based on historical harvesting levels and then only includes changes in the forest carbon sink compared to that baseline; as a result, significant amounts of emissions are not accounted for;
- fourthly, the LULUCF Regulation does not apply to wood imported from non-EU countries;
- fifthly, the emissions accounted for under the LULUCF Regulation are done at State level and reflect changes in forest and land carbon sinks which occur for any reason and not just as a result of harvesting for biomass; that regulation does not therefore make it possible to determine the extent to which biomass harvesting is responsible for over-exploitation, if it occurs.

250 The Commission disputes those arguments.

251 The arguments referred to in paragraphs 248 and 249 above are unfounded, for the reasons set out below.

252 In the first place, by their line of argument set out in paragraph 248 above, the applicants have failed to demonstrate an error of law vitiating Section 3.2.1 of Annex III to the contested decision arising from an infringement of Article 10(3)(a) of the Taxonomy Regulation.

253 The Commission's assessment that the 'rules concerning bioenergy-related activities, as laid down in the Delegated [Regulation], should apply in combination with other relevant EU legislation' (see Section 3.2.1(b) of Annex III (page 81) to the contested decision) is directed at the applicants' criticism, in the request for internal review, of the technical screening criteria laid down in point 2 of the table entitled 'Substantial contribution to climate change mitigation' in Sections 4.8, 4.13, 4.20 and 4.24 of Annex I to the Delegated Regulation, which refers to Annex VI to the RED II Directive. That finding relates to the introductory sentence of the first paragraph of Section 3.2.1(b) of Annex III (page 80) to the contested decision, according to which 'the [greenhouse gas] saving criteria require that biomass power plants yield at least 80% [of greenhouse gas] savings compared to equivalent fossil fuel energy production' and that 'such threshold is underpinned by the calculation methodologies provided in Annex VI to the RED II [Directive]'.

254 Those responses – which, like the technical screening criteria concerned, are based on a reference to Annex VI to the RED II Directive – comply with Article 10(1)(a) of the Taxonomy Regulation.

255 Under Article 10(1)(a) of the Taxonomy Regulation, 'an economic activity shall qualify as contributing substantially to climate change mitigation where that activity contributes substantially to the stabilisation of greenhouse gas concentrations ... by generating, transmitting, storing, distributing or using renewable energy in line with [the RED II Directive]'.

256 The reference in Article 10(1)(a) of the Taxonomy Regulation to the RED II Directive includes, in particular, Article 29(6) and (7) of that directive. Article 29(6) of the RED II Directive provides for the 'sustainability criteria of the RED II Directive'. Article 29(7) of the RED II Directive, for its part, refers to the 'LULUCF criteria'. Those LULUCF criteria are essentially linked to the parameters referred to in the LULUCF Regulation which, as provided for in Article 1 thereof, defines the Member States' commitments in the land use, land-use change and forestry (LULUCF) sector

which contribute to the achievement of the objectives of the Paris Agreement. Contrary to what the applicants claim, it is apparent from Article 10(1)(a) of the Taxonomy Regulation that the Commission was entitled to base itself on the RED II Directive in its response. It was also entitled to refer to the LULUCF Regulation in its responses. The LULUCF criteria provided for in Article 29(7) of the RED II Directive and the LULUCF Regulation are intrinsically linked, since the accounting for emissions and removals resulting from LULUCF activities is carried out on the basis of that regulation. Article 1 of the LULUCF Regulation provides that the objective thereof is to lay down the rules for the accounting of emissions and removals from LULUCF and for checking the compliance of Member States with those commitments in the LULUCF sector that contribute to achieving the objectives of the Paris Agreement and meeting the greenhouse gas emission reduction target of the Union for the period from 2021 to 2030.

- 257 Lastly, it should be noted that Article 19(1)(d) of the Taxonomy Regulation requires the Commission, during the establishment of the technical screening criteria, to take into account ‘any relevant existing Union legislation’. The Commission cannot accordingly be criticised for having stated, in the contested decision, that it took into account the provisions of the RED II Directive and the LULUCF Regulation.
- 258 In the second place, none of the complaints referred to in paragraph 249 above is such as to render implausible the assessments in the contested decision to the effect that ‘biogenic emissions are accounted by Member States under the comprehensive framework constituted by Member States’ obligations as regards their national inventories under the “LULUCF Regulation” and towards their 2030 commitments, while supply chain emissions occurring in the EU (cultivation, transport etc.) are accounted under the EU [Emissions Trading System] and the ... sectors [falling under the scope of the Effort Sharing Regulation]’ (see paragraph 247 above) (see Section 3.2.1(b) of Annex III (page 81) to the contested decision).
- 259 That statement describes accurately the relationship between the provisions referred to in paragraph 256 above. In that regard, it should be borne in mind that the LULUCF criteria provided for in Article 29(7) of the RED II Directive and the LULUCF Regulation are intrinsically linked, since the accounting for emissions and removals resulting from LULUCF activities is carried out on the basis of that regulation.
- 260 In particular, in the first place, and contrary to what the applicants claim (see the first indent of paragraph 249 above), the Commission did not state or imply that the ‘accounting of forest biogenic emissions under the LULUCF Regulation’ is a substitute for emissions reduction or that, solely by virtue of the fact that those emissions are accounted for, the climate impact of forest bioenergy activities is somehow mitigated. What is apparent from the passage of the contested decision criticised by the applicants is that the use of forest biomass contributes to emission reduction where certain criteria are met. That position is, moreover, the premiss on which the last sentence of Article 1 of the RED II Directive is based, a premiss formulated by the legislature itself. Thus, the assertion referred to in the first indent of paragraph 249 above is based on a misreading of the contested decision, with the result that it must be rejected.
- 261 In the second place, the argument to the effect that the Commission failed to ‘explain’ how emissions from the harvesting and burning of forest biomass are supposed to be ‘compensated’ under the LULUCF Regulation since, ‘compared to crops which regrow over short periods, forest biomass is part of a much longer carbon cycle’ must be rejected (see the second indent of paragraph 249 above).

- 262 The RED II Directive is based on the principle that, if the conditions laid down in Article 29(6) and (7) are satisfied, the biomass, which has been turned into fuel, may be categorised as renewable energy. Moreover, under Article 10(1)(a) of the Taxonomy Regulation, generating renewable energy in line with the RED II Directive contributes substantially to climate change mitigation. Hence, in so far as the applicants intend to dispute the suitability of (forest) biomass for categorisation as genuine renewable energy, no complaint against the Commission may be entertained. That is a premiss established by the legislature from which the Commission may not depart as it sees fit.
- 263 Moreover, the Commission was not required to ‘explain’ in the contested decision – or in the Delegated Regulation – how emissions from harvesting and burning of forest biomass are supposed to be ‘compensated’ under the LULUCF Regulation. That explanation is apparent from the LULUCF Regulation.
- 264 The LULUCF Regulation requires the Member States to maintain their natural carbon sinks. Under Article 4 of that regulation, for the periods from 2021 to 2025 and from 2026 to 2030, the Member States are to ensure that emissions do not exceed removals, calculated as the sum of total emissions and total removals on their territory in all of the land accounting categories referred to in Article 2 thereof combined, as accounted in accordance with that regulation. Thus, in so far as the emissions compensation scheme, at which the applicants’ argument is directed, results from the LULUCF Regulation, the Commission cannot be criticised for having failed to explain, in the contested decision, how emissions from harvesting and burning of forest biomass are supposed to be compensated under the LULUCF Regulation.
- 265 In the third place, the applicants claim that the LULUCF Regulation does not include all biomass carbon emissions in the accounting, but only changes in forest carbon sinks in relation to a baseline that relies on a projection of forest carbon sink levels based on historical harvesting levels (see the third indent of paragraph 249 above).
- 266 That line of argument is not such as to demonstrate a manifest error of assessment vitiating the Commission’s response referred to in paragraph 247 above. It is true that the emissions accounting mechanism provided for in the LULUCF Regulation applies a baseline approach that relies on a projection of forest carbon sink levels based on historical harvesting levels.
- 267 However, as correctly observed by the Commission, although the relevant technical screening criteria had exceeded the parameters laid down in the RED II Directive and the LULUCF Regulation, inter alia by including in the accounting emissions arising from the burning of forest biomass in the energy sector, that could have led to double accounting of greenhouse gas emissions. The Commission cannot accordingly be criticised for having based itself on LULUCF criteria as part of its margin of discretion.
- 268 In the fourth place, the fact that the LULUCF Regulation does not apply to wood imported from non-EU countries (see the fourth indent of paragraph 249 above) has no bearing on the well-foundedness of the Commission’s response set out in Section 3.2.1(b) of Annex III (page 81) to the contested decision. The sustainability criteria laid down in Article 29(6) and (7) of the RED II Directive apply equally to EU wood and imported wood. Indeed, it follows from paragraph 6 of that article that the sustainability and greenhouse gas emissions saving criteria for fuels must take into account, inter alia, whether the country in which forest biomass was harvested has national or subnational laws applicable in the area of harvest as well as monitoring systems in place. In addition, under paragraph 7(a)(i) and (ii) of that article, account must also be taken of whether

the country or regional economic integration organisation of origin of the forest biomass is a party to the Paris Agreement on Climate Change and has laws applicable in the area of harvest, to conserve and enhance carbon stocks and sinks, and provide evidence that reported LULUCF-sector emissions do not exceed removals.

269 In the fifth place, the applicants' argument to the effect that, in essence, the emissions included in the accounting under the LULUCF Regulation cannot be included in a targeted manner, as a result of which the LULUCF framework does not make it possible to determine the extent to which biomass harvesting is responsible for over-exploitation, cannot be upheld.

270 As is apparent from point A(e) of Annex IV to the LULUCF Regulation, Member States' forest reference level is to be determined in accordance with an assumed constant ratio between solid and energy use of forest biomass as documented in the period from 2000 to 2009. That assumption, which ensures that the increase in harvests for bioenergy use is included in the accounting as a debit in the LULUCF sector, is sufficiently targeted.

271 Consequently, the first part of the seventh plea in law must be rejected.

Second part of the seventh plea in law: manifest error of assessment vitiating the Commission's rejection of the applicants' arguments to the effect that the RED II Directive sustainability criteria and the LULUCF criteria are inadequate to assess the contribution of forest bioenergy activities to climate change mitigation

272 The applicants claim that, in Section 3.2.1(a) (page 80) of Annex III to the contested decision, the Commission stated that 'Article 29(6) and Article 29(7) of the RED II [Directive] [did] not address significant climate change mitigation on their own', but that 'they [had to] be read in conjunction with the other provisions of the same Article 29 of the RED II [Directive], which ensure that, where bioenergy is used, it must deliver ... [greenhouse gas] emission savings'. The Commission went on to state that the application of Article 29(6) and (7) of the RED II Directive ensured that 'the climate change mitigation contribution [did] not come at the cost of harm to the environment, and biodiversity in particular' and that 'bioenergy-related activities [were] subject to a series of criteria including as regards the reporting and accounting of LULUCF emissions and removals by the country of origin of the biomass'.

273 That reasoning is incorrect, however. First, the Commission could not rely on the LULUCF Regulation to remedy the shortcomings in the greenhouse gas emission savings criteria. Secondly, the Commission's reasoning is circular. Indeed, the Commission acknowledged that the RED II Directive's LULUCF sustainability criteria '[did] not address significant climate change mitigation on their own'. The Commission did, however, imply that the contribution of forest bioenergy activities to climate change mitigation would be ensured by virtue of the greenhouse gas emission savings criteria.

274 The Commission disputes those arguments.

275 By their arguments referred to in paragraph 273 above, the applicants have not made out proof of a manifest error of assessment. They have not adduced evidence enabling the Court to understand which facts were manifestly misassessed by the Commission when it formulated the response set out in Section 3.2.1 of Annex III to the contested decision.

- 276 The Court finds that, in so far as the arguments referred to in paragraph 273 above may be interpreted as being based on an error of law arising from an infringement of Article 10(1)(a) or Article 10(3)(a) of the Taxonomy Regulation, they must also be rejected. Those arguments are unfounded, as will be apparent from the considerations set out below.
- 277 The Commission's assessments, set out in Section 3.2.1(a) of Annex III to the contested decision, which address the concerns expressed by the applicants in paragraphs 274 to 297 of their request for internal review, are based, in essence, on a reference to the suitability of Article 29(6) and (7) of the RED II Directive, read in conjunction with the other provisions of that same directive, for ensuring achievement of the climate change mitigation objective. That reference by the Commission seems relevant. Neither Article 10(1)(a) nor Article 10(3)(a) of the Taxonomy Regulation prohibits the Commission from making the establishment of the technical screening criteria at which those provisions are directed contingent on a series of provisions such as those of the RED II Directive, including Article 29(6) and (7) thereof. On the contrary, as is apparent from paragraph 254 above, Article 10(1)(a) of the Taxonomy Regulation calls on the Commission to take that directive into account, expressly and without reservation.
- 278 Moreover, the applicants' argument alleging the inadequacy of the Commission's response, which is based on the sustainability criteria and the LULUCF criteria of the RED II Directive, found in Article 29(6) and (7) of that directive respectively, must be rejected.
- 279 It is not clear how the Commission allegedly erred in referring to the sustainability criteria and the LULUCF criteria of the RED II Directive.
- 280 Lastly, the applicants' complaint alleging that the Commission's reasoning is circular (see paragraph 273 above) must be rejected. The Commission could rightly find that the sustainability criteria and the LULUCF criteria of the RED II Directive '[did] not address significant climate change mitigation on their own'. The wording 'significant climate change mitigation' does not per se appear in the RED II Directive.
- 281 Recital 2 of the RED II Directive states that 'the increased use of energy from renewable sources ... constitutes an important part of the package of measures needed to reduce greenhouse gas emissions and comply with the Union's commitment under the ... Paris Agreement ..., and with the Union 2030 energy and climate framework, including the Union's binding target to cut emissions by at least 40% below 1990 levels by 2030.' The RED II Directive recognises the suitability of forest biomass as a renewable energy source where it meets the sustainability criteria laid down in Article 29(6) and (7) of that same directive. Subject to those criteria, the use of forest biomass is supposed to enable greenhouse gas reductions, which position results from a choice made by the legislature itself. In view of the foregoing, the Commission was correct in stating, in the contested decision, that the contribution of forest bioenergy activities to climate change mitigation is guaranteed through the greenhouse gas emission savings criteria referred to in Article 29(6) and (7) of the RED II Directive. In so doing, it merely replicated a premiss established by the legislature.
- 282 In the light of the foregoing, the second part of the seventh plea in law must be rejected, as must the plea in law in its entirety.

Eighth plea in law: manifest errors of assessment in relation to the Commission's response to the applicants' criticisms regarding the 'do no significant harm' technical screening criteria in relation to forest bioenergy activities

283 By their eighth plea in law, the applicants submit, in essence, that the Commission's responses in Sections 3.1.1 and 3.1.2 of Annex III (pages 77 and 78) to the contested decision infringe Article 10(1) and (3)(a) and Article 19(1)(d) and (k) of the Taxonomy Regulation, and also the precautionary principle. Those responses from the Commission addressed the concerns expressed by the applicants in paragraphs 230 to 260 of the request for internal review that the technical screening criteria relating to climate change mitigation for forest bioenergy activities did not comply with the requirement that they be based on conclusive scientific evidence and the precautionary principle, as stipulated in Article 19(1)(f) of the Taxonomy Regulation.

284 The eighth plea in law is divided into three parts.

First part of the eighth plea in law: errors in the interpretation of the precautionary principle

285 The applicants submit that, in order to respond to their arguments concerning the requirement to rely on conclusive scientific evidence (see paragraphs 231 to 251 of the request for internal review) and the precautionary principle (see paragraphs 252 to 260 of the request for internal review), the Commission, in Section 3.1.2 (page 78) of Annex III to the contested decision, referred to Section 1 (page 22) of Annex II to that decision. It stated therein that the precautionary principle conferred on it a broad discretion in exercising its powers, with the result that it was empowered to calibrate the substantial environmental outcome of a given economic activity as established by the technical screening criteria.

286 However, that interpretation distorts the scope of the precautionary principle, the objective of which is rather to set limits on the discretion of the EU institutions. By virtue of the precautionary principle, the EU institutions do not have unlimited discretion when adopting measures where there are potential risks to public health, safety and the environment. An institution is deemed to comply with the precautionary principle only if it completes three specific stages, namely the identification of the adverse effects, risk assessment and risk management, in order ultimately to adopt the appropriate measures. The precautionary principle further requires the Commission to assess the 'best scientific knowledge in the field' and to give precedence to the protection of the environment over other interests. By distorting the meaning attributed to the precautionary principle and relying on that principle of law in order to maintain that it has a broad discretion authorising it to 'calibrat[e]' the level of the 'substantial contribution' – even though that concept is already defined in Article 10(1)(a) and (3)(a) of the Taxonomy Regulation – the Commission erred in law.

287 The Commission disputes those arguments.

288 The Court notes, as a preliminary point, that under Article 19(1)(f) of the Taxonomy Regulation, the technical screening criteria are to be based on conclusive scientific evidence and the precautionary principle enshrined in Article 191 TFEU.

- 289 The arguments referred to in paragraph 286 above do not demonstrate that the Commission infringed the precautionary principle, with the result that they must be rejected. Contrary to what the applicants claim, neither the assessments set out in Section 3.1.2 of Annex III to the contested decision nor those in Section 1 (page 22) of Annex II to that decision support a finding that the Commission infringed the scope of that principle.
- 290 In observing, in Section 3.1.2 (page 78) of Annex III to the contested decision, that the precautionary principle ‘presuppose[d] a situation of scientific uncertainty’, the Commission was referring, in essence, to the case-law of the Courts of the European Union, according to which the precautionary principle, referred to *inter alia* in Article 191(2) TFEU, allows the institutions, where there is scientific uncertainty as to the existence or extent of risks to the environment, to take protective measures without having to wait until the reality and seriousness of those risks become fully apparent or until the adverse environmental effects materialise (see, to that effect, judgment of 17 March 2021, *FMC v Commission*, T-719/17, EU:T:2021:143, paragraph 63 and the case-law cited).
- 291 In Section 3.1.2 of Annex III to the contested decision as well, the Commission referred to the case-law when it referred to the determination of the level of risk which is deemed acceptable and the task with which the competent institutions are charged to determine the critical probability threshold for adverse effects on the environment and the degree of those potential effects which, in their judgement, is no longer acceptable for society. In that regard, the Commission stated that it is settled case-law that the responsibility for determining the level of risk which is deemed unacceptable for society lies, provided that the applicable rules are observed, with the institutions responsible for the political choice of determining an appropriate level of protection for society. It is for those institutions to determine the critical probability threshold for adverse effects on public health, safety and the environment and for the degree of those potential effects which, in their judgement, is no longer acceptable for society and above which it is necessary, in the interests of protecting *inter alia* the environment, to take preventive measures in spite of the existing scientific uncertainty (see also, to that effect, judgment of 17 March 2021, *FMC v Commission*, T-719/17, EU:T:2021:143, paragraph 75 and the case-law cited).
- 292 Lastly, the Commission’s statements in Section 1 (page 22) of Annex II to the contested decision concerning ‘the simultaneous and cumulative application of all these requirements implicate[d] that the Commission [was] empowered to calibrate the substantial environmental outcome of a given economic activity ... in the light of *inter alia* available conclusive scientific evidence, consistency with specific Union legislation, technological and market feasibility’ relate, in essence, to the case-law according to which the ‘level of risk deemed unacceptable for society will depend on the assessment made by the competent public authority of the particular circumstances of each individual case’. The Court has clarified, in that regard, that the authority may take account, *inter alia*, of the severity of the impact on public health, safety and the environment were the risk to occur, including the extent of possible adverse effects, the persistency or reversibility of those effects and the possibility of delayed effects as well as of the more or less concrete perception of the risk based on available scientific knowledge (see judgment of 17 March 2021, *FMC v Commission*, T-719/17, EU:T:2021:143, paragraph 77 and the case-law cited).

293 Far from distorting the content of the precautionary principle, the considerations set out by the Commission in Section 3.1.2 (page 78) of Annex III to the contested decision and in Section 1 (page 22) of Annex II to the contested decision consist, in essence, in referring to the interpretation given by the EU judicature to that principle. The Court accordingly does not find there to be any error of law in that regard.

294 Consequently, the first part of the eighth plea in law must be rejected as being unfounded.

Second part of the eighth plea in law: errors of law by the Commission in that it attached disproportionate weight to the requirement of policy coherence pursuant to Article 19(1)(d) of the Taxonomy Regulation

295 In paragraphs 244 to 249 of their request for internal review, the applicants claim that the Commission wrongly considered that the objective of consistency outweighed the need to base the Delegated Regulation on conclusive scientific evidence. In Section 3.1.1 (page 77) of Annex III to the contested decision – which refers to Section 2.1(b)(i) (page 29) of Annex II to that decision – the Commission responded that recital 40 of the Taxonomy Regulation authorised it to attach a ‘certain weight’ to Article 19(1)(d) of that regulation in order to ‘ensure consistency of the Delegated Regulation with other existing Union legislation’. It is also apparent from Annex II (pages 34, 35, 37 to 39 and 41) and Annex III (pages 80, 81, 84 and 85) to the contested decision that the Commission started from the premiss that it was authorised to give precedence to the requirement of policy coherence over other requirements and even to rely simply on the criteria of the RED II Directive instead of laying down mitigation technical screening criteria for forest bioenergy activities.

296 According to the applicants, in so doing the Commission erred in law. Article 19(1)(d) of the Taxonomy Regulation does not authorise the Commission simply to replicate the wording of the legislation in force in order to define the technical screening criteria where that approach leads to a result which contravenes the requirements of the Taxonomy Regulation, in particular Article 10(1) and (3) thereof. The wording of Article 19(1) of the Taxonomy Regulation also shows that the Commission may not attach disproportionate weight to policy coherence in relation to scientific and environmental considerations. Whilst Article 19(1)(f) of that regulation provides that the technical screening criteria ‘shall be based’ on conclusive scientific evidence and the precautionary principle, Article 19(1)(d) of that same regulation provides simply that the technical screening criteria ‘shall take into account’ any relevant existing Union legislation ‘where appropriate’. In order for the taxonomy to be effective, it would not be coherent to invoke the principle of policy coherence unjustifiably and to rely primarily on the legislation in force when the very idea is to go beyond those obligations. Nor does Article 10(1)(a) of the Taxonomy Regulation authorise the Commission to assume that activities which comply with the RED II Directive make a substantial contribution to climate change mitigation. Under Article 10(3) of the Taxonomy Regulation, the purpose of the Delegated Regulation is to supplement the technical screening criteria. That wording is much more stringent than the requirement in Article 10(1)(a) of the Taxonomy Regulation, which states that activities relating to renewable energy must be carried out ‘in line’ with the RED II Directive. The reference to the RED II Directive should have been subject to a narrow interpretation in order to avoid undermining the Taxonomy Regulation’s primary objective of environmental protection. The list of options in Article 10(1)(a) to (i) of the Taxonomy Regulation is at most a bare minimum and does not provide the level of protection required by that regulation.

297 The Commission disputes those arguments.

- 298 By the complaints referred to in paragraph 296 above, the applicants claim, in essence, that, in the response in Section 2.1(b) (page 29) of Annex II to the contested decision, which is referred to in Section 3.1.1 (page 77) of Annex III to that decision, the Commission granted too much importance to the requirements of ‘policy coherence’, referred to in Article 19(1)(d) of the Taxonomy Regulation in relation to the requirement to base the technical screening criteria on ‘conclusive scientific evidence’, as referred to in Article 19(1)(f) of that regulation. That response is vitiated by an error of law inasmuch as it contradicts Article 10(1) and (3) and Article 19(1)(d) and (f) of the Taxonomy Regulation.
- 299 That line of argument cannot be upheld. The Commission’s interpretation of all of the provisions referred to in paragraph 298 above *prima facie* complies with the requirements laid down in the Taxonomy Regulation. Contrary to what the applicants claim, when the Commission examines ‘conclusive scientific evidence’ as referred to in Article 19(1)(f) of the Taxonomy Regulation, it must make sure that those technical screening criteria are established in a manner compatible with EU law and ‘any relevant existing Union legislation’ as referred to in Article 19(1)(d) of that same regulation. In view of its task of overseeing the application of EU law, provided for in the third sentence of Article 17(1) TEU, the Commission is required to take EU law into account in examining relevant facts and scientific evidence. It is in that light that the Commission’s reference, in Section 2.1(b)(i) (page 29) of Annex II to the contested decision, to its right to attach a ‘certain weight’ to the requirements of ‘policy coherence’, referred to in Article 19(1)(d) of that regulation, must be construed.
- 300 Thus, the Commission was entitled to refer, in Section 2.1(b)(i) (page 29) of Annex II to the contested decision, to the need to ensure consistency of the technical screening criteria established in the Delegated Regulation with the provisions of the RED II Directive, such as those referred to in recital 30 of the Delegated Regulation and the LULUCF Regulation. Article 10(1)(a) of the Taxonomy Regulation itself refers to the RED II Directive. It is thus the legislature that chose to attach particular importance to the RED II Directive. Moreover, the precautionary principle, the infringement of which was alleged by the applicants, does not require a different approach in view of the RED II Directive.
- 301 Lastly, the applicants criticise the Commission for having relied on the sustainability criteria of the RED II Directive, although without going further than the criteria defined therein. However, as stated by the Commission in Section 3.1.1 (page 35) of Annex II to the contested decision, the technical screening criteria for bioenergy activities are, in part, more stringent than those laid down in the RED II Directive. For example, whilst Article 29(10) of the RED II Directive requires greenhouse gas emissions savings of 70% by 31 December 2025, the technical screening criteria for electricity generation from bioenergy laid down in point 2 of Section 4.8, relating to electricity generation from bioenergy, of Annex I to the Delegated Regulation, require greenhouse gas emission and fossil fuel comparator savings of at least 80% below the calculation methodology referred to in Annex VI to the RED II Directive. Moreover, the 20 megawatt threshold laid down in Article 29(1) of the RED II Directive does not apply within the framework of the technical screening criteria.
- 302 In the light of the foregoing, the second part of the eighth plea in law must be rejected.

Third part of the eighth plea in law: errors in the interpretation of Article 19(1)(k) of the Taxonomy Regulation

- 303 The applicants state that, in various parts of the contested decision, in particular in Annex II (pages 22, 23, 28 and 30) to that decision, the Commission relied, inter alia, on the concept of ‘usability’ to imply that Article 19(1)(k) of the Taxonomy Regulation had to be interpreted in such a way as to enable ‘the largest number of market participants’ to satisfy the conditions of the mitigation technical screening criteria set for forest bioenergy activities.
- 304 In so doing, the Commission confused the ‘usability’ of the technical screening criteria with their ‘applicability’, the latter being absent from the requirements listed in Article 19(1) and the objectives of the Taxonomy Regulation. It is true that, under Article 19(1)(k) and recital 47 of the Taxonomy Regulation, the criterion of ‘usability’ requires that the technical screening criteria be designed as clearly as possible in order to ensure that undertakings understand and apply them easily. However, the Commission has broadened the meaning of the requirement of ‘usability’ to the extent that it could be concluded that it has deprived the Taxonomy Regulation of its substance. By interpreting Article 19(1)(k) of the Taxonomy Regulation as requiring that the mitigation technical screening criteria for forest bioenergy activities are drafted in such a way as to extend their applicability so that the largest number of economic activities may satisfy them, the Commission has erred in law.
- 305 The Commission disputes those arguments.
- 306 By the arguments referred to in paragraph 303 above, the applicants submit that, in its response in Section 1 (pages 22 and 23), in Section 2.1(a)(ii) (page 28) and also in Section 2.1(b)(ii) (page 30) of Annex II to the contested decision, the Commission indicated that Article 19(1)(k) of the Taxonomy Regulation had to be interpreted in such a way as to enable ‘the largest number of market participants’ to satisfy the conditions of the mitigation technical screening criteria set for forest bioenergy activities. Those arguments are unfounded.
- 307 Nowhere in the contested decision, including in the annexes, did the Commission state that its interpretation of Article 19 of the Taxonomy Regulation had to enable ‘the largest number of market participants’ to satisfy the conditions of the mitigation technical screening criteria set for forest bioenergy activities.
- 308 What the Commission did state in Section 1 (pages 22 and 23), in Section 2.1(a)(ii) (page 28) and also in Section 2.1(b)(ii) (page 30) of Annex II to the contested decision was that a coherent approach was called for in the interpretation of Article 19 of the Taxonomy Regulation, which had to take account of all the points included in that provision. It identified a ‘need to balance the different requirements under Article 19(1) of [that regulation]’ mirrored in other provisions of that regulation, such as Article 20(2). It also stated that it was ‘empowered’ to ‘calibrate’, within the technical screening criteria, the level of substantial contribution to climate change of a certain economic activity with other parameters in order to ensure ‘coherence’ with EU legislation.

309 It is true that, in Section 2.1 (page 23) of Annex II to the contested decision, the Commission stated the following:

‘... any interpretation of Article 19(1) of the Taxonomy Regulation that would be based on a too restrictive interpretation of Article [19(1)(f) of that regulation] would unduly narrow down the scope [thereof] to a limited number of activities by [thus] jeopardising the overall objective of the Taxonomy Regulation as a useful tool to channel the financial flows towards the transition of the entire EU economy towards sustainability. Hardly any economic activity would qualify under the Taxonomy Regulation if the technical screening [criteria] had to be based exclusively on the most conservative scientific assumptions in isolation from all the other requirements of Article 19(1) of the Taxonomy Regulation, in particular those related to usability and consistency with other Union policies pursuing sustainability objectives.’

310 However, neither those assessments nor the other considerations on which the contested decision is based can be interpreted as suggested by the applicants, that is to say, to the effect that the Commission opted to interpret Article 19(1) of the Taxonomy Regulation so as to enable ‘the largest number of market participants’ to satisfy the conditions of the mitigation technical screening criteria set for forest bioenergy activities. At most, those considerations are to the effect that, according to the Commission, Article 19(1) of that regulation should not be interpreted too restrictively without taking due account of all of the parameters thereof, as otherwise the overall objective of that regulation would be undermined. The applicants’ arguments accordingly do not establish that the Commission broadened the concept of ‘usability’ referred to in Article 19(1)(k) of the Taxonomy Regulation.

311 For those reasons, the arguments referred to in paragraph 303 above must be rejected.

312 It follows that the present part must be rejected, as must therefore the eighth plea in law.

Ninth plea in law: manifest errors of assessment arising from a failure to take account of relevant conclusive scientific evidence and failure to observe the precautionary principle

313 By their ninth plea in law, the applicants submit that the considerations set out by the Commission in Section 3.1.1 (page 77) and in Section 3.1.2 (pages 78 and 79) of Annex III to the contested decision, according to which the climate change mitigation technical screening criteria for forest bioenergy activities are based on conclusive scientific evidence and on the precautionary principle, constitute a manifest error of assessment.

314 The Commission stated, in Section 1 (page 21) of Annex II to the contested decision, read in conjunction with Section 3.1.1 (page 77) of Annex III to that same decision, that the expression ‘conclusive scientific evidence’ meant ‘evidence that is not inconclusive’. It also maintained in Section 3.1.1 (page 77) of Annex III to the contested decision that it took ‘utmost account of the available scientific evidence in devising sustainability criteria for mitigating significant environmental risks in the RED II [Directive]’.

315 That response is said to be vitiated by manifest errors of assessment and therefore contrary to Article 19(1)(f) of the Taxonomy Regulation.

316 First, the Commission did not put forward any argument whatsoever to support the view that the Delegated Regulation was based on scientific evidence.

- 317 Secondly, by stating in Section 1 of Annex II (page 23) to the contested decision, read in conjunction with Section 3.1.1 of Annex III to the contested decision (page 77), that ‘hardly any economic activity would qualify under the Taxonomy Regulation if the technical screening [criteria] had to be based exclusively on the most conservative scientific assumptions in isolation from all the other requirements of Article 19(1) of the Taxonomy Regulation’, the Commission acknowledged that the technical screening criteria were motivated by considerations other than scientific ones.
- 318 Thirdly, the Commission acknowledged, in Section 2.1(b)(ii) (page 30) of Annex II to the contested decision, that the Delegated Regulation departed from the recommendations set out in the technical expert group report on sustainable finance to restrict the range of eligible raw materials ‘to implement the option that calibrates the level of substantial contribution in the technical screening criteria to the highest level of usability of technical screening criteria and alignment with the RED II [Directive]’. On that point, the Commission did not even attempt to argue that the choices made in the Delegated Regulation were supported by scientific evidence. It is therefore wrong to assert, as the Commission did in the contested decision, that it took ‘utmost account’ of scientific evidence.
- 319 Moreover, the applicants stated in the request for internal review that the Commission had not applied the precautionary principle when it set the technical screening criteria for forest bioenergy activities. The numerous scientific warnings about the damage caused by the harvesting and burning of forest biomass to the climate and biodiversity should have led the Commission to exclude forest bioenergy activities from the Delegated Regulation or to lay down much more stringent criteria to mitigate environmental risks.
- 320 In the contested decision, the Commission merely relied on the precautionary principle in order to maintain that it had a broad discretion in ‘calibrating’ the technical screening criteria.
- 321 The Commission’s response to those concerns, expressed in the request for internal review, is vitiated by error since it infringes Article 19(1)(f) of the Taxonomy Regulation. The Commission did not explain how it had complied with that principle. By invoking the ‘trade-offs’ which it claims it had to make between the different requirements in the various points of Article 19(1) of the Taxonomy Regulation, the Commission deliberately disregarded the state of science, prioritising economic and political considerations over ensuring a high level of environmental protection, as is clear from Section 3.1.1 of Annex III (page 77) to the contested decision.
- 322 The Commission disputes those arguments.
- 323 The Court finds that the ninth plea in law is unfounded, for the reasons set out below.
- 324 In the first place, the applicants’ arguments alleging a failure by the Commission to provide an adequate response for the lack of conclusive scientific evidence in support of the Delegated Regulation cannot be upheld (see paragraphs 316 to 318 above).
- 325 First, the applicants’ argument alleging that the Commission did not ‘provide any arguments at all to support [the view] that the [d]elegated [a]ct was based on scientific evidence of any kind’ (see paragraph 316 above) is lacking a factual basis. In Section 3.1.1 of Annex II to the contested decision (page 33), namely the part of the contested decision referred to by Section 3.1.2 of Annex III (page 78) to that decision, the Commission expressly stated that it had taken ‘utmost

account of the available scientific evidence in devising sustainability criteria for mitigating significant environmental risks [referred to] in the RED II [Directive]’. That statement is, in essence, reproduced in the last sentence of Section 3.1.1 of said Annex III.

- 326 Secondly, the applicants’ argument to the effect that the Commission’s statement referred to in paragraph 317 above amounts to stating that the technical screening criteria were motivated by considerations other than scientific ones is unfounded.
- 327 As is apparent from Article 19(1) of the Taxonomy Regulation, scientific considerations – referred to as ‘scientific evidence’ in Article 19(1)(f) of that regulation – are not the only ones to be taken into account in the adoption of technical screening criteria. The mere fact that the Commission based itself on factors other than that ‘scientific evidence’ does not establish that there was an infringement of Article 19 of the Taxonomy Regulation, in particular Article 19(1)(f) thereof.
- 328 Moreover, in so far as the applicants intend to submit that the Commission allowed itself to be guided solely by non-scientific considerations, the Court notes that such an argument is based on a misinterpretation of the contested decision. In fact, by its statement referred to in paragraph 317 above, the Commission highlighted two distinct aspects. It indicated that it had indeed taken scientific evidence that it considered conclusive into account, which is apparent, more specifically, from Section 3.1.1 of Annex III to that decision (see paragraph 325 above). Moreover, it stated that it considered itself capable of weighing up the outcomes of the examinations of those aspects and the other parameters referred to in Article 19(1) of the Taxonomy Regulation. None of those assessments can be interpreted as meaning that the Commission let itself be guided solely by non-scientific considerations.
- 329 Thirdly, the argument referred to in paragraph 318 above is based on the premiss that the Commission did not provide any specific indication, in the contested decision, concerning the taking into account of conclusive scientific evidence when the technical screening criteria in question were adopted. However, as is apparent from paragraphs 325 and 326 above, that premiss is incorrect.
- 330 It is true that the Commission stated, in Section 2.1(b)(ii) (page 30) of Annex II to the contested decision, that it could have ‘[followed] the [technical expert group on sustainable finance] recommendation and restrict the scope of eligible feedstock to advanced biofuels in Annex IX, part A of [the RED II Directive]. This would prioritise the requirement of environmental ambition, but at the possible expense of the requirements of consistency with EU law and level playing-field and usability for economic operators’. It is apparent, however, that the Commission opted for the solution that made it possible to combine as harmoniously as possible the various parameters following from Article 19(1) of the Taxonomy Regulation and not, as argued by the applicants, that it did not even attempt to argue that the choices made in the Delegated Regulation were supported by scientific evidence, or that it is incorrect to state, as the Commission did in the contested decision, that it had taken ‘utmost account’ of scientific evidence (see paragraph 318 above).
- 331 In the second place, the applicants have failed to demonstrate that the Commission’s response to the concerns expressed in the request for internal review as to an alleged infringement of the precautionary principle is vitiated by an error on the ground that it infringes Article 19(1)(f) of the Taxonomy Regulation.

- 332 The statement to the effect that the Commission did not explain how it had complied with that principle (see paragraph 321 above) is lacking a factual basis. The assessments set out in Section 3.1.2 of Annex III (pages 78 and 79) to the contested decision concern precisely the application of the precautionary principle, as can be inferred inter alia from the very title of that section and the express reference to paragraph 81 of the judgment of 6 May 2021, *Bayer CropScience and Bayer v Commission* (C-499/18 P, EU:C:2021:367).
- 333 Furthermore, the statement to the effect that the Commission made ‘trade-offs’ between the different requirements of Article 19(1) of the Taxonomy Regulation cannot be interpreted, as the applicants have done, as meaning that the Commission ‘deliberately’ disregarded the state of science, prioritising economic and political considerations over ensuring a high level of environmental protection (see paragraph 321 above). On the contrary, in Section 3.1.2 of Annex II to the contested decision (page 79), the Commission observed that ‘in a situation characterised by data gaps and heated scientific debate on its interpretation and evolving market trends (demand, prices, external shocks) “conclusive scientific evidence” is a dynamic benchmark, as is the RED II [Directive] itself’. Contrary to what the applicants submit, that assessment by the Commission cannot be interpreted as being based on the application of economic parameters in a manner that ‘disregarded the state of science and prioritised economic and political considerations over ensuring a high level of environmental protection’.
- 334 In the light of the foregoing, the ninth plea in law must be rejected.

Tenth plea in law: manifest errors of assessment in the Commission’s response to the applicants’ criticism relating to the ‘do no significant harm’ criteria for forest bioenergy activities, in view of the prevention and reduction of pollution and the protection and restoration of biodiversity and ecosystems

- 335 By their tenth plea in law, the applicants submit that some of the responses given by the Commission in Section 3.3.2 of Annex III to the contested decision in relation to the concerns expressed in the request for internal review as regards the ‘do no significant harm’ criteria for forest bioenergy activities in relation to ‘pollution prevention and control’ and ‘the protection and restoration of biodiversity and ecosystems’ within the meaning of Article 9(e) and (f) of the Taxonomy Regulation, respectively, infringe Article 10(3)(b) and Article 17(1)(e) and (f) of the Taxonomy Regulation.
- 336 The tenth plea is divided into three parts.

First part of the tenth plea in law: insufficient response from the Commission to criticisms about the lack of adequate criteria aimed at preventing significant harm to biodiversity and ecosystems

- 337 According to the applicants, the Commission’s response in Section 3.3.2(i) (page 89) of Annex III to the contested decision, which refers to Section 3.1.3 (pages 47 to 49) of Annex II to that decision, and which refers to the concerns expressed in the request for internal review as to the ‘do no significant harm’ technical screening criteria in relation to the ‘protection and restoration of biodiversity and ecosystems’ within the meaning of Article 9(f) of the Taxonomy Regulation, is vitiated by manifest errors of assessment and thus infringes Article 17(1)(f) of the Taxonomy Regulation.

- 338 In Section 3.3.2(i) (page 89) of Annex III to the contested decision, the Commission referred inter alia to Section 3.1.3 (pages 47 to 49) of Annex II to that decision. Moreover, it submitted that the wording of the ‘do no significant harm’ technical screening criteria for biodiversity had been chosen to ensure usability, in particular outside the European Union. The Commission also referred to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7; ‘the Habitats Directive’), and to the sustainability criteria of the RED II Directive. It also relied on its proposal to revise the RED II Directive, which includes ‘stricter rules on forest biomass sourcing in relation to highly biodiverse areas’. Lastly, the Commission referred to recital 31 of the Delegated Regulation, which states that technical screening criteria for bioenergy activities should be revised to take into account policy developments, such as the revision of the RED II Directive. It further stated that it would consider any relevant additional scientific evidence so as to take account of the outcome of any current or future policy revisions, such as the revision of the RED II Directive.
- 339 According to the applicants, those responses are vitiated by manifest errors of assessment for the following reasons.
- 340 First, inasmuch as the Commission relied on Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (OJ 2012 L 26, p. 1; ‘the EIA Directive’), it did not take into account the fact that, often, forestry activities do not meet the criteria for requiring an assessment under that directive. Article 4(2) of the EIA Directive applies only to a limited range of projects, namely those listed in Annex II to that directive. The only projects listed in Annex II that would potentially be relevant are ‘initial afforestation and deforestation for the purposes of conversion to another type of land use’ (see point 1(d) of Annex II to the EIA Directive) but, in most cases, forest activities for biomass production for the purposes of electricity generation do not lead to conversion to another type of land use, which means that the protective measures provided for in the EIA Directive generally do not apply to forestry activities for biomass production. The Commission did not even state why those criteria could be adequate to ensure that forest bioenergy activities do not cause significant harm to biodiversity or to ecosystems. The fact that the wording of those criteria refers to ‘equivalent applicable national law or international standards’ does nothing to address the fact that some third countries have very unprotective laws and poor implementation of environmental protection rules. Lastly, regarding the Commission’s assessments with respect to the Habitats Directive, the applicants submit that forestry activities do not meet the criteria for requiring an assessment under that directive. In that regard, they refer to their claims in the request for internal review, in relation to the technical screening criteria set out in the Delegated Regulation.
- 341 Secondly, the reference to the RED II Directive sustainability criteria is ‘ineffective’ since, as far as biodiversity is concerned, those criteria require only that there be laws or ‘management systems’ at forest sourcing area level ensuring that harvesting is carried out considering ‘maintenance of soil quality and biodiversity with the aim of minimising negative impacts’. However, those criteria do not set any threshold and do not exclude harvesting practices such as clear-cutting which cause considerable harm to biodiversity.
- 342 Thirdly, it is not relevant to invoke the forthcoming revision of the RED II Directive to justify the shortcomings in the current ‘do no significant harm’ technical screening criteria. The fact that the RED II Directive criteria might be amended in future does not, according to the applicants, exempt those criteria from the obligation to comply with the requirements of the Taxonomy Regulation at the time of publication of the Delegated Regulation.

343 The Commission disputes those arguments.

344 The first part of the tenth plea in law is unfounded, for the reasons set out below.

345 As a preliminary point, Article 17(1)(f) of the Taxonomy Regulation provides that, taking into account the life cycle of the products and services provided by an economic activity, including evidence from existing life-cycle assessments, that economic activity is to be considered significantly to harm the protection and restoration of biodiversity and ecosystems where it is: '(i) significantly detrimental to the good condition and resilience of ecosystems' or '(ii) detrimental to the conservation status of habitats and species, including those of Union interest'.

346 As is apparent from paragraph 193 of the application, the applicants claim that, contrary to what the Commission found in the contested decision, the 'do no significant harm' technical screening criteria in question are not suitable for ensuring that the economic activity in question must not be held to be one that is 'significantly detrimental to the good condition and resilience of ecosystems' (see Article 17(1)(f)(i) of the Taxonomy Regulation) or 'detrimental to the conservation status of habitats and species, including those of Union interest' (see Article 17(1)(f)(ii) of the Taxonomy Regulation).

347 Yet those arguments do not contain any explanation as to why either Article 17(1)(f)(i) or Article 17(1)(f)(ii) was infringed and, accordingly, do not establish that the Commission's response in Section 3.3.2(i) (page 89) of Annex III to the contested decision is contrary to Article 17(1) of the Taxonomy Regulation. Those arguments do not render implausible the Commission's assessment in the contested decision, as can be inferred from the following.

348 First, it is not necessary to examine the term 'effectiveness' in terms of alignment with the Paris Agreement temperature goals and various mechanisms and assessment procedures provided for in the various provisions of the Habitats Directive and the EIA Directive, referred to by the Commission in the contested decision.

349 The question of the 'effectiveness' of the Habitats Directive and the EIA Directive, in terms of alignment with the Paris Agreement temperature goals, on which the applicants' line of argument is based, comes within the legislative prerogatives of the European Parliament and the Council of the European Union. The provisions of those directives constitute the legal framework relevant to that stage of development of EU law, a framework from which the Commission may not extract itself. The fact that the Commission referred to those directives in its response cannot, therefore, constitute an error of law.

350 In any event, the alleged inadequacies, relied on by the applicants as vitiating the assessments in the third and fourth paragraphs of Section 3.1.3 (page 48) of Annex II to the contested decision, relating to the environmental protection mechanism provided for in Article 4(2) of the EIA Directive, and also point 1(d) of Annex II to that directive, or the assessment provided for in Article 6(3) of the Habitats Directive, have not been proven.

351 As regards the issue raised by the EIA Directive, contrary to what the applicants claim, it cannot be viewed as 'not likely' that forest biomass harvesting for the production of forest biomass will come under Annex II to the EIA Directive or that the only potentially relevant 'projects' under the EIA Directive will be 'initial afforestation and deforestation for the purposes of conversion to

another type of land use’ listed in point 1(d) of Annex II to the EIA Directive, it being understood that, as observed by the applicants, conversion to another type of land use entails a change of use of land.

- 352 In fact, forest biomass harvesting, which constitutes a project for the restructuring of rural land holdings, may also fall within the scope of point 1(a) of Annex II to the EIA Directive.
- 353 Moreover, the applicants’ interpretation of point 1(d) of Annex II to the EIA Directive is not compatible with the Court of Justice’s broad interpretation of the scope of that provision. It follows from paragraphs 32 to 38 of the judgment of 7 August 2018, *Prenninger and Others* (C-329/17, EU:C:2018:640), that even path clearance operations in a forest for the purpose of the construction and operation of an overhead electrical power line are covered by point 1(d) of Annex II to the EIA Directive. A corresponding application of the inferences to be drawn from that judgment to the present case leads to the conclusion that any biomass harvesting done in order to confer ‘another type of use’ on land comes within point 1(d) of Annex II to the EIA Directive and, accordingly, leads to the obligation to assess the environmental impact thereof, in accordance with Article 4(1) of the EIA Directive.
- 354 The following should be noted as regards the applicants’ argument to the effect that the Commission’s response is incorrect due to the inadequacy of the Habitats Directive since forestry activities do not come within the scope of activities requiring an assessment under that directive.
- 355 The argument relating to the alleged inadequacy of the requirement laid down in Appendix D to Annexes I and II to the Delegated Regulation for sites and operations situated in or near biodiversity-sensitive areas is unsubstantiated. As noted by the Commission in the contested decision, the requirements of Article 6(3) and (4) of the Habitats Directive, referred to in footnote 3 of Appendix D to Annexes I and II to the Delegated Regulation, ensure that forestry activities do not seriously compromise the integrity of a site, if only through the adoption of mitigation and compensation measures. Although the ‘do no significant harm’ criterion, laid down in Appendix D to Annexes I and II to the Delegated Regulation, does not prohibit forestry activities in Natura 2000 areas – any more than the Habitats Directive does – it nevertheless requires that ‘an appropriate assessment, where applicable, has been conducted and based on its conclusions the necessary mitigation measures are implemented’. The Member States must accordingly adopt protective measures for forest habitats, including those situated outside Natura 2000 areas. It is true that those facts relied on by the applicants in order to demonstrate the alleged ineffectiveness of the provisions of the Habitats Directive and, therefore, the ‘do no significant harm’ technical screening criteria in question, namely the harvesting that took place in Poland and Estonia ‘without environmental impact assessments being undertaken’, illustrate extreme, concerning situations. However, those specific situations do not call into question the purpose or effectiveness of the provisions of the Habitats Directive or, therefore, the well-foundedness of the Commission’s statements at page 48 of Annex II to the contested decision.
- 356 Inasmuch as the applicants also dispute the Commission’s assessments in the fourth paragraph of Section 3.1.3 (page 48) of Annex II to the contested decision, according to which ‘the wording of the [“do no significant harm” criteria for] protection and restoration of biodiversity and ecosystems, as laid down in Appendix D [to] Annex I to the Delegated [Regulation,] was also deliberately broadened to cover activities that would not fall under the appropriate assessment required by the Habitats Directive, or the environmental impact assessment required by the

[EIA] Directive but would fall under equivalent legislative provisions. This explains the wording “with equivalent applicable national law or international standards” in [footnote 3 of] Appendix D of Annex I to the Delegated [Regulation].

357 Although, according to the applicants, the Commission’s reference to ‘equivalent applicable national law or international standards’ (see also footnote 3 of Appendix D to Annexes I and II to the Delegated Regulation) does not resolve the issue arising due to ‘very unprotective laws’ of certain countries which have ‘poor implementation of environmental protection rules’, that argument does not call into question the lawfulness of the Commission’s response. That argument must therefore be rejected, as it is unsubstantiated.

358 It follows that the Commission’s reference in the contested decision (see Section 3.1.3 of Annex II) to footnote 3 of Appendix D to Annexes I and II to the Delegated Regulation is not limited to taking into account those economic activities which are situated in third countries having certain environmental legislation. A reading of footnote 3 shows that the Commission intended to refer solely to third countries having legislation ‘equivalent’ to that of the European Union in the area of assessments covered by Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7) and the Habitats Directive.

359 The term ‘equivalent’, used in the applicants’ argument, itself relating to footnote 3 of Appendix D to Annexes I and II to the Delegated Regulation and concerning both third-country legislation and the abovementioned international standards, is aimed precisely at precluding an economic activity from being found to meet the ‘do no significant harm’ technical screening criteria when the assessment of the relevant economic activity was carried out pursuant to ‘very unprotective laws’ or when that activity was assessed under ‘poor implementation of environmental protection rules’. It is apparent from footnote 3 of Appendix D to Annexes I and II to the Delegated Regulation, as referred to in the contested decision, that an economic activity that could not be assessed at a similar (‘equivalent’) level to that of the EU legislation does not meet the requirements of Appendix D. That precludes that activity from being designated as ‘environmentally sustainable’ within the meaning of Articles 1 and 3 of the Taxonomy Regulation.

360 Hence, in view of the foregoing, the issue of third countries having an inadequate level of environmental protection is not a situation which was insufficiently addressed by the contested decision.

361 Secondly, the argument to the effect that the reference to the RED II Directive sustainability criteria is ‘ineffective’, since the criteria laid down in Appendix D to Annexes I and II to the Delegated Regulation do not set ‘any threshold’ and do not exclude ‘harvesting practices such as clear-cutting which cause considerable harm to biodiversity’, is unfounded.

362 The example of clear-cutting, relied on by the applicants, is a reality of the forestry economy, which is defined differently in the various States’ legislation and operates with varying thresholds, as can be inferred from Article 29(6)(a)(iv) and (6)(b)(iv) of the RED II Directive. That diversity of definitions of thresholds for clear-cutting also holds true for the Member States of the European Union. Thus, far from systematically being considered problematic, as the applicants suggest, clear-cutting is, depending on the situation, prohibited, allowed as an acceptable practice or authorised subject to certain conditions in the Member States’ legislation. Clear-cutting thus carries a note of ambivalence, inasmuch as its environmental impact is not always negative. The Court accordingly does not find that, as argued by the applicants, clear-cutting necessarily comes

within the concept of an activity ‘significantly detrimental to the good condition and resilience of ecosystems’ (see Article 17(1)(f)(i) of the Taxonomy Regulation) or that of an activity ‘detrimental to the conservation status of habitats and species, including those of Union interest’ (see Article 17(1)(f)(ii) of the Taxonomy Regulation).

363 Moreover, although the applicants intended to direct their plea solely at clear-cutting having a potentially adverse impact – and not clear-cutting having a potentially beneficial impact – it is not clear which ‘pan-European threshold’, that is to say, uniform threshold, the Commission could have established in the technical screening criteria, in order to address that issue adequately. Such harmonisation would, as a consequence, have standardised the applicable national thresholds in that field. It should be noted, however, that such a step could not have been undertaken without running the risk of undermining both the legal basis for the Taxonomy Regulation, to wit Article 114 TFEU, and the subsidiarity principle, laid down in Article 5(3) TEU. Clear-cutting is a practice for which the Member States have fixed their own quantitative thresholds, expressed inter alia as hectares, beyond which clear-cutting is prohibited. Those quantitative thresholds are different due to national or local geographical variations and the species involved. At no time have the applicants suggested to the Commission or the Court how those national thresholds could have been standardised in such a manner that the Commission, in so doing, did not undermine the principle of subsidiarity.

364 Thirdly, the applicants’ arguments to the effect that it is not relevant to invoke the forthcoming revision of the RED II Directive to justify the ‘shortcomings’ in the ‘do no significant harm’ technical screening criteria are unfounded.

365 The applicants have not demonstrated that there is any ‘shortcoming’ in those technical screening criteria or specified what is lacking. Furthermore, the Commission’s reference to the forthcoming revision of the RED II Directive is relevant. In so doing, the Commission stated its willingness – its obligation, even – to adapt the technical screening criteria in question in order to take account of future amendments to the RED II Directive, depending on developments in the state of science or EU law, which governs and sets the framework for the establishment of technical screening criteria. The Court does not find that the Commission was not entitled to state, in the contested decision, that it was willing to amend the technical screening criteria in question so as to address developments in the state of science or EU law. The Commission’s obligation to review regularly the technical screening criteria referred to in Article 19(1) of the Taxonomy Regulation is expressly provided for in the first paragraph of Article 19(5) thereof.

366 In the light of the foregoing, the first part of the tenth plea in law must be rejected.

Second part of the tenth plea in law: errors vitiating the Commission’s response to criticisms relating to the ‘do no significant harm’ technical screening criteria with a view to preventing and controlling pollution

367 The applicants submit that the Commission’s response in Section 3.3.2(ii) (pages 89 and 90) of Annex III to the contested decision infringes Article 17(1)(e) of the Taxonomy Regulation.

368 In Section 3.3.1(ii) of Annex III (pages 89 and 90) to the contested decision, the Commission did not put forward any structured argument to dispute the applicants’ complaint that the ‘do no significant harm’ technical screening criteria for pollution prevention and control are inadequate for determining whether forest bioenergy-related activities ‘[lead] to a significant increase in the emissions of pollutants into air, water or land, as compared with the situation before the activity

started’, in accordance with Article 17(1)(e) of the Taxonomy Regulation. In that part of the contested decision, the Commission merely stated that they had misinterpreted the concept of ‘best available techniques’ referred to in point 10 of Article 3 of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ 2010 L 334, p. 17; ‘the Industrial Emissions Directive’), and that the implementation of ‘best available techniques’ ‘provide[d] the best results in terms of environmental effectiveness and efficiency’.

369 The Commission did not provide any response as to the lack of quantitative requirements as regards the extent of the emissions reduction in areas exceeding pollution limits.

370 Lastly, as regards the pollution associated with the manufacture of wood pellets, the Commission merely argued that ‘[d]espite the extensive consideration, the integration of life-cycle considerations universally into the criteria proved difficult for the lack of usable and comparable data’ (see the document entitled ‘Taxonomy [Regulation’s] Impact Assessment’).

371 The Commission disputes those arguments.

372 The second part of the tenth plea in law is unfounded, for the reasons set out below.

373 It should be borne in mind that, under Article 17(1)(e) of the Taxonomy Regulation, taking into account the life cycle of the products and services provided by an economic activity, including evidence from existing life-cycle assessments, that economic activity is to be considered to significantly harm pollution prevention and control, where that activity leads to a ‘significant increase in the emissions of pollutants into air, water or land, as compared with the situation before the activity started’.

374 None of the arguments referred to in paragraph 368 above demonstrates that there was an error of law arising from infringement of the conditions laid down in Article 17(1)(e) of the Taxonomy Regulation. Nor do those arguments render implausible the Commission’s assessments in Section 3.3.2(ii) (pages 89 and 90) of Annex III to the contested decision.

375 In the first place, the applicants’ argument to the effect that the Commission did not provide a structured response to dispute the complaints put forward in the request for internal review, but merely criticised them for having misinterpreted the concept of ‘best available techniques’ referred to in Article 10(3) of the Industrial Emissions Directive, cannot be upheld.

376 The applicants fail to explain exactly how the Commission’s basing its response on the concept of ‘best available techniques’, as referred to in Article 10(3) of the Industrial Emissions Directive, is contrary to Article 17(1)(e) of the Taxonomy Regulation. In particular, it is not possible to discern, in those arguments, facts or legal aspects which could be specifically linked to the concept of a ‘significant increase in emissions of pollutants’ or to the ‘air’, ‘water’ and ‘land’ categories referred to in Article 17(1)(e) of the Taxonomy Regulation.

377 Furthermore, the Commission’s response in Section 3.3.2(ii) (pages 89 and 90) of Annex III to the contested decision is relatively complete. It makes it possible to understand the reason why the Commission made the concept of ‘best available techniques’ in point 10 of Article 3 of the Industrial Emissions Directive one of the fundamental parameters of the ‘do no significant harm’

technical screening criteria for pollution prevention and control referred to in point 5 of the table of ‘do no significant harm’ criteria found in Sections 4.7, 4.8, 4.19, 4.20, 4.23 and 4.24 of Annexes I and II to the Delegated Regulation.

- 378 According to the Commission, placing the concept of ‘best available techniques’ at the heart of those criteria is justified by the fact that it is a criterion representing the gold standard in its field. It is true that the Commission did not use that term in the contested decision. However, it is apparent from the last sentence of the first paragraph of page 90 of the contested decision, which states that ‘[the implementation of best available techniques] provides the best results in terms of environmental effectiveness and efficiency’, that it implicitly bases its method on the search for that gold standard. Thus, it seems that the Commission was indeed aware of the fact that that gold standard translates an approach required by the legislature.
- 379 By their arguments, the applicants do not explain why the Commission ought to have departed from that ‘best available techniques’ criterion, as set out in point 10 of Article 3 of the Industrial Emissions Directive. The applicants’ line of argument in that regard is vague and incomplete. It does not explain why the recourse to ‘best available techniques’, that is to say, the gold standard in its field, is not suitable for complying with the conditions of Article 17(1)(e) of the Taxonomy Regulation or achieving the ‘best results in terms of environmental effectiveness and efficiency’ referred to in the Commission’s response.
- 380 In the second place, nor can the Court uphold the applicants’ argument alleging that the Commission did not respond to the complaint as to the lack of requirements as regards the extent of the emissions reduction in ‘areas exceeding pollution limits’ (see paragraph 369 above).
- 381 That argument can be understood only in view of the complaints relied on by the applicants in the request for internal review, concerning installations situated in areas not complying with air quality ‘limit values’ within the meaning of Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ 2008 L 152, p. 1). The argument to the effect that the Commission did not provide any response as to the lack of requirements in ‘areas exceeding pollution limits’ is admissible in the present proceedings only if it was included in the request for internal review. That argument is admissible, in view of the statements in paragraph 366 of that request. Therein the applicants had criticised the lack of requirements for ‘areas exceeding pollution limits’, not generally, but in order to highlight the lack of a ‘quantitative threshold’ as regards the extent of the emissions reduction.
- 382 It is true that, in Section 3.3.2(ii) (pages 89 and 90) of Annex III to the contested decision, the Commission did not refer expressly to the wording of Article 19(1)(c) of the Taxonomy Regulation, or state whether it had been able to find the quantitative thresholds as regards the extent of the emissions reduction in areas exceeding pollution limits and whether it had had to restrict itself to laying down qualitative criteria. In that regard, it should be noted that, under Article 19(1)(c) of the Taxonomy Regulation, the technical screening criteria established under Article 10(3) and Article 11(3) of that regulation, including the criteria referred to in Article 17 thereof, are to ‘be quantitative and contain thresholds to the extent possible, and otherwise be qualitative’.
- 383 The applicants may not, however, claim that the Commission did not provide any response as to the lack of requirements for ‘areas exceeding pollution limits’ in Section 3.3.2(ii) (pages 89 and 90) of Annex III to the contested decision. In Section 1.3 (page 65) of Annex III to the contested

decision, the Commission refuted all arguments concerning the lack of quantitative criteria, by referring explicitly to Article 19(1)(c) of the Taxonomy Regulation. Although Section 1.3 (page 65) of Annex III to the contested decision is devoted more broadly to criticisms made by the applicants, in Section IV.B of the request for internal review (paragraph 108 of that request), as to the presence of a ‘misuse of power’ on the ground that the ‘do no significant harm’ technical screening criteria do not contain quantitative thresholds, it follows from that part of the contested decision that, according to the Commission, the ‘qualitative nature of the criteria results from the lack of measured baselines or accepted metrics for defining quantitative screening criteria for adaptation at this point in time, and relative lack of quantitative adaptation targets defined at the national, sectoral, or subnational level’. Thus, that response from the Commission to the criticisms about the potential existence of a ‘misuse of powers’ also covers the issue relating to the lack of quantitative criteria, raised by the applicants in the second part of the tenth plea in law.

- 384 In the third place, the argument to the effect that, as regards the pollution associated with the manufacture of wood pellets, the Commission ‘merely’ stated that ‘[d]espite the extensive consideration, the integration of life-cycle considerations universally into the criteria proved difficult for the lack of usable and comparable data’ (see paragraph 370 above), is unfounded.
- 385 First, as there is no reference to the specific substantive conditions of Article 17(1)(f) of the Taxonomy Regulation, referred to in paragraph 345 above, that argument is unsubstantiated. The link between that argument and the position that an operator wishing to prove the environmental sustainability of his or her activity must avoid that activity being found to be: ‘(i) significantly detrimental to the good condition and resilience of ecosystems’ or ‘(ii) detrimental to the conservation status of habitats and species, including those of Union interest’ is not in any way readily apparent.
- 386 Secondly, it is clear that, in the response given in Section 3.3.2(ii) (pages 89 and 90) of Annex III to the contested decision, the Commission did not ‘merely’ make the statement cited in paragraphs 368 and 384 above. On the contrary, as regards the issue of pollution associated with dust from the manufacture of wood pellets, the Commission included in the passage cited a parenthesis referring explicitly to the document entitled ‘Taxonomy [Regulation’s] Impact Assessment’, which is also cited in footnote XXV to the contested decision, the complete title of which reads as follows: ‘Commission Staff Working Document “Impact Assessment”, accompanying the document “Proposal for a Regulation of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment”, SWD(2018) 264 final, [of 24 May 2018]’.
- 387 As is apparent from Section 1.2 of Annex I to the contested decision, which concerns all entities having lodged requests for internal review against the Delegated Regulation, including the applicants, the Commission believes it has a basis to state that the ‘general and specific objectives of the Delegated [Regulation] are consistent with those of the Taxonomy Regulation, which were explained in detail in the “Taxonomy [Regulation’s] Impact Assessment”’. Far from restricting itself to that statement, the Commission pursued its reasoning concerning the adequacy of the ‘do no significant harm’ criteria from the standpoint of the Taxonomy Regulation, by setting out legal and scientific aspects at pages 10 to 12 of Annex I to the contested decision.
- 388 The applicants do not call into question the implications for the well-foundedness of the Commission’s assessments of the parenthesis accompanying the passage cited in paragraph 370 above, referring explicitly to the document entitled ‘Taxonomy [Regulation’s] Impact

Assessment’ (see paragraph 386 above). Nor do they establish any link between the argument referred to in paragraph 370 above and the Commission’s overall assessment in Section 1.2 of Annex I to the contested decision. In other words, the applicants do not take account of the broader – and more complete – context of which the statement in question forms part, which enabled the Commission to make such a statement.

389 By not placing the passage cited in paragraph 370 above in the context of the evidence noted by the Commission in the overall assessment set out in Section 1.2 of Annex I to the contested decision or of the content of the document entitled ‘Taxonomy [Regulation’s] Impact Assessment’, the applicants failed to provide evidence capable of rendering implausible the Commission’s assessment that ‘[d]espite the extensive consideration, the integration of life-cycle considerations universally into the criteria proved difficult for the lack of usable and comparable data’.

390 Consequently, the applicants’ complaint must be rejected, as must the second part of the tenth plea in law as a whole.

Third part of the tenth plea in law: errors relating to the ‘do no significant harm’ technical screening criteria in the context of the circular economy

391 According to the applicants, the Commission’s response in Section 3.3.2 (page 88) of Annex III to the contested decision, which refers to Section 3.1.2(b) (pages 44 to 46) of Annex II to that same decision, to the concerns expressed in the request for internal review about the complete absence of ‘do no significant harm’ technical screening criteria in relation to the circular economy as it relates to forest bioenergy activities, is contrary to Article 10(3)(b) of the Taxonomy Regulation.

392 In Section 3.3.2 (page 88) of Annex III to the contested decision – which refers to Section 3.1.2(b) (page 44) of Annex II to the contested decision – the Commission responded to those concerns by stating that the relationship between the principle of cascading use and biomass was ‘highly complex’ and that there ‘[was] a lack of sufficient scientific evidence from which to design adequate criteria’. The Commission also relied on references to the circular economy in the RED II Directive and on its proposal for a revision of that directive, which aims to discourage States from providing incentives for the generation of energy by burning saw logs, veneer logs, stumps and roots.

393 In the first place, that response confirms, in the applicants’ view, that forest bioenergy activities do indeed harm the circular economy and that the absence of ‘do no significant harm’ technical screening criteria in relation to the circular economy infringes Article 10(3)(b) of the Taxonomy Regulation, read in conjunction with Article 17(1)(d)(i) of the Taxonomy Regulation.

394 In the second place, in response to the considerations set out by the Commission in its defence, according to which its competence to draw up technical screening criteria must be interpreted in the light of its power to adopt a ‘step-by-step’ approach and to proceed in the light of the experience gained, as required by Article 19(5) of the Taxonomy Regulation, the applicants submit that, when adopting an administrative act such as a delegated regulation, the Commission must comply with the legislative act empowering it to adopt that administrative act on the ground that it has the power to review it subsequently. In the present case, there was evidence showing that bioenergy activities were likely to cause harm to the circular economy and that the establishment of ‘do no significant harm’ technical screening criteria in relation to the circular economy was necessary and possible.

395 The Commission disputes those arguments.

396 The Court finds that the arguments set out in paragraphs 393 and 394 above are unfounded. The applicants have not managed to demonstrate that the Commission's response in Section 3.3.2 of Annex III (page 88) to the contested decision, read in conjunction with Section 3.1.2(b) (page 44) of Annex II to that decision, is vitiated by a manifest error of assessment, or that that response is contrary to Article 10(3)(b) of the Taxonomy Regulation, read in conjunction with Article 17(1)(d)(i) of that regulation.

397 In that regard, it should be borne in mind that, under Article 10(3)(b) of the Taxonomy Regulation, the Commission is to adopt a delegated regulation in order to 'supplement Article 17 by establishing, for each relevant environmental objective, technical screening criteria for determining whether an economic activity in respect of which technical screening criteria have been established ... causes significant harm to one or more of those objectives'. Under Article 17(1)(d) of the Taxonomy Regulation, an economic activity is considered to harm significantly the circular economy where it 'leads to significant inefficiencies in the use of materials or in the direct or indirect use of natural resources such as non-renewable energy sources, raw materials, water and land at one or more stages of the life cycle of products, including in terms of durability, reparability, upgradability, reusability or recyclability of products'.

398 In the first place, the applicants submit that the Commission 'confirmed' that forest bioenergy activities harmed the circular economy and that the absence of 'do no significant harm' technical screening criteria in relation to the circular economy infringes Articles 10 and 17 of the Taxonomy Regulation (see paragraph 393 above). That allegation is based essentially on the applicants' disputing the statement in the contested decision to the effect that, on the date on which the decision was adopted, the Commission did not have sufficient scientific evidence to establish 'do no significant harm' technical screening criteria in relation to the circular economy (see also paragraph 392 above).

399 In the present case, it is the applicants who have the burden of proving the existence of scientific evidence capable of providing a basis for the adoption of technical screening criteria, the absence of which they criticise. To that end, in the present proceedings they must call into question the conclusion reached by the Commission, by adducing evidence capable of rendering the Commission's assessments implausible.

400 It is apparent from Section 3.1.2(b) of Annex II (page 44) to the contested decision that the non-governmental organisation that expressed similar, or even identical, concerns to those expressed by the applicants at the stage of the request for internal review with respect to the issue of the cascading principle for biomass had relied on certain 'TEG recommendations' (recommendations of the Technical Expert Group on Sustainable Finance) in support of its complaint. It is true that the annexes to the application contain a report entitled 'Technical Expert Group on Sustainable Finance', which seems to correspond to the abovementioned 'TEG recommendations' cited a number of times by the Commission in the annexes to the contested decision and lodged with the Court as Annex A.42 to the application in order to substantiate the allegations set out under the second plea in law. That document could, to a certain extent, have served as a basis to substantiate the present part of the tenth plea in law.

401 However, although it is not for the Court to seek and identify in the annexes the pleas and arguments on which it may consider the action to be based, since the annexes have a purely evidential and instrumental function (judgment of 15 December 2016, *TestBioTech and Others v*

Commission, T-177/13, not published, EU:T:2016:736, paragraph 141), the Court does not find that there is anything in the ‘Technical Expert Group on Sustainable Finance’ report capable of calling into question the well-foundedness of the Commission’s response to the effect that there ‘is a lack of sufficient scientific evidence from which to design adequate criteria’ in relation to the circular economy. As argued by the applicants under the ninth plea in law, the probative value of that report is low in relation to the issue of the circular economy. In particular, the following is stated at page 166 of the application:

‘Further, in designing the mitigation [technical screening criteria] for forest bioenergy activities, the Commission officially claimed that it relied on the [Technical Expert Group on Sustainable Finance] report. ... However, [that group] did not properly engage in scientific evidence-gathering and its reports cannot be considered to fulfil the requirement for “conclusive scientific evidence”. The only “analysis” formulated in the [Technical Expert Group on Sustainable Finance] final report indicates that the use of bioenergy “if done incorrectly can have no net positive impact or even a negative impact” on climate change mitigation. ... However, the [Technical Expert Group on Sustainable Finance] report remains silent as to what a “correct” use of bioenergy would be.’

- 402 In those circumstances, the evidence adduced by the applicants does not establish that the Commission made a manifest error of assessment with respect to the ‘do no significant harm to the circular economy’ technical screening criteria.
- 403 In the second place, contrary to what the applicants suggest, the main factor underlying the Commission’s response to their arguments referred to in paragraph 394 above, found in Section 3.1.2(b) (pages 44 to 46) of Annex II to the contested decision, referred to in Section 3.3.2 (page 88) of Annex III to that decision, does not amount to a reference by the Commission to its power to revise the Delegated Regulation at a later time.
- 404 As is apparent from the last sentence of the last paragraph of page 44 of Annex II to the contested decision, the principal argument put forward by the Commission relating to its power to revise the Delegated Regulation refers to the fact that, on the date of adoption of the Delegated Regulation or of the contested decision, it did not have sufficient conclusive scientific evidence to ensure adequate implementation of the cascading principle. In so doing, it states its willingness to revise the Delegated Regulation where other provisions of EU law, such as those of the RED II Directive, may be amended in the light of ‘additional’ scientific evidence, as is apparent from the last sentence of the second paragraph on page 46 of Annex II to the contested decision. It is apparent from the last paragraph of page 45 of Annex II to the contested decision that the future revision of the RED II Directive will focus explicitly on the cascading principle and its impact on the suitable method for approaching the biomass issue in such a way as to minimise undue distortive effects on the biomass raw materials market and harmful effects on biodiversity.
- 405 Contrary to what the applicants suggest, when the considerations set out at pages 44 to 46 of Annex II to the contested decision are read as a whole, they do not support a finding that the Commission intended to justify the lawfulness of the Delegated Regulation by relying on the possibility of future revision of the RED II Directive. What does emerge is that the Commission intended to use its competence to draw up technical screening criteria using an approach based on developments in science and experience acquired in the field. The Commission’s statements in question show that, at the very least, at the time of adoption of the Delegated Regulation or the contested decision, it preferred to refrain from adopting any specific criteria whatsoever and rather to focus on a ‘step-by-step’ approach.

- 406 That step-by-step approach set out by the Commission in the contested decision also follows from recital 31 of the Delegated Regulation, according to which technical screening criteria for bioenergy activities should be complemented, reviewed and where necessary revised to take into account the latest evidence base and relevant EU law, including the RED II Directive and its future revisions.
- 407 Such an approach is in line with the case-law of the EU Courts. Thus, as is apparent from paragraph 91 of the judgment of 17 October 2013, *Schaible* (C-101/12, EU:C:2013:661), where the legislature of the European Union is called on to restructure or establish a ‘complex system’, it is entitled to have recourse to a ‘step-by-step’ approach and to proceed in the light of the experience gained, provided that its choice is based on objective criteria appropriate to the aims pursued by the legislation in question. That approach applies, in principle, not only to the legislature, but also to the Commission when it adopts delegated acts in the field, as the context featuring in the technical screening criteria form part of an economic field characterised by a high degree of technicality, which accordingly merits being recognised as ‘complex’ within the meaning of the case-law cited.
- 408 In the present case, as stated by the Commission in Section 3.1.2(b) of Annex II (page 44) to the contested decision, without being challenged by the applicants on that point, the link between the cascading principle and biomass is highly complex. Since the Commission, according to its own statements, did not have sufficient scientific evidence on the basis of which it could have adopted adequate technical screening criteria in relation to the circular economy, and since the information in the file before the Court does not support a finding that those statements are unlawful, the Court finds that the Commission was entitled to opt not to adopt specific technical screening criteria in relation to the circular economy and rather to focus on a ‘step-by-step’ approach.
- 409 In the light of the foregoing, the third part of the tenth plea in law must be rejected, as must, therefore, the tenth plea in law in its entirety.

Eleventh plea in law: errors of law and errors of assessment in the Commission’s response to the applicants’ criticism relating to the technical screening criteria for climate change adaptation

- 410 By the first part of the eleventh plea in law, the applicants submit that the Commission misinterpreted Article 11(1) and (3)(a) of the Taxonomy Regulation, which constitutes an error of law.
- 411 By the second part of the eleventh plea in law, the applicants claim, in essence, that the contested decision is vitiated by a manifest error of assessment in that the Commission stated that the adaptation technical screening criteria satisfied the conditions laid down in the Taxonomy Regulation with regard to forest bioenergy activities, without however explaining how those criteria can ensure that forest bioenergy activities make a substantial contribution to climate change adaptation.
- 412 In Section 1.2 of Annex III (pages 64 and 65) to the contested decision, the Commission stated, in response to those arguments set out in the request for internal review, that it had adopted the following approach in order to establish the adaptation technical screening criteria. It started from the principle that ‘all sectors and activities through the economy are expected to be able to make a substantial contribution to climate change adaptation’ and that ‘it was not possible to

include the whole economy for climate change adaptation in this Delegated [Regulation] within the given [time frame] for the adoption of the Delegated [Regulation]’. While stating that the adaptation technical screening criteria are ‘uniform’ and ‘process-based’, the Commission also stated that ‘the primary qualitative nature of the criteria results from the lack of measured baselines or accepted metrics for defining quantitative screening criteria for adaptation at this point in time, and relative lack of quantitative adaptation targets defined at the national, sectoral, or subnational level’.

- 413 According to the applicants, the Commission’s reasoning, summarised in paragraph 412 above, is based on a misinterpretation by the Commission of the requirements of Article 11(1) and (3)(a) of the Taxonomy Regulation.
- 414 In the first place, the Commission’s position in the contested decision to the effect that ‘all activities can make a contribution to climate change mitigation’ (see paragraph 412 above) amounts to stating that any activity qualifying as contributing substantially to climate change mitigation under Annex I to the Delegated Regulation would qualify as contributing substantially to climate change adaptation under Annex II to the Delegated Regulation. The applicants state that such an approach would make the establishment of the adaptation technical screening criteria required by Article 11(3)(a) of the Taxonomy Regulation a pointless exercise and would therefore run counter to the objective of that regulation.
- 415 In the second place, the technical screening criteria set out in Annex II to the Delegated Regulation require only the reduction of the ‘most important’ climate risks associated with the activity. That limitation is contrary to Article 11(1) of the Taxonomy Regulation, which contains no such clarification. Moreover, the Commission also allowed economic operators to determine freely whether a climate risk is among the ‘most important’ risks, which is also incorrect.
- 416 In the third place, the technical screening criteria for climate change adaptation all derive from the obligation to carry out a ‘climate risk and vulnerability assessment’, under which adaptation solutions must be adopted. However, the ‘climate risk and vulnerability assessment’ responds only to the ‘first part of the sentence in Article 11(1)(a) [of the Taxonomy Regulation]’ since, according to the Delegated Regulation, it must only identify risks ‘that are material to the activity’. However, the approach taken in the Delegated Regulation ignored the second half of Article 11(1)(a) of the Taxonomy Regulation, relating to risks arising from adaptation solutions liable to affect people, nature or assets. Accordingly, those adaptation criteria relate principally to the protection of the activity from natural risks increased by climate change, but do not adequately take into account the risks to people and nature.
- 417 Lastly, in the context of the second part of the eleventh plea in law, the applicants submit that the decision is vitiated by a manifest error of assessment. In that regard, they state that the decision does not put forward any argument explaining how the adaptation technical screening criteria can ensure that forest bioenergy activities make a substantial contribution to climate change adaptation.
- 418 The Commission disputes those arguments.
- 419 The first part of the eleventh plea in law is unfounded, for the reasons set out below.

- 420 As regards the scope of the first part of the eleventh plea in law, in paragraph 218 of the application, the applicants referred to the complaints they put forward in paragraphs 333 to 337 of the request for internal review. However, the application does not contain any arguments relating to the Commission's response in Section 3.3.1 of Annex III (page 88) to the contested decision, read in conjunction with Section 2.3 of Annex III (pages 71 to 73) to that decision. It follows that the Commission's response to the complaints put forward in paragraphs 333 to 337 of the request for internal review is not contested. Hence, the eleventh plea in law concerns only the Commission's response set out in Section 1.2 of Annex III (pages 63 to 65) to the contested decision. That interpretation of the present plea is confirmed by footnote 51 (page 27) to the reply, which indicates that the eleventh plea in law concerns only the response set out in Section 1.2 of Annex III (pages 63 to 65) to the contested decision.
- 421 Moreover, none of the arguments referred to in paragraphs 413 to 417 above is such as to make out proof of an error of law or manifest error of assessment vitiating the contested decision.
- 422 In the first place, the complaint alleging that the Commission's approach under which 'all activities can make a contribution to climate change mitigation' (see paragraph 414 above) is 'almost redundant' and makes the establishment of the adaptation technical screening criteria required by Article 11(3)(a) of the Taxonomy Regulation a pointless exercise, must be rejected as unfounded.
- 423 It is true that the Commission stated in the contested decision that 'all sectors and activities through the economy' were capable of making a substantial contribution to climate change adaptation. However, in so doing, it did not undermine the objective of Article 11(3)(a) of the Taxonomy Regulation. That statement by the Commission, which amounts to finding that no economic operator is excluded from the circle of players capable of contributing to climate change adaptation, is a coherent fit with the objective of a pathway towards low greenhouse gas emissions and climate-resilient development, reiterated in recital 3 of the Taxonomy Regulation. That development holds true for all economic sectors.
- 424 The applicants further criticise the Commission for having, in essence, found that 'any activity qualifying as contributing substantially to climate change mitigation under Annex I [to the Delegated Regulation should automatically] qualify as contributing substantially to climate change adaptation under Annex II [to the Delegated Regulation]' (see paragraph 414 above), thereby making the establishment of the adaptation technical screening criteria required by Article 11(3)(a) of the Taxonomy Regulation 'pointless'.
- 425 The Court does not find any error of law on the part of the Commission here.
- 426 The position advocated by the applicants, referred to in paragraph 414 above, is based on a theoretical interpretation of the Commission's response. According to the applicants, the Commission's statement amounts to rendering 'pointless' an application of the technical screening criteria for climate change adaptation under Annex II to the Delegated Regulation with respect to an economic activity, as that activity already satisfies the requirements of climate change mitigation under Annex I to the Delegated Regulation. However, the Commission's response cannot be construed as meaning that the recognition of an economic activity as 'environmentally sustainable' in accordance with the technical screening criteria laid down in Annex I to the Delegated Regulation entails that that activity automatically comes within the category of criteria laid down in Annex II to that regulation. Such an inference of 'automatic transfer' cannot be accepted, if only because the technical screening criteria laid down in

Annexes I and II to the Delegated Regulation are different, as is apparent from a comparison of the provisions in question, namely Sections 4.7, 4.8, 4.13, 4.19, 4.20, 4.23 and 4.24 of Annexes I and II to the Delegated Regulation, relating to forest bioenergy activities.

- 427 Lastly, the applicants do not dispute that the criteria used in Annexes I and II to the Delegated Regulation relate to the same economic activities, since ‘it [would not have been] possible to include the whole economy for climate change adaptation in [that] Delegated [Regulation] within the given [time frame] for the adoption of the Delegated [Regulation]’ (see paragraph 412 above).
- 428 In that regard, first, the applicants do not dispute that certain economic activities referred to in Annex I to the Delegated Regulation may also come within the scope of Annex II thereto.
- 429 Secondly, as observed in paragraph 407 above, when the Commission is called on to establish rules forming part of a complex economic system, it is entitled to have recourse to a step-by-step approach and to proceed in the light of the experience gained, provided that its choice is based on objective criteria appropriate to the aims pursued by the legislation in question. In the present case, as noted in paragraph 408 above, the Commission was empowered to take a step-by-step approach for the ‘do no significant harm’ technical screening criteria in relation to the circular economy, as it did for the technical screening criteria for climate change adaptation.
- 430 In the second place, the applicants’ argument relating to the reduction of the ‘most important’ climate risks (see paragraph 415 above) cannot be upheld, since, first, it was not put forward in paragraphs 106 and 107 or in paragraphs 333 to 337 of the request for internal review and, secondly, the applicants refer to certain technical screening criteria used not in the contested decision but in the Delegated Regulation itself.
- 431 In any event, that argument is unfounded. According to the applicants, the ‘focus’ on solutions that ‘substantially reduce the most important physical climate risks’ is not sufficient to satisfy the technical screening criteria laid down in Sections 4.7, 4.8, 4.13, 4.19, 4.20, 4.23 and 4.24 of Annex II to the Delegated Regulation, in accordance with Article 11(1) and (3) of the Taxonomy Regulation.
- 432 However, not only do the applicants not dispute that alleged inadequacy in view of the substantive conditions laid down in Article 11(1) and (3) of the Taxonomy Regulation, they do not explain why the solutions that ‘substantially reduce the most important physical climate risks’ (point 1 of the table of technical screening criteria entitled ‘Substantial contribution to climate change adaptation’ found in Sections 4.7, 4.8, 4.13, 4.19, 4.20, 4.23 and 4.24 of Annex II to the Delegated Regulation) do not contribute substantially to climate change adaptation as required by Article 11(1) of the Taxonomy Regulation.
- 433 In the third place, the applicants’ arguments referred to in paragraph 416 above are unfounded. Contrary to what the applicants claim, it has not been established that the climate change adaptation technical screening criteria fail to abide by the obligation to examine and identify risks arising from adaptation solutions that are liable to affect people, nature or assets, provided for in Article 11(1)(a) of the Taxonomy Regulation. The applicants have not pointed to specific evidence liable to refute the position put forward by the Commission in its defence, according to which those technical screening criteria must be read not in isolation, but in the light of the other criteria, so that, when read together, those criteria ensure that a substantial contribution to

climate change adaptation is made, as required by Article 11(1)(a) of the Taxonomy Regulation. The applicants' arguments are selective and fail to take account of the overall picture intended by the parameters laid down in those technical screening criteria.

434 The second part of the eleventh plea in law is also unfounded. The applicants' allegation that, in the contested decision, the Commission does not put forward 'any argument as to how the adaptation [technical screening criteria] are capable of ensuring that forest bioenergy activities substantially contribute to climate change adaptation' does not render implausible the Commission's assessments in Section 1.2 (pages 63 to 65) of Annex III to the contested decision.

435 The applicants question the suitability of the technical screening criteria in question to ensure that forest bioenergy activities substantially contribute to climate change adaptation. The Court notes, however, that, in particular, the parameters laid down in points (a) to (e) of the tables of technical screening criteria entitled 'Substantial contribution to climate change adaptation' in Section 4.7 of Annex II to the Delegated Regulation do indicate in which circumstances, for which reasons and on what terms the adaptation solutions proposed for forest bioenergy activities – and, therefore, those economic activities themselves – can substantially contribute to climate change adaptation. In view of that context, with which the applicants are familiar, the Commission did not have to provide such an explanation in the contested decision. Even if the applicants do take the view that the factors laid down in Sections 4.7, 4.8, 4.13, 4.19, 4.20, 4.23 and 4.24 of Annex II to the Delegated Regulation also do not explain how the adaptation solutions proposed for forest bioenergy activities – and, therefore, those economic activities themselves – can substantially contribute to climate change adaptation, such a criticism cannot, in any event, be validly raised in the present proceedings, as it ought to have been put to the Commission in the request for internal review.

436 It follows from the foregoing that the arguments referred to in paragraphs 413 to 417 above must be rejected, as must, therefore, the eleventh plea in law in its entirety.

Twelfth plea in law: errors of law and errors of assessment in the application of the Paris Agreement and the UNFCCC

437 By their twelfth plea in law, the applicants dispute the contested decision inasmuch as the Commission dismissed their arguments put forward in the request for internal review, to the effect that the Delegated Regulation infringes Article 2 of the United Nations Framework Convention on Climate Change ('the UNFCCC') and Article 2(1) of the Paris Agreement.

438 The applicants argue that the Commission was incorrect, in Section 4.3 of Annex III (pages 94 to 96) to the contested decision, in disputing the applicants' argument to the effect that the mitigation technical screening criteria were inadequate in the light of the Paris Agreement, and also in stating that, in any case, 'the nature and broad logic of the Paris Agreement and of the UNFCCC [was] such that it [did] not permit to examine the validity of the Delegated [Regulation] in the light of those instruments of international law'.

439 The Commission disputes those arguments.

440 The twelfth plea in law is unfounded.

- 441 Given that all of the arguments put forward by the applicants in support of the present plea in law are based on the premiss that they may rely on the UNFCCC (in particular Article 2 thereof) and the Paris Agreement (in particular Article 2(1) thereof), both in their request for internal review seeking to establish that the Delegated Regulation is unlawful, and in their disputing the lawfulness of the contested decision in the present proceedings, the Court shall examine first whether, as the applicants argue, those provisions have such direct effect.
- 442 It should be borne in mind that, under Article 216(2) TFEU, international agreements concluded by the European Union are binding upon its institutions and prevail over its own legal acts (see judgment of 13 January 2015, *Council and Others v Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, C-401/12 P to C-403/12 P, EU:C:2015:4, paragraph 52 and the case-law cited).
- 443 However, the effects, within the EU legal order, of provisions of an agreement concluded by the European Union with non-member countries may not be determined without taking account of the international origin of those provisions. In conformity with the principles of international law, EU institutions which have the power to negotiate and conclude such an agreement are free to agree with the non-member countries concerned what effects the provisions of the agreement are to have in the internal legal order of the contracting parties. If that question has not been expressly dealt with in the agreement, it is for the EU Courts to decide it, in the same manner as any other question of interpretation relating to the application of the agreement in question in the European Union on the basis in particular of the agreement's spirit, general scheme or terms (see, to that effect, judgment of 13 January 2015, *Council and Others v Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, C-401/12 P to C-403/12 P, EU:C:2015:4, paragraph 53 and the case-law cited).
- 444 It is settled case-law that the provisions of an international agreement to which the European Union is a party can be relied on in support of an action for annulment of an act of secondary EU legislation or an exception based on the illegality of such an act only where, first, the nature and the broad logic of that agreement do not preclude it and, secondly, those provisions appear, as regards their content, to be unconditional and sufficiently precise (see judgment of 13 January 2015, *Council and Others v Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, C-401/12 P to C-403/12 P, EU:C:2015:4, paragraph 54 and the case-law cited). It is therefore only when both those conditions are met that such provisions may be relied upon before the EU Courts as a criterion in order to assess the legality of an EU act (judgment of 16 July 2015, *Commission v Rusal Armenal*, C-21/14 P, EU:C:2015:494, paragraph 37).
- 445 Contrary to what the applicants, in essence, argue, those conditions under which the provisions of an international agreement concluded by the European Union may be relied on do not hold true only if those provisions are relied on in support of an action for the annulment of an act of secondary EU legislation, but also in the context of a request for internal review under Article 10(1) of the Aarhus Regulation. It follows from recitals 19 and 21 of the Aarhus Regulation that the internal review procedure under that regulation aims 'to ensure adequate and effective remedies, including those available before the Court of Justice of the European [Union] under the relevant provisions of the Treaty' and that there is the possibility of bringing an action before the Court of Justice of the European Union in accordance with the relevant Treaty provisions when a request for internal review has not been successful. Thus, a request for internal review brought pursuant to Article 10(1) of the Aarhus Regulation is a prerequisite procedural stage which may provide a basis for a subsequent action brought before the EU

Courts pursuant to Article 12 of that regulation, if one is brought. Moreover, as observed in paragraph 30 above, the scope of the judicial review of a decision rejecting a request for internal review is no different from the scope of judicial review of the administrative act which was the subject of that request if that act were to be challenged before the courts. In those circumstances, there are no grounds for not applying, in the context of a request for internal review based on Article 10(1) of the Aarhus Regulation, the same conditions for being able to rely on the provisions of an international agreement concluded by the European Union as those which apply in the context of an action brought before the EU Courts.

- 446 In the present case, regarding Article 2(1) of the Paris Agreement, it should be borne in mind that the Court of Justice has held previously that that provision did not appear, as regards its content, to be unconditional and sufficiently precise for it to be relied on directly in order to challenge the lawfulness of an act of secondary EU law (judgment of 4 October 2024, *Lithuania and Others v Parliament and Council (Mobility package)*, C-541/20 to C-555/20, EU:C:2024:818, paragraphs 1037 to 1040). The same finding holds true in respect of Article 2 of the UNFCCC. It should be noted that that provision merely lays down the objectives and general rules, but without defining specific means or, at the very least, precise parameters ensuring the attainment of those objectives.
- 447 Since one of the conditions referred to in paragraph 444 above is not fulfilled, it follows that, contrary to what the applicants claim, those provisions of the UNFCCC and the Paris Agreement do not have direct effect and therefore, in principle, may not be relied on by the applicants to challenge, in the context of the present proceedings, the lawfulness of the contested decision or, at the stage of the request for internal review, the Delegated Regulation.
- 448 However, as correctly stated by the applicants, the Court of Justice has held that, where the European Union intends to implement a particular obligation assumed in the context of the agreements concluded in the context of the World Trade Organization (WTO) ('the WTO agreements') or where the EU act at issue refers explicitly to specific provisions of those agreements, the EU Courts should review the legality of the act at issue and the acts adopted for its implementation in the light of the rules of those agreements (see judgment of 13 January 2015, *Council and Others v Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, C-401/12 P to C-403/12 P, EU:C:2015:4, paragraph 56 and the case-law cited). However, the Court of Justice clarified that those two exceptions were justified solely by the particularities of the agreements that led to their application (judgments of 13 January 2015, *Council and Others v Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, C-401/12 P to C-403/12 P, EU:C:2015:4, paragraph 57, 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 49).
- 449 As regards the first exception, the Court of Justice has previously held, in essence, that, in order for the intention of the EU legislature to implement in EU law a specific obligation entered into in the context of the WTO Agreements to be established, it is not sufficient for the preamble to an EU act to support only a general inference that the legal act in question was to be adopted with due regard for international obligations entered into by the European Union. It is, on the other hand, necessary to be able to deduce from the specific provision of EU law contested that it seeks to implement into EU law a particular obligation stemming from the WTO agreements (see judgment of 28 September 2023, *Changmao Biochemical Engineering v Commission*, C-123/21 P, EU:C:2023:708, paragraph 79 and the case-law cited).

- 450 In the present case, it is clear that the applicants have not identified a specific provision of the Delegated Regulation – an act the lawfulness of which they are challenging in the context of the request for internal review – specifically aimed at implementing, in the legal order of the European Union, a specific obligation resulting from Article 2 of the UNFCCC and Article 2(1) of the Paris Agreement.
- 451 As follows from paragraph 446 above, those provisions of the UNFCCC and the Paris Agreement merely set out objectives and general rules, but without defining any specific means. The UNFCCC provides, in Article 3(3), that ‘the Parties should take precautionary measures to anticipate, prevent or minimise the causes of climate change and mitigate its adverse effects’, whilst Article 2(1)(c) of the Paris Agreement provides that it aims to ‘... strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by: ... [m]aking finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development’. It is thus clear that the UNFCCC and the Paris Agreement leave broad discretion to the parties, including the European Union, to define the detailed rules for their implementation.
- 452 Although the UNFCCC sets out objectives for the prevention and mitigation of climate change and the Paris Agreement specifies objectives for making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development, neither of those agreements provides for a ‘taxonomy’ obligation for certain economic activities, such as those referred to in the Taxonomy Regulation or in the Delegated Regulation.
- 453 In view of that broad discretion allowed under the UNFCCC and the Paris Agreement for the definition of detailed rules for their implementation, the Court does not find that, in adopting the Delegated Regulation, the Commission intended to implement specific obligations arising from Article 2 of the UNFCCC or Article 2(1) of the Paris Agreement (see, by analogy, judgments of 13 January 2015, *Council and Others v Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, C-401/12 P to C-403/12 P, EU:C:2015:4, paragraphs 59 and 60, 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, paragraphs 51 and 52).
- 454 As regards the second exception, it is apparent from the case-law that, in essence, it presupposes that the EU law provision alleged to be incompatible with an international agreement by which the European Union is bound refers directly and explicitly to the specific provisions of the international agreement in question (see, to that effect, judgments of 13 January 2015, *Council and Others v Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, C-401/12 P to C-403/12 P, EU:C:2015:4, paragraph 58, 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 50).
- 455 As noted in paragraph 450 above, it is clear that the applicants have not identified, either in the request for internal review or in the context of the present proceedings, a specific provision of EU law that they are challenging, namely a specific provision of the Delegated Regulation that refers directly and explicitly to Article 2 of the UNFCCC or Article 2(1) of the Paris Agreement.
- 456 The Court further notes that nor does the Taxonomy Regulation refer to the UNFCCC. Similarly, although that regulation makes a number of references to the Paris Agreement (see recitals 3, 11 and 24, Article 2(5) and Article 10(1) of that regulation), only recital 3 contains an explicit reference to a specific provision of that agreement, namely Article 2(1)(c) of that agreement).

That recital is not part of the actual provisions of the Taxonomy Regulation and thus has no binding effect on its own. In any event, that recital is not what the applicants claim is contrary to a specific provision of the international agreement in question.

- 457 It follows that neither of the two exceptions referred to in paragraph 448 above is applicable in the present case.
- 458 Insofar as the applicants refer to case-law according to which the fact that an international agreement contains provisions which do not have direct effect, in the sense that they do not create rights which individuals can rely on directly before the courts, does not preclude review by the courts of compliance with the obligations incumbent on the European Union as a party to an international agreement, the Commission is correct in contending, in essence, that the judicial decision invoked by the applicants in that regard (judgment of 9 October 2001, *Netherlands v Parliament and Council*, C-377/98, EU:C:2001:523, paragraph 54) was an isolated case (see, to that effect, Opinion of Advocate General Jääskinen in *Council and Others v Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, C-401/12 P to C-403/12 P, EU:C:2014:310, point 67) and was not followed in the subsequent case-law of the EU Courts. Despite an express invitation to follow it (Opinion of Advocate General Jääskinen in *Council and Others v Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht*, C-401/12 P to C-403/12 P, EU:C:2014:310, point 10), the EU Courts have instead upheld, inter alia by the judgments referred to in paragraphs 442 to 444 above, the settled case-law referred to in those paragraphs above and from which it follows, in the present case, that the applicants may not rely on Article 2 of the UNFCCC or Article 2(1) of the Paris Agreement, either in the context of the present proceedings or at the stage of their request for internal review of the Delegated Regulation.
- 459 Thus, the Commission was correct in finding, in the contested decision, that the lawfulness of the Delegated Regulation could not be examined in the light of those provisions of international law.
- 460 In any event, the Court finds that the twelfth plea in law is based on the premiss that the Commission's response to the applicants' criticisms, set out in the request for internal review in relation to the mitigation technical screening criteria for forest bioenergy activities referred to in the first part of the seventh plea in law, is incorrect. As stated above, by their line of argument set out in the first part of the seventh plea in law, the applicants have not made out proof of errors of law or manifest errors of assessment vitiating the Commission's response to their criticisms set out in the request for internal review in relation to the mitigation technical screening criteria for forest bioenergy activities.
- 461 In the light of all of the foregoing, the twelfth plea in law must be rejected and the action must be dismissed in its entirety.

Costs

- 462 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to bear their own costs and to pay those incurred by the Commission, in accordance with the form of order sought by that institution.

On those grounds,

THE GENERAL COURT (Sixth Chamber, sitting with five Judges)

hereby:

- 1. Dismisses the action;**
- 2. Orders Robin Wood – Gewaltfreie Aktionsgemeinschaft für Natur und Umwelt eV and the other applicants whose names are listed in the annex to pay the costs.**

Costeira

Kancheva

Öberg

Zilgalvis

Tichy-Fisslberger

Delivered in open court in Luxembourg on 18 March 2026.

V. Di Bucci
Registrar

S. Papasavvas
President

Table of contents

Background to the dispute	2
Forms of order sought	2
Law	3
Preliminary considerations on the Taxonomy Regulation and the Delegated Regulation	3
Preliminary considerations relating to the request for internal review and the scope of the Court’s review	7
First plea in law: errors of law and manifest errors of assessment in relation to the Commission’s response to the criticism put forward by the applicants regarding the technical screening criteria for determining whether a forest management activity contributes substantially to climate change mitigation	8
First part of the first plea in law: errors of law and manifest errors of assessment in relation to the assessments in the contested decision relating to the use of an ‘as against a business-as-usual’ baseline under the technical screening criteria for determining whether a forest management activity contributes substantially to climate change mitigation	9
Second part of the first plea in law: errors in relation to the Commission’s response to the applicants’ criticisms to the effect that the technical screening criteria ought to have been quantitative and were not based on conclusive scientific evidence and the precautionary principle	17
Second plea in law: errors of law and manifest errors of assessment in relation to the Commission’s response to the applicants’ criticism concerning the exemption from the climate benefit analysis provided for forest holdings under 13 hectares in the criteria for substantial contribution to climate change mitigation	19
First part of the second plea: errors of law or manifest errors of assessment in relation to Article 10(1)(f) and Article 19(1)(f) of the Taxonomy Regulation as regards the Commission’s response to the effect that the purpose of the exemption for forest holdings under 13 hectares provided for in Section 2.4 of Annex I to the Delegated Regulation is to ‘minimise the administrative burden for small forest holdings and small-scale forest owners’	19
Second part of the second plea: errors of law or manifest errors of assessment in relation to Article 10(1)(f) and Article 19(1)(f) of the Taxonomy Regulation as regards the Commission’s response to the effect, in essence, that the exemption for forest holdings under 13 hectares, provided for in point 2.4 of the table of technical screening criteria, entitled ‘Substantial contribution to climate change mitigation’, found in Annex I to the Delegated Regulation, is justified in view of all the requirements to be observed for small-scale forest owners	22
Third part of the second plea in law: error of law due to the Commission’s misinterpretation of the competence conferred on it by Article 10(3)(a) of the Taxonomy Regulation	25
Third plea in law: errors vitiating the Commission’s response to the applicants’ criticisms regarding the technical screening criteria for determining whether an activity does no significant harm to climate change adaptation	26

Fourth plea in law: errors of law and manifest errors of assessment in relation to the Commission's response to the applicants' criticism regarding the criteria for determining when an activity does no significant harm to the transition to a circular economy	29
Fifth plea in law: errors of law in the Commission's response to the applicants' criticism relating to the 'do no significant harm' criteria in relation to climate change mitigation	32
Sixth plea in law: errors of law and manifest errors of assessment vitiating the Commission's response to the applicants' criticism in relation to the criteria for determining whether an activity does no significant harm to the protection and restoration of biodiversity and ecosystems	37
Seventh plea in law: errors of law and manifest errors of assessment by the Commission in finding, in the contested decision, that the mitigation technical screening criteria relating to forest bioenergy activities are adequate for determining whether an activity makes a substantial contribution to climate change mitigation	43
First part of the seventh plea in law: errors of law and manifest errors of assessment in that the Commission found that the 'greenhouse gas emission savings' criteria were adequate to ensure the contribution of forest bioenergy activities to climate change mitigation	44
Second part of the seventh plea in law: manifest error of assessment vitiating the Commission's rejection of the applicants' arguments to the effect that the RED II Directive sustainability criteria and the LULUCF criteria are inadequate to assess the contribution of forest bioenergy activities to climate change mitigation	48
Eighth plea in law: manifest errors of assessment in relation to the Commission's response to the applicants' criticisms regarding the 'do no significant harm' technical screening criteria in relation to forest bioenergy activities	50
First part of the eighth plea in law: errors in the interpretation of the precautionary principle	50
Second part of the eighth plea in law: errors of law by the Commission in that it attached disproportionate weight to the requirement of policy coherence pursuant to Article 19(1)(d) of the Taxonomy Regulation	52
Third part of the eighth plea in law: errors in the interpretation of Article 19(1)(k) of the Taxonomy Regulation	54
Ninth plea in law: manifest errors of assessment arising from a failure to take account of relevant conclusive scientific evidence and failure to observe the precautionary principle	55
Tenth plea in law: manifest errors of assessment in the Commission's response to the applicants' criticism relating to the 'do no significant harm' criteria for forest bioenergy activities, in view of the prevention and reduction of pollution and the protection and restoration of biodiversity and ecosystems	58
First part of the tenth plea in law: insufficient response from the Commission to criticisms about the lack of adequate criteria aimed at preventing significant harm to biodiversity and ecosystems	58
Second part of the tenth plea in law: errors vitiating the Commission's response to criticisms relating to the 'do no significant harm' technical screening criteria with a view to preventing and controlling pollution	63

Third part of the tenth plea in law: errors relating to the ‘do no significant harm’ technical screening criteria in the context of the circular economy	67
Eleventh plea in law: errors of law and errors of assessment in the Commission’s response to the applicants’ criticism relating to the technical screening criteria for climate change adaptation ..	70
Twelfth plea in law: errors of law and errors of assessment in the application of the Paris Agreement and the UNFCCC	74
Costs	78
Annex – applicants	