ORDER OF THE GENERAL COURT (Fourth Chamber)

6 May 2020 (*)

(Action for annulment — Environment — Energy — Directive (EU) 2018/2001 — Inclusion of forest biomass among the sources of renewable energy — Act not of individual concern — Inadmissibility)

In Case T-141/19,

Peter Sabo, residing in Tulčik (Slovakia), and the other applicants whose names appear in the Annex, (1) represented by R. Smith, A. Dews and C. Day, Solicitors, D. Wolfe QC and P. Lockley and B. Mitchell, Barristers,

applicants,

v

European Parliament, represented by I. McDowell, C. Ionescu Dima and A. Tamás, acting as Agents,

and

Council of the European Union, represented by A. Lo Monaco and R. Meyer, acting as Agents,

defendants,

APPLICATION under Article 263 TFEU for annulment in part 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), in so far as it includes forest biomass among the sources of renewable energy,

THE GENERAL COURT (Fourth Chamber),

composed of S. Gervasoni, President, R. Frendo (Rapporteur) and J. Martín y Pérez de Nanclares, Judges,

Registrar: E. Coulon,

makes the following

Order

Background to the dispute

1 The applicants, Mr Peter Sabo and the other persons whose names appear in the Annex, comprise individuals from various EU Member States (Estonia, Ireland, France and Slovakia) and from the United States as well as associations, more specifically environmental interest groups, which have their seat in various Member States.

2 In its conclusions of 23 and 24 October 2014, the European Council approved the 2030 EU climate and energy policy framework. That framework sets a binding target of a reduction of at least 40% in EU greenhouse gas emissions by 2030. The increased use of energy from renewable sources constitutes an important part of the package of measures needed to reduce greenhouse gas emissions and to comply with

the European Union's commitments under the Paris Agreement on Climate Change, approved on 12 December 2015.

3 On 11 December 2018, the European Parliament and the Council of the European Union adopted Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources (OJ 2018 L 328, p. 82, 'the contested directive'). The contested directive is a recast 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).

4 According to Article 1 thereof, the contested directive establishes a common framework for the promotion of energy from renewable sources and sets a binding Union target in that regard for the period up to 2030.

5 Article 2(2)(1) of the contested directive defines 'energy from renewable sources' as being, inter alia, 'energy from renewable non-fossil sources, namely … biomass'.

6 Article 2(2)(24) of the contested directive defines 'biomass' as 'the biodegradable fraction of products, waste and residues from biological origin from agriculture, including vegetal and animal substances, from forestry and related industries, including fisheries and aquaculture, as well as the biodegradable fraction of waste, including industrial and municipal waste of biological origin'.

7 Article 29 of the contested directive sets out the sustainability criteria and greenhouse gas emissions saving criteria for biofuels, bioliquids and biomass fuels. Article 29(1) provides that energy from those sources is to be taken into account for the purposes of contributing to the target relating to the share of energy from renewable sources, of measuring compliance with renewable energy obligations, and of eligibility for financial support. In comparison with Directive 2009/28, the contested directive extended the criteria to biomass used for heating, cooling and the production of electricity.

8 Article 29(3) of the contested directive provides that biofuels, bioliquids and biomass fuels taken into account for the purposes set out in paragraph 7 above are not to be made from raw material obtained from land with a high biodiversity value. That land includes, inter alia, primary forest and other wooded land, highly biodiverse forest, areas designated for nature protection purposes and grassland that maintains natural species composition and ecological characteristics and processes.

9 Article 29(6) of the contested directive defines the criteria which forest biomass — whether national or imported — must fulfil in order to be taken into account for the purposes of Article 29(1).

10 Article 30 concerns the verification of compliance with the sustainability and greenhouse gas emissions saving criteria and Article 31 sets out how the greenhouse gas impact of biofuels, bioliquids and biomass fuels is calculated.

Procedure and forms of order sought

11 On 4 March 2019, the applicants brought the present action.

12 By separate documents lodged at the Court Registry on 21 June 2019, the Parliament and the Council each raised a plea of inadmissibility on the basis of Article 130(1) of the Rules of Procedure of the General Court.

13 Accordingly, a decision on the applications to intervene submitted by the European Commission on 9 June 2019, U.S. Industrial Pellet Association on 12 June 2019, and Stichting Dutch Biomass Certification and Stichting RBCN (Rotterdam Biomass Commodities Network) on 19 June 2019 in support of the form of order sought by the Parliament and the Council was stayed, in accordance with Article 144(3) of the Rules of Procedure.

14 On 21 August 2019, the applicants submitted their observations on the plea of inadmissibility raised by the Parliament and the Council.

15 In their application, the applicants claim that the Court should annul the provisions of the contested directive which allow energy produced from forest biomass to count as a renewable energy source for the purposes of Article 29(1) of that directive.

16 In their observations on the plea of inadmissibility, the applicants claim that the Court should dismiss that plea.

17 The Parliament and the Council contend that the Court should:

– dismiss the action as inadmissible;

– order the applicants to pay the costs.

Law

18 Under Article 130(1) and (7) of the Rules of Procedure, the Court may, if the defendant so requests, rule on the question of admissibility without considering the substance of the case. In the present case, since the Parliament and the Council have requested that the Court give a ruling on inadmissibility and the Court considers that it has sufficient information from the material in the file, the Court has decided to rule on this application without taking further steps in the proceedings.

19 The applicants seek the annulment in part of the contested directive to the extent that it includes forest biomass among the sources of renewable energy. They take the view that including forest biomass infringes Article 191 TFEU and certain fundamental rights embodied in the Charter of Fundamental Rights of the European Union (‘the Charter’). According to the applicants, taking into account forest biomass as a renewable energy source undermines the goals of the contested directive owing to the amount of carbon discharged by burning wood and to the increase in industrial logging.

20 The applicants consider that the contested directive is of direct concern to them because of the effect that including forest biomass among the sources of renewable energy has on their legal situation. In addition, they submit that the contested directive leaves no discretion to its addressees.

21 The applicants also submit that the contested directive is of individual concern to them because they are part of a limited category of persons that is affected by the deforestation and the operation of power plants which the directive causes. In support of their position, they also allege an infringement of their individual legal interests and their fundamental rights.

22 The Parliament and the Council dispute that assessment. They submit that the action is inadmissible on the basis that the applicants do not have standing under the fourth paragraph of Article 263 TFEU because the contested directive is not of direct and individual concern to them.

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

24 It should be noted that the contested directive is not a regulatory act within the meaning of the fourth paragraph of Article 263 TFEU, but a legislative act that was adopted under the ordinary legislative procedure, a fact which is not contested by the parties. However, case-law does not preclude that, in certain circumstances, the provisions of a legislative act may be of direct and individual concern to an individual (see, to that effect, judgments of 18 May 1994, *Codorniu* v *Council*, C-309/89, EU:C:1994:197, paragraphs 19 to 22; of 27 June 2000, *Salamander and Others* v *Parliament and Counci*l, T-172/98 and

T-175/98 to T-177/98, EU:T:2000:168, paragraph 30; and of 2 March 2010, *Arcelor* v *Parliament and Council*, T-16/04, EU:T:2010:54, paragraph 96).

25 In that context, one should examine, first of all, whether the second condition — that the act be of individual concern to the applicants — has been met. Since the conditions of direct and individual concern are cumulative (judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 76), it will be unnecessary to assess whether the contested directive is of direct concern to the applicants if it is not of individual concern to them.

26 As a preliminary observation, it should be pointed out that natural or legal persons satisfy the condition of individual concern only if the contested act affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguishes them individually in the same way as the addressee of a decision would be (judgments of 15 July 1963, *Plaumann* v *Commission*, 25/62, EU:C:1963:17, p. 107, and of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 72).

27 In the present case, the applicants take the view that the contested directive is of individual concern to them because the deforestation and operation of power plants caused by the directive do not affect everyone, but only a limited category of persons of which they form part. In addition, they submit that the measures in the contested directive infringe their individual legal interests and fundamental rights.

28 These arguments cannot succeed.

29 First, as regards the conditions laid down by the case-law cited in paragraph 26 above, it should be noted that the contested directive constitutes an act of general application in that it applies to objectively determined situations and entails legal effects for categories of persons envisaged in a general and abstract manner. It establishes a common framework for the promotion of the production of renewable energy and sets a target for the reduction of greenhouse gas emissions by increasing the use of energy from renewable sources with the aim of enabling the European Union to comply with its commitments under the Paris Agreement on Climate Change, approved on 12 December 2015.

30 It follows that, contrary to the applicants' submissions, it is not possible to identify a limited category of persons concerned by the provisions of the contested directive that are at issue. As the Parliament and the Council submit, as an act of general application, the contested directive applies to all persons, both natural and legal. The applicants do not put forward any factor recognised by case-law which would be capable of distinguishing them individually as addressees. Furthermore, they themselves acknowledge that the protection and regulation of the environment is something which affects 'everyone in both current and future generations', a statement which is difficult to deny and which militates against the notion of individual concern.

31 Accordingly, even assuming that the contested directive does have a negative impact as regards forests and the operation of power plants, the applicants are not in a situation that is different from that of the indeterminate and indeterminable body of Union citizens, which prevents the contested directive from being of individual concern to them.

32 Second, the factual circumstances of the present case differ from those of the case which led to the judgment of 18 May 1994, *Codorniu* v *Council* (C-309/89, EU:C:1994:197), which is cited by the applicants to substantiate their submission on the condition relating to individual concern. In that case, the applicant was individually distinguished by the fact that it was the proprietor of the trade mark 'Grand Crémant de Codorniu' and the regulation at issue prevented it from using that trade mark by restricting the right to use the term 'crémant' to French and Luxembourg producers only. That case therefore concerned the loss of a specific acquired right. In the present case, however, the applicants have not alleged the loss of such a right.

33 Third, as regards the alleged infringement of the applicants' fundamental rights, it is clear from case-law that the EU institutions are required to respect higher-ranking rules of law, including fundamental rights, when adopting an act of general application. However, the allegation that such an act infringes those rules or rights is not sufficient in itself to establish that the action brought by an individual is admissible, without running the risk of rendering the requirements of the fourth paragraph of Article 263 TFEU meaningless, as long as that alleged infringement does not distinguish the applicant individually just as in the case of the addressee of an act (see judgment of 2 March 2010, *Arcelor* v *Parliament and Council*, T-16/04, EU:T:2010:54, paragraph 103 and the case-law cited).

34 Even on the assumption that the contested directive does infringe the applicants' fundamental rights, the applicants have not demonstrated that the directive is such as to distinguish them individually from all other natural or legal persons in the same way as the person to whom an act is addressed.

35 Fourth and finally, as regards the applicants which are environmental interest groups, it should be noted from the outset that, as with the applicants who are natural persons, they have not demonstrated that the contested directive is of individual concern to them.

36 In addition, according to settled case-law, actions for annulment brought by associations may be admissible in three types of situation: first, when a legal provision expressly grants a series of procedural powers to trade associations; second, when the association represents the interests of its members who would, themselves, be entitled to bring proceedings; or third, when the association is distinguished individually because its own interests as an association are affected, in particular because its negotiating position has been affected by the measure whose annulment is sought (see order of 23 November 1999, *Unión de Pequeños Agricultores* v *Council*, T-173/98, EU:T:1999:296, paragraph 47 and the case-law cited). In the present case, the applicants have not alleged, let alone demonstrated, that they fall within one of those situations.

37 In the light of these considerations, it must be concluded that the contested directive is not of individual concern to the applicants.

38 Accordingly, since the criteria of direct and individual concern are cumulative criteria for admissibility where admissibility is examined in relation to the second situation envisaged by the fourth paragraph of Article 263 TFEU, as pointed out in paragraph 25 above, it is not necessary to examine whether the contested directive is of direct concern to the applicants.

39 That assessment is not called into question by the applicants' argument that the interpretation of the concept of 'individual concern' in the fourth paragraph of Article 263 TFEU is incompatible with Article 9 of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1), and with the fundamental right to effective judicial protection as laid down by Article 47 of the Charter. Nor is it called into question by the argument that, in environmental matters, the Court should change its case-law and cease applying the formula established by the judgment of 15 July 1963, *Plaumann* v *Commission* (25/62, EU:C:1963:17).

40 First, it should be noted that, as the Council submits, acts adopted by the EU institutions acting in a legislative capacity are excluded from the scope of Article 9(3) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus. That article applies to acts by public authorities as defined by Article 2(2) of the convention, which does not cover bodies or institutions acting in a judicial or legislative capacity.

41 Second, according to case-law, the protection conferred by Article 47 of the Charter does not require that an individual should have an unconditional entitlement to bring an action for annulment of an EU legislative act directly before the Courts of the European Union (see, to that effect, judgment of 3 October

2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 105).

42 In that context, it should be recalled, as the Parliament and Council have done, that Articles 263 and 277 TFEU, on the one hand, and Article 267 TFEU, on the other, have established a complete system of legal remedies and procedures designed to ensure judicial review of the legality of acts of the institutions. The Treaty on the Functioning of the European Union thus guarantees that natural or legal persons who cannot, by reason of the conditions of admissibility set out in the fourth paragraph of Article 263 TFEU, directly challenge EU acts of general application are nevertheless protected by Article 267 TFEU against the application to them of those acts.

43 In other words, where responsibility for the implementation of those acts lies with the EU institutions, those persons are entitled to bring a direct action before the Courts of the European Union against the implementing measures under the conditions stated in the fourth paragraph of Article 263 TFEU, and to plead, pursuant to Article 277 TFEU, in support of that action, the illegality of the general act at issue. Where, on the other hand, that implementation is a matter for the Member States, such persons may plead the invalidity of the EU act at issue before the national courts and tribunals and cause the latter to request a preliminary ruling from the Court of Justice, pursuant to Article 267 TFEU (judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 93). Requests for preliminary rulings which seek to ascertain the validity of a measure thus constitute, like actions for annulment, means for reviewing the legality of EU acts (judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 95).

44 Lastly, it should be noted that an interpretation of the formula established by the judgment of 15 July 1963, *Plaumann* v *Commission* (25/62, EU:C:1963:17), such as that proposed by the applicants cannot succeed. According to the applicants, it should be open to individuals and environmental interest groups to bring a direct action for annulment in environmental matters where they have a demonstrable interest in the question that is being referred to the Courts of the European Union. However, such an interpretation would have the effect of setting aside the condition of individual concern expressly provided for in the fourth paragraph of Article 263 TFEU, which would go beyond the jurisdiction conferred by the Treaty on the Courts of the European Union (judgments of 25 July 2002, *Unión de Pequeños Agricultores* v *Council*, C-50/00 P, EU:C:2002:462, paragraph 44, and of 1 April 2004, *Commission* v *Jégo-Quéré*, C-263/02 P, EU:C:2004:210, paragraph 36).

45 While EU action in environmental matters is of paramount importance — as is clear from the recitals of the contested directive — and while it is possible, and may be considered desirable, to widen the entitlement to pursue legal remedies before the Courts of the European Union for reviewing the legality of EU acts of general application in environmental matters, beyond the system established by the Treaty on the Functioning of the European Union, only the Member States can reform the current system, as they have done by adding to the acts included in the fourth paragraph of Article 263 TFEU regulatory acts of direct concern to natural or legal persons that do not entail implementing measures.

46 It follows from all of the foregoing that the applicants do not demonstrate that they have standing to initiate proceedings under the fourth paragraph of Article 263 TFEU.

47 In the light of all of the foregoing considerations, the plea of inadmissibility raised by the Parliament and the Council should be upheld and, accordingly, the action should be dismissed as inadmissible.

48 In those circumstances, in accordance with Article 142(2) of the Rules of Procedure, there is no need to adjudicate on the applications to intervene made by the Commission, U.S. Industrial Pellet Association, Stichting Dutch Biomass Certification and Stichting RBCN (Rotterdam Biomass Commodities Network) in support of the form of order sought by the Parliament and the Council.

Costs

49 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

50 Since the applicants have been unsuccessful in their action, they must be ordered to bear their own costs and to pay those of the Parliament and the Council, in accordance with the forms of order sought by the latter.

51 In addition, pursuant to Article 144(10) of the Rules of Procedure, the Commission, U.S. Industrial Pellet Association, Stichting Dutch Biomass Certification and Stichting RBCN (Rotterdam Biomass Commodities Network) are to bear their own costs relating to the applications to intervene.

On those grounds,

THE GENERAL COURT (Fourth Chamber)

hereby orders:

1. The action is dismissed as inadmissible.

2. There is no need to adjudicate on the applications to intervene made by the Commission, U.S. Industrial Pellet Association, Stichting Dutch Biomass Certification and Stichting RBCN (Rotterdam Biomass Commodities Network).

3. Mr Peter Sabo and the other applicants whose names appear in the Annex shall bear their own costs and those incurred by the European Parliament and the Council of the European Union.

4. The Commission, U.S. Industrial Pellet Association, Stichting Dutch Biomass Certification and Stichting RBCN (Rotterdam Biomass Commodities Network) shall each bear their own costs relating to the applications to intervene.

Luxembourg, 6 May 2020.

E. Coulon S. Gervasoni

Registrar President

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* Language of the case: English

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