ORDER OF THE COURT (Eighth Chamber)

14 January 2021 (*)

(Appeal – Article 181 of the Rules of Procedure of the Court of Justice – Environment – Directive (EU) 2018/2001 – Action for annulment – Inadmissibility – Persons not individually concerned – Aarhus Convention)

In Case C−297/20 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, lodged on 2 July 2020,

Peter Sabo, residing in Tulčik (Slovakia),

Lesoochranárske zoskupenie VLK, established in Tulčik (Slovakia),

Hasso Krull, residing in Tartu (Estonia),

2 Celsius, established in Cugir (Romania),

Bernard Auric, residing in Meyreuil (France),

Tony Lowes, residing in Eyeries (Ireland),

Kent Roberson, residing in Williamston (United States),

Hiite Maja SA, established in Tartu (Estonia),

Association de lutte contre toutes formes de nuisance et de pollutions sur les communes de Meyreuil and Gardanne (ALNP Meyreuil – Gardanne), established in Meyreuil (France),

Friends of the Irish Environment CLG, established in Kilcatherine (Ireland), represented by R. Smith and C. Day, Solicitors, by P. Lockley and B. Mitchell, Barristers and by D. Wolfe QC,

appellants,

the other parties to the proceedings being:

European Parliament,

Council of the European Union,

defendants at first instance,

THE COURT (Eighth Chamber),

composed of N. Wahl, President of the Chamber, L.S. Rossi and J. Passer (Rapporteur), Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to give a decision by reasoned order, pursuant to Article 181 of the Rules of Procedure of the Court of Justice,

makes the following

Order

1 By their appeal, Peter Sabo, Lesoochranárske zoskupenie VLK, Hasso Krull, 2 Celsius, Bernard Auric, Tony Lowes and Kent Roberson, Hiite Maja SA, the Association de lutte contre toutes formes de nuisance et de pollutions sur les communes de Meyreuil et Gardanne (ALNP Meyreuil – Gardanne) as well as Friends of the Irish Environment CLG seek to have set aside the order of the General Court of 6 May 2020, *Sabo and Others* v *Parliament and Council* (T−141/19, not published, EU:T:2020:179; 'the order under appeal'), by which the General Court dismissed as inadmissible their action seeking the 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; 'the directive at issue'), in so far as it includes forest biomass among the sources of renewable energy.

Legal context

International law

2 The Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed at Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1; 'the Aarhus Convention'), provides in Article 2(2):

'For the purposes of this Convention,

2. "Public authority" means:

(a) government at national, regional and other level;

(b) natural or legal persons performing public administrative functions under national law, including specific duties, activities or services in relation to the environment;

(c) any other natural or legal persons having public responsibilities or functions, or providing public services, in relation to the environment, under the control of a body or person falling within subparagraphs (a) or (b) above;

(d) the institutions of any regional economic integration organisation referred to in Article 17 which is a Party to this Convention.

This definition does not include bodies or institutions acting in a judicial or legislative capacity'.

3 Article 9 of the Aarhus Convention, entitled 'Access to justice', provides:

'1. Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under Article 4 [(entitled "Access to environmental information")] has been ignored … has access to a review procedure before a court of law or another independent and impartial body established by law.

…

2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned:

(a) having a sufficient interest or, alternatively,

(b) maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition, have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of Article 6 [(entitled "Public participation in decisions on specific activities")] and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

…

3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

…'

European Union law

4 Article 2 of the directive at issue, entitled 'Definitions', provides in the second paragraph:

'…

The following definitions also apply:

(1) "energy from renewable sources" or "renewable energy" means energy from renewable non-fossil sources, namely wind, solar (solar thermal and solar photovoltaic) and geothermal energy, ambient energy, tide, wave and other ocean energy, hydropower, biomass, landfill gas, sewage treatment plant gas, and biogas;

…

(24) "biomass" means 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;

(25) "agricultural biomass" means biomass produced from agriculture;

(26) "forest biomass" means biomass produced from forestry;

…'

5 Article 29 of that directive, entitled 'Sustainability and greenhouse gas emissions saving criteria for biofuels, bioliquids and biomass fuels', provides in paragraphs 1 and 3:

'1. Energy from biofuels, bioliquids and biomass fuels shall be taken into account for the purposes referred to in points (a), (b) and (c) of this subparagraph only if they fulfil the sustainability and the greenhouse gas emissions saving criteria laid down in paragraphs 2 to 7 and 10:

(a) contributing towards the Union target set in Article 3(1) and the renewable energy shares of Member States;

(b) measuring compliance with renewable energy obligations, including the obligation laid down in Article 25;

(c) eligibility for financial support for the consumption of biofuels, bioliquids and biomass fuels.

…

3. Biofuels, bioliquids and biomass fuels produced from agricultural biomass taken into account for the purposes referred to in points (a), (b) and (c) of the first subparagraph of paragraph 1 shall not be made from raw material obtained from land with high biodiversity value, namely land that had one of the following statuses in or after January 2008, whether or not the land continues to have that status:

(a) primary forest and other wooded land, namely forest and other wooded land of native species, where there is no clearly visible indication of human activity and the ecological processes are not significantly disturbed;

(b) highly biodiverse forest and other wooded land which is species-rich and not degraded, or has been identified as being highly biodiverse by the relevant competent authority, unless evidence is provided that the production of that raw material did not interfere with those nature protection purposes;

(c) areas designated:

…

(d) highly biodiverse grassland spanning more than one hectare …

…'

Background to the dispute, the proceedings before the General Court and the order under appeal

6 By an application lodged at the Registry of the General Court on 4 March 2019, the appellants, comprising natural persons and environmental associations, brought an action seeking the annulment in part of the directive at issue in so far as it allows for energy from forest biomass to count as a source of renewable energy towards the Article 29(1) purposes of that directive.

7 By separate documents lodged at the Court Registry on 21 June 2019, the European Parliament and the Council of the European Union submitted pleas that that action was inadmissible, on the basis of Article 130(1) of the Rules of Procedure of the General Court, in respect of which pleas the appellants submitted comments on 21 August 2019.

8 The General Court, considering that it had sufficient information available to it from the documents in the file, decided to rule on the admissibility of that action, without taking further steps in the proceedings.

9 Initially, the General Court considered, in paragraphs 29 to 37 of the order under appeal, whether the admissibility condition requiring the appellants to be individually concerned was met.

10 In that regard, in the first place, the General Court observed in paragraph 29 of the order under appeal that the directive at issue 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 and that even on the assumption that that directive had negative effects on forests, the appellants' situation would be no different from that of all other EU citizens.

11 In the second place, the General Court drew a distinction, in paragraph 32 of the order under appeal, between the factual circumstances of the present case and those of the case which led to the judgment of

18 May 1994, *Codorniu* v *Council* (C−309/89, EU:C:1994:197), in so far as the appellants had not claimed the loss of a specific acquired right.

12 In the third place, as regards the alleged breach of the appellants' fundamental rights, the General Court found that the claim that an act infringes those rights is not sufficient in itself for an individual's action to be established to be 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 appellants individually just as in the case of the addressee of an act. As the General Court stated and as is apparent from paragraph 34 of the order under appeal, even on the assumption that the directive at issue has infringed the appellants' fundamental rights, the appellants had not demonstrated that it was such as to distinguish them individually.

13 In the fourth place, as regards the appellants which are environmental associations, the General Court observed in paragraphs 35 and 36 of the order under appeal that they had not demonstrated that they fell within one of the situations in which actions for annulment brought by associations may be admissible in accordance with the case-law and, therefore, that, as with the appellants who are natural persons, those associations had not demonstrated that they fell within a situation which was different from that of the indeterminate and indeterminable body of EU citizens, which prevented the directive at issue from being of individual concern to them.

14 Subsequently, the General Court considered in paragraphs 39 to 45 of the order under appeal that the finding that the directive at issue was not of individual concern to the appellants was not called into question by their argument that the interpretation of the condition that applicants must be individually concerned within the meaning of the fourth paragraph of Article 263 TFEU is incompatible with Article 9 of the Aarhus Convention and with the fundamental right to effective judicial protection as enshrined in Article 47 of the Charter of Fundamental Rights of the European Union.

15 In that regard, the General Court, first, held that acts adopted by the EU institutions acting in a legislative capacity are excluded from the scope of Article 9(3) of the Aarhus Convention.

16 Second, the General Court considered that the protection conferred by Article 47 of the Charter of Fundamental Rights of the European Union 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.

17 On that basis, the General Court recalled that Articles 263 and 277 TFEU, as well as Article 267 TFEU, have established a complete system of legal remedies and procedures designed to ensure judicial review of the legality of acts of the institutions and that the appellants' argument – that it should be open to persons 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 – would have the effect of setting aside the condition, which is expressly provided for in the Treaty, that applicants must be individually concerned, which would go beyond the jurisdiction conferred on the Courts of the European Union.

18 By reason of the appellants' lack of standing to initiate proceedings, the General Court dismissed the action before it as inadmissible.

The form of order sought by the appellants before the Court of Justice

19 By their appeal, the appellants claim, in essence, that the Court of Justice should:

– set aside the order under appeal;

– declare the appeal admissible and refer the case back to the General Court; and

– order the Parliament and the Council to pay the costs incurred in relation to their comments of 21 August 2019 and the costs of the appeal proceedings.

The appeal

20 Under Article 181 of its Rules of Procedure, where the appeal is, in whole or in part, manifestly inadmissible or manifestly unfounded, the Court may at any time, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide by reasoned order to dismiss that appeal in whole or in part.

21 That provision should be applied to the present appeal.

22 In support of their appeal, the appellants rely upon three grounds, alleging, first, a clear distortion of the language of Article 29(3) of the directive at issue, second, errors of law made by the General Court in interpreting and applying the fourth paragraph of Article 263 TFEU and, third, an error of law in the assessment of the scope of the General Court's jurisdiction to interpret that provision, in particular in the light of the Aarhus Convention.

23 The second ground of appeal will be examined first, followed by the third and first grounds of appeal in turn.

The second ground of appeal

24 By the second ground of appeal, the appellants allege that the General Court erred in law in interpreting, and applying to the present case, the condition that applicants must be individually concerned by the measure the annulment of which is sought, laid down in the fourth paragraph of Article 263 TFEU, in the light of the case-law resulting from the judgment of 18 May 1994, *Codorniu* v *Council* (C−309/89, EU:C:1994:197).

25 According to the appellants, contrary to the General Court's findings in paragraphs 32 and 33 of the order under appeal, the Court of Justice in that judgment did not confine its reasoning solely to situations which concerned the loss of a specific acquired right, but held that what is required for an applicant to be individually concerned is, in essence, the impact of the legislative measure on its individual rights. The purpose of the condition that that applicant must be individually concerned is to ensure that actions are brought by those whose individual rights or individual interests are affected. In the present case, the appellants allege that the directive at issue infringes their rights, which distinguishes them individually from those who are not dependent on forests for the exercise of their rights.

26 It should be recalled, as a preliminary point, that it is apparent from the settled case-law of the Court that a natural or legal person can be individually concerned by a provision of general application only if that provision affects him or her by reasons of certain attributes which are peculiar to him or her or by reason of circumstances in which he or she is differentiated from all other persons, and by virtue of these factors distinguishes him or her individually just as in the case of a person to whom an act is addressed (see, in particular, 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 that context, the Court, in the judgment of 18 May 1994, *Codorniu* v *Council* (C−309/89, EU:C:1994:197, paragraphs 20 to 22), after having recalled the case-law cited in paragraph 26 of the present order, concluded that the applicant was individually concerned by the regulation the annulment of which it had sought on account of certain attributes which were peculiar to it and by certain factual circumstances in which it was differentiated from all other persons, namely the fact that it was the holder of a graphic trade mark registered before the entry into force of that regulation and the traditional use by it

of that trade mark both before and after the registration of that mark, such regulation preventing him from using that trade mark.

28 Accordingly, the General Court made no error of law in the interpretation, and application to the present case, of the condition that applicants must be individually concerned, within the meaning of the fourth paragraph of Article 263 TFEU, when finding, first, in paragraph 32 of the order under appeal, that 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), in so far as, given the findings set out in paragraphs 30 and 31 of that order, they were not in a situation which was different from that of the indeterminate and indeterminable body of EU citizens and were, therefore, not differentiated by the fact of holding a specific acquired right.

29 Second, the General Court also made no error of law in finding, in paragraph 33 of the order under appeal, that the claim that an act infringes fundamental rights is not sufficient in itself for it to be established 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. Indeed, it is apparent from the settled case-law of the Court that the extent of the alleged adverse impact on the observance of the appellants' fundamental rights cannot give rise to non-application of the rules for admissibility expressly laid down by the fourth paragraph of Article 263 TFEU (see, to that effect, order of 28 October 2020, *Sarantos and Others* v *Parliament and Council*, C−84/20 P, not published, EU:C:2020:871, paragraphs 34 and the case-law cited).

30 The second ground of appeal must, therefore, be rejected as manifestly unfounded.

The third ground of appeal

31 By the third ground of appeal, the appellants criticise the alleged refusal by the General Court, objected to in relation to paragraph 45 of the order under appeal, to give a more open interpretation to the condition laid down in the fourth paragraph of Article 263 TFEU, according to which applicants must be individually concerned, in particular in the field of the environment and in the light of the Aarhus Convention. The appellants take the view that for the General Court to fetter its judicial role in interpreting that provision constitutes an error of law.

32 In that regard, it is sufficient to recall that the Court has repeatedly held that, while it is true that that condition must be interpreted in the light of the principle of effective judicial protection by taking account of the various circumstances that may distinguish an applicant individually, such an interpretation cannot have the effect of setting aside that condition, expressly laid down in the FEU Treaty, without going beyond the jurisdiction conferred by the Treaty on the EU Courts (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; see also, to that effect, judgment of 13 March 2018, *Industrias Químicas del Vallés* v *Commission*, C−244/16 P, EU:C:2018:177, paragraph 101 and the case-law cited).

33 While it is, admittedly, possible to envisage a system of judicial review of the legality of EU measures of general application different from that established by the founding Treaty and never amended as to its principles, it is for the Member States, if necessary, in accordance with Article 48 EU, to reform the system currently in force (judgment of 25 July 2002, *Unión de Pequeños Agricultores* v *Council*, C−50/00 P, EU:C:2002:462, paragraph 45).

34 Therefore, after having found, in paragraph 44 of the order under appeal, that the interpretation of the condition that applicants must be individually concerned proposed by the appellants – namely that, at least in environmental matters, direct actions for annulment should be open not to persons on account of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and their being individually distinguished, just as in the case of a person to whom an act is addressed, but rather, more broadly, to persons whose rights are affected and to environmental interest groups which have a demonstrable interest in the question put before the EU Courts – would have the

effect of setting aside that condition, the General Court made no errors of law in concluding, in paragraphs 44 and 45 of the order under appeal, on the basis of the case-law recalled in paragraphs 32 and 33 of the present order, that such an interpretation would go beyond the jurisdiction conferred on the EU Courts, and that only the Member States can reform the system of legal remedies established by the Treaty.

35 That finding is not called into question by the appellants' arguments based on the Aarhus Convention.

36 In that regard, it is clear that acts adopted by the EU institutions acting in a legislative capacity are excluded from the scope of Article 9(3) of the Aarhus Convention. Indeed, that provision concerns the acts of public authorities, the definition of which in Article 2(2) of that convention does not include bodies or institutions acting in a judicial or legislative capacity.

37 Since the directive at issue is a legislative act which is excluded from the scope of Article 9(3) of the Aarhus Conversion, the General Court was therefore fully entitled to find, in paragraph 40 of the order under appeal, that the appellants' arguments in support of the action based on the Aarhus Convention were irrelevant.

38 In the light of the foregoing considerations, the third ground of appeal must be rejected as manifestly unfounded.

The first ground of appeal

39 The first ground of appeal alleges a clear distortion of the language of Article 29(3) of the directive at issue. In the appellants' view, the General Court failed, in paragraph 8 of the order under appeal, to take account of an element of that provision resulting in effects regarding the protection of forests being ascribed to that directive, despite the directive not having such effects, and resulting in it being impossible to assess adequately the extent of the adverse effects on their interests caused by that directive. The General Court's finding that the directive was not of individual concern to them was therefore, they allege, vitiated by an error of law on account of that clear distortion.

40 However, it must be stated that, even if the General Court, by reason of omitting from paragraph 8 of the order under appeal certain language ('produced from agricultural biomass') found in Article 29(3) of the directive at issue, was able, as the appellants allege, wrongly to assume that that provision applied to forest biomass, the fact remains that that manifestly has no impact on the finding in paragraphs 31 and 34 of the order under appeal – and which the appellants are unable to call into question for the reasons set out in paragraphs 26 to 29 of the present order – that, on the assumption that the directive at issue had negative effects on forests and adversely affected the appellants' fundamental rights, the appellants have not demonstrated that they were affected by that directive on account of certain attributes peculiar to them or by factual circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually, just as in the case of the person to whom an act is addressed.

41 It follows that the first ground of appeal must be rejected as manifestly unfounded.

42 Since all of the grounds of appeal have been rejected, in accordance with Article 181 of the Rules of Procedure, the appeal must be dismissed, in its entirety, as manifestly unfounded.

Costs

43 Under Article 137 of the Rules of Procedure of the Court of Justice, applicable to the proceedings on appeal pursuant to Article 184(1) of those rules, a decision as to costs is to be given in the order which closes the proceedings.

44 Since the present order was adopted before the appeal was served on the other parties to the proceedings and, therefore, before they could have incurred costs, it is appropriate to decide that the appellants are to

bear their own costs.

On those grounds, the Court (Eighth Chamber) hereby orders:

1. **The appeal is dismissed as manifestly unfounded.**

2. **Peter Sabo, Lesoochranárske zoskupenie VLK, Hasso Krull, 2 Celsius, Bernard Auric, Tony Lowes and Kent Roberson, Hiite Maja SA, the Association de lutte contre toutes formes de nuisance et de pollutions sur les communes de Meyreuil et Gardanne (ALNP Meyreuil – Gardanne) as well as Friends of the Irish Environment CLG shall bear their own costs.**

Luxembourg, 14 January 2021.

A. Calot Escobar

N. Wahl

Registrar

President of the Eighth Chamber

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* Language of the case: English.