MRF 2021.86

EU-Domstolens dom af 25. marts 2021, 6. afd., sag C-565/19 P, Carvalho m.fl. mod Parlamentet og Rådet

Private borgere og en forening havde ikke søgsmålskompetence til anfægtelse af EU's "klimalovgivningspakke" fra 2018, der havde til formål at nedbringe udledningen af drivhusgasser med 40 % i 2030.

Både EU og en række medlemsstater er parter til Kyoto-protokollen til FN's rammekonvention om klimaændringer. I regi heraf blev Parisaftalen indgået i 2015, der bl.a. pålægger parterne at vedtage de såkaldte nationalt bestemte bidrag (NDC) med henblik på at reducere udledningen af drivhusgasser. I 2018 vedtog EU en lovgivningspakke bestående af tre retsakter, der havde til formål at overholde de fastsatte NDC'er og nedbringe udledningen af drivhusgasser i overensstemmelse med EU's daværende klimamålsætning om 40 % reduktion i 2030 i forhold til 1990-niveau. Det drejede sig om direktiv 2018/410 om ændring af kvotedirektivet (2003/87), forordning 2018/841 om klima- og energirammen for 2030 samt forordning 2018/842 om bindende årlige reduktioner af drivhusgasemissioner for medlemsstaterne fra 2021 til 2030. I maj 2018 lagde 36 personer bosiddende både inden og uden for EU samt en svensk forening for unge samere sag an ved Retten med påstand om annullation af de tre retsakter efter TEUF art. 263. Sagsøgernes hovedanbringende var, at EU's ambitionsniveau i forhold til reduktionen af udledning af drivhusgasser ikke var tilstrækkelig høj, og at EU har kapacitet til at reducere udledningen med op til 50-60 %. Med hensyn til deres søgsmålskompetence gjorde sagsøgerne navnlig gældende, at retsakterne krænkede deres menneskerettigheder, og mens denne ret – ligesom andre menneskerettigheder såsom retten til livet – i princippet tilkommer enhver, er påvirkningen af klimaforandringerne og dermed overtrædelsen af menneskerettighederne unik og forskellig for hver enkel borger. Sagsøgerne nedlagde tillige påstand om erstatning i medfør af TEUF art. 340 "i form af et foreløbigt påbud" til Europa-Parlamentet og Ministerrådet om iværksættelse af foranstaltninger til reduktion af udledningen af drivhusgasser med 50-60 % i 2030. Retten udskilte formalitetsspørgsmålet til særskilt afgørelse og traf i maj 2019 kendelse om at afvise søgsmålet (sag T-330/18), idet sagsøgerne ikke fandtes at være individuelt berørt af de tre retsakter som krævet efter TEUF art. 263(4). Retten fandt det ikke godtgjort, at de anfægtede retsakter krænkede sagsøgernes menneskerettigheder og udskilte dem individuelt fra alle andre fysiske og juridiske personer. Selvom klimaforandringerne vil kunne påvirke mennesker på forskellig vis afhængig af vedkommendes personlige forhold, indebærer dette ikke, at retsakterne udsondrer sagsøgerne individuelt. I øvrigt henviste Retten til, at de tre retsakter forudsætter yderligere implementering på både EU- og medlemsstatsniveau, og at sagsøgerne derfor efter omstændighederne vil have mulighed for at anfægte gyldigheden af de tre retsakter enten i medfør af TEUF art. 277 (den såkaldte uanvendelighedsindsigelse) eller ved anlæg af sag ved de nationale domstole og dér anmode om præjudiciel forelæggelse for EU-Domstolen. Retten fandt ligeledes, at den svenske forening manglede søgsmålskompetence, idet foreningen ikke var individuelt berørt, ikke repræsenterede medlemmer, der var individuelt berørt, og ikke ved lov var tillagt søgsmålskompetence. Hvad angik sagsøgernes påstand om erstatning i form af et foreløbigt påbud, bemærkede Retten, at muligheden for at anlægge erstatningssøgsmål efter TEUF art. 340 principielt ikke er afhængig af, om sagsøgerne er søgsmålskompetente efter TEUF art. 263, men dog begrænses af princippet om retsmisbrug. Dette indebærer, at der ikke kan anlægges et erstatningssøgsmål, såfremt den erstatningssøgende reelt forsøger at opnå det samme resultat som en annullation af en retsakt, når sagsøgeren mangler søgsmålskompetence i annullationssøgsmålet. Retten fandt, at sagsøgerne med erstatningspåstanden ikke søgte at opnå erstatning for påståede individuelle tab, men derimod et foreløbigt påbud til EU, hvis formål reelt var at opnå en ændring af de anfægtede retsakter. På denne baggrund blev også erstatningspåstanden afvist. Sagsøgerne appellerede kendelsen til Domstolen, der ikke fandt grundlag for at tilsidesætte Rettens vurdering af, at sagsøgerne ikke var individuelt berørt og derfor ikke havde søgsmålskompetence, idet Domstolen bl.a. bemærkede, at det ikke for Retten var gjort gældende, at den svenske forening var

søgsmålskompetent som "a collective defending a collective good", hvorfor dette ikke kunne prøves af Domstolen. Domstolen var også enig med Retten i, at sagsøgerne med påstanden om erstatning i form af et foreløbigt påbud i realiteten søgte at opnå det samme resultat som med annullationspåstanden, hvorfor det samlede søgsmål med rette var blevet afvist.

Kommentar: *Sagen, der er blevet omtalt som "Folkets klimaretssag", blev den første af slagsen for EU-Domstolen. Henset til EU-Domstolens restriktive retspraksis vedr. søgsmålsbetingelserne i TEUF art. 263(4), jf. f.eks. sag C-352/19 P (**MRF 2020.21**), er EU-Domstolens afvisning af annullationspåstanden ikke overraskende, og Domstolen viste ikke tegn på at liberalisere søgsmålsadgangen, blot fordi sagen drejer sig om klimaforandringer. Et interessant aspekt i sagen er desuden, at dommen kan læses som en forudsætningsvis anerkendelse af, at TEUF art. 340 om EU's erstatningsansvar kan danne grundlag for et krav om foreløbigt påbud over for EU's institutioner med det formål at undgå, at sagsøgerne vil lide et forestående kausalt tab som følge af EU's påståede retsstridige adfærd. I dette lys er det imidlertid næppe overraskende, at også denne påstand blev afvist som følge af manglende søgsmålskompetence. Resultatet ville antageligt være blevet det samme efter dansk ret, hvor det i teorien antages, at søgsmålsretten til begæring af foreløbige retsmidler efter retsplejelovens §§ 413-415 ikke er videre end adgangen til at anlægge almindelige civile søgsmål, jf. f.eks. Gomard, Fogedret, 4. udg., 1997, s. 389 ff. og Salung Petersen m.fl., Judicielle forbud/påbud og immaterialretsproces, 2015, s. 66 og 84 f. Endelig er det værd at bemærke, at umiddelbart efter afsigelsen af EU-Domstolens dom i sag C-565/19 P nåede EU's institutioner i april 2021 til politisk enighed om at revidere EU's klimamål for 2030, hvorved EU forpligter sig til en reduktion i udledningen af drivhusgasser med mindst 55 %.*

Bemærk: *Domstolens dom af 25. marts 2021 (sag C-565/19 P) er optaget i forlængelse af Rettens kendelse.*

ORDER OF THE GENERAL COURT (Second Chamber)

8 May 2019 (*)

(Action for annulment and damages — Environment — Greenhouse gas emissions — 2030 climate and energy package — Directive (EU) 2018/410 — Regulation (EU) 2018/842 — Regulation (EU) 2018/841 — Lack of individual concern — Inadmissibility)

In Case T-330/18,

Armando Carvalho, residing in Santa Comba Dão (Portugal), and the other applicants whose names are set out in the annex, (1) represented by G. Winter, Professor, R. Verheyen, lawyer, and H. Leith, Barrister,

applicants,

v

European Parliament, represented by L. Darie and A. Tamás, acting as Agents,

and

Council of the European Union, represented by M. Moore and M. Simm, acting as Agents,

defendants,

APPLICATION under Article 263 TFEU seeking, first, annulment in part of Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814 (OJ 2018 L 76, p. 3), in particular Article 1 thereof, Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ 2018 L 156, p. 26), in particular Article 4(2) thereof and Annex I thereto, and 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), in particular Article 4 thereof, and, second, compensation under Articles 268 and 340 TFEU in the form of an injunction for the damage that the applicants claim to have suffered,

THE GENERAL COURT (Second Chamber),

composed of M. Prek, President, F. Schalin (Rapporteur) and M.J. Costeira, Judges,

Registrar: E. Coulon,

makes the following

Order

Background to the dispute

1 The applicants, Mr Armando Carvalho and the other persons whose names are set out in the annex, all of whom operate in the agricultural or tourism sectors, are 36 individuals in families from various countries in the European Union (Germany, France, Italy, Portugal and Romania) and the rest of the

world (Kenya, Fiji), and an association governed by Swedish law, which represents young indigenous Sami.

2 The European Union ratified the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) by Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder (OJ 2002 L 130, p. 1). As a result, the European Union adopted various measures concerning a scheme for greenhouse gas emission allowance trading, measures relating to effort sharing between the Member States, carbon capture and storage, the quality of petrol and diesel fuels, and reducing CO^2 emissions for motor vehicles, and measures relating to accounting rules on greenhouse gas emissions and removals from activities relating to land use, land use change and forestry.

3 In view of the expiry of the second commitment period of the Kyoto Protocol in 2020, the Paris Agreement was adopted by the Conference of the Parties to the UNFCCC in December 2015, aiming to limit the global temperature increase to between 1.5 °C and 2 °C above pre-industrial levels. In 2016 the European Union ratified that agreement (Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ 2016 L 282, p. 1)).

4 The Paris Agreement focuses on the concept of 'nationally determined contributions' (NDCs). Article 4(2) thereof provides as follows:

'Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.'

5 The European Union and its Member States have committed jointly to complying, by means of their NDCs, with a binding target of reducing greenhouse gas emissions within the European Union by at least 40% by 2030 in relation to 1990 levels.

6 The following acts (collectively, 'the contested acts' or 'the legislative package') are the acts whereby the European Union seeks to comply with those NDCs:

– Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814 (OJ 2018 L 76, p. 3);

– 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);

– Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ 2018 L 156, p. 26).

7 Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32) established a scheme for greenhouse gas emission allowance trading within the European Union, based on the principle of capping and trading emission allowances.

8 Directive 2003/87 as amended by Directive 2018/410 enhances the scheme for greenhouse gas emission allowance trading within the European Union for the period from 2021 to 2030 by increasing the rate of annual allowance reductions from 1.74% to 2.2% from 2021 onwards. Article 9 of Directive 2003/87, entitled 'Union-wide quantity of allowances', provides as follows in paragraph 1 thereof:

‘The Union-wide quantity of allowances issued each year starting in 2013 shall decrease in a linear manner beginning from the mid-point of the period from 2008 to 2012. The quantity shall decrease by a linear factor of 1.74% compared to the average annual total quantity of allowances issued by Member States in accordance with the Commission Decisions on their national allocation plans for the period from 2008 to 2012 …

Starting in 2021, the linear factor shall be 2.2%.’

9 Regulation 2018/841 sets binding commitments for all Member States so as to ensure that accounted emissions from land use are offset in their entirety by an equivalent removal of CO^2 from the atmosphere by means of activities carried out in the land use, land use change and forestry sector.

10 Article 4 of Regulation 2018/841 states that ‘for the periods from 2021 to 2025 and from 2026 to 2030, taking into account the flexibilities provided for in Articles 12 and 13, each Member State shall ensure that emissions do not exceed removals, calculated as the sum of total emissions and total removals on its territory in all of the land accounting categories referred to in Article 2 combined, as accounted in accordance with this Regulation’.

11 According to Article 1 thereof, Regulation 2018/842 ‘lays down obligations on Member States with respect to their minimum contributions for the period from 2021 to 2030 to fulfilling the Union’s target of reducing its greenhouse gas emissions by 30% below 2005 levels in 2030 in the sectors covered by Article 2 of this Regulation and contributes to achieving the objectives of the Paris Agreement’. That regulation applies to emissions from economic sectors not falling within the scope of Directive 2003/87 or Regulation 2018/841.

12 Article 4 of Regulation 2018/842, entitled ‘Annual emission levels for the period from 2021 to 2030’, provides as follows:

‘1. Each Member State shall, in 2030, limit its greenhouse gas emissions at least by the percentage set for that Member State in Annex I in relation to its greenhouse gas emissions in 2005, determined pursuant to paragraph 3 of this Article.

2. Subject to the flexibilities provided for in Articles 5, 6 and 7 of this Regulation, to the adjustment pursuant to Article 10(2) of this Regulation and taking into account any deduction resulting from the application of Article 7 of Decision No 406/2009/EC, each Member State shall ensure that its greenhouse gas emissions in each year between 2021 and 2029 do not exceed the limit defined by a linear trajectory, starting on the average of its greenhouse gas emissions during 2016, 2017 and 2018 determined pursuant to paragraph 3 of this Article and ending in 2030 on the limit set for that Member State in Annex I to this Regulation. The linear trajectory of a Member State shall start either at five-twelfths of the distance from 2019 to 2020 or in 2020, whichever results in a lower allocation for that Member State.

3. The Commission shall adopt implementing acts setting out the annual emission allocations for the years from 2021 to 2030 in terms of tonnes of CO^2 equivalent as specified in paragraphs 1 and 2 of this Article. For the purposes of those implementing acts, the Commission shall carry out a comprehensive review of the most recent national inventory data for the years 2005 and 2016 to 2018 submitted by Member States pursuant to Article 7 of Regulation (EU) No 525/2013.

Those implementing acts shall indicate the value for the 2005 greenhouse gas emissions of each Member State used to determine the annual emission allocations specified in paragraphs 1 and 2.

4. Those implementing acts shall also specify, based on the percentages notified by Member States under Article 6(3), the total quantities that may be taken into account for a Member State’s compliance under Article 9 between 2021 and 2030. If the sum of all Member States’ total quantities were to exceed the collective total of 100 million, the total quantities for each Member State shall be reduced on a pro rata basis so that the collective total is not exceeded …’

Procedure and forms of order sought

13 On 23 May 2018 the applicants brought the present action.

14 By separate document lodged at the Court Registry on 16 October 2018, the Council of the European Union raised a plea of inadmissibility in relation to the action.

15 By separate document lodged at the Court Registry on 20 October 2018, the European Parliament also raised a plea of inadmissibility.

16 As a result, the processing of the applications for leave to intervene lodged by Climate Action Network Europe on 20 September 2018, WeMove Europe SCE mbH on 20 September 2018 and Arbeitsgemeinschaft Bäuerliche Landwirtschaft on 24 September 2018 in support of the form of order sought by the applicants, and by the European Commission on 4 October 2018 in support of the form of order sought by the Parliament and the Council, was suspended in accordance with Article 144(3) of the Rules of Procedure of the General Court.

17 On 10 December 2018 the applicants submitted their observations regarding the plea of inadmissibility raised by the Parliament and the Council.

18 In the application, the applicants claim that the Court should:

– declare that the legislative package regarding greenhouse gas emissions is unlawful in so far as it permits the emission between 2021 and 2030 of a quantity of greenhouse gases corresponding to 80% of 1990 levels in 2021, decreasing to 60% of 1990 levels in 2030;

– annul the legislative package regarding greenhouse gas emissions in so far as it sets targets to reduce greenhouse gas emissions by 2030 by 40% compared to 1990 levels, in particular Article 1 of Directive 2018/410, Article 4(2) of Regulation 2018/842 and Annex I thereto, and Article 4 of Regulation 2018/841;

– order the Council and the Parliament to adopt measures under the legislative package regarding greenhouse gas emissions requiring a reduction in greenhouse gas emissions by 2030 by at least 50% to 60% compared to their 1990 levels, or by such higher level of reduction as the Court shall deem appropriate;

– in the alternative, in the event that the decision to annul the contested acts is adopted too late to allow the relevant provisions to be amended before 2021, order that the contested provisions of the legislative package regarding greenhouse gas emissions are to remain in force until a date to be determined by the Court, by which time at the latest they should have been amended by higher-ranking rules of law;

– order the Council and the Parliament to pay the costs.

19 In the observations regarding the plea of inadmissibility, the applicants claim that the Court should:

– reserve its decision on the inadmissibility of the action pursuant to Article 130(7) of the Rules of Procedure;

– in the alternative, open the oral part of the procedure in relation to the Council and the Parliament's plea of inadmissibility;

– in any event, regardless of whether the Court opens the oral part of the procedure, reject the plea of inadmissibility.

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

– dismiss the action as inadmissible;

– order the applicants to pay the costs.

Law

21 Under Article 130(1) and (7) of the Rules of Procedure, if the defendant so requests, the Court may give a ruling on inadmissibility or lack of competence without going to the substance of the case. In the present case, as the Parliament and the Council have requested a ruling on inadmissibility, the Court, considering that it has sufficient information from the documents in the case file, hereby decides to give a ruling regarding that request without taking further steps in the proceedings.

Admissibility of the action

22 The applicants seek, first, in the context of the action for annulment under Article 263 TFEU, the annulment in part of Directive 2018/410, in particular Article 1 thereof, Regulation 2018/842, in particular Article 4(2) thereof and Annex I thereto, and Regulation 2018/841, in particular Article 4 thereof, and, second, in the context of non-contractual liability under Articles 268 and 340 TFEU, an injunction obliging the co-legislators to adopt measures 'requiring a reduction in greenhouse gas emissions by 2030 by at least 50% to 60% compared to their 1990 levels, or by such higher level of reduction as the Court shall deem appropriate'.

23 To summarise, regarding the action for annulment, the applicants submit that the Union's level of ambition is not sufficiently high with regard to reducing greenhouse gas emissions and infringes binding higher-ranking rules of law. They argue that the technical and economic capacity of the European Union extends to reducing those emissions by 50% to 60%, which is why the legislative package must be annulled in so far as it will allow for emissions in 2030 at a level that is higher than 40% to 50% of 1990 levels.

24 Regarding the action for damages, the applicants argue that the non-contractual liability of the European Union has been triggered inasmuch as, by failing to comply with higher-ranking rules of law, the European Union has caused them damage for which they request compensation in kind in the form of an injunction. That damage is both current and future and consists in their living conditions being adversely affected, in particular in so far as climate change, to which greenhouse gas emissions directly contribute, curtails their activities and their livelihoods and results in physical damage. As is apparent from the reports of the World Bank and UNICEF (the United Nations Children's Fund), heatwaves are already causing damage to human health, in particular to children, and to persons whose professions are dependent on moderate temperatures, such as in the agriculture and tourism sectors.

Admissibility of the claim for annulment

Arguments of the parties

25 The Council contends that, notwithstanding the immense volume of documentation appended to the application, the applicants have not shown that any of the contested acts has affected their legal situation. Indeed, the applicants seek only to show that their factual situation has been, or is likely to be affected. The Council also contends that all the contested acts in fact require or enable both the Member States and the Commission to take action to comply with the basic obligations laid down therein or to go beyond such obligations, so that there is at least some discretion that, in any event, precludes the applicants from being directly concerned. The Council also points to the fact that all the acts concerned were adopted under Article 192 TFEU and that Article 193 TFEU states that the Member States may take more stringent protective measures than those set out in acts adopted under Article 192 TFEU.

26 Next, the Council contends that the part of the application relating to individual concern is confused because the applicants disregard the conditions of eligibility for bringing proceedings. In the Council's view, accepting the applicants' argument whereby each of them claims that their fundamental rights have been infringed would render the condition of individual concern entirely meaningless.

27 The Parliament is also of the view that the contested acts do not directly affect the applicants' legal situation. In that regard, the Parliament remarks that the contested provisions setting the target levels of greenhouse gas emissions are not, in themselves, capable of affecting the fundamental rights invoked by the applicants. According to the Parliament, in order for those rights to be capable of being affected,

the greenhouse gas emissions must first take place, via authorisations to emit or via the allocation of emission allowances to economic operators. However, the legislative package does not 'authorise' any person to emit greenhouse gases. Indeed, it lays down the minimum requirements with which Member States must comply in order to reduce emissions and, accordingly, combat climate change. The Parliament adds that the legislative package also confers some discretion on the national authorities tasked with its implementation.

28 Regarding individual concern, the Parliament contends that the contested provisions are of a general nature and that they can be applied to any natural or legal person and apply to an indeterminate number of natural and legal persons. It maintains that the applicants have not produced the slightest evidence to show that the legislative package would alter the rights that they had acquired prior to the adoption of that package in accordance with the cases giving rise to the judgments of 18 May 1994, *Codorniu* v *Council* (C-309/89, EU:C:1994:197), and of 13 March 2008, *Commission* v *Infront WM* (C-125/06 P, EU:C:2008:159). In addition, the applicants' argument that 'each applicant is affected by climate change … idiosyncratically and is therefore distinguished from all other persons' is fallacious from a logical perspective. It implies that, besides the applicants, each and every person around the world is individually concerned by the legislative package. However, suggesting that all persons are individually concerned by the contested acts is a blatant contradiction of the case-law criterion resulting from the judgment of 15 July 1963, *Plaumann* v *Commission* (25/62, EU:C:1963:17), which requires the existence of genuine distinguishing features. Moreover, as regards fundamental rights and effective judicial protection, the Parliament recalls that, according to the case-law, a claim that an act of general application infringes those rules or those rights is not in itself sufficient 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. In that context, the Parliament also recalls that the Treaty on the Functioning of the European Union has established, by Articles 263 and 277 thereof, on the one hand, and Article 267 thereof, on the other, a complete system of legal remedies and procedures designed to ensure judicial review of the legality of acts of the Union.

29 Lastly, the Parliament contends that the action is inadmissible because the applicants are seeking the annulment of provisions that cannot be severed from the remainder of the legislative package.

30 The applicants maintain that they are directly concerned by the greenhouse gas emission reduction targets laid down by the legislative package. The legislative package directly affects their legal situation, given that, by requiring an insufficient reduction in greenhouse gas emissions and thereby allocating and authorising an excessive volume of emissions, it infringes their fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union, namely the right to life (Article 2), the right to the integrity of the person (Article 3), the rights of the child (Article 24), the right to engage in work and to pursue a freely chosen or accepted occupation (Article 15), the freedom to conduct a business (Article 16), the right to property (Article 17) and the right to equal treatment (Articles 20 and 21).

31 The applicants argue that they are also individually concerned. In that regard, they emphasise that they are each claiming an infringement of their individual fundamental rights as listed in paragraph 30 above. The effects of climate change, to which the legislative package contributes, and, accordingly, the infringement of those rights will be unique to and different for each individual. According to the applicants, a farmer affected by drought is in a different situation to a farmer whose land is flooded and made saltier by seawater. Even within a group of farmers affected by drought, each farmer will experience the effects differently.

32 In the alternative, the applicants request that the concept of individual concern set out in the judgment of 15 July 1963, *Plaumann* v *Commission* (25/62, EU:C:1963:17), be interpreted more flexibly. In their view, the case-law criterion arising from that judgment is unsuitable and it is inappropriate to apply it in the present case, given that it reflects an outdated line of case-law manifesting itself in paradoxical outcomes. The more widespread the harmful effects of an act, the more restricted the access to the courts. In other words, the more serious the damage and the higher the number of affected persons, the less judicial protection is available. It follows that there is an obvious shortfall in terms of judicial protection. The applicants thus recall and maintain the following:

– their argument is based on the case-law that recognises that infringement of fundamental rights is a ground for individual concern;

– if the Courts of the European Union are indeed to be the sole arbiters of the reconciliation of EU measures with fundamental rights, an individual whose fundamental rights are at stake must necessarily have a right of access to those courts;

– a broadening in the present case of the narrow interpretation that characterises the criterion set out in the judgment of 15 July 1963, *Plaumann* v *Commission* (25/62, EU:C:1963:17), would lead to a situation that would be more in line with the *locus standi* requirements set out in 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 on 25 June 1998;

– a narrow interpretation of the concept of 'direct and individual concern' would, if applied in the present case, infringe the guarantee of judicial protection offered by Article 47 of the Charter of Fundamental Rights, pursuant to which 'everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy';

– the Parliament's argument that they have the possibility to obtain an 'effective remedy' before a national court is not convincing, given that an action before the national courts is hypothetical and infeasible in the circumstances of the present case; in order to obtain a result sufficient to reduce total EU emissions to a level consistent with the law, each applicant would be obliged to bring proceedings before the courts of all the Member States; in addition, the diversity of judicial procedures and legal remedies means it is almost certain that an effective remedy would be impossible in this case; moreover, an action before a national court hearing a challenge to the measures to reduce greenhouse gas emissions adopted by a Member State cannot give rise to a suitable reference for a preliminary ruling contesting the legislative package.

Findings of the Court

33 As indicated in paragraphs 25 to 29 above, the Parliament and the Council are pleading the inadmissibility of the action for annulment on the ground that, in essence, the applicants do not have standing to bring proceedings under the fourth paragraph of Article 263 TFEU. In their view, the applicants are neither directly nor individually concerned by the legislative package.

34 Under the fourth paragraph of Article 263 TFEU, any natural or legal person may institute proceedings against an act addressed to that person or that is of direct and individual concern to them, and against a regulatory act that is of direct concern to them and does not entail implementing measures.

35 In the present case, it must be pointed out that the legislative package does not identify the applicants as addressees thereof. In those circumstances, the first scenario in which a natural or legal person has standing to bring proceedings under the fourth paragraph of Article 263 TFEU must be excluded.

36 It is therefore necessary to examine whether the second or even the third scenario in which, under the fourth paragraph of Article 263 TFEU, a natural or legal person is to be recognised as having standing to bring an action against an act that is not addressed to them may correspond to the present case. According to the second scenario, an action may be brought if the act is of direct and individual concern to the natural or legal person bringing the action. According to the third scenario, such a person may bring proceedings against a regulatory act not entailing implementing measures if that act is of direct concern to them (judgments of 19 December 2013, *Telefónica* v *Commission*, C-274/12 P, EU:C:2013:852, paragraph 19; of 27 February 2014, *Stichting Woonpunt and Others* v *Commission*, C-132/12 P, EU:C:2014:100, paragraph 44; and of 27 February 2014, *Stichting Woonlinie and Others* v *Commission*, C-133/12 P, EU:C:2014:105, paragraph 31).

37 In the first place, regarding the third scenario referred to in paragraph 36 above, according to which natural or legal persons, such as the applicants, may, under the fourth paragraph of Article 263 TFEU, bring an action against a regulatory act not entailing implementing measures if that act is of direct

concern to them, it is necessary to examine whether the acts constituting the legislative package are regulatory acts.

38 In that regard, first, it should be borne in mind that, according to the case-law, the meaning of 'regulatory act' for the purposes of the fourth paragraph of Article 263 TFEU must be understood as covering all acts of general application apart from legislative acts (judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraphs 60 and 61; order of 6 September 2011, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, T-18/10, EU:T:2011:419, paragraph 56; and judgment of 25 October 2011, *Microban International and Microban (Europe)* v *Commission*, T-262/10, EU:T:2011:623, paragraph 21).

39 Second, the test for distinguishing between a legislative act and a regulatory act is based, according to the Treaty on the Functioning of the European Union, on the criterion of the procedure, legislative or not, that led to its adoption (order of 6 September 2011, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, T-18/10, EU:T:2011:419, paragraph 65).

40 In the present case, it should be noted that, as is apparent from the recitals set out in the preamble to the contested acts constituting the legislative package, those acts were adopted on the basis of Article 192(1) TFEU. That article states that the Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the European Economic and Social Committee and the Committee of the Regions, are to decide what action is to be taken by the Union in order to achieve the objectives referred to in Article 191 TFEU. That article concerns the Union's policy on the environment.

41 Therefore, it must be concluded that the three contested acts are legislative acts, not regulatory acts, for the purposes of the case-law cited in paragraph 39 above, which, moreover, is not contested by the applicants.

42 Accordingly, and without there being any need to examine whether the other conditions of the third scenario set out in paragraph 36 above, concerning the lack of implementing measures and direct concern on the part of the applicants, are satisfied, it is not possible to establish the admissibility of the present action on that basis.

43 In the second place, it is necessary to examine the admissibility of the present action having regard to the second scenario referred to in paragraph 36 above, according to which natural or legal persons, such as the applicants, may bring an action for annulment under the fourth paragraph of Article 263 TFEU against an act that is not addressed to them, provided that that act is of direct and individual concern to them.

44 Regarding the plea of inadmissibility raised by the Parliament and the Council on the ground that the applicants are neither directly nor individually concerned by the legislative package, it must first be examined whether the second condition, relating to the individual concern of the applicants, is satisfied. Since the direct concern and individual concern conditions 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), if the applicants are not individually concerned by the legislative package, it will become unnecessary to enquire whether that package is of direct concern to them (see, to that effect, judgment of 15 July 1963, *Plaumann* v *Commission*, 25/62, EU:C:1963:17, p. 223).

45 According to settled case-law, natural or legal persons satisfy the condition of individual concern only if the contested act affects them by reason of certain attributes that 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 just as in the case of the addressee (judgments of 15 July 1963, *Plaumann* v *Commission*, 25/62, EU:C:1963:17, p. 223; of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 72; of 27 February 2014, *Stichting Woonpunt and Others* v *Commission*, C-132/12 P, EU:C:2014:100, paragraph 57; and of 27 February 2014, *Stichting Woonlinie and Others* v *Commission*, C-133/12 P, EU:C:2014:105, paragraph 44).

46 In the present case, it should be observed at the outset that the applicants are claiming an infringement of their fundamental rights. They infer from this that they are individually concerned, given that, although all persons may in principle each enjoy the same right (such as the right to life or the right to work), the effects of climate change and, by extension, the infringement of fundamental rights is unique to and different for each individual.

47 Such an argument cannot succeed.

48 It is apparent from the case-law that, although it is true that, when adopting an act of general application, the institutions of the Union are required to respect higher-ranking rules of law, including fundamental rights, the claim 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 (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).

49 The applicants have not established that the contested provisions of the legislative package infringed their fundamental rights and distinguished them individually from all other natural or legal persons concerned by those provisions just as in the case of the addressee.

50 It is true that every individual is likely to be affected one way or another by climate change, that issue being recognised by the European Union and the Member States who have, as a result, committed to reducing emissions. However, the fact that the effects of climate change may be different for one person than they are for another does not mean that, for that reason, there exists standing to bring an action against a measure of general application. As can be seen from the case-law cited in paragraph 48 above, a different approach would have the result of rendering the requirements of the fourth paragraph of Article 263 TFEU meaningless and of creating *locus standi* for all without the criterion of individual concern within the meaning of the case-law resulting from the judgment of 15 July 1963, *Plaumann* v *Commission* (25/62, EU:C:1963:17), being fulfilled.

51 So far as concerns the association Sáminuorra, it should be pointed out, in the first place, that, like the other applicants and for the same reason, that applicant has not shown that it was individually concerned. In the second place, it is settled case-law that actions for annulment brought by associations have been held to be admissible in three types of situation: firstly, where a legal provision expressly grants a series of procedural powers to trade associations; secondly, where the association represents the interests of its members, who would themselves be entitled to bring proceedings; and, thirdly, where 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 act in respect of which 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 association Sáminuorra has not shown that it satisfied one of those conditions.

52 Next, as regards the applicants' argument that the interpretation of the concept of 'individual concern' referred to in the fourth paragraph of Article 263 TFEU is incompatible with the fundamental right to effective judicial protection inasmuch as it results in a directly applicable regulation being virtually immune to judicial review, it should be pointed out that the protection conferred by Article 47 of the Charter of Fundamental Rights does not require that an individual should have an unconditional entitlement to bring an action for annulment of such a legislative act of the Union 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).

53 Lastly, as is highlighted by the Parliament and the Council, the implementation of the legislative package presupposes that such implementation will be carried out by means of legislative or regulatory provisions by the Commission and the Member States, such as the allocation of allowances and the putting in place of measures to avoid exceeding the limits fixed by each Member State with regard to emissions. In that context, it should be borne in mind 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 the acts of the institutions, entrusting such review to the Courts of the European Union. Under that system, where natural or legal persons cannot, by reason of the conditions for admissibility laid down in Article 263 TFEU, directly challenge acts of the Union such as those at issue in the present case, they are able, depending on the case, to plead the invalidity of such acts either indirectly, under Article 277 TFEU, before the Courts of the European Union, or before the national courts and to ask them, since they have no jurisdiction themselves to declare those acts invalid, to question the Court in that regard through questions referred for a preliminary ruling (see, to that effect, order of 29 April 2015, *von Storch and Others* v *ECB*, C-64/14 P, not published, EU:C:2015:300, paragraph 50 and the case-law cited).

54 Accordingly, it must be found that the applicants are not individually concerned by the contested acts for the purposes of the case-law cited in paragraph 45 above.

55 Furthermore, that finding cannot be called in question by the case-law referred to by the applicants, namely the judgment of 18 May 1994, *Codorniu* v *Council* (C-309/89, EU:C:1994:197). Indeed, the case giving rise to that judgment concerned the loss of a specific acquired right, namely the right to use the word ‘crémant’ in a registered graphic mark. In the present case, the applicants have not claimed the loss of a specific acquired right.

Admissibility of the claim for damages

Arguments of the parties

56 The Council contends, making reference to the case-law relating to the jurisdiction of the Courts of the European Union in connection with actions for annulment, that the request for an injunction must be refused on the ground of the Court’s manifest lack of jurisdiction.

57 The Parliament argues, in the first place, that the claim for compensation is inadmissible, because it is intrinsically linked to an action for annulment that is itself inadmissible.

58 In that regard, the Parliament, having recalled the case-law pursuant to which an action for damages is an autonomous legal remedy, so that a declaration of inadmissibility of the claim for annulment does not automatically render the claim for damages inadmissible and that that principle is limited by the prohibition of abuse of the proceedings, argues that the claim for compensation — in so far as it does not seek compensation for damages but an injunction obliging the European Union to adopt certain legislative acts — is based on the same legislative package as that concerned by the action for annulment and that, in those circumstances, it is pursuing the same objective as the action for annulment. There is therefore a direct link between the claim for damages and the claim for annulment. Given that both claims concern the same alleged unlawfulness and the claim for annulment is inadmissible, the claim for compensation should also be declared inadmissible.

59 In the second place, the Parliament contends that the action for damages is inadmissible because it in fact seeks to obtain an injunction. More specifically, the Parliament contends that the applicants are attempting, by their request for an injunction in connection with an action for compensation, to circumvent the rule whereby the Court does not have jurisdiction to order such an injunction in the context of a review of legality under Article 263 TFEU.

60 In the last place, for the sake of completeness, the Parliament maintains that the action for damages is manifestly lacking any foundation in law, so that it is possible to dismiss it, pursuant to Article 126 of the Rules of Procedure, without having to rule on the plea of inadmissibility. In that regard, the Parliament argues that, without there being a need to rule on the legality of the legislative package and the question whether the alleged unlawfulness of that legislative package constitutes a sufficiently serious breach of a rule of law the purpose of which is to confer rights on individuals, there is no direct and specific link between the conduct of the Union legislature and the damage that the applicants claim to have suffered. In that connection, the Parliament remarks that climate change is global and that the Union, even by reducing all its emissions to zero, is not in a position to overcome climate change by itself. In addition, while it does not deny the reality of climate change, the extent to which the alleged damage is a result of that change (and not of other natural phenomena or other human activities not linked to climate change) has not been definitively established. Lastly, according to the Parliament, it is

also not established that the alleged damage is a result of the alleged lack of efforts to mitigate greenhouse gas emissions, rather than the lack of efforts to adapt (which falls within the Member States' competences).

61 The applicants argue that their claim for compensation under Article 340 TFEU is admissible.

62 In that regard, the applicants recall that an action for damages is an autonomous legal remedy and that the conditions for triggering the non-contractual liability of the Union, namely unlawful conduct, damage and a causal link, are satisfied.

63 The applicants dispute the Parliament's allegation of abuse of the proceedings. According to the case-law, that concept applies only in the exceptional cases where an action for damages is seeking payment of a sum in precisely the same amount as the sum that an applicant could have obtained in an action for annulment that was not brought. In the present case, an action for annulment has been brought and, furthermore, the claim in the two actions is not identical. While the basis of the request for an injunction is the protection of the applicants' individual interests and the request was made *inter partes*, the claim for annulment merely seeks an annulment *erga omnes*. The aim of the injunction is to prevent the Union from committing acts that would cause the applicants damage as private parties and its adoption would lead to the reduction in greenhouse gas emissions necessary to avoid adding to the damage suffered. The fact that that injunction would bring advantages from which all would benefit, given the characteristics of the climate system, is irrelevant for the purposes of examining the admissibility of the request.

64 The applicants also dispute the Parliament's argument that there is no causal link. In their view, issues of causation essentially require consideration of the facts, assessed in the light of legal policy. The applicants therefore dispute the Parliament's criticisms and note that these are relatively complex issues that will be examined in their entirety during the decision on the merits and that cannot be resolved in isolation, regardless of the facts and without all their arguments being heard.

Findings of the Court

65 It should be borne in mind, in the first place, that the remedy of an action for damages was introduced as an autonomous form of action, with a particular purpose to fulfil within the system of actions and subject to conditions on its use dictated by its specific nature (judgment of 2 December 1971, *Zuckerfabrik Schöppenstedt* v *Council*, 5/71, EU:C:1971:116, paragraph 3), so that the inadmissibility of the claim for annulment does not automatically entail the inadmissibility of the claim for damages (see, to that effect, judgment of 26 February 1986, *Krohn Import-Export* v *Commission*, 175/84, EU:C:1986:85, paragraph 32).

66 That principle is limited by the prohibition on abuse of the proceedings. An applicant may not, by means of an action for damages, attempt to obtain a result similar to the result of annulling the act, where an action for annulment concerning that act would be inadmissible (see, to that effect, judgment of 15 December 1966, *Schreckenberg* v *Commission*, 59/65, EU:C:1966:60, p. 797).

67 In that regard, it should be pointed out that the claim seeking annulment of the legislative package and the injunction requested in connection with the action for damages are almost identical and concern the same alleged unlawfulness. In the action for annulment, the applicants have argued that the target set by the three contested acts, namely a 40% reduction in emissions, is manifestly inadequate, which is why that target should be annulled and reviewed. In the action for damages, they seek, instead of pecuniary damages for their alleged individual losses, compensation in the form of an injunction ordering the Union to adopt measures to put an end to its unlawful and harmful conduct. The applicants therefore request that the Parliament and the Council be ordered to adopt measures under the legislative package requiring a reduction in greenhouse gas emissions by 2030 by at least 50% to 60% compared to 1990 levels.

68 It is clear from the action as a whole that the action for damages is not seeking compensation for damage attributable to an unlawful act or omission but amendment of the legislative package.

69 Both by their claim for annulment and by their request for an injunction, the applicants are seeking to obtain the same result, namely the replacement of the contested provisions of the legislative package at issue with new measures that will have to achieve a greater reduction in greenhouse gas emissions than is laid down currently.

70 Given that the applicants do not have *locus standi* and that, accordingly, they may not request annulment in part of the legislative package, it follows that their action for compensation, which in reality seeks to achieve the same result, must also be declared inadmissible.

71 In the light of the foregoing, the plea of inadmissibility raised by the Parliament and the Council must be upheld and the action must accordingly be dismissed as inadmissible in its entirety.

72 Pursuant to Article 144(3) of the Rules of Procedure, where the defendant lodges a plea of inadmissibility or of lack of competence, as provided in Article 130(1) of those rules, a decision on applications for leave to intervene is not to be given until after the plea has been rejected or the decision on the plea reserved. Furthermore, pursuant to Article 142(2) of the Rules of Procedure, an intervention is ancillary to the main proceedings and becomes devoid of purpose, inter alia, when the application is declared inadmissible.

73 In the present case, since the action is being dismissed in its entirety, there is no longer any need to adjudicate on the applications for leave to intervene submitted by Climate Action Network, WeMove Europe, Arbeitsgemeinschaft Bäuerliche Landwirtschaft and the Commission.

Costs

74 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.

75 As the applicants have been unsuccessful, they must be ordered to bear their own costs and to pay those incurred by the Parliament and the Council, in accordance with the form of order sought by those parties.

76 Furthermore, pursuant to Article 144(10) of the Rules of Procedure, Climate Action Network Europe, WeMove Europe, Arbeitsgemeinschaft Bäuerliche Landwirtschaft and the Commission are to bear their own costs in relation to their applications for leave to intervene.

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby orders:

1. The action is dismissed as inadmissible.

2. There is no longer any need to adjudicate on the applications for leave to intervene submitted by Climate Action Network Europe, WeMove Europe SCE mbH, Arbeitsgemeinschaft Bäuerliche Landwirtschaft and the European Commission.

3. Mr Armando Carvalho and the other applicants whose names are set out in the annex are to bear their own costs and to pay those incurred by the European Parliament and the Council of the European Union.

4. Climate Action Network Europe, WeMove Europe, Arbeitsgemeinschaft Bäuerliche Landwirtschaft and the Commission are to bear their own costs in relation to their applications for leave to intervene.

Luxembourg, 8 May 2019.

E. Coulon M. Prek

Registrar President

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* Language of the case: English.

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

JUDGMENT OF THE COURT (Sixth Chamber)

25 March 2021 (*)

(Appeal – Action for annulment and for damages – Environment – 2030 climate and energy package – Fourth paragraph of Article 263 TFEU – Lack of individual concern)

In Case C-565/19 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 23 July 2019,

Armando Carvalho, residing in Santa Comba Dão (Portugal), **and Others,**

represented by G. Winter, Professor, H. Leith, Barrister, and by R. Verheyen, Rechtsanwältin,

appellants,

the other parties to the proceedings being:

European Parliament, represented by M. Peternel, C. Ionescu Dima and A. Tamás, acting as Agents,

Council of the European Union, represented by M. Moore and K. Michoel, acting as Agents,

defendants at first instance,

supported by:

European Commission, represented by A.C. Becker and J.-F. Brakeland, acting as Agents,

intervener in the appeal,

THE COURT (Sixth Chamber),

composed of L. Bay Larsen, President of the Chamber, C. Toader and N. Jääskinen (Rapporteur), Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By their appeal, Mr Armando Carvalho and 36 other appellants, whose names are set out in the annex to the present judgment, seek the setting aside of the order of the General Court of the European Union of 8 May 2019, *Carvalho and Others* v *Parliament and Council* (T-330/18, not published, EU:T:2019:324; 'the order under appeal'), by which the General Court dismissed as inadmissible their action seeking, first, the partial annulment of (i) Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective

emission reductions and low-carbon investments, and Decision (EU) 2015/1814 (OJ 2018 L 76, p. 3), in particular Article 1 thereof, (ii) Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ 2018 L 156, p. 26), in particular Article 4(2) thereof and Annex I thereto, and (iii) 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), in particular Article 4 thereof ('the acts at issue' or 'the legislative package'), and, second, compensation in the form of an injunction for the damage which the appellants claim to have suffered.

2 The appellants operate in either the agricultural sector, including reindeer husbandry, or the tourism sector. They are 36 individuals belonging to families from various Member States of the European Union, namely Germany, France, Italy, Portugal and Romania, as well as from the rest of the world, namely Kenya and Fiji, as well as an association governed by Swedish law, which represents young indigenous Samis.

The Kyoto Protocol and the Paris Agreement

3 The European Union ratified the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) by Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder (OJ 2002 L 130, p. 1).

4 In view of the expiry of the second commitment period of the Kyoto Protocol in 2020, the Paris Agreement was adopted by the Conference of the Parties to the UNFCCC in December 2015, aiming to limit the global temperature increase to between 1.5 °C and 2 °C above pre-industrial levels. In 2016 the European Union ratified that agreement by Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ 2016 L 282, p. 1).

5 The Paris Agreement focuses on the concept of 'nationally determined contributions'. Article 4(2) thereof provides:

'Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.'

6 The European Union and its Member States have committed jointly to complying, by means of their nationally determined contributions, with a binding target of reducing greenhouse gas emissions within the European Union by at least 40% by 2030 in relation to 1990 levels.

The acts at issue

7 The acts at issue were adopted by the European Union in order to comply with the Paris Agreement as regards contributions determined at national level.

8 Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32), as amended by Directive 2018/410 ('Directive 2003/87'), the first act at issue, enhances the scheme for greenhouse gas emission allowance trading within the European Union for the period from 2021 to 2030 by increasing the rate of annual allowance reductions from 1.74% to 2.2% from 2021 onwards.

9 The first paragraph of Article 9 of Directive 2003/87, entitled ‘Union-wide quantity of allowances’, provides:

‘The Union-wide quantity of allowances issued each year starting in 2013 shall decrease in a linear manner beginning from the mid-point of the period from 2008 to 2012. The quantity shall decrease by a linear factor of 1.74% compared to the average annual total quantity of allowances issued by Member States in accordance with the Commission Decisions on their national allocation plans for the period from 2008 to 2012 …

Starting in 2021, the linear factor shall be 2.2%.’

10 Regulation 2018/841, the second act at issue, sets binding commitments for all Member States so as to ensure that accounted emissions from land use are offset in their entirety by an equivalent removal of CO2 from the atmosphere by means of activities carried out in the land use, land use change and forestry sector.

11 Article 4 of that regulation states:

‘For the periods from 2021 to 2025 and from 2026 to 2030, taking into account the flexibilities provided for in Articles 12 and 13, each Member State shall ensure that emissions do not exceed removals, calculated as the sum of total emissions and total removals on its territory in all of the land accounting categories referred to in Article 2 combined, as accounted in accordance with this Regulation.’

12 Regulation 2018/842, the third act at issue, lays down obligations for the Member States, in accordance with Article 1 thereof, with respect to their minimum contributions, for the period from 2021 to 2030, to fulfilling the Union’s target of reducing its greenhouse gas emissions by 30% below 2005 levels in the sectors covered by Article 2 of that regulation, and contributes to achieving the objectives of the Paris Agreement. That regulation applies to emissions from economic sectors not falling within the scope of Directive 2003/87 or Regulation 2018/841.

13 Article 4 of Regulation 2018/842, entitled ‘Annual emission levels for the period from 2021 to 2030’, is worded as follows:

‘1. Each Member State shall, in 2030, limit its greenhouse gas emissions at least by the percentage set for that Member State in Annex I in relation to its greenhouse gas emissions in 2005, determined pursuant to paragraph 3 of this Article.

2. Subject to the flexibilities provided for in Articles 5, 6 and 7 of this Regulation, to the adjustment pursuant to Article 10(2) of this Regulation and taking into account any deduction resulting from the application of Article 7 of Decision No 406/2009/EC [of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community’s greenhouse gas emission reduction commitments up to 2020 (OJ 2009 L 140, p. 136)], each Member State shall ensure that its greenhouse gas emissions in each year between 2021 and 2029 do not exceed the limit defined by a linear trajectory, starting on the average of its greenhouse gas emissions during 2016, 2017 and 2018 determined pursuant to paragraph 3 of this Article and ending in 2030 on the limit set for that Member State in Annex I to this Regulation. The linear trajectory of a Member State shall start either at five-twelfths of the distance from 2019 to 2020 or in 2020, whichever results in a lower allocation for that Member State.

3. The Commission shall adopt implementing acts setting out the annual emission allocations for the years from 2021 to 2030 in terms of tonnes of CO2 equivalent as specified in paragraphs 1 and 2 of this Article. For the purposes of those implementing acts, the Commission shall carry out a comprehensive review of the most recent national inventory data for the years 2005 and 2016 to 2018 submitted by Member States pursuant to Article 7 of Regulation (EU) No 525/2013 [of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC (OJ 2013 L 165, p. 13)].

Those implementing acts shall indicate the value for the 2005 greenhouse gas emissions of each Member State used to determine the annual emission allocations specified in paragraphs 1 and 2.

4. Those implementing acts shall also specify, based on the percentages notified by Member States under Article 6(3), the total quantities that may be taken into account for a Member State's compliance under Article 9 between 2021 and 2030. If the sum of all Member States' total quantities were to exceed the collective total of 100 million, the total quantities for each Member State shall be reduced on a pro rata basis so that the collective total is not exceeded.

…'

Procedure before the General Court and the order under appeal

14 By application lodged at the Registry of the General Court on 23 May 2018, the appellants brought an action seeking, first, annulment of the acts at issue and, second, compensation in the form of an injunction for the damage which the appellants claimed to have suffered.

15 In their application, the appellants claimed that the General Court should:

– declare that the legislative package regarding greenhouse gas emissions is unlawful in so far as it permits the emission between 2021 and 2030 of a quantity of greenhouse gases corresponding to 80% of 1990 levels in 2021, decreasing to 60% of 1990 levels in 2030;

– annul the legislative package regarding greenhouse gas emissions in so far as it sets targets to reduce greenhouse gas emissions by 2030 by 40% compared to 1990 levels, in particular Article 1 of Directive 2018/410, Article 4(2) of Regulation 2018/842 and Annex I thereto, and Article 4 of Regulation 2018/841;

– order the European Parliament and the Council of the European Union to adopt measures under the legislative package regarding greenhouse gas emissions requiring a reduction in greenhouse gas emissions by 2030 by at least 50% to 60% compared to their 1990 levels, or by such higher level of reduction as the General Court shall deem appropriate;

– in the alternative, in the event that the decision to annul the contested acts is adopted too late to allow the relevant provisions to be amended before 2021, order that the contested provisions of the legislative package regarding greenhouse gas emissions are to remain in force until a date to be determined by the General Court, by which time at the latest they should have been amended by higher-ranking rules of law; and

– order the Parliament and the Council to pay the costs.

16 By separate document lodged at the Registry of the General Court on 16 October 2018, the Council raised a plea of inadmissibility in relation to the action.

17 By separate document lodged at the Registry of the General Court on 20 October 2018, the Parliament also raised a plea of inadmissibility.

18 As a result, the processing of the applications for leave to intervene lodged by Climate Action Network Europe on 20 September 2018, WeMove Europe SCE mbH on 20 September 2018 and Arbeitsgemeinschaft Bäuerliche Landwirtschaft on 24 September 2018 in support of the form of order sought by the appellants, and by the Commission on 4 October 2018 in support of the form of order sought by the Parliament and the Council, was suspended in accordance with Article 144(3) of the Rules of Procedure of the General Court.

19 On 10 December 2018 the appellants submitted their observations regarding the plea of inadmissibility raised by the Parliament and the Council.

20 By the order under appeal, the General Court held, in accordance with Article 130 of its Rules of Procedure, that both the claim for annulment and the claim for damages submitted by the appellants were inadmissible.

21 Regarding, on the one hand, the claim for annulment, the General Court held that the appellants did not satisfy any of the *locus standi* criteria laid down in the fourth paragraph of Article 263 TFEU.

22 First, concerning the first scenario in which a natural or legal person may have *locus standi* under that provision, the General Court observed, in paragraph 35 of the order under appeal, that the appellants were not the addressees of the acts at issue. Next, regarding the third scenario, it found, in paragraphs 37 to 41 of the order under appeal, that the acts at issue had been adopted on the basis of Article 192(1) TFEU in accordance with the ordinary legislative procedure, with the result that the acts at issue could not be regarded as regulatory acts for the purposes of the fourth paragraph of Article 263 TFEU. Lastly, concerning the second scenario, the General Court held, in paragraphs 46 to 54 of the order under appeal, that the appellants were not individually concerned for the purposes of the fourth paragraph of Article 263 TFEU. In that regard, the General Court considered that the fact that the effects of climate change may be different for one person than they are for another does not mean that, for that reason, there exists standing to bring an action against a measure of general application. In its view, a different approach has the effect of rendering the requirements of the fourth paragraph of Article 263 TFEU meaningless and of creating *locus standi* for all.

23 Regarding, on the other hand, the claim for damages, the General Court considered, in essence, in paragraphs 67 to 70 of the order under appeal, that that claim sought, in reality, to obtain a result similar to the result of annulling the acts at issue and that, consequently, it had to be declared inadmissible, like the appellants' claim for annulment.

Forms of order sought before the Court of Justice

24 By their appeal, the appellants claim that the Court should:

– set aside the order under appeal;

– declare the actions at first instance admissible;

– refer the case back to the General Court so that it may give a ruling on the merits of the claim for annulment;

– refer the case back to the General Court so that it may give a ruling on the merits of the claim invoking the non-contractual liability of the Union; and

– order the Parliament and the Council to pay the costs of the present appeal and the costs of the proceedings before the General Court.

25 The Parliament and the Council, supported by the Commission, contend that the Court should:

– dismiss the appeal; and

– order the appellants to pay the costs.

The appeal

26 In support of their appeal, the appellants rely on four grounds of appeal, alleging that the General Court erred (i) in finding that the appellants were not individually concerned; (ii) on account of the failure to adapt the settled case-law on *locus standi* in order to guarantee the legal protection of fundamental rights; (iii) in finding that the association Sáminuorra did not have *locus standi*; and (iv) in rejecting their claim for damages.

The first ground of appeal, alleging that the General Court erred in law in finding that the appellants were not individually concerned

Arguments of the parties

27 By their first ground of appeal, the appellants submit that the General Court erred in law by failing to take account of the fact that the appellants were concerned, from a factual and legal point of view, in distinct ways.

28 That ground is divided into two parts.

29 By the first part, the appellants claim that the acts at issue affect each of them 'by reason of certain attributes which are peculiar to them' and by virtue of these factors '[distinguish] them individually'. Each of the appellant families, and even each member of those families, has different characteristics that are peculiar to them. Some families are affected by droughts, others by flooding, still others by melting snow or heatwaves caused or intensified by climate change. Some of those families are farmers or forest owners, others own businesses in the tourism sector, still others are dedicated to animal husbandry. Ultimately, they are all individuals suffering in distinct ways as a result of climate change.

30 According to the appellants, the General Court did not, in the order under appeal, make any reference to the evidence showing that the appellants were affected in different ways by climate change. It merely ruled, in paragraph 50 of that order, that the fact that persons are affected differently does not confer standing to bring an action to challenge a measure of general application.

31 By the second part of the first ground of appeal, the appellants claim that, in the light of recent case-law developments regarding *locus standi*, the interference of the acts at issue with fundamental rights gives rise to individual concern, for the purposes of the fourth paragraph of Article 263 TFEU, if the right concerned is a personal right. The fact that there may be several rightholders cannot be of any significance, because the individual nature of the concern arises from the nature of the right as a personal and individual right.

32 According to the appellants, the General Court erred, in paragraph 49 of the order under appeal, in so far as it neglected the importance of the legal effects of the acts at issue on each specific appellant, focusing exclusively on the factual consequences. The appellants submit that, if the General Court had taken account of the appellants' legal position, it would have focused on the fact that each of them holds a fundamental right, which is individually affected by the acts at issue.

33 In that regard, the appellants emphasise that both the Charter of Fundamental Rights of the European Union ('the Charter') and the case-law of the Court of Justice clearly state that the fundamental rights concerned in the present case confer individual rights on each appellant. In particular, the rights concerned are the right to equality and non-discrimination, provided for in Article 21 of the Charter, the right to pursue an occupation, set out in Article 15(1) of the Charter, the right to property, within the meaning of Article 17(1) of the Charter, and the rights relating to children under Article 24 of the Charter.

34 The Parliament and the Council, supported by the Commission, dispute the appellants' arguments.

Findings of the Court

35 In the first place, as regards the first part of the first ground of appeal, the Council disputes the appellants' claims and contends that those claims, which fall within the scope of the factual assessment carried out by the General Court, cannot be contested in the context of the present appeal.

36 In that regard, it should be borne in mind that it is clear from Article 256 TFEU and the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union that the General Court has exclusive jurisdiction, first, to find the facts, except where the substantive inaccuracy of its findings is apparent from the documents submitted to it and, second, to assess those facts. When the General Court has found or assessed the facts, the Court of Justice has jurisdiction under Article 256 TFEU to review the legal characterisation of those facts by the General Court and the legal conclusions it has

drawn from them. The Court of Justice thus has no jurisdiction to establish the facts or, in principle, to examine the evidence which the General Court accepted in support of those facts. Save where the clear sense of the evidence has been distorted, that appraisal does not therefore constitute a point of law which is subject as such to review by the Court of Justice (see, in particular, judgment of 19 March 2009, *Archer Daniels Midland* v *Commission*, C-510/06 P, EU:C:2009:166, paragraph 105).

37 In the present case, it should be noted that, in order to find that the appellants were not individually concerned by the acts at issue, the General Court held, in paragraphs 49 and 50 of the order under appeal, as follows:

> ‘49 The applicants have not established that the contested provisions of the legislative package infringed their fundamental rights and distinguished them individually from all other natural or legal persons concerned by those provisions just as in the case of the addressee.
>
> 50 It is true that every individual is likely to be affected one way or another by climate change, that issue being recognised by the European Union and the Member States who have, as a result, committed to reducing emissions. However, the fact that the effects of climate change may be different for one person than they are for another does not mean that, for that reason, there exists standing to bring an action against a measure of general application. As can be seen from the case-law cited in paragraph 48 above, a different approach would have the result of rendering the requirements of the fourth paragraph of Article 263 TFEU meaningless and of creating *locus standi* for all without the criterion of individual concern within the meaning of the case-law resulting from the judgment of 15 July 1963, *Plaumann* v *Commission* (25/62, EU:C:1963:17) [(“the judgment in *Plaumann*”)], being fulfilled.’

38 It is apparent from paragraphs 49 and 50 of the order under appeal that the General Court provided a legal characterisation of the facts in order to determine whether the appellants were individually concerned for the purposes of the fourth paragraph of Article 263 TFEU, considering that the circumstances alleged by them were not capable of establishing that the acts at issue distinguished them individually, just as in the case of the addressee of those acts. The calling in question of such a legal characterisation of the facts is therefore a point of law which may, as such, be invoked in the context of the present appeal.

39 It should, however, be noted that, contrary to what the appellants seek to argue in the first part of the present ground of appeal, the General Court took account, in paragraphs 49 and 50 of the order under appeal, of the arguments which, in their view, set out the numerous and specific ways in which they were concerned from a factual point of view.

40 The General Court held, in essence, in paragraph 50 of the order under appeal, that the fact that the effects of climate change may be different for one person than they are for another and that they depend on the personal circumstances specific to each person does not mean that the acts at issue distinguish each of the appellants individually. In other words, the fact that the appellants, owing to the alleged circumstances, are affected differently by climate change is not in itself sufficient to establish the standing of those appellants to bring an action for annulment of a measure of general application such as the acts at issue.

41 Accordingly, the General Court held, in paragraph 50 of the order under appeal, that the appellants’ interpretation of the circumstances alleged by them as establishing that they were individually concerned would render the requirements of the fourth paragraph of Article 263 TFEU meaningless and would create *locus standi* for all without the criterion of individual concern referred to in the judgment in *Plaumann* being fulfilled.

42 Consequently, the appellants cannot claim that the General Court did not take into account, in the order under appeal, the characteristics specific to them in order to determine whether they were individually concerned.

43 Moreover, the appellants’ argument that the General Court made no reference, in the order under appeal, to the evidence showing that the appellants were affected in different ways by climate change is, in the light of the foregoing, ineffective.

44 The first part of the first ground of appeal must therefore be rejected.

45 In the second place, as regards the appellants' argument, raised in the context of the second part of the first ground of appeal, that the interference of the acts at issue with their fundamental rights gives rise to individual concern for the purposes of the fourth paragraph of Article 263 TFEU, it must be stated that the appellants have misinterpreted the criterion of individual concern set out in that provision, as interpreted by the case-law of the Court.

46 According to settled case-law, which has not been altered by the Treaty of Lisbon, 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 just as in the case of the person addressed (judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraphs 71 and 72 and the case-law cited).

47 In that regard, as is noted by the Parliament, the appellants' reasoning, in addition to its generic wording, leads to the conclusion that there is *locus standi* for any applicant, since a fundamental right is always likely to be concerned in one way or another by measures of general application such as those contested in the present case.

48 As was recalled by the General Court in paragraph 48 of the order under appeal, the claim that the acts at issue infringe fundamental 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 (see, to that effect, orders of 10 May 2001, *FNAB and Others* v *Council*, C-345/00 P, EU:C:2001:270, paragraph 40, and of 14 January 2021, *Sabo and Others* v *Parliament and Council*, C-297/20 P, not published, EU:C:2021:24, paragraph 29 and the case-law cited).

49 Since, as is apparent from paragraph 46 of the order under appeal, the appellants merely invoked, before the General Court, an infringement of their fundamental rights, inferring individual concern from that infringement, on the ground that the effects of climate change and, accordingly, the infringement of fundamental rights are unique to and different for each individual, it cannot be held that the acts at issue affect the appellants 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 distinguish them individually just as in the case of the person addressed.

50 Therefore, the General Court was fully entitled to hold, in paragraph 49 of the order under appeal, that the appellants had not established that the contested provisions of the acts at issue distinguished them individually from all other natural or legal persons concerned by those provisions just as in the case of the addressee.

51 The second part of the first ground of appeal must therefore be rejected.

52 Accordingly, the first ground of appeal must be rejected in its entirety.

The second ground of appeal, alleging that the General Court erred on account of the failure to adapt the settled case-law on locus standi in order to guarantee the legal protection of fundamental rights

Arguments of the parties

53 By their second ground of appeal, the appellants claim that, in the event that the Court of Justice is not convinced by the arguments put forward in their first ground of appeal, the test derived from the judgment in *Plaumann* for establishing the existence of 'individual concern' should be adapted in order to ensure adequate judicial protection against serious infringements of fundamental rights. The appellants put forward six arguments in support of that claim.

54 In the first place, the appellants remark that the test derived from the judgment in *Plaumann* is not specified in the wording of the fourth paragraph of Article 263 TFEU. That wording simply states that

a person may institute proceedings where the act 'is of direct and individual concern to them'. That phrasing provides an opportunity to alter the test established by case-law provided such alteration is well founded. In addition, according to the appellants, that same test has already been adapted depending on the specific circumstances of the individual case, which shows that the text of the FEU Treaty may allow for a wide range of interpretations. The Court has relaxed the test derived from the judgment in *Plaumann* where it deemed it appropriate to do so in order to ensure effective judicial protection.

55 In the second place, the appellants maintain that the condition relating to individual concern must be interpreted in accordance with the constitutional traditions of the Member States, pursuant to Article 6(3) TEU. In that regard, the appellants emphasise that none of the Member States requires an applicant to prove that it is distinguished individually, in the narrow sense of the test derived from the judgment in *Plaumann*. This is true both for courts which adopt an 'administrative' approach to judicial protection, and for courts which apply a 'constitutional' approach. According to the appellants, the wording established in the judgment in *Plaumann*, as applied to their action for annulment, disregards the obligation to develop EU constitutional principles on the basis of the constitutional principles of the Member States.

56 In the third place, the appellants submit that the right to bring an action before the Courts of the European Union must be given a teleological interpretation in order to take account of how seriously an applicant is concerned. The appellants maintain that it is paradoxical, or even illogical, to find that, where a failure by the European Union to fulfil its legal obligations has far-reaching consequences, no individual can demonstrate individual concern.

57 In the fourth place, the appellants claim that the fourth paragraph of Article 263 TFEU must in principle allow for direct actions against legislative acts. Those acts are, by their very nature, likely to concern a large number of persons, which means that it is virtually impossible to satisfy the test used in the judgment in *Plaumann*. However, the fourth paragraph of Article 263 TFEU provides the possibility of direct access to the Courts of the European Union in order to establish the compatibility of legislative acts with higher-ranking rules of law.

58 In that regard, the appellants recall that the issue of direct access to courts in order to challenge measures of general application has already been addressed by Advocate General Jacobs in his Opinion in *Unión de Pequeños Agricultores* v *Council* (C-50/00 P, EU:C:2002:197), and by the General Court in its judgment of 3 May 2002, *Jégo-Quéré* v *Commission* (T-177/01, EU:T:2002:112). In connection with the appeal against that judgment, Advocate General Jacobs proposed that individual concern should be regarded as serious and direct concern to individuals, thereby eliminating the concept of 'singularity'. That step was successful in so far as, in the fourth paragraph of Article 263 TFEU, that requirement was entirely removed for regulatory acts not entailing implementing measures. The appellants invite the Court of Justice to adapt the definition of 'individual concern' in order to take account of the particular nature of constitutional actions against legislative acts of the European Union.

59 In the fifth place, the appellants submit that the test used in the judgment in *Plaumann* must be amended in order to meet the legal requirement of effective judicial protection. In that regard, they observe that, in the order under appeal, the General Court held, with regard to Article 47 of the Charter, that that article 'does not require that an individual should have an unconditional entitlement to bring an action for annulment of such a legislative act of the Union directly before the Courts of the European Union'. The General Court also held that an effective review of the legality of the acts at issue could be obtained by means of the interlocutory procedure provided for in Article 277 TFEU or a reference for a preliminary ruling under Article 267 TFEU.

60 However, in the present case, neither of those remedies is legally applicable and, therefore, the General Court erred in law. In the circumstances of the present case and in view of the breach of legal standards complained of by the appellants, proceedings against the implementing acts under Article 277 TFEU or proceedings before the national courts, with the possibility to request a reference for a preliminary ruling pursuant to Article 267 TFEU, would not afford effective judicial protection.

61 First, as regards the implementing acts, the appellants remark in particular that the Commission is not empowered to adopt implementing acts that would reduce the overall level of emissions into the European Union below the level set by the legislative package regarding greenhouse gas emissions.

62 Secondly, as regards the possibility of bringing proceedings before the national courts, the appellants submit, in essence, that proceedings before a national court or tribunal are not truly effective. The appellants indicate that a number of factors make it structurally impossible to obtain an effective remedy through the national courts, having regard, in particular, first, to the inadmissibility of a request for a preliminary ruling concerning the validity of the legislative package regarding greenhouse gas emissions, secondly, to the irrational imposition of the obligation to bring proceedings in all the Member States and, third, to the fact that no adequate national remedies are available.

63 In the sixth place, the appellants submit that, contrary to what the General Court held in paragraph 50 of the order under appeal, the amendment of the criterion of individual concern referred to in the case-law derived from the judgment in *Plaumann* may make it possible both to avoid creating *locus standi* for all and to create an effective filter for actions.

64 According to the appellants, where it is impossible to gain access to an effective and adequate remedy through the national courts and/or a procedure concerning the implementing measures, the condition of individual concern must be regarded as satisfied if the contested legislative act significantly encroaches on a personal fundamental right or encroaches on that right to an extent likely to undermine the essence of the right.

65 The appellants maintain that a criterion of that nature provides a mechanism that is sufficient to filter potential actions at an early stage. Furthermore, that criterion has points in common with comparable concepts applied by the courts of the Member States in accordance with their constitutional traditions. Lastly, according to the appellants, the criterion of seriousness could be specified by case-law reacting to different kinds of fundamental rights and factual constellations.

66 The Parliament and the Council, supported by the Commission, dispute those arguments.

Findings of the Court

67 As a preliminary point, it should be borne in mind that the European Union is a union based on the rule of law in which the acts of its institutions are subject to review of their compatibility with, in particular, the Treaties, the general principles of law and fundamental rights (judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraph 91).

68 To that end, the FEU Treaty has established a complete system of legal remedies and procedures designed to ensure judicial review of the legality of acts of the institutions, and has entrusted such review to the Courts of the European Union (judgment of 25 July 2002, *Unión de Pequeños Agricultores* v *Council*, C-50/00 P, EU:C:2002:462, paragraph 40).

69 According to settled case-law, the Courts of the European Union may not, without going beyond their jurisdiction, interpret the conditions under which an individual may institute proceedings against an act of the Union in a way which has the effect of setting aside those conditions, which are expressly laid down in the FEU Treaty, even in the light of the principle of effective judicial protection (see, to that effect, judgment of 1 April 2004, *Commission* v *Jégo-Quéré*, C-263/02 P, EU:C:2004:210, paragraph 36).

70 It follows that, even if the appellants are requesting that the judgment in *Plaumann* be adapted so as to enable the acts at issue to be contested in the present case, such an adaptation must be rejected inasmuch as it is contrary to the provisions laid down in the FEU Treaty regarding the admissibility of actions for annulment, such as that set out in the fourth paragraph of Article 263 TFEU.

71 Under that provision, any natural or legal person may 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.

72 In that regard, the General Court correctly held, in paragraph 35 of the order under appeal, that the acts at issue do not identify the appellants as being the addressees of those acts and that, consequently, the first scenario in which a natural or legal person has standing to bring proceedings under the fourth paragraph of Article 263 TFEU had to be excluded.

73 Next, regarding the second scenario provided for in that provision, that is to say, that proceedings may be instituted on condition that the act is of direct and individual concern to the natural or legal person instituting those proceedings, the General Court was fully entitled to consider, as is apparent from paragraph 50 of the present judgment, that the appellants had not established that the contested provisions of the acts at issue were such as to distinguish them individually just as in the case of the addressee. Since the conditions of direct concern 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), the General Court did not err in considering that the appellants were not covered by the second scenario provided for in the fourth paragraph of Article 263 TFEU for bringing an action before the General Court.

74 Lastly, the General Court rightly held that the acts at issue, having been adopted on the basis of Article 192(1) TFEU, are not regulatory acts covered by the third scenario provided for in the fourth paragraph of Article 263 TFEU.

75 In the light of the foregoing, the General Court did not err in law in considering that the appellants were not covered by any of the three scenarios provided for in the fourth paragraph of Article 263 TFEU allowing them to bring an action before the General Court.

76 Consequently, as is apparent from the case-law cited in paragraph 69 of the present judgment, the appellants cannot ask the Court of Justice to set aside such conditions, which are expressly laid down in the FEU Treaty, and, in particular, to adapt the criterion of individual concern as defined by the judgment in *Plaumann*, in order that they may have access to an effective remedy.

77 In that regard, it should be borne in mind, as the General Court did in paragraph 52 of the order under appeal, that 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 such a legislative act of the Union 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).

78 Although the conditions of admissibility laid down in the fourth paragraph of Article 263 TFEU must be interpreted in the light of the fundamental right to effective judicial protection, such an interpretation cannot have the effect of setting aside the conditions expressly laid down in that Treaty (see, to that effect, 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).

79 It follows that the appellants' arguments seeking to have the criterion of individual concern extended cannot, in any event, succeed.

80 In the light of the foregoing considerations, the second ground of appeal must therefore be rejected.

The third ground of appeal, alleging that the General Court erred in finding that the association Sáminuorra did not have locus standi

Arguments of the parties

81 By the third ground of appeal, the association Sáminuorra claims that the General Court erred in law by failing to take into account the evidence demonstrating that that association was individually concerned. According to that appellant, the General Court held, in a single sentence, in paragraph 51 of the order under appeal, that it had not demonstrated that it satisfied the conditions for admissibility of an action for annulment. The General Court thus distorted the evidence submitted by that association,

in particular in order to demonstrate, in accordance with settled case-law, that it represented the interests of its members, who were themselves entitled to bring proceedings.

82 Furthermore, the association Sáminuorra submits that the General Court erred in law by failing to take account of another type of action that may be brought by an association, namely the 'action of a collective defending a collective good'. The association Sáminuorra represents a whole that is more than the sum of the individual interests of its members. The common good represented by that association is the right of the Sami people to use public and private land for their reindeer herds, in accordance with the Swedish Law of 1971 on Reindeer Husbandry, as amended in 1993.

83 In that context, the association Sáminuorra remarks that individual concern should, in the present case, be defined as being the concern of an identifiable collective. Such an interpretation falls within the scope of the European Union's obligations as defined in the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the United Nations General Assembly on 13 September 2007, as well as in the Convention on Biological Diversity (CBD), signed in Rio de Janeiro on 5 June 1992, which is also binding on the European Union.

84 The Parliament and the Council, supported by the Commission, dispute those arguments.

Findings of the Court

85 As regards the association Sáminuorra, the General Court found, in paragraph 51 of the order under appeal, as follows:

> '51 So far as concerns the association Sáminuorra, it should be pointed out, in the first place, that, like the other applicants and for the same reason, that applicant has not shown that it was individually concerned. In the second place, it is settled case-law that actions for annulment brought by associations have been held to be admissible in three types of situation: firstly, where a legal provision expressly grants a series of procedural powers to trade associations; secondly, where the association represents the interests of its members, who would themselves be entitled to bring proceedings; and, thirdly, where 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 act in respect of which 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 association Sáminuorra has not shown that it satisfied one of those conditions.'

86 It is apparent from the preceding paragraph of the present judgment that the General Court stated in the order under appeal that, first, for the same reasons as those applicable to the other appellants – natural persons – that association could not be regarded as being individually concerned. In the light of the findings made in connection with the first and second grounds of appeal, in particular in paragraphs 49 and 50 of the present judgment, it cannot be held that the General Court erred in making those findings.

87 Secondly, the General Court held that the association Sáminuorra had not established that it was covered, as an association, by one of the three conditions under which case-law allows associations to bring an action for annulment.

88 In that regard, the General Court cannot be said to have distorted the facts in its assessment of the association Sáminuorra as regards, in particular, the second condition.

89 Indeed, in so far as the appellants, as natural persons, were considered not to be individually concerned for the purposes of the fourth paragraph of Article 263 TFEU, the same consideration applies to the members of that association. Those members cannot therefore claim that they possess attributes which distinguish them individually from the other potential addressees of the acts at issue.

90 Concerning the first condition, it should be borne in mind that associations have a right to bring proceedings against an act of the Union where the provisions of EU law specifically recognise those associations as having procedural rights (see, to that effect, judgment of 4 October 1983, *Fediol* v

Commission, 191/82, EU:C:1983:259, paragraph 28). However, the association Sáminuorra has not claimed that such provisions exist in its favour.

91 As regards the argument that the General Court should have recognised the existence of another situation in which associations would be entitled to bring proceedings, namely 'the action of a collective defending a collective good', that argument was not put forward at first instance and must therefore, pursuant to Article 170(1) of the Rules of Procedure of the Court of Justice, be rejected as inadmissible in the context of the present appeal.

92 To allow the appellants to raise for the first time before the Court of Justice arguments which they have not raised before the General Court would be to authorise them to bring before the Court of Justice, whose jurisdiction in appeals is limited, a case of wider ambit than that which came before the General Court. In an appeal, the jurisdiction of the Court of Justice is thus confined to review of the findings of law on the pleas argued before the lower court (see, to that effect, judgment of 17 June 2010, *Lafarge* v *Commission*, C-413/08 P, EU:C:2010:346, paragraph 52).

93 As regards the third condition, the association Sáminuorra has not claimed to satisfy it.

94 It follows from the foregoing that the General Court did not err in concluding that the association Sáminuorra could not be regarded as being individually concerned by the acts at issue under the fourth paragraph of Article 263 TFEU.

95 The third ground of appeal must therefore be rejected as being in part unfounded and in part inadmissible.

The fourth ground of appeal, alleging that the General Court erred in rejecting the appellants' claim for damages

Arguments of the parties

96 The appellants claim that the General Court wrongly concluded that the non-contractual liability of the Union was excluded in so far as the appellants did not have standing to bring an action for annulment. There are fundamental differences between the measure requested in the claim for annulment and that requested in the claim invoking the non-contractual liability of the Union, which were not addressed by the General Court in the order under appeal.

97 First, the General Court's approach is contrary to the principle that actions for annulment based on the non-contractual liability of the Union are autonomous. It would also be contrary to its own practice, as the General Court has repeatedly examined the validity of legal acts as part of the preconditions for non-contractual liability without regard to whether the act had been the subject of annulment proceedings or not.

98 Secondly, contrary to what the General Court held in the order under appeal, the alleged illegality was not the same in the two claims. On the one hand, in the claim for annulment, the appellants argued that the acts at issue which make up the legislative package regarding greenhouse gas emissions were vitiated by errors of law, having regard to higher-ranking rules of law. On the other hand, the claim invoking the non-contractual liability of the Union is based on a broader breach of higher-ranking rules of law, which began in 1992. That breach is a continuous one. The European Union's failure to adopt adequate emission reductions in the legislative package regarding greenhouse gas emissions is only one aspect of that continuous breach.

99 Thirdly, the appellants emphasise that, contrary to the reasoning employed by the General Court in the order under appeal, the two claims in question did not seek to obtain the same result, namely the replacement of the acts at issue which make up the legislative package in question with new measures that will have to achieve a greater reduction in greenhouse gas emissions than is laid down currently. In their claim invoking the non-contractual liability of the Union, the appellants requested measures targeting the legislative package regarding greenhouse gas emissions, whereas the basis underlying the liability of the Union is much broader. That liability is based on a continuous breach of higher-ranking rules of law which began in 1992.

100 The Parliament and the Council, supported by the Commission, dispute those arguments.

Findings of the Court

101 As was recalled by the General Court in paragraphs 65 and 66 of the order under appeal, according to settled case-law, the action for damages under the second paragraph of Article 340 TFEU was introduced as an autonomous form of action, with a particular purpose to fulfil within the system of actions and subject to conditions on its use dictated by its specific purpose, and hence a declaration of inadmissibility of the application for annulment does not automatically render the action for damages inadmissible (judgment of 5 September 2019, *European Union* v *Guardian Europe* and *Guardian Europe* v *European Union*, C-447/17 P and C-479/17 P, EU:C:2019:672, paragraph 49 and the case-law cited).

102 However, although a party may take action by means of a claim for compensation without being obliged by any provision of law to seek the annulment of the illegal measure which causes him damage, he may not in that way circumvent the inadmissibility of an application which concerns the same instance of illegality and which has the same financial end in view (judgment of 5 September 2019, *European Union* v *Guardian Europe* and *Guardian Europe* v *European Union*, C-447/17 P and C-479/17 P, EU:C:2019:672, paragraph 50 and the case-law cited).

103 Thus, an action for damages must be declared inadmissible where it is actually aimed at securing withdrawal of an individual decision which has become final and it would, if upheld, have the effect of nullifying the legal effects of that decision. That is the case if the applicant seeks, by means of a claim for damages, to obtain the same result as he would have obtained had he been successful in an action for annulment which he failed to commence in due time (judgment of 5 September 2019, *European Union* v *Guardian Europe* and *Guardian Europe* v *European Union*, C-447/17 P and C-479/17 P, EU:C:2019:672, paragraph 51 and the case-law cited).

104 In the present case, in paragraph 67 of the order under appeal, the General Court makes the following finding:

‘In that regard, it should be pointed out that the claim seeking annulment of the legislative package and the injunction requested in connection with the action for damages are almost identical and concern the same alleged unlawfulness. In the action for annulment, the applicants have argued that the target set by the three contested acts, namely a 40% reduction in emissions, is manifestly inadequate, which is why that target should be annulled and reviewed. In the action for damages, they seek, instead of pecuniary damages for their alleged individual losses, compensation in the form of an injunction ordering the Union to adopt measures to put an end to its unlawful and harmful conduct. The applicants therefore request that the Parliament and the Council be ordered to adopt measures under the legislative package requiring a reduction in greenhouse gas emissions by 2030 by at least 50% to 60% compared to 1990 levels.’

105 That finding by the General Court cannot be challenged. The action, taken as a whole, shows that the claim for compensation, which is formulated as an injunction, is intended not to obtain damages for harm attributable to an unlawful act or an omission, but to amend the acts at issue. Thus, as the General Court found in paragraph 69 of the order under appeal, both by their claim for annulment and by their request for an injunction, the appellants seek to obtain the same result, namely the replacement of the acts at issue with new measures that are more severe than those currently laid down in terms of reducing greenhouse gas emissions.

106 The General Court was therefore fully entitled to find, in paragraph 70 of the order under appeal, that, since the appellants did not have standing to bring proceedings to request partial annulment of the legislative package, their claim for compensation, which in reality seeks to achieve the same result, must also be declared inadmissible.

107 The fourth ground of appeal must therefore be rejected, and the appeal must be dismissed in its entirety.

Costs

108 In accordance with Article 184(2) of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to the costs.

109 Under Article 138(1) of those rules, applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party's pleadings.

110 Since the Parliament and the Council have applied for costs and the appellants have been unsuccessful, the appellants must be ordered to pay the costs.

111 In accordance with Article 140(1) of the Rules of Procedure of the Court of Justice, applicable to appeal proceedings by virtue of Article 184(1) thereof, the Commission, which has intervened in the proceedings, must bear its own costs.

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

1. **Dismisses the appeal;**

2. **Orders Mr Armando Carvalho and 36 other appellants whose names are set out in the annex to the present judgment to bear their own costs and to pay those incurred by the European Parliament and the Council of the European Union;**

3. **Orders the European Commission to bear its own costs.**

Bay Larsen Toader Jääskinen

Delivered in open court in Luxembourg on 25 March 2021.

A. Calot Escobar L. Bay Larsen

Registrar President of the Sixth Chamber

Annex

List of appellants

Armando Carvalho, residing in Santa Comba Dão (Portugal),

Diogo Carvalho, residing in Santa Comba Dão,

Ildebrando Conceição, residing in Tomar (Portugal),

Alfredo Sendim, residing in Foros de Vale de Figueira (Portugal),

Joaquim Caxeiro, residing in Foros de Vale de Figueira,

Renaud Feschet, residing in Grignan (France),

Guylaine Feschet, residing in Grignan,

Gabriel Feschet, residing in Grignan,

Maurice Feschet, residing in Grignan,

Geneviève Gassin, residing in Grignan,

Roba Waku Guya, residing in Marsabit County (Kenya),

Fadhe Hussein Tache, residing in Marsabit County,

Sado Guyo, residing in Marsabit County,

Issa Guyo, residing in Marsabit County,

Jibril Guyo, residing in Marsabit County,

Adanoor Guyo, residing in Marsabit County,

Mohammed Guyo, residing in Marsabit County,

Petru Vlad, residing in Cugir (Romania),

Ana Tricu, residing in Cugir,

Petru Arin Vlad, residing in Cugir,

Maria Ioana Vlad, residing in Cugir,

Andrei Nicolae Vlad, residing in Cugir,

Giorgio Davide Elter, residing in Cogne (Italy),

Sara Burland, residing in Cogne,

Soulail Elter, residing in Cogne,

Alice Elter, residing in Cogne,

Rosa Elter, residing in Cogne,

Maria Elter, residing in Cogne,

Maike Recktenwald, residing in Langeoog (Germany),

Michael Recktenwald, residing in Langeoog,

Lueke Recktenwald, residing in Langeoog,

Petero Qaloibau, residing in Vanua Levu (Fiji),

Melania Cironiceva, residing in Vanua Levu,

Katarina Dimoto, residing in Vanua Levu,

Petero Jnr Qaloibau, residing in Vanua Levu,

Elisabeta Tokalau, residing in Vanua Levu,

Sáminuorra, established in Jokkmokk (Sweden).

* Language of the case: English.