IN THE COURT OF JUSTICE OF THE EUROPEAN UNION **Case T-141/19**

ON APPEAL TO THE EUROPEAN COURT OF JUSTICE

BETWEEN:-

PETER SABO

(ON BEHALF OF WOLF FOREST PROTECTION MOVEMENT)

& OTHERS

Applicants

- and -

(1) THE EUROPEAN PARLIAMENT

(2) THE COUNCIL OF THE EUROPEAN UNION

Defendants

APPLICATION TO APPEAL AGAINST ORDER OF INADMISSIBILITY[1]

Format of the Submissions

[1] References to documents in the schedule of annexes are in the form [D1/*] where 1 is the tab number and * is the page number

A. Introduction

1. This is the Applicants' application to appeal against the Order of the General Court in Case T-141/19, dated 6 May 2020, ECLI:EU:T:2020:179 ("**the Order**") **[D5/108-119]**. In §1 of the operative part of that Order **[D5/110]**, the General Court held that the Applicants' application for annulment is inadmissible, and in §3 **[D5/110]** it ordered the Applicants to pay the Defendants' costs. The Applicants were served and notified of the Order upon requesting access to it via e-Curia on 11 May 2020 **[D5/108]**.

2. The Applicants appeal against §§1 and 3 of the Order pursuant to Article 256(1) of the Treaty on the Functioning of the European Union ("**TFEU**"), Article 56 of the Statute of the Court of Justice, and Article 167 of the Rules of Procedure of the Court of Justice. They request that the question of their standing be decided by the Court of Justice, with the substantive application for annulment to be referred back to the General Court. The form of order they seek by this appeal is:

    (1) The Order of the General Court dated 6 May 2020 is set aside,

    (2) The Applicants having demonstrated that they have standing to initiate proceedings under the fourth paragraph of Article 263 TFEU, the Action is admissible and should proceed to a substantive hearing of the important issues it raises before the General Court, and

    (3) The Defendants shall bear their own costs in relation to their pleas of inadmissibility and this appeal, and shall pay the costs of the Applicants relating to their Observations dated 21 August 2019 and this Application to Appeal.

3. The Applicants are individuals and environmental NGOs from across the EU and the USA who have fundamental rights to, and important interests in, the protection of forests and the prevention of catastrophic climate change. Their names and addresses are given in Appendix 1[2]. This case raises extremely important environmental protection issues, relating to climate change, forest ecosystems and biodiversity. Despite this, the case has become mired on the arid question of standing, because of the

[2] We draw the Court's attention to the fact that the membership of the Applicant representative association, Association de Lutte contre les Nuisances et la Pollution ("ALNP"), has changed, so that the previous President of the association has stood down and three Co-Presidents have taken his place. We include a short witness statement in the Schedule of Annexes, which explains this **[D/390-391]**. For the reasons given in that statement, we do not consider this changes ALNP's standing in this appeal.

position adopted by the Defendants in their pleas of inadmissibility (both dated 27 June 2019) **[D2/51-70; D3/71-91]**.

4. The Applicants' Action seeks the annulment of the following provisions of Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ 2018 L 328, p. 82) ("**the Directive**") **[D9/186-313]**,

    (1) The inclusion of "forest biomass" in the definition of "renewable energy", through the combined effect of Article 2(1), (24) and (26); and

    (2) The provisions that allow forest biomass to count towards the Article 29(1) purposes, which are Article 29(1), (6), (7), (10) and (11), to the extent that they apply to forest biomass.

    on the grounds that the inclusion of forest biomass as a potential "renewable" fuel violates Article 191 TFEU (Union policies and internal actions relating to the environment) and a number of the Applicants' rights under the Charter of Fundamental Rights.

5. The Order held that the Applicants lacked standing to bring the Action, within the meaning of the fourth paragraph of Article 263 TFEU, because the Directive was not of individual concern to them. That conclusion was wrong in law, as explained further below, because:

    (1) The General Court misstated and misunderstood relevant provisions of the Directive, causing it to misunderstand the nature of the individual impact it has on the Applicants;

    (2) The General Court was wrong to conclude that the Applicants are not individually concerned by the Directive, within the meaning of the fourth paragraph of Article 263 TFEU; and

    (3) The General Court unlawfully fettered its power to interpret the Treaties and failed to have regard to the EU's non-compliance with the Convention on Access to Information, Public Participation in Decision-Making and Access to

Justice in Environmental Matters, signed 25 June 1998 ("**Aarhus Convention**") **[D9/120-144]**.[3]

B. Background

6. The Applicants are individuals and environmental NGOs from across the EU and the USA who have fundamental and important interests in the protection of forests and biodiversity and the prevention of catastrophic climate change. They support and welcome many of the steps taken by the EU to transition towards renewable energy production.

7. However, they have grave concerns about those provisions of the Directive that treat "forest biomass" as a "renewable energy source". These provisions will cause irreparable damage to forest ecosystems across the EU, the USA and elsewhere. They will contribute significantly to climate change through increased CO_2 emissions. These provisions fundamentally undermine otherwise positive aspects of the Directive that make the EU the global leader in renewable energy production. They also gravely undermine the EU's strategy "to be climate-neutral by 2050".[4] The Applicants have identified these flaws with the Directive in their Application for Annulment dated 4 March 2019.

C. Ground 1: Misstatement and misunderstanding of the terms of the Directive

8. The Order contains a fundamental misstatement and misunderstanding of the Directive that demonstrates that the General Court failed to consider and/or understand the relevant provisions of the Directive. The error shows that the General Court misunderstood the nature of the individual affect the Directive has on the Applicants, establishing a clear error of law in its conclusion that they are not so affected.

9. In particular, at §8 the Order **[D5/111]** misstates the terms of Article 29(3) of the Directive, incorrectly assuming that it applies to forest biomass. This provision relevantly provides:

> "Biofuels, bioliquids and biomass fuels produced from agricultural biomass taken into account for the purposes referred to in points (a), (b) and (c) of the

[3] Approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1)
[4] https://ec.europa.eu/clima/policies/strategies/2050_en

first subparagraph of paragraph 1 shall not be made from raw material obtained from land with a high biodiversity value, namely land that had one of the following statuses in or after January 2008, whether or not the land continues to have that status:

(a) primary forest and other wooded land …

(b) highly biodiverse forest and other wooded land which is species-rich and not degraded …"

(emphasis added)

10. Accordingly, Article 29(3), only applies to "Biofuels, bioliquids and biomass fuels produced from agricultural biomass". It does not apply to forest biomass (e.g. wood sourced directly from forests), which is the matter in issue here. Article 29(3) is thus intended to discourage conversion of forests to energy crops, which is considered land-use change. But there are no equivalent restrictions on the production of biomass fuels produced from the forest biomass itself. This is because when forests are harvested for fuel but the land is not specifically converted to another purpose (e.g. agriculture), such that it is essentially left so that trees may (but might not) regrow, it is not considered land-use change. This is the case even if wild, bio-diverse hardwood forests are converted to monoculture plantation pine forests, which provide much worse long-term stores of carbon.

11. The Applicants are affected by the production of forest biomass (i.e. extraction from forests without any land-use change). Article 29(3) does not apply to that situation, and so the Applicants cannot benefit from the protections it provides. Article 29(3) is simply irrelevant to the Applicants' position.

12. Despite this, the General Court premised its Order on an extreme misstatement of the protections provided by Article 29(3) at §8:

"Article 29(3) of the contested directive provides that biofuels, bioliquids and biomass fuels taken into account for the purposes set out in paragraph 7 above are not to be made from raw material obtained from land with a high biodiversity value. That land includes, inter alia, primary forest and other wooded land, highly biodiverse forest, areas designated for nature protection purposes and grassland that maintains natural species composition and ecological characteristics and processes." **[D5/111]**

13. An identical error was made in the Parliament's plea of inadmissibility (at §§11 and 41) **[D2/57, 64]**. The General Court's misstatement of Article 29(3) is so obvious that it can only have been made by simply accepting the Parliament's submission on this point. This discloses a complete failure by the General Court to consider the Observations filed by the Applicants in response to the Parliament's plea, or even the terms of the Directive itself. In their Observations, at §§24-28 **[D4/98-99]**, the Applicants explained why it was undisputable that Article 29(3) is irrelevant as it is inapplicable to forest biomass, concluding with:

> "In short, when wood is burned for heat and electricity generation, *none* of the protections in Article 29(3) apply, because such biomass is not "*produced from agricultural biomass*." Consequently, and key to the flaw in its approach here, the Parliament has invited the Court to adopt an understanding of the Directive that is simply wrong." (emphasis original)

14. The fact that the General Court nonetheless misstated the terms of Article 29(3), based upon the Parliament's misstatement, can only be explained by a failure to consider adequately or at all the Applicants' Observations and the terms of the Directive, which is an error of law for which the Order should be set aside.

15. These are not, however, merely procedural failings (though they are, of course, stark examples of such). The error goes to the heart of the General Court's conclusion that the Applicants are not individually affected by the Directive. The General Court erroneously assumed that Article 29(3) protects forests (and the Applicants) from the harmful production of forest biomass. As a result of this error, the General Court did not address <u>at all</u> the ways in which the individual Applicants had explained in their witness evidence that the Directive was of individual concern to them. These points were simply ignored by the General Court.

16. If the General Court's misreading of Article 29(3) were the correct one, there would be significantly less harm posed by the Directive to the Applicants who rely directly on forests (namely, Peter Sabo, the WOLF Forest Protection Movement, Hasso Krull and Kent Roberson) and the extent to which they would be individually affected would be reduced. This misreading, thus, appears to have led the General Court to dismiss out of hand the Applicants' explanation of the individual effects on them of the Directive. Upon proper consideration of the Applicants' evidence, and their submissions at §§112-

124 of the Application for Annulment **[D1/31-34]**, the only lawful conclusion open to the General Court was to recognise that they are individually affected by the Directive and have standing to seek its annulment. The consequent failure to consider this evidence is a further error of law for which the Order should be set aside.

D. Ground 2: Erroneous interpretation and application of the requirement for individual concern

17. Further and in the alternative, the General Court erred in law in its interpretation of the requirement of individual concern in the fourth paragraph of Article 263 TFEU. In particular, the General Court was wrong to conclude that the principle in the judgment of 18 May 1994, *Codorniu v Council*, C-309/89, EU:C:1994:197 **[D10/314-325]** is inapplicable to the present case. The Court in *Codorniu* did not, contrary to §32 of the Order **[D5/114]**, confine its reasoning only to situations that "concerned the loss of a specific acquired right". Rather, the Court explained how the requirement for individual concern in Article 263 TFEU (ex 173) ought to apply in §19 **[D10/321]**:

> "Although it is true that according to the criteria in the second paragraph of Article 173 of the Treaty the contested provision is, by nature and by virtue of its sphere of application, of a legislative nature in that it applies to the traders concerned in general, that does not prevent it from being of individual concern to some of them." (emphasis added)

18. Notably, the Court reasoned that a legislative measure can be of individual concern to "some of them", namely the people affected by it, which necessarily includes situations where multiple people are all individually affected in the same way. The Court went on to apply that principle to the facts of the case at §21 **[D10/321]** and explained that Codorniu was individually affected by virtue of having a right that it exercised which was being infringed:

> "Codorniu registered the graphic trade mark 'Gran Cremant de Codorniu' in Spain in 1924 and traditionally used that mark both before and after registration. By reserving the right to use the term 'cremant' to French and Luxembourg producers, the contested provision prevents Codorniu from using its graphic trade mark."

19. The Court's reasoning was thus that the impact of the legislative measure on the individual applicant's right was the substance of what was required by individual

concern. Contrary to §33 of the Order **[D5/114-115]**, the Applicants do not seek to make the requirements of the fourth paragraph of Article 263 TFEU meaningless. The requirement of individual concern is unavoidable but its purpose is to ensure that claims are brought by applicants whose individual rights or interests are affected. In *Codorniu*, that individual concern was satisfied by the infringement of a right to a trademark. That was simply the application of that general principle to the facts of that case, but the Court did not in any way indicate that those facts were the only ones to which the principle applied. For example, the Court applied a similar principle in an entirely different context in the judgment of 23 April 1986, *Les Verts v Parliament*, C-294/83, ECLI:EU:C:1986:166 **[D11/326-342]**.

20. Identically, the present Applicants have rights that are being infringed by the Directive, which distinguish them individually from others (i.e. those who do not rely on forests for the exercise of their rights), as explained at §123 of the Applicants' submissions in the Action **[D1/33-34]**. Accordingly, the General Court's conclusion that the Applicants are not individually affected by the Directive misinterpreted the requirements of Article 263 TFEU and misapplied it in the circumstances of this case. This is an error of law for which the Order should be set aside.

21. It follows that the Applicant individuals have demonstrated that they have standing to seek an application for annulment.

22. It follows also that the Applicant representative association (Association de Lutte contre les Nuisances et la Pollution) satisfies the requirements for individual concern under the second scenario set out in the order of 23 November 1999, *Unión de Pequeños Agricultores v Council*, T-173/98, EU:T:1999:296, at §47 **[D12/358]**, namely, "when the association represents the interests of undertakings which would, themselves, be entitled to bring proceedings", contrary to §36 of the Order **[D5/115]**.

23. As to the non-representative associations (2Celsius and WOLF Forest Protection Movement), which are each *bona fide* environmental NGOs acting in the public interest, the Applicants advance the submissions at §§151-152 of the Application for Annulment **[D1/40]**, as addressed further below.

E. Ground 3: Fettering of the judicial power

24. Further and in the alternative, the General Court misconstrued its role as part of the CJEU, the sole institution with competence authoritatively to interpret the Treaties. In

doing so, it made an error of law in concluding that it did not have the power to reinterpret the requirement of "direct and individual concern" in the fourth paragraph of Article 263 TFEU in §45 of the Order **[D5/117]**:

> "While EU action in environmental matters is of paramount importance — as is clear from the recitals of the contested directive — and while it is possible, and may be considered desirable, to widen the entitlement to pursue legal remedies before the Courts of the European Union for reviewing the legality of EU acts of general application in environmental matters, beyond the system established by the Treaty on the Functioning of the European Union, only the Member States can reform the current system …"

25. It is an established feature of the EU's treaty-based architecture that the Member States draft and enter into the Treaties, and the CJEU is charged with their interpretation. It is a matter of settled caselaw that the CJEU's interpretation of the Treaties is binding on both Member States and the other EU institutions: judgments of 14 December 2000, *Fazenda Pubblica*, Case C-446/98, ECLI:EU:C:2000:691, §49, and of 3 February 1977, *Luigi Benedetti v. Munari F.lli s.a.s*, Case C-52/76, §§24-26; and order of 5 March 1986, *Wünsche*, Case 69/85, ECLI:EU:C:1986:104, §13.

26. This is evident in the approach to standing informed by the judgment of 15 July 1963, *Plaumann v Commission*, Case 25/62, ECLI:EU:C:1963:17. That was solely a creation of judicial interpretation: Article 263 does <u>not</u> expressly say standing is only to be afforded to applicants where "the contested act affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguishes them individually in the same way as the addressee of a decision would be". It says:

> "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 …"

27. How those words are to be interpreted was (and remains) exclusively within the power of the CJEU. That includes the power to <u>re</u>interpret them. In *Plaumann*, the Court chose to interpret the words "individual concern" in one manner. Contrary to §45 of the Order **[D5/117]**, there is no fetter on the Court's power now to interpret them in a different manner. For example, the Court's decision to reinterpret the words of Article 173 EEC

in the judgment of 23 April 1986, *Les Verts v Parliament*, C-294/83, ECLI:EU:C:1986:166, was a legitimate exercise of the judicial power conferred on the Court by the Treaties **[D11/326-342]**. There was (properly) no question of the Court abdicating that responsibility by an assertion that "only the Member States can reform the current system" in that case. For the General Court so to fetter the judicial role in the Order was an error of law.

28. As a result of this error of law, the General Court failed to consider adequately or at all the reasons why it ought to reinterpret the fourth paragraph of Article 263 TFEU, particularly those relating to the Aarhus Convention. There is no question of rendering this paragraph "meaningless" (§33) **[D5/114]**, or "setting aside the condition of individual concern" (§56) **[D3/84]**. Similarly, the Applicants do not argue for an "unconditional entitlement to bring an action for annulment", contrary to §41 of the Order **[D5/116]**. The Applicants simply advance good reasons why "individual concern" should be interpreted as a requirement for there to be an effect on the applicant's own (or "individual") rights, interests or circumstances, in relation to individuals, and as a requirement of a proven track record of interest in the issue before the Court in the case of *bona fide* NGOs. This is analogous to the standing tests that are ubiquitous across the jurisdictions of the Member States, and before the European Court of Human Rights (which requires an applicant to be a "victim" under Article 34 ECHR). It has never been part of the Applicants' claim that there should be no conditions of standing.

29. The Applicants do not assert that the Court is <u>bound</u> to reinterpret the fourth paragraph of Article 263 TFEU because of Article 9 of the Aarhus Convention **[D6/131-132]**. Rather, they submit that it gives the Court good reason to exercise its power to interpret "individual concern" in a different manner to that set out in *Plaumann*, at least in relation to cases relating to the protection of the environment. This is explained in the witness statement provided by Alistair McGlone **[D13/366-389]**, who was a member of the Aarhus Convention Compliance Committee that addressed case ACCC/C/2008/32 (Case C32). This is the case in which the Compliance Committee recommended that the CJEU reinterpret the meaning of "individual concern". Mr McGlone explains that the recommendation should be seen as a persuasive source for the Court:

> "In short, whilst the EU, in its implementation of the Convention, is not obliged to apply its access to justice provisions to bodies acting in a legislative capacity; but if the General Court sees fit it may choose to apply, to the review of the secondary legislation of the EU, the provisions of Article 9 and to afford NGOs and individuals the right to challenge EU secondary legislation on the ground that it is incompatible with the TFEU and the Charter of fundamental rights." (§73) **[D13/387]**

30. There is no question of this being beyond the scope of the Court's powers, or inconsistent with the provisions of the Aarhus Convention, as Mr McGlone also explains:

> "It should be mentioned that there is nothing in the Convention that would prevent a Party from deciding to extend legislation to cover these bodies and institutions, even if it is not obligated by the Convention to do so." (§71) **[D13/386]**

31. In short, the reason the Court should reinterpret the words "individual concern" is because the EU is failing to comply with the Aarhus Convention due to the application of the interpretation adopted in *Plaumann*. In Case C32 the Compliance Committee considered this interpretation and, in Part 1 of its findings,[5] the Compliance Committee clearly felt that the EU had failed to comply with the Aarhus Convention, but avoided making a formal finding of this because of the possibility that this Court would re-interpret the approach taken in *Plaumann*:

> "86. It is clear to the Committee that TEC article 230, paragraph 4, on which the ECJ has based its strict position on standing, is drafted in a way that could be interpreted so as to provide standing for qualified individuals and civil society organizations in a way that would meet the standard of article 9, paragraph 3, of the [Aarhus] Convention.
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> 87. Yet, the cases referred to by the communicant reveal that, to be individually concerned, according to the ECJ, the legal situation of the person must be affected because of a factual situation that differentiates him or her from all

[5] Compliance Committee, Findings and recommendations with regard to communication ACCC/C/2008/32 (Part I) concerning compliance by the European Union, Adopted on 14 April 2011. Available at: https://www.unece.org/fileadmin/DAM/env/pp/compliance/CC-32/ece.mp.pp.c.1.2011.4.add.1_as_submitted.pdf

other persons. Thus, persons cannot be individually concerned if the decision or regulation takes effect by virtue of an objective legal or factual situation. The consequences of applying the Plaumann test to environmental and health issues is that in effect no member of the public is ever able to challenge a decision or a regulation in such case before the ECJ.

88. Without having to analyse further in detail all the cases referred to, it is clear to the Committee that this jurisprudence established by the ECJ is too strict to meet the criteria of the Convention. … Yet, the Committee considers with regret that the EU Courts, despite the entry into force of the Convention, did not account for the fact that the Convention had entered into force and whether that should make a difference in its interpretation and application of TEC article 234.

89. Without prejudicing the forthcoming examination of the Aarhus Regulation and any other relevant internal administrative review procedure (see para. 10), the Committee is also convinced that if the examined jurisprudence of the EU Courts on access to justice were to continue, unless fully compensated for by adequate administrative review procedures, the Party concerned would fail to comply with article 9, paragraph 3, of the Convention. However, since this conclusion is based on court cases that were initiated before the entry into force of the Convention and since the Committee is not examining the Aarhus Regulation or any other internal administrative review procedure, the Committee does not make a finding of non-compliance by the Party concerned with article 9, paragraph 3, of the Convention in this case." **[D7/164-165]**

32. Mr McGlone explains this in his witness statement:

"In Part I of its findings, the Committee did not find the EU to be in non-compliance because of the *possibility* of a new direction of jurisprudence; but it was clear from Part I *that if there were no such new direction of jurisprudence the existing laws on standing would be too strict to comply with the Convention*, unless compensated for by adequate administrative review procedures." (§20, emphasis original) **[D13/371]**

33. In Part 2 of its findings,[6] the Compliance Committee found that the interpretation of "individual concern" adopted in *Plaumann* was too strict to meet the requirements of the Aarhus Convention. It therefore found that the EU was not in compliance with the Aarhus Convention:

> "81. Having considered the main jurisprudence of the EU Courts since Part I, the Committee finds that there has been no new direction in the jurisprudence of the EU Courts that will ensure compliance with article 9, paragraph 3 and consequentially, article 9, paragraph 4 of the Convention.
>
> 82. In this regard, the Committee notes that in the Slovak Bears case [judgment of 8 March 2011, *Lesoochranárske zoskupenie*, C-240/09, ECLI:EU:C:2011:125], the CJEU made the following findings:
>
> > 49. … if the effective protection of EU environmental law is not to be undermined, it is inconceivable that Article 9(3) of the Aarhus Convention be interpreted in such a way as to make it in practice impossible or excessively difficult to exercise rights conferred by EU law.
> >
> > 50. It follows that … it is for the national court, in order to ensure effective judicial protection in the fields covered by EU environmental law, to interpret its national law in a way which, to the fullest extent possible, is consistent with the objectives laid down in Article 9(3) of the Aarhus Convention.
>
> 83. The Committee regrets that despite its finding with respect to the national courts, the CJEU does not consider itself bound by this principle. The Committee considers that if the EU Courts had been bound in the same way as the national courts, the EU might have moved towards compliance with article 9, paragraph 3, and consequently article 9, paragraph 4." **[D8/179]**

34. As a result of the General Court's error of law here in fettering its power to interpret the Treaties, it failed to give any consideration to these important factors that should have informed its interpretation of the words "individual concern" in the fourth

[6] Compliance Committee, Findings and recommendations of the compliance committee with regard to communication ACCC/C/2008/32 (Part II) concerning compliance by the European Union, Adopted on 17 March 2017. Available at: https://www.unece.org/fileadmin/DAM/env/pp/compliance/C2008-32/Findings/C32_EU_Findings_as_adopted_advance_unedited_version.pdf

paragraph of Article 263 TFEU. In deciding this appeal, this Court should avoid making the same error of law.

35. The Defendants' own submissions to the Aarhus Convention Compliance Committee expressly recognised that the authoritative interpretation of the Treaties is exclusively a judicial power vested in CJEU, which includes the power to reinterpret the words "individual concern" (notably contrary to the position taken in their pleas of inadmissibility before the General Court). Mr McGlone explains this in his witness statement:

> "Moreover the Council are on public record as having accepted – with all the member states in unanimity – the draft Aarhus decision on Case C32, subject to some amendments in order to clarify inter alia that the MOP [Meeting of the Parties] did not intend to require the EU to interfere with the independence of its judiciary." (§60) **[D13/382]**

36. This Court should be aware that the recommendations of the Compliance Committee become binding as a matter of international law when they are endorsed by the Meeting of the Parties ("MOP") (i.e. the signatories to the Aarhus Convention). That has not occurred in Case C32. The only reason for this, however, is because the Council unilaterally blocked it from occurring. This was truly exceptional in that it was the first time, ever, that a party to the Convention has blocked the MOP from endorsing a finding of the Compliance Committee. As Mr McGlone explains:

> "In short, the EU blocked consensus on the endorsement of the C32 findings. This was an exceptional action for any Party to the Convention to take: it was without precedent in the history of the Convention." (§60) **[D13/382]**

37. In the Order, the General Court relied upon submissions from the Defendants that are diametrically opposed to the Council's publicly stated position. At the proceedings in relation to the Aarhus Convention, the Council argued that standing rules were entirely a matter for the CJEU and that it was entirely open to the CJEU to change its interpretation of "individual concern". The Council then blocked the MOP from reaching a binding conclusion that the interpretation adopted in *Plaumann* is incompatible with the Aarhus Convention. Before the General Court, the Defendants then (inaccurately) argued that the Court could not accept the Applicants' submissions without setting aside the requirement of individual concern, directly contrary to the

position adopted before the Compliance Committee. The General Court made an error of law in accepting that submission. This Court should avoid that error and instead confirm that the interpretation of the Treaties is exclusively a matter for the CJEU, not the political organs of the EU, and that the narrow reading of "individual concern" in the fourth paragraph of Article 263 TFEU is entirely inappropriate in cases relating to the protection of the environment.

38. Finally, the General Court also failed adequately to consider the reasons why the preliminary reference procedure is inadequate in this case, as set out at §§143-147 of the Applicants' application for annulment **[D1/38-39]**, on which the Applicants continue to rely.

F. Conclusion: The Applicants have demonstrated "direct and individual concern"

39. In light of the above, and the Applicants' submissions on "direct concern" in their main submissions in the Action (at §§112-118) **[D1/31-33]**, the Court is respectfully invited to find that the Applicants have demonstrated that they have standing to initiate proceedings under the fourth paragraph of Article 263 TFEU. The Order of the General Court should be set aside and the Action should be declared admissible.

40. The Defendants should be ordered to bear their own costs of their pleas of inadmissibility, and to pay those of the Applicants relating to their Observations dated 21 August 2019 and to this Application to Appeal.

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