Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

27 February 2014*

(Appeal — State aid — Schemes for aid granted in favour of housing corporations — Compatibility decision — Commitments provided by the national authorities in order to comply with European Union law — Fourth paragraph of Article 263 TFEU — Action for annulment — Conditions governing admissibility — Interest in bringing proceedings — Locus standi — Beneficiaries who are individually and directly concerned — Notion of a 'closed circle')

In Case C-132/12 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 29 February 2012,

Stichting Woonpunt, established in Maastricht (Netherlands),

Stichting Havensteder, formerly Stichting Com.wonen, established in Rotterdam (Netherlands),

Woningstichting Haag Wonen, established in The Hague (Netherlands),

Stichting Woonbedrijf SWS.Hhvl, established in Eindhoven (Netherlands),

represented by P. Glazener and E. Henny, advocaten,

appellants,

the other party to the proceedings being:

European Commission, represented by H. van Vliet, S. Noë and S. Thomas, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, A. Borg Barthet and E. Levits (Rapporteur), Judges,

Advocate General: M. Wathelet,

Registrar: M. Ferreira, Administrator,

having regard to the written procedure and further to the hearing on 17 April 2013,

after hearing the Opinion of the Advocate General at the sitting on 29 May 2013,

* Language of the case: Dutch.

gives the following

Judgment

1 By their appeal, Stichting Woonpunt, Stichting Havensteder (formerly Stichting Com.wonen), Woningstichting Haag Wonen and Stichting Woonbedrijf SWS.Hhvl request the Court to set aside the order of the General Court of the European Union of 16 December 2011 in Case T-203/10 *Stichting Woonpunt and Others* v *Commission* ('the order under appeal'), by which the General Court dismissed the action brought by the appellants for annulment of Commission Decision C(2009) 9963 final of 15 December 2009 relating to State aid No E 2/2005 and N 642/2009 – The Netherlands – Existing and special project aid to housing corporations ('the contested decision').

Background to the dispute and the contested decision

2 The facts underlying the dispute were set out as follows by the General Court in paragraphs 1 to 14 of the order under appeal:

> '1 The applicants … are housing corporations (woningcorporaties; hereinafter referred to as "wocos") established in The Netherlands. Wocos are not-for-profit bodies whose mission is to acquire, build and rent out dwellings aimed mainly at underprivileged individuals and socially disadvantaged groups. Wocos also engage in other activities, such as the construction and lease of apartments at higher rents, the construction of apartments for sale and the construction and lease of public purpose buildings.
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> 2 On 15 December 2009, the Commission adopted [the contested decision].
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> 3 In the first place, with regard to aid measure E 2/2005, in 2002 the Netherlands authorities notified the Commission of the general State aid scheme for wocos. Since the Commission found that the funding measures for wocos could be classified as existing aid, the Netherlands authorities subsequently withdrew their notification.
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> 4 On 14 July 2005, the Commission sent a letter to the Netherlands authorities under Article 17 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [107 TFEU] (OJ 1999 L 83, p. 1), classifying the general scheme of State aid provided in favour of wocos as existing aid (aid measure E 2/2005) and expressing doubts as to the compatibility of that aid with the common market. First, the Commission pointed out that the Netherlands authorities had to amend the public service mission entrusted to wocos, in such a way that social housing would be earmarked for a clearly defined target group of underprivileged individuals or socially disadvantaged groups. It stated that all commercial activities of wocos had to be carried out in accordance with market conditions and should not benefit from State aid. Finally, it stated that the offer of social housing had to be adapted to the requirements of underprivileged individuals and socially disadvantaged groups.
>
> 5 After that letter had been sent, the Commission and the Netherlands authorities commenced negotiations in order to bring the aid scheme into line with Article 106(2) TFEU.
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> 6 On 16 April 2007, the Association of institutional property investors of the Netherlands (Vereniging van Institutionele Beleggers in Vastgoed, Nederland …) lodged a complaint with the Commission concerning the aid granted to wocos. In June 2009, Vesteda Groep BV became a party to that complaint.

7 By letter of 3 December 2009, the Netherlands authorities offered commitments to the Commission designed to amend the general State aid scheme for wocos.

8 The following measures are included in the general scheme for State aid paid by the [Kingdom of the] Netherlands to wocos and referred to in the E 2/2005 procedure:

(a) State guarantees for loans granted by the Guarantee Fund for the construction of social housing;

(b) State aid from the Central Housing Fund, project-based aid or aid for rationalisation in the form of loans at preferential rates or direct subsidies;

(c) the sale by municipal authorities of land at prices below market value;

(d) the right to obtain loans from the Bank Nederlandse Gemeenten.

9 In the [contested] decision, the Commission classified each of those measures as constituting State aid and took the view that the Netherlands scheme for financing social housing constituted existing aid, as that scheme had been created before the EC Treaty entered into force in the Netherlands and the subsequent reforms did not bring about any fundamental change.

10 In recital 41 to the [contested] decision, the Commission stated:

"The Netherlands authorities have made commitments to amend the functioning of wocos and the measures favouring them. For several of the planned changes the Netherlands authorities have submitted draft rules to the Commission. The new rules will be implemented by way of a new ministerial decree from 1 January 2010 and a new Housing Law from 1 January 2011. …"

11 The Commission examined the compatibility of aid measure E 2/2005 relating to the scheme for financing wocos, as amended, with the series of commitments provided by the Netherlands authorities. It concluded, in recital 72 to the [contested] decision, that "the aid for the provision of social housing, i.e. the activity of construction and renting out dwellings to individuals, including the building and maintenance of ancillary infrastructure, … is compatible with Article 106(2) TFEU". As a result, the Commission accepted the commitments provided by the Netherlands authorities.

12 In the second place, with regard to aid measure N 642/2009, on 18 November 2009 the Netherlands authorities notified a new aid scheme for the regeneration of declining urban areas, classified as "specific project-based aid intended for certain areas", which benefits wocos operating in the selected areas. This new aid scheme must be granted in accordance with the same conditions as those provided for with respect to the measures covered by the existing aid scheme, as amended following the commitments provided by the Netherlands authorities.

13 Aid measure N 642/2009 will be in the form of direct subsidies paid by the Centraal Fonds Volkshuisvesting (Central Housing Fund) for carrying out special projects relating to the construction and lease of housing in geographically defined zones corresponding to the most disadvantaged urban communities. It will be financed by a new tax paid by wocos which carry out their activities outside sensitive urban zones.

14 In the [contested] decision, the Commission took the view that aid measure N 642/2009 was compatible with the common market. It found that "[t]he aid for the activity of construction and renting out of dwellings to individuals, including the construction and maintenance of ancillary

infrastructure and construction and renting out of public purpose buildings, is compatible with Article 106(2) TFEU". As a result, it decided not to raise objections to the new measures notified.'

Procedure before the General Court and the order under appeal

3 By application lodged at the Registry of the General Court on 30 April 2010, the appellants brought an action under Article 263 TFEU for annulment of the contested decision.

4 In support of their action, the appellants relied on a variety of pleas in law.

5 Although not formally raising a plea to that effect, the Commission nevertheless contested, as a preliminary point, the admissibility of that application by contending, first, that the appellants were not individually concerned, within the meaning of the fourth paragraph of Article 263 TFEU, by the contested decision, in so far as it relates to aid measure E 2/2005, and, secondly, that those appellants did not have an interest in bringing proceedings for annulment of the contested decision in so far as it relates to aid measure N 642/2009.

6 In that context, the General Court accordingly decided that it was first necessary to rule on that question.

7 In the first place, having established that the appellants were not the addressees of the contested decision in so far as it relates to aid measure E 2/2005, and having noted, in paragraph 29 of the order under appeal, that, in those circumstances, an undertaking could not be entitled to contest a Commission decision prohibiting a sectoral aid scheme where that undertaking was concerned by such a decision only as a result of the fact that it belonged to the sector in question and that it was a potential beneficiary of that scheme, the General Court held, in paragraph 30 of that order, that the same was true with regard to the action seeking the annulment of a decision by which the Commission, taking note of the commitments provided by the national authorities, had declared the amendments made to the aid scheme at issue to be compatible with the internal market.

8 In the present case, the General Court held, in paragraphs 31 and 32 of the order under appeal, that the status of wocos was granted on the basis of objective criteria which were capable of being satisfied by an indeterminate number of operators as potential beneficiaries under aid measure E 2/2005 referred to in the contested decision.

9 From this the General Court concluded that their status as wocos did not by itself allow the appellants to take the view that they were individually affected by the contested decision in so far as it related to aid measure E 2/2005.

10 Subsequently, in paragraphs 38 to 50 of the order under appeal, the General Court concerned itself with disproving the appellants' arguments.

11 First of all, it stated that the cases which gave rise to the judgments of the Court relied on by the appellants in support of their position, namely Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207 and Joined Cases C-182/03 and C-217/03 *Belgium and Forum 187* v *Commission* [2006] ECR I-5479, differed from the case before the General Court in so far as, within the context of those two judgments of the Court, the applicants belonged to a group the size of which was not capable of increasing after the decisions at issue had been adopted.

12 Next, the General Court held that the appellants could not claim that the likelihood of a new approval of a body as a woco was minimal or that wocos previously approved would have been identifiable at the time when the contested decision was adopted. It noted, in this regard, that the possibility of determining the number or even the identity of the individuals to whom a measure applies does not imply that those individuals must be regarded as being individually concerned by that measure.

13 In response to the appellants' argument that existing wocos are not affected in the same way by the contested decision as wocos which will be approved in future, the General Court first pointed out that the aid scheme referred to in that decision had been declared compatible, for the future, with the internal market. Next, it noted that the fact that an operator is economically more affected by a measure than its competitors does not enable that operator to be individually distinguished. Finally, the General Court held that the appellants belonged to a category of economic operators defined on the basis of objective criteria which did not distinguish them.

14 The General Court concluded, in paragraph 52 of the order under appeal, that the appellants were not individually concerned by the contested decision in so far as it related to aid measure E 2/2005.

15 In the second place, with regard to the contested decision in so far as it related to aid measure N 642/2009, the General Court took the view that the appellants could not, in the context of the examination of new aid, rely on an earlier, allegedly more favourable, situation. Pointing out that the contested decision declares aid potentially benefitting the appellants to be compatible, it held, in paragraph 63 of the order under appeal, that the appellants had not provided evidence of their interest in bringing proceedings against the contested decision in so far as it related to aid measure N 642/2009.

16 Consequently, the General Court dismissed the action in its entirety as being inadmissible.

Forms of order sought

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

— set aside the order under appeal;

— refer the case back to the General Court; and

— order the Commission to pay the costs.

18 The Commission contends that the Court should dismiss the appeal and order the appellants to pay the costs.

The appeal

19 The appellants put forward three grounds in support of their appeal. The first alleges an error of law, an inaccurate appraisal of the relevant facts and a failure to provide reasons, inasmuch as the General Court made the admissibility of the action against the contested decision dependent, in so far as that decision relates to aid measure E 2/2005, on the issue of the appellants' status as actual or potential beneficiaries. The second ground alleges an error of law, an inaccurate appraisal of the relevant facts and a failure to provide reasons, to the extent to which the General Court held, with regard to the contested decision, in so far as it relates to aid measure E 2/2005, that the appellants did not belong to a 'closed circle' of existing wocos. The third ground alleges an error of law, an inaccurate appraisal

of the relevant facts and a failure to provide reasons in so far as the General Court held that the appellants had no interest in bringing proceedings for annulment of the contested decision, inasmuch as the latter relates to aid measure N 642/2009.

20 Since the first two grounds in support of the appeal challenge the General Court's assessment of the appellants' *locus standi*, they should be examined together, following an examination of the third ground of appeal.

The third ground of appeal

Arguments of the parties

21 According to the appellants, first of all, the General Court mistakenly presupposed, in paragraph 59 of the order under appeal, that the conditions for the application of aid measure N 642/2009 came from the national authorities, and not from the Commission.

22 Next, the appellants claim that, in that same paragraph of the order under appeal, the General Court wrongfully held that they had no legal interest in bringing proceedings on the ground that it was not clear that the Commission would have approved the aid scheme in other circumstances.

23 Finally, they submit, the General Court wrongfully failed, in those circumstances, to accept the appellants' complaint alleging infringement of their procedural rights, in so far as they were not able to enjoy the status of an interested party.

24 The Commission points out that, since aid measure N 642/2009 is a new scheme, the appellants cannot rely on a notional situation prior to the adoption of the contested decision which would have been more favourable to them.

25 Consequently, the Commission submits, this ground of appeal must be rejected as being unfounded.

Findings of the Court

26 With regard to the appellants' first argument, it must be held that the General Court did not link their interest in bringing proceedings against the contested decision, in so far as it relates to aid measure N 642/2009, to the question of the extent to which the conditions governing application of that aid had been set by the Commission itself or by the Netherlands authorities.

27 By contrast, to the extent to which that decision concerned new notified aid, the General Court explained the lack of an interest in bringing proceedings by merely stating, in paragraph 58 of the order under appeal, that the appellants could not rely, for those purposes, on the existence of an earlier situation in which the aid would have been paid under more favourable conditions than those set out in the contested decision.

28 As regards the second argument, it must be held that this is directed against a ground which had been included in paragraph 59 of the order under appeal for the sake of completeness, the rebuttal of which does not make it possible to acknowledge that the appellants have an interest in bringing proceedings.

29 In any event, as was highlighted by the Advocate General in point 36 of his Opinion, the appellants have clearly misinterpreted that paragraph of the order under appeal. It does not follow from that paragraph that the appellants did not have an interest in bringing proceedings on the ground that it is not certain that the Commission would have approved the aid scheme in other circumstances. The General Court merely intended to confirm that the appellants were not entitled, in the circumstances

of the present case, to rely on a situation prior to the adoption of the contested decision which would have been more favourable to them in so far as they had no acquired rights with regard to the aid envisaged.

30 With regard to the third argument, the Court has already held that where an applicant seeks the annulment of a Commission decision not to raise objections, on the basis of the infringement of its procedural rights, it is for that applicant to show that, during the preliminary phase of examination of the measure notified, the Commission should have had doubts as to the compatibility of that measure with the common market (see, to that effect, Case C-83/09 P *Commission* v *Kronoply and Kronotex* [2011] ECR I-4441, paragraph 59).

31 In the present case, the contested decision led to a declaration that the new aid was compatible with the internal market at the conclusion of the preliminary examination phase. Since the appellants are the potential beneficiaries of that aid, they cannot claim that the General Court erred in law by infringing their procedural rights.

32 Consequently, the third ground of appeal must be rejected as unfounded.

The first and second grounds of appeal

Arguments of the parties

33 In the first place, the appellants claim that, since they were beneficiaries of aid measure E 2/2005 before it was amended by the contested decision, the General Court erred in basing itself, in paragraphs 44 and 45 of the order under appeal, on their status as potential beneficiaries of the amended aid scheme in order to deny them the status of parties individually concerned by that decision. Their previous situation is, they submit, significantly affected by the new conditions for the grant of the aid, as they result from the amendments made by the contested decision.

34 First, the existing loans granted on the basis of the previous scheme and falling due after the adoption of the contested decision could, where they must be refinanced, be guaranteed only where the woco satisfies the conditions newly defined in the context of aid measure E 2/2005.

35 Secondly, if the loans related to previously eligible investments which, after the adoption of the contested decision, are no longer eligible for financing guaranteed by the funds, those investments should, after those loans become repayable, be financed by external funds without guarantee.

36 It follows, in the appellants' view, that their factual situation is different from that of wocos which did not have approval prior to adoption of the contested decision.

37 In the second place, the General Court relied on a definition of the concept of 'closed circle' which is too strict.

38 Thus, they submit, the General Court, in paragraph 46 of the order under appeal, wrongfully rejected, on the ground that it was conjecture, the argument that no new body would in future be approved as a woco in the Netherlands.

39 Furthermore, the General Court erred in law by requiring, in paragraph 51 of the order under appeal, that the appellants be distinguished from other wocos which existed before the adoption of the contested decision.

40 The Commission contends that the commitments provided by the Netherlands authorities concern only the period following the adoption of the contested decision. For that reason, it argues, the appellants' initial situation is not affected by that decision. Furthermore, the Commission did not seek repayment of the amounts paid under the initial aid scheme.

41 The Commission points out that the Netherlands legislation provides for the approval of new bodies on the basis of objective criteria. Consequently, it argues, the appellants necessarily belong to a circle of economic operators which is liable to be enlarged.

Findings of the Court

42 As a preliminary point, it is necessary to point out that the contested decision was adopted on 15 December 2009, that is to say, after the entry into force of the Lisbon Treaty amending the EC Treaty.

43 As well as other amendments, the Treaty of Lisbon, under the fourth paragraph of Article 263 TFEU, relaxed the conditions of admissibility of actions for annulment brought by natural and legal persons against acts of the European Union by adding a third limb to that provision. Since the effect of that limb is that the admissibility of actions for annulment brought by natural and legal persons is not subject to the condition of individual concern, it also makes possible legal actions against regulatory acts which do not entail implementing measures and are of direct concern to the applicant (see, to that effect, Case C-583/11 P *Inuit Tapiriit Kanatami and Others* v *Parliament and Council* [2013] ECR, paragraph 57).

44 The fourth paragraph of Article 263 TFEU provides, therefore, for two situations in which natural or legal persons are accorded standing to institute proceedings against an act which is not addressed to them. First, such proceedings may be instituted if the act is of direct and individual concern to them. Second, such persons may bring proceedings against a regulatory act not entailing implementing measures if that act is of direct concern to them (Case C-274/12 P *Telefónica* v *Commission* [2013] ECR, paragraph 19).

45 In this context, it should be recalled that the criterion which makes the admissibility of an action brought by a natural or legal person against a decision addressed to another person subject to the conditions governing admissibility laid down in the fourth subparagraph of Article 263 TFEU raises an absolute bar to proceeding which the European Union Courts may consider at any time, even of their own motion (see, to that effect, Case C-362/06 P *Sahlstedt and Others* v *Commission* [2009] ECR I-2903, paragraph 22).

46 In the order under appeal, the General Court, with a view to declaring inadmissible the action brought by the appellants, limited itself to an examination of the condition that they must be individually concerned, within the meaning of the second limb of the fourth paragraph of Article 263 TFEU, thereby failing to carry out an examination as to the admissibility of that action in the light of the other, less stringent, conditions set out in the third limb of the fourth paragraph of Article 263 TFEU, and the examination of which was in no way prejudiced by the finding that the appellants were not individually concerned.

47 By acting in this way, the General Court erred in law.

48 However, such an error is irrelevant if it transpires that the appellants' action did not satisfy the conditions governing admissibility set out in the third limb of the fourth paragraph of Article 263 TFEU.

49 Under that provision, actions for annulment may, inter alia, be brought against regulatory acts which do not entail implementing measures and are of direct concern to an applicant.

50 In this regard, the Court has already held that the question whether a regulatory act entails implementing measures should be assessed by reference to the position of the person pleading the right to bring proceedings under the third limb of the fourth paragraph of Article 263 TFEU (*Telefónica* v *Commission*, paragraph 30).

51 Furthermore, in order to determine whether the measure being challenged entails implementing measures, reference should be made exclusively to the subject-matter of the action (*Telefónica* v *Commission*, paragraph 31).

52 In the present case, first, the appellants seek, by their action, the annulment of the contested decision by which the Commission confirms that aid measure E 2/2005 is compatible with the common market, following the commitments provided by the Netherlands authorities amending the aid scheme which benefitted the appellants. It is apparent from recital 41 to the contested decision that those commitments will be implemented by a ministerial decree and by a new housing law.

53 Secondly, the contested decision does not define the specific and actual consequences for the appellants' activities of the application of the commitments given by the Netherlands authorities in the context of aid measure E 2/2005. Those consequences will materialise by way of measures adopted to implement the ministerial decree and the new housing law, which, as such, are themselves implementing measures entailed by the contested decision within the meaning of the third limb of the fourth paragraph of Article 263 TFEU.

54 Accordingly, independently of the question whether the contested decision is a 'regulatory act' within the meaning of the aforementioned provision, since the appellants' action does not satisfy the conditions governing admissibility set out in the third limb of the fourth paragraph of Article 263 TFEU, the error of law which the General Court made in the order under appeal in failing to assess the admissibility of that action also in the light of those other conditions is of no consequence.

55 That said, it is necessary to examine the appellants' first and second grounds in support of their appeal.

56 In this regard, it is common ground that the contested decision is addressed solely to the Kingdom of the Netherlands.

57 As was pointed out by the General Court in paragraph 28 of the order under appeal, third parties may be individually concerned by a decision addressed to another person only if that decision 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 (Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, 107; Case C-298/00 P *Italy* v *Commission* [2004] ECR I-4087, paragraph 36; *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, paragraph 72; and *Telefónica* v *Commission*, paragraph 46).

58 In this regard, it is true, as the General Court pointed out in paragraph 47 of the order under appeal, that the mere possibility of determining more or less precisely the number, or even the identity, of the persons to whom a measure applies by no means implies that it must be regarded as being of individual concern to those persons as long as that measure is applied in accordance with an objective legal or factual situation defined by the act in question (see *Telefónica* v *Commission*, paragraph 47).

59 It is, however, clear from settled case-law that where the decision affects a group of persons who were identified or identifiable when that measure was adopted by reason of criteria specific to the members of the group, those persons might be individually concerned by that measure inasmuch as they form

part of a limited class of traders and that that can be the case particularly when the decision alters rights acquired by the individual prior to its adoption (see, to that effect, Case C-125/06 P *Commission* v *Infront WM* [2008] ECR I-1451, paragraphs 71 and 72 and the case-law cited).

60 In the present case, it should be noted, as the General Court found in paragraph 31 of the order under appeal, that, since the status of wocos is granted through a system of approval by royal decree, their number and identity were precisely determined at the time when the contested decision was adopted.

61 Furthermore, it is not disputed that the contested decision had the effect of amending, as from 1 January 2011, the date on which the new housing law entered into force, the aid scheme from which, up to that date, the approved wocos had benefitted, by making the conditions for the exercise of their activities less favourable than had previously been the case, particularly in light of the fact that, as the appellants stated at the hearing, under the amended scheme the latitude relating to the choice of tenants eligible for housing managed by wocos is reduced and the guarantee funds for loans benefitting them cease to exist.

62 In those circumstances, it must be held that the appellants belong to a closed circle of operators, a fact which individually distinguishes them in relation to that decision, in so far as it concerns aid measure E 2/2005.

63 The General Court consequently erred in law in holding that the appellants were not individually concerned by the contested decision in so far as it relates to aid measure E 2/2005.

64 It follows that the order under appeal must be set aside to the extent to which it was held therein that the appellants are not individually concerned by the contested decision in so far as it relates to aid measure E 2/2005.

Admissibility of the action at first instance

65 In accordance with the second sentence of the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, the Court of Justice may, if the decision of the General Court is set aside, give final judgment in the matter where the state of the proceedings so permits.

66 While the Court is not in a position, at the present stage of the proceedings, to give judgment on the substance of the action brought before the General Court, it does, by contrast, have the information necessary to enable it to give final judgment on the admissibility of that action against the contested decision, in so far as the latter relates to aid measure E 2/2005.

67 In this regard, it should be noted, first, that an action for annulment brought by a natural or legal person is admissible only in so far as that person has an interest in having the contested act annulled. Such an interest requires that the annulment of that act must be capable, in itself, of having legal consequences and that the action may therefore, through its outcome, procure an advantage to the party which brought it (see, to that effect, Case C-519/07 P *Commission* v *Koninklijke FrieslandCampina* [2009] ECR I-8495, paragraph 63).

68 Secondly, the appellants must, under the second limb of the fourth paragraph of Article 263 TFEU, be concerned not only individually but also directly by the act which they are seeking to have annulled, in the sense that that act must directly affect the legal situation of those parties and leave no discretion to the authorities responsible for implementing that act, such implementation being purely automatic and resulting from European Union law alone, without the application of other intermediate rules (see, to that effect, *Commission* v *Koninklijke FrieslandCampina*, paragraphs 48 and 49).

69 In the present case, first, to the extent to which it follows from paragraph 66 of the present judgment that the amendments to aid measure E 2/2005 make the conditions for the exercise of the activities of wocos less favourable than had previously been the case, the annulment of the contested decision, in so far as it concerns that aid scheme, would have the effect of maintaining the previous conditions which were more favourable to approved wocos.

70 Consequently, it must be held that the appellants have a legitimate interest in having the contested decision annulled in so far as it concerns aid measure E 2/2005.

71 Secondly, it should be pointed out that the contested decision was adopted by the Commission, as is apparent from recital 74 to that decision, in accordance with Article 19(1) of Regulation No 659/1999.

72 As was noted by the Advocate General in points 43 to 45 of his Opinion, in the context of the procedure under Article 19(1) of Regulation No 659/1999, it is the Commission's decision recording the proposals of the Member State which renders those proposals binding.

73 In that regard, the fact that the amendments recorded by the contested decision were adopted by the Netherlands legislation cannot call that finding into question. As also observed by the Advocate General in points 94 and 98 of his Opinion, the Kingdom of the Netherlands does not have any discretion when implementing the contested decision.

74 Consequently, it must be held that the contested decision, in so far as it concerns aid measure E 2/2005, directly affects the legal position of the appellants.

75 It follows from all of those considerations that the action for annulment brought by the appellants before the General Court must be declared admissible, to the extent to which, first, they have an interest in bringing proceedings against the contested decision in so far as it relates to aid measure E 2/2005, and, secondly, they are individually and directly concerned by the contested decision in so far as it relates to aid measure E 2/2005.

Costs

76 As the case is to be referred back to the General Court, the costs relating to the present appeal proceedings must be reserved.

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

1. **Sets aside the order of the General Court of the European Union of 16 December 2011 in Case T-203/10 *Stichting Woonpunt and Others* v *Commission* in so far as it declares inadmissible the action brought by Stichting Woonpunt, Stichting Havensteder, Woningstichting Haag Wonen and Stichting Woonbedrijf SWS.Hhvl for annulment of Commission Decision C(2009) 9963 final of 15 December 2009 relating to State aid No E 2/2005 and N 642/2009 – The Netherlands – Existing and special project aid to housing corporations, in so far as that decision concerns aid measure E 2/2005;**

2. **Dismisses the remainder of the appeal;**

3. **Declares the action for annulment referred to in paragraph 1 of the present operative part to be admissible;**

4. **Refers the case back to the General Court of the European Union for a decision on the merits concerning the action for annulment referred to in paragraph 1 of the present operative part;**

5. Reserves the costs.

[Signatures]