ORDER OF THE COURT OF FIRST INSTANCE (First Chamber)
9 August 1995 *

In Case T-585/93,

Stichting Greenpeace Council (Greenpeace International), Domingo Viera González, Pablo Guedes García, José Ignacio Trojaola Chávez, Aurora González González, Pedro Melián Castro, Caridad Sánchez Artiles, José Juan Melián Melián, Carmen Guadalupe Gómez Castro, Clara Donate Hernández, Balbina Martín Espínola, José Hernández Morín, Germán Peña Hernández, Antonio Cabrera Expósito, Valentín Hernández Vaquero, Peter Reinhard, Julio González Domínguez, Tagoror Ecologista Alternativo and Comisión Canaria contra la Contaminación, represented by Philippe Sands and Mark Hoskins, Barristers, of the Bar of England and Wales, instructed by Leigh, Day & Co., Solicitors, with an address for service in Luxembourg at the Chambers of Jean-Paul Noesen, 18 Rue des Glacis,

applicants,

v

Commission of the European Communities, represented by David Gilmour, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

* Language of the case: English.

defendant,

supported by

Kingdom of Spain, represented by Alberto Navarro González, Director-General for Community Legal and Institutional Coordination, and Gloria Calvo Díaz, Abogado del Estado, of the State Legal Service for matters before the Court of Justice of the European Communities, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4-6, Boulevard Emmanuel Servais,

intervener,

APPLICATION for annulment of the decision alleged to have been adopted by the Commission between 7 March 1991 and 29 October 1993 to disburse to the Kingdom of Spain a sum of the order of ECU 11 000 000 or 12 000 000 pursuant to Decision C (91) 440 concerning financial assistance provided by the European Regional Development Fund for the construction of two power stations in the Canary Islands (Gran Canaria and Tenerife),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (First Chamber),

composed of: J. L. Cruz Vilaça, President, A. Kalogeropoulos and V. Tiili, Judges,

Registrar: H. Jung,

makes the following

Order

Factual background to the dispute

1 On 7 March 1991, on the basis of Council Regulation (EEC) No 1787/84 of 19 June 1984 on the European Regional Development Fund (OJ 1984 L 169, p. 1, 'the basic regulation'), as amended by Council Regulation (EEC) No 3641/85 of 20 December 1985 (OJ 1985 L 350, p. 40), the Commission adopted Decision C (91) 440 granting the Kingdom of Spain financial assistance from the European Regional Development Fund ('the ERDF') up to a maximum of ECU 108 578 419, for infrastructure investment. The project concerned was for the building of two power stations in the Canary Islands, on Gran Canaria and on Tenerife, by Unión Eléctrica de Canarias SA ('Unelco').

2 The Community finance for the construction of the two power stations was to be spread over four years, from 1991 to 1994, and to be paid in yearly tranches (Articles 1 and 3 of, and Annexes II and III to, the decision). The financial commitment for the first year (1991), for ECU 28 953 000 (Article 1 of the decision), was payable on the defendant's adoption of the decision (Annex III, paragraph A4, of the decision). Subsequent disbursements, based on the financial plan for the operation and on the progress of its implementation, were to cover expenditure relating to the operations in question, legally approved in the Member State concerned (Articles 1 and 3 of the decision). Under Article 5 of the decision, the Commission could reduce or suspend the aid granted to the operation in issue if an examination were to reveal an irregularity and in particular a significant change affecting the way in which it was carried out for which the Commission's approval had not been requested (see also paragraphs A20, A21 and C2 of Annex III to the decision).

3 By letter dated 23 December 1991, Aurora González González and Pedro Melián Castro, the fifth and sixth applicants, informed the Commission that the works carried out on Gran Canaria were unlawful because Unelco had failed to undertake an environmental impact assessment study in accordance with Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40) and asked it to intervene to stop the works. Their letter was registered as No 4084/92.

4 By letter dated 23 November 1992, Domingo Viera González, the second applicant, sought the Commission's assistance on the ground that Unelco had already started work on Gran Canaria and Tenerife without the Comisión de Urbanismo y Medio Ambiente de Canarias (Canary Islands Commission for Planning and the Environment, 'Cumac') having issued its declaration of environmental impact in accordance with the applicable national legislation. That letter was registered as No 5151/92.

5 On 3 December 1992, Cumac issued two declarations of environmental impact relating to the construction of the power stations on Gran Canaria and Tenerife, published in the *Boletín Oficial de Canarias* on 26 February and 3 March 1993 respectively.

6 On 26 March 1993, Tagoror Ecologista Alternativo ('TEA'), the 18th applicant, a local environmental protection association based on Tenerife, lodged an administrative appeal against Cumac's declaration of environmental impact relating to the project for the construction of a power station on Tenerife. On 2 April 1993, the Comisión Canaria contra la Contaminación (Canary Islands Commission against Pollution, hereinafter 'CIC'), the 19th applicant, a local environmental protection

association based on Gran Canaria, also brought administrative proceedings against Cumac's declaration of environmental impact relating to the two construction projects on Gran Canaria and Tenerife.

7 On 18 December 1993, Greenpeace Spain, an environmental protection association responsible at the national level for the achievement at local level of the objectives of Stichting Greenpeace Council ('Greenpeace'), the first applicant, a nature conservancy foundation having its head office in the Netherlands, brought legal proceedings challenging the validity of the administrative authorizations issued to Unelco by the Canary Island Regional Ministry of Industry, Commerce and Consumption.

8 By letter of 17 March 1993 addressed to the Director-General of the Commission's Directorate-General for Regional Policies ('DG XVI'), Greenpeace asked the Commission to confirm whether Community structural funds had been paid to the Regional Government of the Canary Islands for the construction of two power stations and to inform it of the timetable for the release of those funds.

9 By letter of 13 April 1993, the Director-General of DG XVI recommended that Greenpeace 'read the Decision C (91) 440' which, he said, contained 'details of the specific conditions to be respected by Unelco in order to obtain Community support and the financing plan'.

10 By letter of 17 May 1993, Greenpeace asked the Commission for full disclosure of all information relating to measures it had taken with regard to the construction of the two power stations in the Canary Islands, in accordance with Article 7 of Council Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 185, p. 9), which provides: 'Measures

financed by the Funds or receiving assistance from the EIB or from another existing financial instrument shall be in keeping with the provisions of the Treaties, with the instruments adopted pursuant thereto and with Community policies, including those concerning ... environmental protection.'

11 By letter dated 23 June 1993, the Director-General of DG XVI wrote as follows to Greenpeace: 'I am unable to supply this information since it concerns the internal decision making procedures of the Commission ... but I can assure you that the Commission's decision was taken only after full consultation between the various services of the concerned'.

12 On 29 October 1993 a meeting took place at the Commission's premises in Brussels between Greenpeace and DG XVI, concerning the financing by the ERDF of the construction of the power stations on Gran Canaria and Tenerife.

13 On 21 December 1993, the applicants brought an action, registered at the Court of First Instance as Case T-585/93, seeking annulment of the decision alleged to have been taken by the Commission to disburse to the Spanish Government, in addition to the first tranche of ECU 28 953 000, a further ECU 12 000 000 in reimbursement of expenses incurred in the construction of two power stations in the Canary Islands (Gran Canaria and Tenerife). That decision was alleged to have been taken between 7 March 1991, when Decision C (91) 440 was adopted, and 29 October 1993, when the Commission, at the abovementioned meeting with Greenpeace, whilst refusing to provide Greenpeace with detailed information regarding the financing of the construction of the two power stations in the Canary Islands, confirmed that a total of ECU 40 000 000 had already been disbursed to the Spanish Government pursuant to Decision C (91) 440.

14 By separate document lodged at the Registry of the Court of First Instance on 22 February 1994, the Commission raised an objection as to admissibility under Article 114 of the Rules of Procedure. The applicants submitted their observations on that objection on 10 May 1994.

15 On 30 March 1994, the Kingdom of Spain sought leave to intervene in support of the Commission. By order of 8 June 1994, the President of the Second Chamber of the Court of First Instance granted the Kingdom of Spain leave to intervene in support of the Commission. The intervener lodged its statement in intervention on 13 July 1994. The applicants submitted their observations on the statement in intervention of the Spanish Government on 27 September 1994.

16 By decision of 25 July 1994, the Court of First Instance referred the case to a chamber of three judges.

Forms of order sought

17 In their application, the applicants claim that the Court should:

— declare void the decision adopted by the defendant between 7 March 1991 and 29 October 1993 to disburse to the Kingdom of Spain ECU 12 000 000 or such other sums pursuant to its Decision C (91) 440, in reimbursement of expenses incurred by the Kingdom of Spain in the construction of two power stations (on Gran Canaria and Tenerife); and

— order that the defendant pay the applicants' costs in the action.

18 The Commission, in its objection as to admissibility, contends that the Court should:

— declare the application inadmissible; and

— declare the applicants liable for its costs.

19 The intervener contends that the Court should:

— declare the application inadmissible; and

— order the applicants to pay the costs.

20 The applicants, in their observations on the objection as to admissibility, claim that the Court should:

— require the Commission to produce all the supporting documents, as defined by Article 38(2) of Commission Regulation 86/610/EEC, Euratom, ECSC of 11 December 1986 laying down detailed rules for the implementation of certain provisions of the Financial Regulation of 21 December 1977 (OJ 1986 L 360, p. 1), relating to the expenditure of funds pursuant to Decision C (91) 440;

— require the Commission to give a full account of the manner in which it has disbursed funds under Decision C (91) 440, in particular the dates of the commitment, validation, authorization and payment of each disbursement under Decision C (91) 440 and the amounts of each such disbursement;

— dismiss the objection as to admissibility; and

— declare that the Commission is liable for the applicants' costs relating to that objection and that Spain is liable for the applicants' costs in replying to its statement in intervention.

Pleas in law and arguments of the parties

21 The Commission puts forward two pleas in law challenging the admissibility of this application, the first concerning the nature of the act in question and the second the applicants' lack of *locus standi*.

The plea of inadmissibility concerning the nature of the act in question

22 The Commission submits that the procedure laid down for the implementation of Decision C (91) 440 cannot involve the adoption of a decision capable of being challenged in annulment proceedings under Article 173 of the EC Treaty, since the

implementation of an ERDF financing decision does not take place by means of formal acts. In the Commission's view, an analysis of the provisions of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities (OJ 1977 L 356, p. 1, 'the Financial Regulation'), last amended by Council Regulation (Euratom, ECSC, EEC) No 610/90 of 13 March 1990 (OJ 1990 L 70, p. 1), shows that when an ERDF financing decision is taken, the legal requirements for the commitment of the expenditure in question are considered to have been met. The payment of part of the ERDF assistance is thus no more than the administrative consequence of the original commitment decision — in the present case, Decision C (91) 440.

23 The Commission submits that the applicants cannot thus seek annulment of the payment made pursuant to Article 51 of the Financial Regulation without challenging the legality of the original commitment, namely Decision C (91) 440. Therefore, having failed to challenge Decision C (91) 440 within the prescribed period, the applicants are out of time unless the Court decides that implementation of the financing decision, Decision C (91) 440, does constitute a decision within the meaning of Article 173 of the Treaty.

24 The applicants submit that, if one looks at the substance and not the form of an act in order to determine whether it constitutes a decision within the meaning of Article 173 of the Treaty (Case T-83/92 *Zunis Holding and Others* v *Commission* [1993] ECR II-1169), the four stages provided for in the Financial Regulation for the disbursement of Community funds — commitment (Articles 36 to 39), validation (Articles 40 to 42), authorization (Articles 43 to 50) and payment (Articles 51 to 53) — must be regarded as acts which can be reviewed by the Court under Article 173 of the Treaty. They add that it is apparent from Article 1 of Decision C (91) 440 that the decision to authorize commitments for each subsequent year is not automatic but depends both on the financial plan and on the progress in the implementation of the operation.

25 The applicants further stress that in the implementation of Decision C (91) 440 the Commission was under a dual obligation to 'monitor' compliance by the Kingdom of Spain with Community environmental policy, in particular with Directive 85/337, and to refuse to disburse further funds in the event of a failure to comply with that policy. They conclude that since the Commission was or should have been aware that the use of the funds was, in this case, contrary to Community environmental policy, it was obliged under Decision C (91) 440 to refuse to pay the amount in issue, of the order of ECU 11 000 000 to 12 000 000.

The plea of inadmissibility concerning the applicants' lack of **locus standi**

26 The Commission submits that the applicants are not directly and individually concerned by the contested decision. It stresses that since the contested decision concerns only the release of a tranche of ERDF financing, the legal position of the applicants, whose interests relate solely to environmental protection, cannot be directly affected. They cannot, therefore, claim to be affected by the contested decision in the same way as the addressee, the Spanish Government. Nor are the applicants individually concerned by the contested decision, since it concerns only the relations between the Commission and Spain and confers no rights and imposes no obligations with regard to third parties.

27 The Commission further argues that neither the second applicant, Domingo Viera González, nor the fifth applicant, Aurora González González, should be recognized as having *locus standi* on the sole ground that they had submitted complaints to the Commission. It adds that the relevant legal rules governing its relations with the Member States, which provide the framework in which the contested decision was adopted, do not confer any subjective rights on individuals, who thus have no *locus standi* either under Articles 173 and 175 or under Article 169 of the EC Treaty.

28 Finally, the Commission considers that the present action should not have been brought before the Community courts but before the national courts, which alone can rule on the question whether the grant of planning permission for the two power stations in the Canary Islands was lawful with regard to Directive 85/337.

29 The applicants consider that they are directly concerned because the contested decision leaves the Spanish Government no discretion as to the use of the funds advanced from the ERDF (Case 62/70 *Bock* v *Commission* [1971] ECR 897 and Case 11/82 *Piraiki-Patraiki* v *Commission* [1985] ECR 207).

30 In order to establish that they are individually concerned, the applicants submit, primarily, that all individuals who have suffered or potentially will suffer detriment or loss as a result of a Community measure which affects the environment have standing to bring an action under Article 173 of the Treaty and, in the alternative, that all individuals who have suffered or potentially will suffer 'particular' detriment or loss as a result of such a measure have that standing.

31 They add that the requirement that in order to establish *locus standi* an applicant must show that he is affected in the same way as the addressee of a decision is not borne out by the case-law of the Court of Justice and cite, in that regard, its judgments in the field of State aids, recognizing that competitors of beneficiaries of aid have standing to bring an action under Article 173 of the Treaty although their interests are not affected in the same way as the addressee of a decision, which is the Member State concerned (Case C-198/91 *Cook* v *Commission* [1993] ECR I-2487).

32 The applicants ask the Court to adopt a liberal approach on this issue and recognize that, in the present case, their *locus standi* can depend not on a purely econ-

omic interest but on their interest in the protection of the environment, abandoning the approach adopted in the past in cases concerning purely economic interests.

33 In support of that argument, the applicants rely on Community policy and case-law in relation to environmental protection, the Community's international commitments in that field and the relevant law and practice of the Member States and of other countries, in particular the United States of America; in that connection, they produce as an annex to their application a report drawn up in 1992 by the Institute for Applied Ecology, entitled 'Access to Justice, Final Report'. That report, according to the applicants, shows that in every Member State individuals who can establish sufficient interest may bring legal proceedings against administrative decisions alleged to have been taken in breach of environmental rules. Moreover, a majority of Member States also allow environmental associations which are sufficiently representative of the interests of their members or which have been subject to some formal accreditation or registration to bring such actions.

34 On the basis of those considerations, the applicants maintain that they have each suffered particular and special harm as a result of the acts and omissions alleged against the Commission and thus, in a case relating to the environment, they meet the criteria for *locus standi* under Article 173 of the Treaty.

35 The applicants submit that the construction of the power station on Gran Canaria thus causes harm to:

— the applicant Domingo Viera González, a local resident and secretary of the Castillo del Romeral association of fishermen, inasmuch as it will adversely affect the livelihoods of local fishermen;

— the applicant Pablo Guedes García, a local resident and farmer, inasmuch as it will adversely affect the livelihoods of local farmers and the area concerned, which produces the largest tomato crop on the Canary Islands;

— the applicant José Ignacio Trojaola Chávez, who is employed in the tourist industry, inasmuch as it will adversely affect the residents' health, the tourist industry, fishermen and farmers;

— the applicant Aurora González González, president of the Aurora Sánchez Bolanos residents' association, inasmuch as it will have a detrimental effect on the quality of life of local residents;

— the applicant Pedro Melián Castro, a local resident and taxi driver, inasmuch as it will harm the environment and damage the tourist industry;

— the applicant Caridad Sánchez Artiles, a local resident and doctor, inasmuch as it will have detrimental effects on residents' health; and

— the applicant José Juan Melián Melián, a local resident and head teacher at the Castillo del Romeral infants' school, inasmuch as it will harm the environment and have detrimental effects on children's education.

36 The construction of the power station on Tenerife will cause harm to:

— the applicant Carmen Guadalupe Gómez Castro, a local resident who bought a house in the area for the benefit of her health because she suffered from serious breathing problems, inasmuch as it will have an adverse affect on her health;

— the applicant Clara Donate Hernández, a local resident and farmer, inasmuch as it will have detrimental effects on her health and on her farm land;

— the applicant Balbina Martín Espínola, inasmuch as it will adversely affect her health;

— the applicant José Hernández Morín, a trade unionist in the Canary Island Workers' Union, inasmuch as it will have an adverse effect on the livelihood of workers in the tourist sector;

— the applicant Germán Peña Hernández, a local resident and representative of the Los Abrigos de Granadilla de Abona residents' collective, inasmuch as it will have an adverse effect on the health of residents and the livelihoods of those employed in the tourist and farming sectors;

— the applicant Antonio Cabrera Expósito, a local resident and Granadilla town hall counsellor for the environment, inasmuch as it will have detrimental effects on the environment, on tourism, on farming and on health;

— the applicant Valentín Hernández Vaquero, who is in charge of the service for preventive medicine in a local hospital, inasmuch as it will have detrimental effects on the health of local residents;

— the applicant Peter Reinhard, a local resident, inasmuch as it will have a detrimental effect on windsurfing, which is the reason he came to live on Tenerife; and

— the applicant Julio González Domínguez, an ornithologist, inasmuch as it will have a detrimental effect on local flora and fauna and in particular the local bird population.

37 As regards the *locus standi* of the applicant associations (Greenpeace, TEA and CIC), the applicants point out that the relevant case-law of the Court of Justice appears to deny standing to such organizations only where their members are not themselves individually concerned by the Community measure challenged. Where one or more members of an association are entitled to bring annulment proceedings, therefore, the association representing their interests should also be so entitled.

38 The applicants consider that those two conditions are met in the present case by the first, 18th and 19th applicants, namely Greenpeace, TEA and CIC. They explain that Greenpeace, whose head office is in the Netherlands, has legal personality and that its object, under Article 2 of its bylaws, is 'promoting the conservation of Nature'. In addition, of the 61 828 members of Greenpeace Spain, which is responsible at the national level for the achievement of Greenpeace's objectives at a local level (see paragraph 7 above), 1 266 are resident in the Canary Islands and many of those are individually concerned by the contested decision. TEA is an environmental association governed by Spanish law and based on Tenerife; Article 2 of its statutes provides that its aims are, *inter alia*, to promote, encourage and support studies on nature and the environment in general, and many of its 154 members are also individually concerned by the contested act. Finally, CIC, also an association with legal personality governed by Spanish law, based on Gran Canaria, has as its aims the protection and defence of historical, cultural, natural, scenic, ecological and environmental values and heritage.

39 In the alternative, the applicants submit that the representative environmental organizations should be considered to be individually concerned by reason of the particularly important role they have to play in the process of legal control by representing the general interests shared by a number of individuals in a focused and coordinated manner (Opinion of Advocate General Lenz in Case 297/86 *CIDA and Others* v *Council* [1988] ECR 3531, point 15).

40 The applicants also reject the Commission's argument that the present action is subsidiary to proceedings brought in the Spanish courts, stressing that it seeks judicial review of acts of the Commission, taken in breach of the relevant Community rules, and not of acts of the Spanish authorities.

41 Finally, the applicants submit that the Commission's argument to the effect that the admissibility of an action for annulment depends on whether the applicant acquires subjective rights as a result of the contested act is unsupported either by the wording of Article 173 or the case-law of the Community courts.

42 The Spanish Government, as intervener, draws a distinction between the *locus standi* of the applicant associations — Greenpeace, TEA and CIC — and that of the applicants who are natural persons.

43 As regards the *locus standi* of the applicant associations, it maintains that, having regard to their position in relation to the contested decision, none of them possesses the characteristics which would enable it to be assimilated to the addressee of that decision and submits that the Court of Justice has held that an association or organization set up to defend the collective interests of a category of persons cannot be considered to be directly and individually concerned by a measure affecting the general interests of that category (Joined Cases 16 and 17/62 *Confédération Nationale des Producteurs de Fruits and Others* v *Council* [1962] ECR 471).

44 As regards the *locus standi* of those of the applicants who are natural persons, the Spanish Government stresses that none of them claims any financial interest which might have underlain the adoption of the contested decision and thus enable them to be placed on the same footing as the Kingdom of Spain. Furthermore, the fact

that some of the applicants had submitted complaints to the Commission in relation to this matter is not sufficient to give them *locus standi*, since it is settled law that the Commission has no obligation to initiate Treaty-infringement proceedings against a Member State (Case C-87/89 *Sonito and Others* v *Commission* [1990] ECR I-1981, paragraph 6).

Findings of the Court

45 Under Article 114(3) of the Rules of Procedure, the remainder of the proceedings on the objection as to admissibility is to be oral unless the Court decides otherwise. In the present case, the Court considers that it has sufficient information from the documents before it and has decided that there is no need to open the oral procedure.

46 The Court will examine first whether the applicants have *locus standi* to bring an action, before considering whether the act which they are challenging constitutes a decision within the meaning of Article 173 of the Treaty.

47 In doing so, the Court will consider first the *locus standi* of the applicants who are private individuals and then that of those which are associations.

The locus standi *of the applicants who are private individuals*

48 It has been consistently held that persons other than the addressees may claim that a decision is of direct concern to them only if that decision affects them by reason of certain attributes which are peculiar to them, or by reason of factual circumstances which differentiate them from all other persons and thereby distinguish them individually in the same way as the person addressed (Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, Case 231/82 *Spijker* v *Commission* [1983] ECR 2559,

Case 97/85 *Deutsche Lebensmittelwerke and Others* v *Commission* [1987] ECR 2265, Case C-198/91 *Cook*, cited above, Case C-225/91 *Matra* v *Commission* [1993] ECR I-3203, Case T-2/93 *Air France* v *Commission* [1994] ECR II-323 and Case T-465/93 *Consorzio Gruppo di Azione Locale 'Murgia Messapica'* v *Commission* [1994] ECR II-361).

49 Before considering whether the conditions laid down in that line of authority are met in the present instance, it is appropriate to examine first the merits of the applicants' argument that when determining the admissibility of their action the Court should free itself from the restrictions those authorities impose, which are that third-party applicants must establish that they are affected by the contested measure in the same way as the addressee of the decision, and concentrate rather on the sole fact that they have suffered or potentially will suffer detriment or loss from the harmful environmental effects arising out of unlawful conduct on the part of the Community institutions. As noted above (see paragraphs 30 and 32), the applicants stress here that their interests affected by the contested decision are not economic, as has been the case in almost all the judgments delivered in relation to Article 173 of the Treaty, but of a quite different kind, relating to environmental and health protection.

50 The Court observes that whilst the abovementioned line of authority comprises judgments given mostly in cases concerning, in principle, economic interests, it is none the less true that the essential criterion applied in those judgments — in substance, a combination of circumstances sufficient for the third-party applicant to be able to claim that he is affected by the contested decision in a manner which differentiates him from all other persons — remains applicable whatever the nature, economic or otherwise, of those of the applicants' interests which are affected.

51 Consequently, the criterion which the applicants seek to have applied, restricted merely to the existence of harm suffered or to be suffered, cannot alone suffice to confer *locus standi* on an applicant, since such harm may affect, generally and in the abstract, a large number of persons who cannot be determined in advance in a way which distinguishes them individually in the same way as the addressee of a decision, in accordance with the case-law cited above. That conclusion cannot be affected by the fact, put forward by the applicants (see paragraph 33 above), that in the practice of national courts in matters relating to environmental protection *locus standi* may depend merely on their having a 'sufficient' interest, since *locus standi* under the fourth paragraph of Article 173 of the Treaty depends on meeting the conditions relating to the applicant's being directly and individually affected by the contested decision (see paragraph 48 above).

52 The applicants' argument that their *locus standi* in this case should be assessed in the light of criteria other than those already set down in the case-law cannot, therefore, be accepted.

53 It must therefore be considered whether the applicants are in this instance individually concerned by the contested decision by reason of certain attributes which are peculiar to them, or by reason of factual circumstances which differentiate them from all other persons and thereby distinguish them individually in the same way as the addressee of that decision.

54 The applicants are 16 private individuals who rely either on their objective status as 'local resident', 'fisherman' or 'farmer' or on their position as persons concerned by the consequences which the building of two power stations might have on local tourism, on the health of Canary Island residents and on the environment. They do not, therefore, rely on any attribute substantially distinct from those of all the people who live or pursue an activity in the areas concerned and so for them the contested decision, in so far as it grants financial assistance for the construction of two power stations on Gran Canaria and Tenerife, is a measure whose effects are

likely to impinge on, objectively, generally and in the abstract, various categories of person and in fact any person residing or staying temporarily in the areas concerned.

55 The applicants thus cannot be affected by the contested decision other than in the same manner as any other local resident, fisherman, farmer or tourist who is, or might be in the future, in the same situation (Case 231/82 *Spijker*, cited above, paragraph 9, and Case T-117/94 *Associazione Agricoltori della Provincia di Rovigo and Others* v *Commission*, order of 21 February 1995, not yet published in the ECR, paragraph 25).

56 Nor can the fact that the second, fifth and sixth applicants have submitted a complaint to the Commission constitute a special circumstance distinguishing them individually from all other persons and thereby giving them *locus standi* to bring an action under Article 173 of the Treaty. No specific procedures are provided for whereby individuals may be associated with the adoption, implementation and monitoring of decisions taken in the field of financial assistance granted by the ERDF. Merely submitting a complaint and subsequently exchanging correspondence with the Commission cannot therefore give a complainant *locus standi* to bring an action under Article 173. As the Court of Justice has held, although a person who asks an institution, not to take a decision in respect of him, but to open an inquiry with regard to third parties, may be considered to have an indirect interest, he is nevertheless not in the precise legal position of the actual or potential addressee of a measure which may be annulled under Article 173 of the Treaty (Case 246/81 *Lord Bethell* v *Commission* [1982] ECR 2277).

57 It follows that the circumstances on which the applicants rely are not sufficient to differentiate them from all other persons and thus distinguish them individually in the same way as the addressee of the decision.

58 The claims of the applicants who are private individuals must therefore be held inadmissible.

The locus standi *of the applicant associations*

59 It has consistently been held that an association formed for the protection of the collective interests of a category of persons cannot be considered to be directly and individually concerned for the purposes of the fourth paragraph of Article 173 of the Treaty by a measure affecting the general interests of that category, and is therefore not entitled to bring an action for annulment where its members may not do so individually (Joined Cases 19 to 22/62 *Fédération Nationale de la Boucherie en Gros et du Commerce en Gros des Viandes and Others* v *Council* [1962] ECR 491; Case 72/74 *Union Syndicale* v *Council* [1975] ECR 401; Case 60/79 *Producteurs de Vins de Table et Vins de Pays* v *Commission* [1979] ECR 2429; Case 282/85 *DEFI* v *Commission* [1986] ECR 2469; Case 117/86 *UFADE* v *Council and Commission* [1986] ECR 3256, paragraph 12; and Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and Others* v *Commission*, judgment of 6 July 1995, ECR [1995], II-1971, paragraphs 58 and 59). Furthermore, special circumstances such as the role played by an association in a procedure which led to the adoption of an act within the meaning of Article 173 of the Treaty may justify holding admissible an action brought by an association whose members are not directly and individually concerned by the contested measure (Joined Cases 67, 38 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219 and Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125).

60 The three applicant associations, Greenpeace, TEA and CIC, claim that they represent the general interest, in the matter of environmental protection, of people residing on Gran Canaria and Tenerife and that their members are affected by the contested decision; they do not, however, adduce any special circumstances to dem-

onstrate the individual interest of their members as opposed to any other person residing in those areas. The possible effect on the legal position of the members of the applicant associations cannot, therefore, be any different from that alleged here by the applicants who are private individuals. Consequently, in so far as the applicants in the present case who are private individuals cannot, as the Court has held (see paragraph 58 above), be considered to be individually concerned by the contested decision, nor can the members of the applicant associations, as local residents of Gran Canaria and Tenerife.

61 Since one of the conditions required for an action brought under Article 173 by an association to be admissible is not met in this case, it must be considered whether the exchange of correspondence and the meeting which took place between Greenpeace, one of the three applicant associations, and the Commission with regard to the financing of the project for the construction of two power stations in the Canary Islands constitute special circumstances such as to give it *locus standi* to bring an action as an association, as in the *Van der Kooy* and *CIRFS* judgments, cited above.

62 In the present case, unlike the *CIRFS* case, the Commission did not, prior to the adoption of the contested decision, initiate any procedure in which Greenpeace participated; nor was Greenpeace in any way the interlocutor of the Commission with regard to the adoption of the basic Decision C (91) 440 and/or of the contested decision. Greenpeace cannot, therefore, claim to have any specific interest distinct from that of its members to justify its *locus standi* (*CIRFS* and *Van der Kooy*, cited above).

63 Furthermore, the correspondence which took place between Greenpeace and the Commission and its subsequent meeting with members of the Commission's staff were for purposes of information only, since the Commission was under no duty either to consult or to hear the applicants in the context of the implementation of

Decision C (91) 440 (see paragraph 56 above). Greenpeace's approaches to the Commission cannot, therefore, give it *locus standi* to bring an action under the fourth paragraph of Article 173 of the Treaty.

64 It follows from all the foregoing that neither the applicants who are natural persons nor those which are associations are individually concerned by the decision alleged to have been adopted by the Commission between 7 March 1991 and 29 October 1993 to disburse to the Kingdom of Spain a sum of the order of ECU 11 000 000 or 12 000 000 as ERDF assistance in reimbursement of expenses incurred in the construction of two power stations in the Canary Islands (Gran Canaria and Tenerife).

65 Consequently, without there being any need to consider whether a decision capable of being challenged in an action under Article 173 of the Treaty exists in the present case and whether the applicants are directly concerned by the contested decision, the application must be declared inadmissible.

Costs

66 Under Article 87(2) 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. Since the applicants have been unsuccessful, they must be ordered to pay the costs.

67 Under Article 87(4) of the Rules of Procedure, Member States which have intervened in proceedings are to bear their own costs. The Kingdom of Spain shall therefore bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby orders:

1. The application is dismissed as inadmissible.

2. The applicants shall jointly and severally bear the costs.

3. The Kingdom of Spain shall bear its own costs.

Luxembourg, 9 August 1995.

H. Jung

Registrar

J. L. Cruz Vilaça

President