OPINION OF ADVOCATE GENERAL

BOT

delivered on 23 October 2008 [1]

1. The subject-matter of the present case is an appeal brought by a number of landowners [2] and an association of farmers and foresters [3] ('the appellants') against the order of the Court of First Instance of the European Communities of 22 June 2006 in *Sahlstedt and Others* v *Commission*. [4]

2. By the order under appeal, the Court of First Instance dismissed the action brought by the appellants for annulment of Commission Decision 2005/101/EC of 13 January 2005 adopting, pursuant to Council Directive 92/43/EEC, [5] the list of sites of Community importance for the Boreal biogeographical region. [6] Following its examination of the admissibility of the action, the Court found that the appellants were not directly concerned by the contested decision for the purposes of the fourth paragraph of Article 230 EC and, in consequence, dismissed their action.

3. The condition to the effect that a natural or legal person must be directly concerned by a Community measure in order to have the right to bring an action for annulment in turn requires two conditions to be satisfied. First, the contested measure must directly affect the applicant's legal situation. Secondly, the measure must not leave the national authorities responsible for its implementation any discretion. [7] In the order under appeal, the Court of First Instance found that those two conditions were not satisfied.

4. In the context of the present appeal, the Court is therefore required to consider the effects on the appellants' legal situation of a

1 — Original language: French.

2 — Those landowners include 13 natural persons and a foundation called MTK:n säätiö ('the Landowners').

3 — Maa- ja metsätaloustuottajain keskusliitto MTK ry ('MTK'), an association which represents the interests of 163 000 farmers and foresters.

4 — T-150/05 [2006] ECR II-1851; 'the order under appeal'.

5 — Directive of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7), as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 (OJ 2003 L 284, p. 1); 'the Directive'.

6 — OJ 2005 L 40, p. 1; 'the contested decision'.

7 — See, in particular, Case C-125/06 P *Commission* v *Infront WM* [2008] ECR I-1451, paragraph 47 and the case-law cited.

decision that classifies certain areas of land as sites of Community importance. It is also called upon to assess the extent of the discretion enjoyed by the Member States for the implementation of such a decision.

5. In this Opinion, I shall propose that the Court uphold this appeal, set aside the order under appeal and give final judgment on the admissibility of the action at first instance.

6. I shall in fact argue that the Court of First Instance erred in law in its examination of the admissibility of the action, by holding that the appellants are not directly concerned by the contested decision.

7. I shall set out the reasons why, on the contrary, such a decision, which classifies land in which the Landowners have rights as sites of Community importance affects their legal situation and leaves only a very limited discretion to the Member States responsible for implementing the decision. I shall then indicate why, in my view, the Landowners are also individually concerned by the contested decision, and why MTK must also be held to have a right of action.

I — Legal and factual background

8. The Directive is intended to create a coherent European ecological network, to be known as 'Natura 2000', in order to encourage the conservation and restoration of natural habitats and of wild fauna and flora in the Member States of the European Community. [8]

9. The Natura 2000 network is composed of 'special areas of conservation'. Under Article 1(1) of the Directive, a special area of conservation is 'a site of Community importance designated by the Member States through a statutory, administrative and/or contractual act where the necessary conserva-

8 — First and third to sixth recitals in the preamble to the Directive.

tion measures are applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and/or the populations of the species for which the site is designated'.

10. The areas are designated following a three-stage procedure described in Article 4 of the Directive.

11. In the first stage, the Member States propose to the Commission of the European Communities a list of sites of Community importance in their territory with a view to the conservation of types of natural habitat or species of flora or fauna covered by the Directive. The list is to be accompanied by all the relevant information — not only scientific, ecological [9] and geographical, [10] but also economic and social [11] — and must be communicated to the Commission in the three years following notification of the Directive.

12. Then, in the second stage, the Commission, acting in the context of a procedure involving an ad hoc committee, [12] is to adopt a list of sites selected as sites of Community importance. That list is to be established within six years of notification of the Directive.

13. That is followed by the third and final stage, which is described in Article 4(4) of the Directive. It marks the end of the procedure for designating special areas of conservation.

14. Article 4(4) of the Directive provides that once a site of Community importance has been adopted by the Commission, 'the Member State concerned shall designate that site as a special area of conservation'.

9 — Such as the classification of animal populations in accordance with the ornithological criteria laid down in Annex I to Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1), but also information on migrant birds regularly present in the area and not referred to in that annex, the classification of mammals, reptiles, amphibians, fish, invertebrates and the plants listed in Annex II to the Directive and the other important species of flora and fauna not listed in that annex.

10 — Such as the location of the area and a map.

11 — Thus the Member States are advised to provide 'information on impacts and [human] activities in and around the site'. To that end, the Member States are asked to send information on activities related in particular to agriculture, forests, fishing, hunting and picking, urbanisation, industrialisation, and transport and communications (see paragraph 6.1 and appendix E of Commission Decision 97/266/EC of 18 December 1996 concerning a site information format for proposed Natura 2000 sites (OJ 1997 L 107, p. 1, and especially p. 37)).

12 — Articles 20 and 21 of the Directive. The committee is chaired by the Commission representative and consists of representatives of the Member States.

15. Furthermore, under Article 4(5) of the Directive, as soon as a site is placed on the list of sites of Community importance, it is subject to the provisions laid down in Article 6(2) to (4) of the Directive.

16. Article 6 of the Directive sets out the measures which the Member States are to adopt in order to ensure the conservation and management of the Natura 2000 sites.

17. Article 6(1) of the Directive provides for a set of general conservation measures which the Member States must introduce for the special areas of conservation. Those measures may take the form of statutory, administrative or contractual measures or, where appropriate, management plans.

18. Unlike Article 6(1) of the Directive, Article 6(2) to (4) applies once an area of land is placed on the list of sites of Community importance.

19. Under Article 6(2) of the Directive, the Member States are to take appropriate steps to prevent the deterioration of natural habitats and the disturbance of species for which the areas have been designated. That provision is therefore essentially preventive.

20. Article 6(3) and (4) of the Directive lays down the conditions for authorising plans or projects likely to affect the integrity of a site.

A — *The contested decision*

21. The contested decision establishes, pursuant to the Directive, the list of sites of Community importance for the Boreal biogeographical region. That list was adopted in accordance with the third subparagraph of Article 4(2) of the Directive.

22. The sites of Community importance listed in Annex I to the contested decision include the following:

A	B	C	D		E	
SCI [13] Code	Name of SCI	*	Area of SCI (ha)	Length of SCI (km)	Geographical coordinates of SCI	
					Longitude	Latitude
			…			
FI0100040	Nuuksio	*	5643		E 24 29	N 60 19
			…			
FI0100050	Haaviston alueet	*	59		E 24 24	N 60 32
			…			
FI0200011	Varesharju	*	271		E 23 42	N 60 26
			…			
FI0900013	Hietasyr-jänkangas-Sirkkaharju		378		E 25 59	N 62 29

13 — Site of Community importance.

23. Some of the land covered by the sites listed in the contested decision is owned by the Landowners. [14]

II — Procedure before the Court of First Instance

24. On 18 April 2005, the appellants brought an action before the Court of First Instance for the annulment, in whole or in part, of the contested decision.

25. By separate document lodged at the Registry of the Court of First Instance on 5 July 2005, the Commission raised a preliminary plea of inadmissibility pursuant to Article 114(1) of the Rules of Procedure of the Court of First Instance.

26. By order of the President of the First Chamber of the Court of First Instance of 27 September 2005, the Republic of Finland was given leave to intervene in support of the Commission.

14 — Certain Landowners are listed and identified in paragraph 6.2.2.7 of the application initiating proceedings.

III — The contested order

27. Following its examination of the admissibility of the application, the Court of First Instance found that the appellants were not directly concerned by the contested decision for the purposes of the fourth paragraph of Article 230 EC, and consequently dismissed their actions.

28. The Court first of all recalled the wording of the fourth paragraph of Article 230 EC, which states that '[a]ny natural or legal person may institute proceedings against decisions addressed to that person or against decisions which, although in the form of a regulation or decision addressed to another person, are of direct and individual concern to the former'.

29. After finding that the contested decision was not addressed to the appellants, the Court examined whether it was of direct and individual concern to them.

A — *Whether the Landowners are directly concerned*

30. After referring, in paragraphs 52 and 53 of the order under appeal, to the relevant case-law of the Court of Justice, the Court of First Instance considered the effects of the contested decision on the legal situation of those Landowners who are natural persons. [15] It held as follows:

'54 The Court considers that it cannot be held that the contested decision — which designates, as sites of Community importance, areas of Finland in which [those Landowners who are natural persons] own land — produces, by itself, effects on the … legal situation [of those Landowners who are natural persons]. The contested decision contains no provision as regards the system of protection of sites of Community importance, such as conservation measures or authorisation procedures to be followed. Thus, it affects neither the rights or obligations of the landowners nor the exercise of those rights. Contrary to the argument [of those Landowners who are natural persons], the inclusion of those sites in the list of sites of Community importance imposes no obligation whatsoever on economic operators or private persons.'

15 — It seems to me that the Court of First Instance omitted in its analysis to consider the legal situation of MTK:n säätiö, which is also — I would point out — the owner of some of the land covered by the contested decision.

31. Next, the Court of First Instance examined the second condition laid down in the case-law, which is that implementation of the contested measure must be automatic and stem solely from the Community rules. Accordingly, in paragraphs 55 to 58 of the order under appeal, the Court examined the substance of the obligations of the Member States under Articles 4(4) and (5) and 6 of the Directive. The Court concluded as follows:

'59 On perusal of those obligations, which bind the Member States concerned once sites of Community importance have been designated by the contested decision, it must be held that none of those obligations applies directly to [those Landowners who are natural persons]. All those obligations necessitate a measure on the part of the Member State concerned, in order to specify how it intends to implement the obligation in question, whether it relates to necessary conservation measures (Article 6(1) of [the Directive]), steps appropriate to avoid deterioration of the site (Article 6(2) of [the Directive]), or the agreement to be given by the competent national authorities to a project likely to have a significant effect on it (Article 6(3) and (4) of [the Directive]).

60 It follows therefore from [the Directive], on the basis of which the contested decision was adopted, that it is binding on the Member State as to the result to be achieved, whilst the choice of the conser-

vation measures to be undertaken and the authorisation procedures to be followed is left to the competent national authorities. That conclusion cannot be undermined by the fact that the discretion thus conferred on the Member States must be exercised in accordance with the aims of [the Directive].'

32. The Court therefore concluded that those Landowners who are natural persons are not directly concerned by the contested decision for the purposes of the fourth paragraph of Article 230 EC and held that, in consequence, it was not necessary to examine whether they are individually concerned by that measure.

B — *Whether MTK is directly concerned*

33. In paragraph 61 of the order under appeal, and in light of its conclusions on the question whether those Landowners who are natural persons are directly concerned, the Court of First Instance held that the members of MTK cannot be regarded as directly concerned by the contested decision. The Court also noted that MTK had not demonstrated that MTK itself has a legal interest in bringing the action.

34. Accordingly, the Court of First Instance dismissed the action brought by the appellants as inadmissible.

IV — Procedure before the Court of Justice and the forms of order sought

35. The appellants brought the present appeal by an application lodged at the Registry of the Court of Justice on 4 September 2006.

36. By order of the President of the Court of 16 January 2007, the Kingdom of Spain was given leave to intervene in support of the form of order sought by the Commission.

37. By their appeal, the appellants request the Court of Justice to set aside the order under appeal and annul the contested decision. They also claim that the Court should order the Commission to pay the costs of both the proceedings at first instance and the appeal.

38. The Commission, supported in this by the Kingdom of Spain, contends that the appeal should be dismissed and the appellants ordered to pay the costs.

V — The appeal

39. The appellants rely on three pleas in law in support of their appeal, alleging: (i) failure to state adequate grounds for the order under appeal; (ii) an error of assessment on the part of the Court of First Instance in finding that they are not directly concerned by the contested decision for the purposes of the fourth paragraph of Article 230 EC; and (iii) lack of effective judicial protection.

A — *The first plea, alleging failure to state adequate grounds for the order under appeal*

1. Arguments of the parties

40. In paragraphs 57 to 60 of their appeal, the appellants argue that the Court of First Instance failed to reply to the argument concerning the legal effects of the obligation, laid down in Article 6(3) of the Directive, relating to the assessment of plans. Yet, in their view, that argument was clearly set out in paragraphs 21 to 29 of the written observations that they had filed following the preliminary plea of inadmissibility entered by the Commission.

2. Findings

41. This plea relates to the formal requirement to state reasons. It seeks a ruling that the Court of First Instance failed to state adequate grounds for the order under appeal.

42. With regard to appeals brought against judgments delivered by the Court of First Instance, the Court of Justice has repeatedly ruled that the question whether the Court of First Instance dealt with the pleas relied on by the parties and gave proper grounds for its judgment is a question of law which, as such, may be raised in an appeal. [16]

43. It is settled case-law that the Court of First Instance is not required by the Court of Justice to provide an account which follows exhaustively and point by point all the arguments put forward by the parties to the case. The grounds stated may therefore be implicit, on condition that they enable the persons concerned to know the reasons for which a particular ruling was made and provide the competent court with sufficient material for it to exercise its power of review. [17] In the case of an action under Article 230 EC, the requirement to state reasons means that the Court of

16 — See, inter alia, Case C-188/96 P, *Commission* v *V* [1997] ECR I-6561, paragraph 24, and Case C-401/96 P *Somaco* v *Commission* [1998] ECR I-2587, paragraph 53.

17 — See, to that effect, Case C-167/06 P *Komninou and Others* v *Commission* [2007] ECR I-141, paragraph 22 and the case-law cited.

First Instance must examine the pleas in law relied on by applicants in seeking annulment and state the grounds on which it rejects a plea or annuls a contested measure.

44. Nevertheless, while the Court of First Instance is not obliged to respond in detail to every single argument advanced by an applicant, particularly if the argument is not sufficiently clear and precise and is not adequately supported by evidence, the Court of Justice considers that the Court of First Instance must at the very least examine all the alleged infringements of rights. [18]

45. That said, it is necessary to assess whether the Court of First Instance failed to rule on the relevant argument raised by the appellants and, if appropriate, whether it was under an obligation to do so.

46. In the present case, I find that the appellants clearly set out the reasons why they considered themselves to be directly concerned by the contested decision. In particular, they set out in a very detailed manner — in section 2.2 of their written observations, [19] and especially in paragraphs 21 to 29 — the new responsibilities which now fall upon the Landowners as a result of the obligation, laid down in Article 6(3) of the Directive, relating to the assessment of plans and projects.

47. That argument is put forward in support of the plea that the appellants are directly concerned. As demonstrated by the summary appended by the appellants to their observations and the outline of their pleas on appeal, it is not a separate plea in law. [20]

48. The reasoning of the Court of First Instance as regards the direct interest of those Landowners who are natural persons is set out in paragraphs 54 and 59 of the order under appeal, which are worded as follows:

'54 The Court considers that it cannot be held that the contested decision... produces, by itself, effects on the … legal situation [of those Landowners who are natural persons]. The contested decision contains no provision as regards the system of protection of sites of Community importance, such as conservation measures or authorisation procedures… Thus, it affects neither the rights or obligations of the landowners nor the exercise of those rights. Contrary to the … argument [of those Landowners who are

18 — Idem.

19 — I refer to the written observations lodged following the preliminary plea of inadmissibility raised by the Commission at first instance.

20 — See paragraphs 68 to 70 of the written observations and page 4 of the appeal respectively.

natural persons], the inclusion of those sites in the list of sites of Community importance imposes no obligation whatsoever on economic operators or private persons.

...

59 On perusal of those obligations, which bind the Member States concerned once sites of Community importance have been designated by the contested decision, it must be held that none of those obligations applies directly to [those Landowners who are natural persons]. All those obligations necessitate a measure on the part of the Member State concerned, in order to specify how it intends to implement the obligation in question, whether it relates to necessary conservation measures (Article 6(1) of [the Directive]), steps appropriate to avoid deterioration of the site (Article 6(2) of [the Directive]), or the agreement to be given by the competent national authorities to a project likely to have a significant effect on it (Article 6(3) and (4) of [the Directive]).'

49. Accordingly, in paragraph 61 of the order under appeal, the Court of First Instance concluded that MTK could not be directly concerned.

50. A simple reading of the order under appeal suffices to show that the Court of First Instance did in fact rule on the plea relating to the appellants' direct interest. Admittedly, the Court of First Instance did not examine in any detail the effects of Article 6(3) of the Directive on the legal position of the Landowners. I can only regret the fact that the reasons it gives on this point are so brief, given that the Court of First Instance is — I would add — ruling on an absolute bar to proceeding.

51. Nevertheless, I believe that the grounds stated for the order under appeal enable the Court of Justice to exercise its power of review and, further, enable the appellants to know the grounds on which the Court of First Instance ruled that they were not directly concerned by the contested decision. As is clear from the order under appeal, the Court of First Instance in fact predicated its ruling on the finding that the contested decision does not contain any provision relating to the conservation measures provided for in Article 6 of the Directive and, further, leaves a measure of discretion to the Member States responsible for its implementation.

52. I therefore propose that the Court should declare the first plea on appeal to be unfounded.

B — *The second plea, alleging an error of assessment on the part of the Court of First Instance with regard to the question whether the Landowners are directly concerned*

1. Arguments of the parties

53. The appellants claim that the Court of First Instance was wrong to hold that they were not directly concerned by the contested decision for the purposes of the fourth paragraph of Article 230 EC and the case-law of the Court of Justice. In their view, the Court of First Instance erred in law in its examination of the two conditions laid down by the case-law to the effect that the contested measure must affect the applicant's legal situation and that implementation of the measure must be purely automatic. [21]

54. With regard to the first condition, the appellants claim that the Court of First Instance misinterpreted Article 6 of the Directive in finding that, so far as they are concerned, the contested decision does not directly give rise to any legal effects.

55. First of all, the contested decision inevitably leads the areas of land selected as sites of Community importance to be classified as special areas of conservation. The decision therefore definitively settles the question of the inclusion of those areas of land in the Natura 2000 network.

56. Secondly, the contested decision entails a prohibition on allowing the deterioration of the areas of land classified as sites of Community importance, as well as an obligation to have plans and projects likely to be implemented in those sites undergo an assessment, as provided under Article 6(3) of the Directive. The fact that the contested decision does not in itself contain obligations or restrictions regarding the use of the land is irrelevant.

57. In support of this plea, the appellants criticise the Court of First Instance for examining the legal effects of the contested decision without taking account of the various stages of the procedure for selecting the sites.

58. With regard to the second condition, the appellants argue that the Court of First Instance also misinterpreted Article 6 of the Directive in finding that, in order for the legal effects engendered by the contested decision to come into being, it was necessary for the Member States to take measures in relation to which they enjoyed a measure of discretion.

21 — Paragraphs 8 to 56 of the appeal.

59. The Commission contends, rather, that the order under appeal complies with the case-law of the Court of Justice concerning the fourth paragraph of Article 230 EC. In its view, the contested decision does not concern the appellants directly since it does not contain any provision as to the body of conservation measures which the Member States must adopt on the basis of the Directive. Furthermore, Article 6(3) of the Directive — like the contested decision — in no way prevents the appellants from implementing building, forestry or farming projects in the special areas of conservation. The wording of Article 6(3) of the Directive is clear and requires only that, before the project is agreed to, assessment evaluation procedures are applied and the competent national authorities organise consultations. Finally, the Commission does not consider it necessary to reply to the appellants' arguments that the contested decision also concerns them individually.

60. The Kingdom of Spain, intervening in support of the Commission, adds that the contested decision does no more than establish a finding of fact, namely, the fact that a particular area of land meets certain conditions relating to the environment. It also states that the effects of Article 6(3) of the Directive do not arise as a result of the contested decision but as a result of the designation of a site by the Member States as a special area of conservation.

2. Findings

61. The sole addressees of the contested decision are, pursuant to Article 2 thereof, the Member States. Natural persons (in the present case, those Landowners who are natural persons) or legal persons (in the present case, MTK:n säätiö) who wish to bring an action for the annulment of that decision must therefore satisfy the conditions laid down in the fourth paragraph of Article 230 EC. This means that they must show that the decision concerns them both directly and individually. If the contested decision does not fulfil those conditions, any action brought against it by a natural or legal person is inadmissible.

62. That is the essence of the present dispute.

63. In accordance with settled case-law, and as the Court of First Instance pointed out in paragraph 52 of the order under appeal, the condition that the contested measure must be of direct concern to a natural or legal person is twofold: (i) the measure must affect directly the individual's legal situation and (ii) the measure must leave no discretion to its

addressees, who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from Community rules without the application of other intermediate rules. [22]

64. In the present case, it is therefore necessary to examine whether those two conditions are met.

(a) First condition: the effects of the contested decision on the Landowners' legal situation.

65. As I have stated, the Court of First Instance held in paragraph 54 of the contested order that the contested decision 'which designates, as sites of Community importance, areas of Finland in which [those Landowners who are natural persons] own land — [23][does not] produce, by itself, effects on [their] legal situation'. According to the Court of First Instance, the contested decision contains no provisions on the system of conservation measures for protecting sites of Community importance and thus does not affect either the rights and obligations of the Landowners or the exercise of those rights. Thus, according to the Court of First Instance, the inclusion of those areas of land in the list of sites of Community importance imposes no obligation whatsoever on economic operators or private persons.

22 — See *Commission* v *Infront WM*, paragraph 47 and the case-law cited.

23 — My italics.

66. I do not agree with that line of reasoning.

67. On the contrary, it is my view that the contested decision does in itself have direct consequences on the legal situation of the Landowners, even in the absence of any conservation measures adopted by the Member State concerned.

68. Contrary to the contention of the Kingdom of Spain, the contested decision constitutes an actionable measure. That decision is neither a 'declaratory act' nor merely an intermediate measure, because it lays down definitively the Commission's position with regard to the sites of Community importance in the Natura 2000 network. [24]

69. The contested decision also constitutes a measure having adverse effects. By classifying as sites of Community importance the areas of land in which the Landowners have rights, the decision deprives the Landowners of the right to use that land as they wish. [25]

24 — Case 60/81 *IBM* v *Commission* [1981] ECR 2639, paragraph 10.

25 — I refer to the statement of Professor G. Isaac who is of the view that 'the applicant is directly concerned only if the contested measure in itself has the immediate effect of depriving him of a right or of imposing on him an obligation, so that it puts him in a situation analogous to that in which he would find himself if he were the addressee thereof' (Isaac, G., *Droit communautaire général*, 7th edition, Colin, Paris, 1999, p. 266).

70. In fact, the consequence of the decision is to encumber the Landowners' rights with new restrictions which were not in existence at the time when they acquired those rights and which make them more difficult to exercise. As a result of the contested decision, the Landowners can no longer use or sell their lands without account being taken of the fact that they are classified as sites of Community importance. The impact of the contested decision on their situation may therefore translate into economic or social damage in the form of a decrease in the value of the land or even the total or partial cessation of farming or forestry activities. That impact may also reveal itself in a number of restrictions on the exercise of the related property rights because, once an area of land has been classified as a site of Community importance, it becomes encumbered with new obligations.

71. First of all, under Article 4(4) of the Directive, those areas are classified as special areas of conservation.

72. Secondly, the Member States are required under Article 4(5) of the Directive to establish a body of conservation measures, in accordance with the provisions of Article 6(1) to (4) of the Directive, for the areas identified in the contested decision. [26] The Member States must, for example, adopt all measures necessary for the conservation of the sites. [27] Thus, they may prohibit certain activities, such as clearance and deforestation, in the protected areas or limit building works and forestry or farming operations there. The Member States must also make all plans and projects which are likely to affect the sites of Community importance, such as water extraction proposals, conditional upon prior administrative approval based on an assessment of their effects on the site concerned. [28]

73. Those measures constitute further restrictions on the exercise of the right to property and are directly linked to the classification of the Landowners' property as sites of Community importance.

74. In *Commission* v *Infront WM*, which seems to me to be a comparable case, the Court accepted that the applicant was directly affected. The contested measure was a decision of the Commission finding that the United Kingdom legislation laying down, in accordance with Directive 89/552/EEC, [29] requirements in relation to the retransmission

26 — See Case C-117/03 *Dragaggi and Others* [2005] ECR I-167. The Court held in paragraph 21 of that judgment that the conservation measures provided for in Article 6(2), (3) and (4) of the Directive apply to a site once it is placed, in accordance with the third subparagraph of Article 4(2) of the Directive, on the list of sites selected as sites of Community importance, as adopted by the Commission under the procedure laid down in Article 21 of the Directive.

27 — Article 6(1) and (2) of the Directive.

28 — Article 6(3) of the Directive.

29 — Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ 1989 L 298, p. 23), as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 (OJ 1997 L 202, p. 60).

of major events by television broadcasters was in conformity with Community law. The Court accepted that an undertaking — in that case, Infront WM AG — whose business it is to buy and sell the broadcasting rights for sporting events was directly concerned by that measure in so far as the legislation adopted by the United Kingdom and approved by that measure imposed certain restrictions on those broadcasters where they planned to retransmit designated events for which Infront WM AG had acquired exclusive rights. The Court held that '[s]ince those restrictions [were] linked to the circumstances in which those broadcasters acquire the television broadcasting rights … from Infront [WM AG], the effect of the measures adopted by the United Kingdom and the contested measure is to subject the rights held by Infront to new restrictions which did not exist when it acquired those broadcasting rights and which render their exercise more difficult. Thus, the contested measure directly affects Infront [WM AG]'s legal situation'. [30]

75. It seems to me perfectly possible to transpose that case-law to the present case.

76. In those circumstances, and in the light of those facts, it seems to me that the contested decision does indeed directly affect the legal situation of the Landowners.

77. It is necessary now to examine whether the implementing measures necessitated by the contested decision are purely automatic or whether, on the other hand, the national authorities retain a measure of discretion in that respect.

(b) Second condition: the extent of the Member States' discretion in the implementation of the contested decision

78. It is settled case-law that where a Community measure is addressed to a Member State by an institution, if the action to be taken by the Member State in order to implement that measure is automatic or is, in one way or another, a foregone conclusion, that measure is of direct concern to any person affected by that action. [31]

30 — Paragraphs 47 to 52.

31 — Case C-386/96 P *Dreyfus* v *Commission* [1998] ECR I-2309, paragraph 43 and the case-law cited, and the order in Case T-223/01 *Japan Tobacco and JT International* v *Parliament and Council* [2002] ECR II-3259, paragraph 46.

79. Where the contested measure and the applicant are linked by a national implementing measure, the Court considers that this is not in itself a factor entailing the inadmissibility of the action, if the measure is purely automatic or if its meaning is predictable and may be inferred from the Community legislation. [32] For example, the Court held that this was the position in the circumstances of *Commission* v *Infront WM*. Despite the existence of a margin for manoeuvre in the implementation of the contested measure, the Court found that the national authorities did not have any power of assessment as to the result to be attained, since that was wholly determined by the measure in question. [33]

80. If, on the other hand, the contested measure leaves a real choice to the addressee Member State and the latter has an option as to whether to take action or not, or is not required to take any particular action, the Court takes the view that an individual cannot claim to be sufficiently directly affected to challenge it. [34]

32 — See, inter alia, Joined Cases 41/70 to 44/70 *International Fruit Company* v *Commission* [1971] ECR 411, paragraph 25, and Case 62/70 *Bock* v *Commission* [1971] ECR English Special Edition 897, paragraphs 7 and 8.

33 — Paragraphs 59 to 63.

34 — See, in particular, Case C-73/97 P *France* v *Comafrica and Others* [1999] ECR I-185. In that case, the Court held that Commission Regulation (EC) No 3190/93 of 19 November 1993 fixing the uniform reduction coefficient for determining the quantities of bananas to be allocated to each operator in categories A and B in the context of the tariff quota 1994 (OJ 1993 L 285, p. 28) did not directly concern the operators, since it was in fact for the competent national authorities definitively to lay down, on the basis of the regulation, the quantities of bananas which the operators would be entitled to import in that period.

81. As I have pointed out, in paragraphs 55 to 58 of the order under appeal, the Court of First Instance examined the substance of the obligations on the Member States under Articles 4(4) and (5) and 6 of the Directive. It concluded that all those obligations necessitate a measure to be taken by the Member State concerned in order for it to clarify how it intends to implement them in its territory. The Court went on to hold as follows:

> '60 It follows therefore from [the Directive], on the basis of which the contested decision was adopted, *that it is binding on the Member State as to the result to be achieved, whilst the choice of the conservation measures to be undertaken and the authorisation procedures to be followed is left to the competent national authorities*'. [35]

82. It is on the basis of that last finding that the Court of First Instance dismissed as inadmissible the application for annulment brought by the Landowners.

83. I disagree with that line of reasoning on the following grounds.

35 — My italics.

84. First of all, I note that the contested decision is decisive in nature and is fully effective in the Member States, the latter having no right to challenge the classification of land in the Natura 2000 network.

85. Secondly, in my view, the Member States have only a very limited discretion in the implementation of the decision.

86. In the present case, the issue on which the parties disagree results from the fact that the contested decision requires implementing measures on the part of the Member States in order to be applied. However, as I have already pointed out, the fact that there is a national implementing measure linking the contested measure to the applicant does not in itself constitute a ground for an action being held inadmissible. In a situation such as this, the Court examines the extent of the discretion enjoyed by the Member States in the implementation of the contested measure.

87. As it is, in the present case, those implementing measures are laid down in a directive which is intended, by definition, to allow the Member States a measure of discretion. Indeed, it should be borne in mind that, under the third paragraph of Article 249 EC, the Member States are bound as to the result to be achieved but have a certain latitude as to the form and methods they use. [36]

88. The question here is therefore whether, in light of the provisions laid down in the Directive, the Member States have a sufficient measure of discretion in the implementation of the contested decision, leaving them free to take action or to refrain from doing so, or whether, on the other hand, they are required to take particular action.

89. The manner and the circumstances in which the contested decision must be implemented are laid down in Articles 4(4) and (5) and 6 of the Directive.

90. First, once the list of sites of Community importance has been adopted by the Commission, the Member States are required to designate those sites as special areas of conservation as soon as possible and, at the latest, within six years. As the appellants pointed out, the wording of Article 4(4) of the Directive is clear and the Member States have no margin of discretion in that regard. [37]

36 — See also Case C-129/96 *Inter-Environnement Wallonie* [1997] ECR I-7411, paragraph 45.

37 — See section 2.2 of the appeal.

91. Secondly, pursuant to Article 4(5) of the Directive, the Member States are required to apply the conservation measures provided for in Article 6(2) to (4) of the Directive to areas of land on the list of sites of Community importance. [38] As the Court pointed out in *Dragaggi and Others*, the placing of an area of land on the list of sites of Community importance and the application of the conservation measures provided for in that provision are expressly linked. [39]

92. Admittedly, the national authorities are not divested of all discretion in the implementation of Article 6 of the Directive and the contested decision. In fact, in order to fulfil their obligations thereunder, the national authorities may provide for the sites an appropriate body of conservation measures, which may differ according to economic, social and cultural requirements and regional and local characteristics in each of the Member States. [40]

93. None the less, the discretion left to the Member States appears to me to be very limited.

94. In fact, the national authorities have to ensure that the owners of areas of land classified as sites of Community importance do not cause the natural habitats on their land to deteriorate, and that the species living there are not disturbed to a degree that contravenes the requirements of the Directive. To that end, the national authorities must adopt conservation measures which to my mind are largely predictable, and which follow a path that is easy to determine. Thus, those measures must enable the natural habitats and species of wild flora and fauna of Community interest to be maintained and restored 'at favourable conservation status'. [41] They must also make it possible for all risk of deterioration and disturbance of the sites to be prevented. Those measures constitute the direct implementation of the contested decision. It is those measures — hence, in the present case, the contested decision — which determine the result to be attained. As regards that result, the national authorities do not therefore enjoy any discretion at all.

95. Yet the damage to the legal situation of the Landowners is attributable to the requirement to attain that result.

96. Furthermore, the Community institutions establish ever narrower limits on the

38 — See Case C-244/05 *Bund Naturschutz in Bayern and Others* [2006] ECR I-8445, paragraph 35.

39 — Paragraph 24.

40 — See, in that connection, Article 2(3) of the Directive.

41 — See Articles 1(e) and (i) and 2(2) of the Directive. Under Article 1(e) of the Directive, the conservation status of a natural habitat will be taken as favourable where its natural range and areas it covers within that range are stable or increasing; the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future; and the conservation status of its typical species is favourable as defined in Article 1(i) of the Directive.

discretion enjoyed by the competent national authorities.

97. Thus, the Commission has produced a guide to the interpretation of Article 6 of the Directive, indicating the scope and content of each of its provisions. [42] With regard, for example, to the implementation of Article 6(2) of the Directive, the Commission explains the meaning of the concepts of disturbance and deterioration of the sites and describes, in particular, to the Member States the manner in which those risks should be assessed. In addition, the Commission lays down the conditions and time-limits in accordance with which the Member States are then required to adopt conservation measures. [43] With regard, next, to the implementation of Article 6(4) of the Directive, the Commission explains the meaning of 'imperative reasons of overriding interest' and 'compensatory measures'. It indicates, inter alia, when such measures should be planned, who should bear the related costs and to whom they should be notified.

98. In addition, the Commission, through actions for failure to fulfil obligations, and the Court of Justice, in its supervisory role, exercise a very tight control over the measures adopted by the Member States under Article 6 of the Directive. This is clear from the scale of the dispute concerning implementation of the Directive. The Court has pointed out in this connection that faithful transposition of the Directive is 'particularly important … where management of the common heritage is entrusted to the Member States in their respective territories'. [44] According to the Court, and in so far as the Directive lays down 'complex and technical rules', 'the Member States are under a particular duty to ensure that their legislation intended to transpose that directive is clear and precise, including with regard to the fundamental surveillance and monitoring obligations'. [45]

99. Thus, the Court has not hesitated to explain the details of the conservation mechanism referred to in Article 6(3) of the Directive. According to the Court, 'appropriate assessment' within the meaning of that provision requires the competent national authorities to identify all the aspects of the plans that are likely to affect the conservation objectives for the site concerned. Next, according to the Court, the plan or project in question may be granted authorisation only if the competent national authorities have made sure that it will not adversely affect the integrity of the site. Thus, in the Court's words,'where doubt remains as to the absence of adverse effects … the competent authority will have to refuse authorisation. [46] As the appellants correctly stated, any authorisation granted on the basis of those criteria therefore leaves only a very limited measure of discretion to the Member States. [47]

42 — The guide is entitled '*Managing Natura 2000 sites — The provisions of Article 6 of the "Habitats" Directive 92/43/EEC*' (Luxembourg, 2000).

43 — See also Case C-75/01 *Commission* v *Luxembourg* [2003] ECR I-1585, paragraphs 41 and 42, and Case C-6/04 *Commission* v *United Kingdom* [2005] ECR I-9017, paragraphs 29 to 39.

44 — *Commission* v *United Kingdom*, paragraph 25.

45 — Ibid. (paragraph 26).

46 — Case C-127/02 *Waddenvereniging and Vogelbeschermingsvereniging* [2004] ECR I-7405, paragraphs 52 to 60.

47 — Paragraph 30 of the appeal.

100. It seems to me, therefore, that, once the Commission has identified an area of land as a site of Community importance, the Member States have no choice but to designate that site as a special conservation area and to adopt measures for the conservation of that site, in accordance with the requirements of the Directive. The fact that the Member States may enjoy a measure of discretion, however limited, as to the conservation measures to be adopted and the authorisation procedures to be followed, does not, to my mind, have any significance with regard to the effects of the contested decision as such.

101. In light of all of those facts, I am of the view that the two conditions laid down by the case-law in order for a natural or legal person to be regarded as directly concerned by a Community measure are satisfied in the present case.

102. I therefore take the view that the Court of First Instance erred in law by holding that the Landowners are not directly concerned by the contested decision and, accordingly, I propose that the Court should set aside the order under appeal.

103. In those circumstances, I consider that there is no need to consider the third plea in law, alleging lack of effective judicial protection.

104. Furthermore, I am of the view that the Court of Justice may, under the first paragraph of Article 61 of the Statute of the Court of Justice, give final judgment on the admissibility of the appellants' application at first instance. [48]

VI — Admissibility of the action for annulment at first instance

105. Since the Court of First Instance did not address this issue in the order under appeal, I shall consider to what extent the Landowners may be individually concerned by the contested decision. I shall then examine the admissibility of the application for annulment brought by MTK.

48 — Under that provision, where an appeal is founded, the Court is to quash the decision of the Court of First Instance. In such cases, the Court may itself give final judgment in the dispute where the state of the proceedings so permits, or it may refer the case back to the Court of First Instance for judgment.

A — *Admissibility of the action for annulment brought by the Landowners*

1. Arguments of the parties

106. By its preliminary plea of inadmissibility entered at first instance, the Commission contends that the Landowners are not individually concerned by the contested decision. It argues first of all that that decision does not affect them in such a way that they are deprived of the enjoyment of their property. The decision confers no rights on them; nor does it impose on them any obligations. The Commission then states that the sites referred to in the contested decision are defined exclusively on the basis of biological criteria, in accordance with Article 1(k) of the Directive. In that connection, the Commission maintains that it is impossible, on the basis of the contested decision or of the data used to draw it up, to identify the owners of the areas of land classified as sites of Community importance; lastly, the Commission states that the sites listed in the contested decision are of interest to economic operators other than the Landowners, such as construction companies, non-governmental organisations or ordinary citizens.

107. The appellants argue, on the contrary, that they are in a special situation which sets them apart from any other person, in so far as the contested decision covers areas of land owned by them and affects their legal situation.

2. Findings

108. It is settled case-law that persons other than those to whom a decision is addressed may claim to be individually concerned 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 by such a decision. [49]

109. It is also clear from the case-law of the Court 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 may be individually concerned by that measure inasmuch as they form part of a limited class of economic operators. [50] The Court has said that this is the case particularly where the decision alters rights acquired by the individual prior to its adoption. [51]

110. In the present case, I take the view that the Landowners are part of a limited class

49 — See, inter alia, Case 25/62 *Plaumann* v *Commission* [1963] ECR 197, especially p. 223; Case C-78/03 P *Commission* v *Aktionsgemeinschaft Recht und Eigentum* [2005] ECR I-10737, paragraph 33; and *Commission* v *Infront WM*, paragraph 70.

50 — See, inter alia, Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, paragraph 31; Joined Cases C-182/03 and C-217/03 *Belgique and Forum 187* v *Commission* [2006] ECR I-5479, paragraph 60, and *Commission* v *Infront WM*, paragraph 71.

51 — *Commission* v *Infront WM*, paragraph 72 and the case-law cited.

whose members are especially affected by the contested decision. That view is based on three reasons.

111. First, the Landowners are in a special situation because they have property rights in areas of land covered by the contested decision.

112. Secondly, the Landowners were identifiable by the Commission at the time when it adopted the contested decision. The areas of land covered by the contested decision are identified according to geographical criteria (latitude and longitude). That data, which is proposed, transmitted and then validated by the Member State, enables the areas of land in which there are property rights to be identified; and, as a general rule, everyone's property rights are recorded by the national authorities in registers.

113. Thirdly, as I have already demonstrated, the contested decision affects the Landowners' legal situation and, in particular, the free exercise of their rights.

114. In those circumstances, it seems to me that the admissibility of the action for annulment brought by the latter may be consistent with the established case-law of the Court to the effect that an individual is entitled to contest the legality of a Community measure where that measure alters rights acquired by that individual prior to its adoption.

115. As I stated in points 99 to 102 of my Opinion in *Commission* v *Infront WM*, the Court took that approach in the judgment in *Toepfer and Getreide-Import Gesellschaft* v *Commission*, [52] in which it accepted for the first time that an individual may be individually concerned by a decision addressed to a Member State. It adopted the same approach in *Bock* v *Commission*, *Agricola commerciale olio and Others* v *Commission* and *Savma* v *Commission*. [53] In *CAM* v *Commission*, [54] the Court also accepted that an individual had *locus standi* to bring an action where the contested measure related to a situation which was ongoing at the time of its adoption and called in question the enjoyment of acquired rights vis-à-vis future operations. The Court made a ruling to the same effect in *Commission* v *Infront WM*.

52 — Joined Cases 106/63 and 107/63 [1965] OJ English Special Edition p. 405.

53 — Case 232/81 [1984] ECR 3881 and Case 264/81 [1984] ECR 3915.

54 — Case 100/74 [1975] ECR 1393.

116. Furthermore, where the right in question ranks as a fundamental right in the Community legal order, such as the right to property, [55] it is clear in my view that any infringement thereof must be open to challenge through effective legal action before the Community judicature.

117. It seems to me that this analysis is supported by the Community case-law and, in particular, by *Codorniu* v *Council*. [56] In that case, a company governed by Spanish law, which had been the proprietor of the trade mark Gran Cremant de Codorniu since 1924, sought annulment of the provision in a Council regulation under which it was prohibited from ever using the word 'cremant'. The Court appears to have accepted that the action was admissible, despite the fact that the contested measure applied *erga omnes*, in the interests of protecting the property right which the company held in the mark under the Spanish legislation.

118. It seems to me perfectly possible to transpose that case-law to the present case, because the Landowners acquired their rights before the adoption of the contested decision.

119. That is why, in light of all of the foregoing, I am of the view that the Landowners are individually concerned by the contested decision.

120. The Landowners therefore satisfy the conditions laid down in the fourth paragraph of Article 230 EC for bringing an action for the annulment of such a decision. Accordingly, I propose that the Court should declare their action admissible.

121. It is now necessary to consider the admissibility of the action for annulment brought by MTK against the contested decision.

55 — See, inter alia, Case C-68/95 *T. Port* [1996] ECR I-6065, paragraph 40, and Joined Cases C-20/00 and C-64/00 *Booker Aquaculture and Hydro Seafood* [2003] ECR I-7411, paragraph 67 and the case-law cited.

56 — Case C-309/89 [1994] ECR I-1853. See, in support of that analysis, the argument expounded by Cassia, P., *L'accès des personnes physiques ou morales au juge de la légalité des actes communautaires,* Dalloz, Paris, 2002, p. 752, paragraph 968 et seq.

B — *Admissibility of the action for annulment brought by MTK*

122. As is apparent from the case-file, MTK represents the interests of 163 000 farmers and foresters, including the Landowners. [57]

123. The admissibility of an action brought before the Community judicature by an association which defends collective interests also stems from the fourth paragraph of Article 230 EC. That provision, I would point out, makes actions for annulment brought by any natural or legal person against a decision to which it is not party subject to the twofold condition that the decision concern that person both directly and individually.

124. An association which defends collective interests is not therefore entitled to bring an action for annulment of a decision of which is not the addressee unless that decision concerns it or its members both directly and individually. It is settled case-law that an association does not have the right to challenge such a measure in the name of the defence of the general and collective interests of the members it represents. [58] This is to prevent individuals from circumventing the procedural requirements of the fourth paragraph of Article 230 EC by founding such an association. [59]

125. As is clear from the case-law of the Court, an association such as MTK therefore has the right to bring an action for the annulment of a decision of the Commission in two situations only. First, an action is admissible if the members which the association represents, or some of those members, themselves have *locus standi*. [60] In such cases, the association is accordingly regarded as substituting itself for its members. Secondly, an action may also be admissible if the association can show that it has an interest

57 — Paragraphs 3 and 6 of the application initiating proceedings and paragraph 66 of the written observations lodged by the appellants following the preliminary plea of inadmissibility raised by the Commission.

58 — Joined Cases 16/62 and 17/62 *Confédération nationale des producteurs de fruits et légumes and Others* v *Council* [1962] ECR English Special Edition p. 471; the order in Case C-409/96 P *Sveriges Betodlares and Henrikson* v *Commission* [1997] ECR I-7531, paragraph 45; Case T-86/96 *Arbeitsgemeinschaft Deutscher Luftfahrt-Unternehmen and Hapag-Lloyd* v *Commission* [1999] ECR II-179, paragraph 55; and the order in Case T-78/98 *Unione provinciale degli agricoltori di Firenze and Others* v *Commission* [1999] ECR II-1377, paragraph 36.

59 — See, to that effect, the analysis made by Cassia, P., op. cit., paragraph 1226 et seq.

60 — Case C-6/92 *Federmineraria and Others* v *Commission* [1993] ECR I-6357, paragraph 17; Joined Cases T-447/93 to T-449/93 *AITEC and Others* v *Commission* [1995] ECR II-1971, paragraph 62; the order in Case T-122/96 *Federolio* v *Commission* [1997] ECR II-1559, paragraph 61; and Case T-55/99 *CETM* v *Commission* [2000] ECR II-3207, paragraphs 23 and 24.

in bringing the action in its own right. The case-law shows that this may be the case where the negotiating position of the association has been affected by the measure whose annulment is sought. [61]

126. In the context of the present dispute, the appellants claim that the action brought by MTK is admissible because the majority of its members themselves have *locus standi* to bring an action.

127. I agree with that view.

128. It seems to me that, by the present action, MTK seeks to defend the individual interests of certain of its members and, in particular, those of the Landowners. Yet, as I have shown, I believe that those members are themselves both directly and individually concerned by the contested decision. The action brought by MTK therefore seems to me to be admissible, because MTK represents those members.

129. In light of the case-law of the Court, that seems to me to be sufficient to demonstrate the admissibility of the action brought by MTK.

130. In the light of those considerations, I therefore propose that the Court should reject the preliminary plea of inadmissibility raised by the Commission in relation to the action brought by the appellants before the Court of First Instance.

131. I further invite the Court to refer the case back to the Court of First Instance for it to rule on the merits of the action, and to reserve costs. [62]

61 — Joined Cases 67/85, 68/85 and 70/85 *Kwekerij van der Kooy and Others* v *Commission* [1988] ECR 219, paragraphs 21 to 24, and Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125, paragraphs 28 to 30.

62 — Case C-193/01 P *Pitsiorlas* v *Council and BCE* [2003] ECR I-4837.

VII — Conclusion

132. In the light of the foregoing considerations, I propose that the Court:

(1) Set aside the order of the Court of First Instance of the European Communities of 22 June 2006 in Case T-150/05 *Sahlstedt and Others* v *Commission*;

(2) Reject the preliminary plea of inadmissibility raised by the Commission of the European Communities before the Court of First Instance of the European Communities;

(3) Refer the case back to the Court of First Instance of the European Communities for a ruling on the merits of the action;

(4) Order that the costs be reserved.