Reports of Cases

JUDGMENT OF THE GENERAL COURT (Ninth Chamber, Extended Composition)

15 September 2021 *

(State aid – Individual aid measures for the operation of offshore wind farms – Obligation to purchase electricity at a price higher than the market price – Preliminary investigation procedure – Decision not to raise any objections – Action for annulment – Article 1(h) of Regulation (EU) 2015/1589 – Status of interested party – Fisheries undertakings – Construction of wind farms in fishing grounds – Competitive relationship – None – Likelihood that granting the aid at issue will have an effect on the interests of fisheries undertakings – None – No direct individual effect – Inadmissibility)

In Case T-777/19,

Coopérative des artisans pêcheurs associés (CAPA) Sarl, established in Tréport (France), and the other applicants whose names are set out in the annex,[1] represented by M. Le Berre, lawyer,

applicants,

supported by

Comité régional des pêches maritimes et des élevages marins des Hauts-de-France (CRPMEM), established in Boulogne-sur-Mer (France),

Fonds régional d'organisation du marché du poisson (FROM NORD), established in Boulogne-sur-Mer,

Organisation de producteurs CME Manche-Mer du Nord (OP CME Manche-Mer du Nord), established in Portel (France),

represented by A. Durand, lawyer

interveners,

v

European Commission, represented by B. Stromsky and A. Bouchagiar, acting as Agents,

defendant,

supported by

* Language of the case: French.

[1] The list of the other applicants is annexed only to the version notified to the parties.

French Republic, represented by E. de Moustier, P. Dodeller and T. Stehelin, acting as Agents,

by

Ailes Marines SAS, established in Puteaux (France), represented by M. Petite and A. Lavenir, lawyers,

by

Éoliennes Offshore des Hautes Falaises SAS, established in Paris (France),

Éoliennes Offshore du Calvados SAS, established in Paris,

Parc du Banc de Guérande SAS, established in Paris,

represented by J. Derenne and D. Vallindas, lawyers,

and by

Éoliennes en Mer Dieppe Le Tréport SAS, established in Dieppe (France),

Éoliennes en Mer Îles d'Yeu et de Noirmoutier SAS, established in Nantes (France),

represented by C. Lemaire and A. Azzi, lawyers,

interveners,

APPLICATION pursuant to Article 263 TFEU for annulment of Commission Decision C(2019) 5498 final of 26 July 2019 concerning the State aid SA.45274 (2016/NN), SA.45275 (2016/NN), SA.45276 (2016/NN), SA.47246 (2017/NN), SA.47247 (2017/NN) and SA.48007 (2017/NN) implemented by the French Republic in favour of six offshore wind farms (Courseulles-sur-Mer, Fécamp, Saint-Nazaire, Île d'Yeu and Île de Noirmoutier, Dieppe and Le Tréport, Saint Brieuc),

THE GENERAL COURT (Ninth Chamber, Extended Composition),

composed of M. van der Woude, President, M.J. Costeira, D. Gratsias (Rapporteur), M. Kancheva and T. Perišin, Judges,

Registrar: L. Ramette, Administrator,

having regard to the written part of the procedure and further to the hearing on 7 June 2021,

gives the following

Judgment

Facts and background to the dispute

Factual context

1 The first applicant, Coopérative des artisans pêcheurs associés (CAPA) Sarl, was set up by the fishermen in Tréport (France) and neighbouring ports to mutualise the purchase and resale of fuel, lubricants and fats. The second to eleventh applicants ('the applicant fishermen') are fisheries undertakings or skippers of fishing vessels established, in particular in Tréport, Erquy (France) and Noirmoutier (France), engaged in small-scale fishing off the French Channel or Atlantic coasts.

2 Ailes Marines SAS ('AM'), Éoliennes Offshore des Hautes Falaises SAS ('EOHF'), Éoliennes Offshore du Calvados SAS ('EOC'), Parc du Banc de Guérande SAS ('PBG'), Éoliennes en Mer Dieppe Le Tréport SAS ('EMDT') and Éoliennes en Mer Îles d'Yeu et de Noirmoutier SAS ('EMYN'), interveners in support of the European Commission ('the beneficiaries of the aid at issue'), are companies created for the purpose of operating the following offshore wind farms respectively: Saint-Brieuc (France) ('the Saint-Brieuc project'), Fécamp (France) ('the Fécamp project'), Courseulles-sur-Mer (France) ('the Courseulles-sur-Mer project'), Saint-Nazaire (France) ('the Saint-Nazaire project'), Dieppe (France) and Tréport ('the Dieppe/Le Tréport project') and Île d'Yeu and Île de Noirmoutier (France) ('the Îles d'Yeu/Noirmoutier project').

3 On completion of a first tendering procedure, in 2011, the French authorities selected, on the one hand, the bid submitted by Éolien Maritime France (EMF) for a lot consisting of the Saint-Nazaire, Fécamp and Courseulles-sur-Mer projects and, on the other, AM's bid for the Saint-Brieuc project. Operation of those projects was authorised by order of 18 April 2012.

4 On completion of a second tendering procedure, in 2013, the French authorities awarded the contract to the joint bid submitted by the consortium comprising ENGIE, EDP Renewables and Neoen Marine for the Îles d'Yeu/Noirmoutier and Dieppe/Le Tréport projects. Operation of those projects was authorised by order of 1 July 2014.

5 The six projects at issue are intended to create the first offshore wind farms operated in France. Those wind farms are intended to supply a total of 10.8 terrawatt-hours per annum, that is to say, around 2% of the total electricity produced annually in France. They are expected to operate for 25 years from commissioning. Those six projects are located inside marine areas exploited as fisheries, including by the applicant fishermen.

6 On the date of Commission Decision C(2019) 5498 final of 26 July 2019 concerning the State aid SA.45274 (2016/NN), SA.45275 (2016/NN), SA.45276 (2016/NN), SA.47246 (2017/NN), SA.47247 (2017/NN) and SA.48007 (2017/NN) implemented by the French Republic in favour of six offshore wind farms (Courseulles-sur-Mer, Fécamp, Saint-Nazaire, Île d'Yeu and Île de Noirmoutier, Dieppe and Le Tréport, Saint Brieuc) ('the contested decision'), construction of those wind farms had not yet commenced as a result of, inter alia, actions before the French courts. They are expected to be commissioned between 2022 and 2024, as those proceedings are disposed of.

7 The projects at issue are subsidised by operating aid in the form of an obligation to purchase electricity at a price higher than the market price, borne by EDF Obligation d'achat (EDF-OA), in respect of which the State offsets the entirety of the additional cost ('the aid at issue'). That mechanism is based on Articles L. 121-7, L. 311-10 and L. 311-12 of the French code de l'énergie (Energy Code).

Administrative procedure

8 The French authorities notified the aid at issue to the Commission on 29 April 2016, in respect of the Courseulles-sur-Mer, Fécamp and Saint-Nazaire projects, on 6 January 2017, in respect of the Îles d'Yeu/Noirmoutier and Dieppe/Le Tréport projects, and on 12 April 2017, in respect of the Saint-Brieuc project.

9 As construction of the offshore wind farms concerned had not yet started, the French authorities decided to renegotiate the purchase prices originally granted.

10 On 9 June 2018, two of the applicant fishermen lodged a complaint with the Commission concerning the aid for the Saint-Brieuc project.

11 On 29 June 2018, the Commission submitted a request for additional information concerning the stage reached in renegotiating the purchase prices. On 6 December 2018, the French authorities informed the Commission of the outcome of that renegotiation, which resulted in a reduction in those prices.

12 On 18 December 2018, a number of the applicant fishermen lodged a complaint with the Commission concerning the aid at issue granted for the Dieppe/LeTréport, Fécamp and Courseulles-sur-Mer projects.

13 On 23 January 2019, the Commission informed the persons who had filed the complaints referred to in paragraphs 10 and 12 above that it did not consider that they were interested parties within the meaning of Article 1(h) of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9). As a result, according to the Commission, the request of those persons could not be examined as a 'formal complaint for the purposes of Article 24(2) of [that regulation]'. By letters of 21 February 2019, those persons concerned disputed that view.

14 On 28 March 2019, a number of persons, including one of the applicant fishermen, lodged a complaint with the Commission concerning the aid at issue granted for the Saint-Nazaire and Îles d'Yeu/Noirmoutier projects.

15 On 3 April 2019, the Commission rejected the complaint referred to in the preceding paragraph on grounds similar to those stated in its letter of 23 January 2019. By letter of 12 April 2019, the persons concerned disputed that view.

16 On 26 July 2019, the Commission adopted the contested decision.

Contested decision

17 In the first place, after describing the aid at issue (paragraphs 9 to 60 of the contested decision), the Commission found that aid to be State aid for the purposes of Article 107(1) TFEU. First, it noted that, as a result of the purchase price mechanism described in paragraph 7 above, the funding of those measures was based on State resources and that those measures were attributable to the State. Secondly, it noted that those measures gave producers of electricity from offshore wind energy a selective advantage in the areas concerned. Thirdly, it noted that, given the interconnections between the French electricity grid and the electricity grids of a number of other Member States, those measures were capable of distorting trade in electricity between France and those Member States (paragraphs 61 to 70 of the contested decision).

18 In the second place, after finding the aid at issue to be unlawful, because it had not been notified in advance, the Commission assessed whether the aid was compatible with the internal market in the light of Article 107(3)(c) TFEU and having regard to sections 3.1.6.2 (operating aid for renewable energy) and 3.2 (incentive effect and necessity of aid) of the Community guidelines on State aid for environmental protection of 1 April 2008 (OJ 2008 C 82, p. 1) ('the 2008 guidelines'), in particular point 109 of those guidelines (paragraphs 71 to 76 of the contested decision).

19 In that regard, first, it noted that the aid at issue contributed to meeting the objectives laid down by national provisions and EU law for the share of renewable energy in the final consumption of energy in France and, consequently, to combating climate change (paragraphs 77 to 79 of the contested decision).

20 Secondly, it considered that the aid at issue was necessary to remedy a market failure. Thus, it found that the French authorities had demonstrated that the production costs in the context of each of the projects at issue ('levelised costs of electricity') ('LCOE') were appreciably higher than the market prices and that, consequently, because those projects had negative profitability, the purchase prices adopted by those authorities were necessary in order to incentivise operators to implement those projects (paragraphs 80 to 86 of the contested decision).

21 Thirdly, the Commission took the view that the aid at issue was such as to satisfy the requirement of proportionality. First of all, it noted that the mechanism used for the aid at issue ensured that the compensation was granted for the difference between the cost of producing the electricity and the basic electricity price. Next, it found that the process of selecting operators had been conducted in a non-discriminatory, transparent and open manner. Lastly, in view of the expected rate of return for each of the projects at issue, which reflected the level of profitability that could normally be expected from a similar investment, and of the undertakings given by the French authorities to monitor the evolution of costs, the Commission took the view that the aid at issue was limited to the minimum necessary and that the measures put in place by the French authorities were capable of preventing overcompensation (paragraphs 87 to 106 of the contested decision).

22 Fourthly, the Commission found that, given the total capacity of the projects at issue and the volume of electricity produced compared with the size of the French electricity market, the aid at issue would have only a limited effect on trade between the Member States (paragraphs 107 and 108 of the contested decision).

23 On the basis of the analysis recalled in paragraphs 19 to 22 above, the Commission concluded that the positive effects on the environment of each of the aid measures at issue outweighed any negative effects in terms of distorting competition. In addition, it noted that, since the funding of that aid was based on a tax that was not levied on electricity, there was no risk of discrimination, in accordance with Articles 30 and 110 TFEU. The Commission therefore found the aid to be compatible with the internal market, under Article 107(3)(c) TFEU and, for that reason, decided not to raise objections (paragraphs 109 to 117 of the contested decision).

Procedure and forms of order sought by the parties

24 By application lodged at the Court Registry on 12 November 2019, the applicants brought this action.

25 On 13 February 2020, the Commission lodged its defence.

26 On 9 March 2020, AM lodged an application to intervene in support of the Commission. The applicants filed observations on that application on 31 March 2020.

27 On 13 March 2020, the French Republic lodged an application to intervene in support of the Commission.

28 On 17 March 2020, EOHF, EOC, PBG, EMDT and EMYN each lodged an application to intervene in support of the Commission.

29 On 18 March 2020, the Comité régional des pêches maritimes et des élevages marins des Hauts-de-France (Hauts-de-France Regional Committee for Maritime Fisheries and Marine Farming, France) (CRPMEM), the not-for-profit association Fonds régional d'organisation du marché du poisson (Regional Fish Market Organisation Fund, France) (FROM NORD) and the variable capital maritime cooperative society Organisation de producteurs CME Manche-Mer du Nord (Manche-Mer du Nord Producer Organisation CME, France) (CME), which are organisations representing professional fishermen operating in the Manche Est fishing grounds (collectively, 'CRPMEM and others'), of which a number of applicant fishermen are members, lodged a joint application to intervene in support of the applicants. The same day, a further two applications to intervene in support of the applicants were lodged, one by the municipality of Erquy and one jointly by the municipalities of Tréport and Mers-les-Bains (France).

30 On 19 May 2020, the applicants lodged the reply.

31 On 20 May 2020, the applicants filed observations on the applications to intervene referred to in paragraphs 27 to 29 above. The Commission filed observations on the applications referred to in paragraph 29 above and disputed their admissibility.

32 By order of 24 July 2020, the President of the Ninth Chamber granted the applications to intervene of AM, EOHF, EOC, PBG, EMDT and EMYN. By decision of the same day, the President granted the French Republic's application to intervene.

33 On 25 August 2020, the Commission lodged its rejoinder.

34 By order of 21 September 2020, *CAPA and Others* v *Commission* (T-777/19, not published, EU:T:2020:452), the President of the Ninth Chamber, first, granted the application to intervene of CRPMEM and others and, secondly, rejected the applications of the municipality of Erquy and of the municipalities of Tréport and Mers-les-Bains.

35 On 6 October 2020, AM lodged its statement in intervention. The French Republic, EOHF, EOC, PBG, EMDT and EMYN lodged their statements in intervention on 7 October 2020. On 26 November 2020, the applicants and the Commission each filed their observations on those various statements.

36 On 3 December 2020, CRPMEM and others lodged their statement in intervention. The applicants and the Commission filed their observations on that statement on 20 and 21 January 21 respectively.

37 On 12 February 2021, the applicants applied for a hearing to be held.

38 On 16 April 2021, at the proposal of the Ninth Chamber, the Court, pursuant to Article 28 of the Rules of Procedure of the General Court, referred the case to a chamber sitting in extended composition.

39 By measure of organisation of procedure of 3 May 2021, the Court invited the applicants to provide certain written factual clarifications, and they responded to that request on 31 May 2021.

40 On 4 June 2021, the sixth to eleventh applicants brought an application for interim measures for suspension of operation of the contested decision and the adoption of other interim measures seeking, in essence, that implementation of the contested decision be suspended.

41 On 7 June 2021, since a member of the formation of the Court was prevented from acting, the President of the General Court designated himself to complete the formation. The hearing was held the same day. The oral stage of the proceedings was closed at the end of the hearing.

42 By order of 2 July 2021, *Bourel and Others* v *Commission* (T-777/19 R, not published, EU:T:2021:407), the Vice-President of the General Court rejected the application for interim measures referred to in paragraph 40 above and reserved the costs.

43 The applicants claim that the Court should:

– annul the contested decision;

– order the Commission to pay the costs;

– order the interveners in support of the Commission to bear their own costs.

44 The Commission claims that the Court should:

– dismiss the action;

– order the applicants to pay the costs;

– order CRPMEM and others to pay the costs resulting from their intervention.

45 The French Republic claims that the Court should dismiss the action.

46 AM, EOHF, EOC, PBG, EMDT and EMYN claim that the Court should:

– dismiss the action;

– order the applicants to pay the costs.

47 CRPMEM and others claim that the Court should:

– annul the contested decision;

– order the Commission to pay the costs.

Law

48 Although it has not formally raised a plea of inadmissibility, the Commission submits, principally, that the action is inadmissible.

49 The Commission states that the applicants are not interested parties for the purposes of Article 108(2) TFEU, and thus are not entitled to bring an action to protect their procedural rights, and that, with all the more reason, they have not demonstrated that they have a particular status within the meaning of the judgment of 15 July 1963, *Plaumann* v *Commission* (25/62, EU:C:1963:17), which would allow them to call into question the merits of the decision appraising the aid at issue.

50 First, as regards categorisation as an interested party, the Commission claims, in particular, that the reasoning of the judgment of 24 May 2011, *Commission* v *Kronoply and Kronotex* (C-83/09 P, EU:C:2011:341), cannot be transposed to the present case. According to the Commission, unlike the applicants in that case, the applicants in the present case are not in a competitive relationship with the beneficiaries of the aid at issue. Secondly, as regards the direct effect on the applicants, the Commission claims that, in essence, the applicant fishermen are affected by the regulatory choices made by the French authorities to dedicate certain areas to producing electricity, and even to prevent the fishermen from having access to those areas. In contrast, the grant of the aid at issue and the contested decision have only an indirect effect on their substantive position. Moreover, the Commission asserts that the construction of the offshore wind farms will have less effect on the substantive position of the applicant fishermen than they claim. Lastly, the Commission asserts that the first applicant has no fishing activity.

51 The applicants, for their part, claim that they are interested parties within the meaning of Article 1(h) of Regulation 2015/1589, on the basis, inter alia, of paragraphs 63 to 65 of the judgment of 24 May 2011, *Commission* v *Kronoply and Kronotex* (C-83/09 P, EU:C:2011:341).

52 In so far as the applicant fishermen are concerned, first, they argue that their fishing activity is delimited geographically on the basis of, on the one hand, fish stocks, unpredictable weather and regulatory access to the various sectors of the fishing grounds and, on the other, the rules applicable to the types of vessel they use and the corresponding navigation licences. The maritime domain in which they can carry on their activities therefore is or may be determined

according to their home port or the port they use at a particular time. The areas concerned by the projects at issue occupy a significant portion of that domain and the projects use them, sometimes on a priority basis, for their activities.

53 Secondly, the applicant fishermen submit that the projects at issue will have a foreseeable effect on their activities because of (i) the regulatory limitations on navigation envisaged in the areas affected by the projects and uncertainty as to whether those activities will be feasible in and near those areas and (ii) the potentially adverse effect of those projects on the marine environment and fish stocks.

54 Thirdly, the applicant fishermen state, by analogy with the judgment of 24 May 2011, *Commission* v *Kronoply and Kronotex* (C-83/09 P, EU:C:2011:341), that access to and use of the areas of maritime domain identified as the sites for the projects at issue must be considered as constituting a 'raw material' for the purposes of that judgment and that they are therefore, on that account, in a competitive relationship with the operators of those projects. In the reply, they further state that the definition of 'interested party' within the meaning of Article 1(h) of Regulation 2015/1589 is not strictly dependent on there being a competitive relationship.

55 In respect of the first applicant, whose customers consist of fishermen from Tréport and the neighbouring ports, the Dieppe/Le Tréport, Fécamp and Courseulles-sur-Mer projects allegedly directly affect its activity, which cannot be diversified beyond those customers and that location.

56 In support of the Commission's plea of inadmissibility, the French Republic, AM, EOHF, EOC, PBG, EMDT and EMYN advance, in essence, a similar line of argument. In their observations on the statements in intervention of those interveners, the applicants dispute that line of argument.

57 CRPMEM and others, in essence, advance a line of argument similar to that of the applicants. In its observations on the statement in intervention of CRPMEM and others, the Commission disputes that line of argument.

Preliminary considerations

58 As a preliminary point, it should be borne in mind that, under Article 108(3) TFEU, where the Commission considers that a plan to grant aid is not compatible with the internal market, it must without delay initiate the formal investigation procedure under Article 108(2). According to the first subparagraph of Article 108(2), if, in the context of that procedure, after giving notice to the parties concerned to submit their comments, the Commission finds, inter alia, that the aid granted is not compatible with the internal market, it is to decide that the State concerned must abolish or alter such aid within a period of time to be determined by the Commission.

59 However, Article 4 of Regulation 2015/1589 establishes a preliminary examination phase for aid measures, intended to enable the Commission to form an initial opinion on whether the aid at issue is compatible with the internal market.

60 According to Article 4(3) of Regulation 2015/1589, if the Commission finds that no doubts are raised as to the compatibility with the internal market of a measure, in so far as it falls within the scope of Article 107(1) TFEU, it is to adopt a decision not to raise objections. That decision constitutes a refusal by implication to initiate the formal investigation procedure laid down in Article 108(2) TFEU and Article 6(1) of Regulation 2015/1589 (see, to that effect, judgment of 24 May 2011, *Commission* v *Kronoply and Kronotex*, C-83/09 P, EU:C:2011:341, paragraph 45).

61 In contrast, under Article 4(4) of Regulation 2015/1589, if the Commission finds that doubts are raised as to the compatibility with the internal market of a notified measure, it must adopt a decision to initiate the formal investigation procedure. Under Article 6(1) of that regulation, that decision must call upon the Member State concerned and upon other interested parties to submit comments within a prescribed period.

62 It therefore follows from those provisions that any interested party, within the meaning of Article 1(h) of Regulation 2015/1589, is directly and individually concerned by the decision not to raise objections. If the beneficiaries of the procedural safeguards provided for in Article 108(2) TFEU and Article 6(1) of Regulation 2015/1589 are to be able to ensure that those safeguards are observed, it must be possible for them to bring a challenge before the EU Courts against such a decision (see, to that effect, judgment of 24 May 2011, *Commission* v *Kronoply and Kronotex*, C-83/09 P, EU:C:2011:341, paragraph 47 and the case-law cited).

63 Under Article 1(h) of Regulation 2015/1589, 'interested party' means, in particular, any person, undertaking or association of undertakings whose interests might be affected by the granting of aid, that is to say, in particular, the beneficiary of the aid, competing undertakings and trade associations. In other words, the concept covers an indeterminate group of persons (see judgment of 24 May 2011, *Commission* v *Kronoply and Kronotex*, C-83/09 P, EU:C:2011:341, paragraph 63 and the case-law cited).

64 Furthermore, in order to be categorised as an interested party, a person, undertaking or association of undertakings must establish, to the requisite legal standard, that the aid is likely to have a specific effect on its situation (judgment of 24 May 2011, *Commission* v *Kronoply and Kronotex*, C-83/09 P, EU:C:2011:341, paragraph 65 and the case-law cited).

65 On the other hand, if the applicant calls into question the merits of the decision appraising the aid as such, the mere fact that it may be regarded as concerned within the meaning of Article 108(2) TFEU cannot suffice to render the action admissible. The applicant must therefore demonstrate that it enjoys a particular status within the meaning of the judgment of 15 July 1963, *Plaumann* v *Commission* (25/62, EU:C:1963:17). That is so in particular where the applicant's position in the market is substantially affected by the aid to which the decision at issue relates (see judgment of 13 December 2005, *Commission* v *Aktionsgemeinschaft Recht und Eigentum*, C-78/03 P, EU:C:2005:761, paragraph 37 and the case-law cited).

66 That having been said, where an applicant seeks annulment of a decision not to raise objections, it essentially contests the fact that the Commission adopted the decision in relation to the aid at issue without initiating the formal investigation procedure, alleging that the Commission thereby acted in breach of the applicant's procedural rights. In order to have its action for annulment upheld, the applicant may invoke any plea to show that the assessment of the information and evidence which the Commission had at its disposal during the preliminary examination phase of the measure notified should have raised doubts as to the compatibility of that measure with the internal market. The use of such arguments cannot, however, have the consequence of changing the subject matter of the application or altering the conditions of its admissibility. On the contrary, the existence of doubts concerning that compatibility is precisely the evidence which must be adduced in order to show that the Commission was required to initiate the formal investigation procedure (see judgment of 24 May 2011, *Commission* v *Kronoply and Kronotex*, C-83/09 P, EU:C:2011:341, paragraph 59).

67 In the present case, as is apparent from paragraph 23 above, the contested decision is a decision not to raise objections. By that decision the Commission necessarily, albeit implicitly, declined to open the formal investigation procedure. The applicants submit that they are interested parties and raise two pleas in law, one alleging infringement of their procedural rights and the other alleging a failure to state reasons. Under the first plea in law, they set out why, in their view, the circumstances in which the contested decision was adopted and the content of that decision demonstrate that the Commission encountered serious difficulties which should have given rise to the initiation of a formal investigation procedure. Under the second plea in law, they refer to a number of parts of the contested decision, which are also disputed under the first plea, and claim that the Commission failed to state adequate reasons for its finding that the aid at issue is compatible and thereby to enable interested third parties to understand why the Commission considered that it was not facing serious difficulties.

68 Having regard to the case-law referred to in paragraphs 62 to 66 above, it is therefore sufficient for the applicants to demonstrate that, in the present case, they can be categorised as interested parties, which it is necessary to ascertain below. In the context of that examination, it is necessary to distinguish between the situation of the applicant fishermen, on the one hand, and that of the first applicant, on the other.

Whether the applicant fishermen are interested parties

69 The line of argument pursued by the applicant fishermen in support of their claim that they are interested parties is based on two grounds, that is to say, first, that there is a competitive relationship between their activities and those of the beneficiaries of the aid at issue and, secondly and in any event, that the aid is likely to have a specific effect on their situation. Those two grounds need to be examined separately.

Whether there is a competitive relationship between the applicant fishermen and the beneficiaries of the aid at issue

70 The arguments of the applicant fishermen raise the question of whether they can be considered as being in a competitive relationship with the beneficiaries of the aid at issue, on the ground that, by analogy with the situation that the Court of Justice examined in its judgment of 24 May 2011, *Commission* v *Kronoply and Kronotex* (C-83/09 P, EU:C:2011:341, paragraph 67), they allegedly use the same ‘raw material’.

71 It should be noted, at the outset, that, by that reasoning, the applicant fishermen are not claiming that they are direct competitors of the beneficiaries of the aid at issue, that is to say, that they compete with those beneficiaries on the markets in which the beneficiaries are engaged, namely electricity production. Moreover, it is obvious that they do not, since the applicant fishermen are engaged only in the small-scale fishing sector. Nevertheless, the concept of an interested party, within the meaning of Article 1(h) of Regulation 2015/1589, is not confined to direct competitors of the beneficiaries of the aid concerned (see, to that effect, by analogy, judgments of 24 May 2011, *Commission* v *Kronoply and Kronotex*, C-83/09 P, EU:C:2011:341, paragraph 70, and of 10 December 2008, *Kronoply and Kronotex* v *Commission*, T-388/02, not published, EU:T:2008:556, paragraph 73).

72 Admittedly, as is apparent from the wording of Article 1(h) of Regulation 2015/1589, as interpreted by the case-law, the expression 'competing undertakings' which appears in that provision denotes only the direct competitors of the beneficiaries of the aid concerned. It can be inferred from the wording of that article, especially from the adverbial phrase 'in particular' which introduces, inter alia, the expression 'competing undertakings', that such direct competitors are without doubt 'parties concerned' (in French, 'intéressés') within the meaning of Article 108(2) TFEU (see, to that effect, judgments of 24 May 2011, *Commission* v *Kronoply and Kronotex*, C-83/09 P, EU:C:2011:341, paragraphs 63 and 64, and of 3 September 2020, *Vereniging tot Behoud van Natuurmonumenten in Nederland and Others* v *Commission*, C-817/18 P, EU:C:2020:637, paragraph 50 and the case-law cited).

73 In contrast, unlike a direct competitive relationship with the beneficiary of the aid at issue, an indirect competitive relationship, such as that claimed by the applicant fishermen, does not automatically confer the status of interested party. As is apparent from paragraph 65 of the judgment of 24 May 2011, *Commission* v *Kronoply and Kronotex* (C-83/09 P, EU:C:2011:341), such an indirect competitive relationship does not relieve a party relying on it of the need to establish, to the requisite legal standard, that the aid is likely to have a specific effect on its situation.

74 In that regard, it should be borne in mind that, in the case that gave rise to the judgment which the Court of Justice examined on appeal in its judgment of 24 May 2011, *Commission* v *Kronoply and Kronotex* (C-83/09 P, EU:C:2011:341), the applicants, undertakings which manufactured fibreboards and oriented strand boards, and the beneficiary of the aid concerned, a manufacturer of pulp, used the same raw material in their production process, namely, industrial wood. Accordingly, the General Court concluded that those undertakings were in a competitive relationship as purchasers of industrial wood, and the Court of Justice found that conclusion to be free of any error in law (see, to that effect, paragraphs 9, 10, 67 and 70 of the judgment of the Court of Justice).

75 In this case, the applicant fishermen are engaged in the coastal small-scale fishing sector, whereas the beneficiaries of the aid at issue operate offshore wind farms with a view to producing electricity sold on the wholesale market.

76 Consequently, as stated by the Commission and the interveners in support of the Commission, first, the markets on which the applicant fishermen and the beneficiaries of the aid at issue sell their respective products are completely different and, secondly, their respective production process does not involve the use of the same 'raw material'. As regards the second consideration in particular, as noted by EMDT and EMYN, whereas the fishermen harvest fish stocks, the operators of offshore wind farms use kinetic wind energy.

77 That finding is not refuted by the claim advanced by the applicant fishermen that access to the areas where the projects at issue are to be constructed and use of those areas should be considered to be a 'raw material' within the meaning of the judgment of 24 May 2011, *Commission* v *Kronoply and Kronotex* (C-83/09 P, EU:C:2011:341).

78 In common parlance, the term 'raw material', which is used in the judgment of 24 May 2011, *Commission* v *Kronoply and Kronotex* (C-83/09 P, EU:C:2011:341), denotes a natural resource or an unprocessed product used as an input in a process to manufacture goods. Accordingly, as AM observes, the applicant fishermen incorrectly suggest, in the reply, that that judgment concerns a relationship involving competition for use of a common area for the supply of wood. As recalled in

paragraph 74 above, it follows from that judgment that the General Court had correctly identified a competitive relationship between the applicant in that case and the beneficiary of the aid concerned, as purchasers on the industrial wood market. Likewise, in the present case, the 'raw material' of their respective economic activities is not the area of maritime public space used by both the applicant fishermen and the beneficiaries of the aid at issue but the natural resources found therein. However, as already noted in paragraph 76 above, those resources are different and the operators at issue are therefore not in competition to exploit them.

79 In any event, in this case, as the Commission and the interveners in support of the Commission, in essence, set forth, the conflict between the applicant fishermen and the beneficiaries of the aid at issue, concerning access to the areas proposed for operation of the wind farms at issue and use of those areas, results from regulatory decisions by the French authorities, relating to monitoring and management of the various uses of maritime public space. The conflict is not caused, however, by that access and that use being 'opened up to competition' by those authorities.

80 In that regards, as is apparent from the explanations provided, in particular by the French Republic, the authorisation given to those beneficiaries to operate wind farms in those areas does not exclude other uses of those areas, in particular fishing, and the competent authorities apply the principle that those different uses can coexist. Although in practice, as is apparent from the documents submitted in the case file, fishing activities are likely to be subject to limitations in those areas, it is also apparent from those documents that those limitations relate to safety and risk prevention objectives pursued by those authorities, not to the exercise by the beneficiaries of the aid at issue of any exclusive right of use granted to them by those authorities. Any possible consequences of those limitations on the economic activity of the applicant fishermen are therefore inherent in the rules governing maritime public space and cannot be considered to confer an advantage on the operators of the wind farms at question over the fisheries undertakings using the same areas (see, to that effect, by analogy, judgment of 13 March 2001, *PreussenElektra*, C-379/98, EU:C:2001:160, paragraph 62 and the case-law cited).

81 Furthermore, as the applicant fishermen themselves state and the French Republic, in essence, states, access to the fishing grounds and use of those grounds are subject to strict rules which may, if necessary, prohibit fishing activities in them in the interests of, inter alia, objectives relating to the management of fish stocks. The applicant fishermen therefore do not have an unconditional right to exploit those areas which would place them 'in competition' with the operators authorised to operate sites inside those areas for the purpose of producing electricity.

82 Accordingly, the applicant fishermen cannot be regarded as interested parties entitled to bring this action on the basis of an alleged indirect competitive relationship with the beneficiaries of the aid at issue.

Likelihood that the aid at issue will have a specific effect on the situation of the applicant fishermen

83 As a preliminary point, it is important to note, as the applicant fishermen do in the reply, that the status of interested party is not strictly dependent on the existence of a competitive relationship, whether direct or indirect. According to consistent case-law, recalled in paragraph 63 above, that concept covers an indeterminate group of persons.

84 In that regard, the case-law does indeed offer some examples of situations in which both the General Court and the Court of Justice have found that persons whose interests were likely to be affected by the grant of aid were interested parties, without examining whether those persons were in a competitive relationship, albeit indirectly, with the beneficiaries of that aid.

85 Thus, for example, in the judgment of 16 September 1998, *Waterleiding Maatschappij* v *Commission* (T-188/95, EU:T:1998:217, paragraphs 79 to 81, 85 and 86), the General Court held that a water distribution company was an interested party in proceedings concerning aid to encourage undertakings to switch to the self-supply of water, where the beneficiaries of that aid were potential customers of that company.

86 Likewise, in the judgment of 9 July 2009, *3F* v *Commission* (C-319/07 P, EU:C:2009:435, paragraphs 45 to 60 and the case-law cited), the Court of Justice found that the applicant, the general trade union for workers in Denmark, could validly claim, in order to establish that it was an interested party, that the aid concerned – tax exemptions for Danish and foreign seafarers employed by Danish shipowners, which ultimately benefited those shipowners – affected its 'competitive position' vis-à-vis other trade unions in the negotiation of collective agreements for seafarers.

87 Lastly, in the judgment of 24 February 2021, *Braesch and Others* v *Commission* (T-161/18, under appeal, EU:T:2021:102), the General Court found that the applicants, holders of bonds subordinated to the shares of a bank benefiting from aid measures granted by the Italian Republic as part of a restructuring plan, had demonstrated that the grant of the aid as a whole was likely to have a specific effect on their situation. In that regard, the General Court found that those aid measures and the commitments offered by that Member State, which included burden-sharing methods likely to cause significant financial losses to the applicants, were intrinsically linked, in so far as those undertakings were a precondition for the declaration of compatibility, and the decision authorising the aid measures simultaneously made those commitments binding (see, to that effect, judgment of 24 February 2021, *Braesch and Others* v *Commission*, T-161/18, under appeal, EU:T:2021:102, paragraphs 39 and 40).

88 However, in the earlier case-law, including the judgments referred to in paragraphs 85 to 87 above, the EU Courts did not rule on a conflict such as that in the present case, between two different economic activities over the use of the same area in order to exploit different resources, and on the alleged adverse effects on one of those activities that would result from the national authorities choosing to pay aid to the other. In more precise terms, this case poses the question of whether the alleged adverse effects of operation of the wind farms subsidised by the aid at issue on their environment – in particular on coexisting fishing activities, the marine environment and fish stocks – can be regarded as a specific effect of the grant of that aid on the situation of the fisheries undertakings concerned.

89 In that regard, although, it cannot be ruled out, in principle, that aid may specifically affect the interests of third parties as a result of the effects the subsidised development has on their environment and, in particular, on other activities carried on in the vicinity, it is apparent from paragraphs 64 and 73 above that, according to the case-law, in order for those third parties to be categorised as interested parties they must demonstrate to the requisite legal standard that such a specific effect is likely. It is furthermore not sufficient for that purpose to demonstrate that those effects exist; it is also necessary to establish that they result from the aid itself. Were that not so, any individual or undertaking whose interests might, as a result of where they are located, be concerned by those effects could potentially claim to be an interested party, which would be

clearly incompatible with Article 108(2) TFEU as interpreted by the case-law (see, to that effect, by analogy, judgment of 19 December 2019, *BPC Lux 2 and Others* v *Commission*, T-812/14 RENV, not published, EU:T:2019:885, paragraph 60 and the case-law cited).

90 In the present case, in the first place, it should be noted that, as the Commission and the interveners in support of the Commission observe, the alleged likelihood that the projects at issue will affect fishing activities in the areas concerned is the result, on the one hand, of the decisions by the French authorities to develop those projects at locations where those activities are carried on and, on the other hand, of the decisions liable to be made by those authorities in order to regulate maritime navigation and fishing at and in the vicinity of those locations. As stated by the French Republic, those decisions are embodied in, respectively, operating licences and decisions relating to the use and management of the public domain, not in the grant of the aid at issue.

91 In the second place, it should be noted that the decisions to grant the aid at issue cannot influence the siting of the projects concerned or the monitoring and limitation of fishing activities in the areas where they are located.

92 First of all, as is apparent from the contested decision and the application and as confirmed by the documents relating to the 2011 and 2013 tendering procedures for the projects at issue, to which the contested decision refers, the exact locations of the sites of those projects had already been decided at the time those tendering procedures were issued and were an integral part of the terms of those procedures.

93 Next, it was only after those tendering procedures had been issued, at the time the bids of the successful tenderers were accepted, that the decision to grant aid measures was adopted (see paragraph 71 of the contested decision). Furthermore, it is not apparent from either the contested decision or the evidence submitted by the parties that the renegotiation of those aid measures in 2018, which concerned only a reduction in the amount of aid in the light of, inter alia, technological and legal developments relating to projects of that nature, itself affected the terms relating to location.

94 Lastly, payment of the aid at issue is linked to the undertaking by the French authorities to re-examine that aid in the event of any subsequent modification of the technical characteristics of the projects at issue (paragraph 105 of the contested decision). Furthermore, the terms on which the aid measures were granted provide that the amount of aid will be reduced on expiry of the contract with the electricity purchaser and that the aid will have a maximum duration of 20 years, after which electricity production will no longer be subsidised (paragraphs 23 and 24 of the contested decision). It must be stated that that mechanism for gradually reducing payment of the aid is completely independent of the alleged likelihood that the projects at issue will affect the activities of the applicant fishermen and is not capable of affecting those activities, since those effects depend solely on any technical and regulatory measures that may be taken to limit those activities or, conversely, to facilitate their coexistence with the projects in question. Thus, even once the aid at issue stops being paid, those alleged effects may continue independently of that payment.

95 In the third place, the aid at issue, which correspond to the difference between the purchase prices of the electricity produced by the installations comprising the projects at issue and the market price of electricity, can only have an effect on the markets in which the beneficiaries are engaged, that is to say, downstream, the electricity market and, potentially, upstream, the markets relating

to the supplies needed for those installations to operate. The aid measures cannot, in themselves, have any effect on the markets in which the applicant fishermen themselves are engaged, and the applicant fishermen have in fact not argued that they could.

96 In the fourth place, as regards the alleged effects of the projects at issue on fish stocks and the marine environment, it is sufficient to note that, similarly to the effects of those projects on the carrying on of fishing in the areas concerned, those effects depend solely on the decisions of the French authorities concerning the location of those projects and on the technical and regulatory measures applicable to the projects, which may influence those effects either positively or negatively. In that regard, it is not apparent from the claims by the applicant fishermen and the interveners in their support or from the evidence they have submitted in support of those claims that there is any link between payment of the aid at issue and those effects on fish stocks and the marine environment. Accordingly, whilst it is not necessary to examine the arguments advanced by the Commission and the interveners in support of the Commission on the lack of evidence of such effects, those effects cannot, in any event, confer the status of interested parties on the applicant fishermen.

97 It is apparent from the foregoing that there is no link between the mechanism for granting the aid at issue and the alleged effects of the projects at issue on the activities of the applicant fishermen. Those effects are in fact inherent, first, in the decisions by the French authorities to locate those projects in the areas concerned as part of their policy to exploit energy resources and, secondly, in the rules governing maritime public space and in the technical measures applicable to those projects. In contrast, although the decision by those authorities to grant aid to the operators of those projects in the form of a purchase obligation funded by the State does give them an advantage over producers of non-subsidised electricity, it does not, on its own, affect the applicant fishermen's economic performance. The aid at issue therefore cannot be regarded as likely, of itself, to have a specific effect on their situation for the purposes of the case-law summarised in paragraph 64 above.

98 That conclusion is not called into question by the applicant fishermen's various arguments aimed at demonstrating the link between the aid at issue and the alleged effects the projects at issue will have on their situation.

99 In the first place, the applicant fishermen claim in the reply and in their observations on the statements in intervention in support of the Commission that payment of the aid is necessary in order for the projects at issue to be implemented and operated.

100 In that regard, first, as is apparent from section 3.2 of the 2008 guidelines (incentive effect and necessity of aid), on which the Commission based paragraphs 81 to 86 of the contested decision, and from those paragraphs themselves, the fact that the aid is necessary in order to implement and operate environmental protection projects, such as the projects at issue, is precisely a precondition for it to be compatible. Specifically, according to point 146(c) of the 2008 guidelines, in order to demonstrate the incentive effect of the aid, the Member State concerned must prove that the investment would not be sufficiently profitable without aid. Accordingly, to concede that, as the applicants argue, the likelihood of the aid at issue having a specific effect on their activities is established simply because the aid is necessary for those projects to exist is tantamount to potentially conferring the status of an interested party on any undertaking or individual on whose interests those projects are likely to have an effect, a result which, as indicated in paragraph 89 above, is unacceptable. Moreover, it should be noted that to interpret categorisation as an interested party in that way would make it possible in practice for such

undertakings or individuals systematically to dispute decisions not to raise objections in relation to aid for environmental protection, since a specific effect on their situation would automatically be proven on the basis of the fact that the aid was necessary.

101 Secondly, it should be noted that, as is apparent, in essence, from the reply, the reasoning of the applicant fishermen in fact concerns not the effects of the aid at issue itself, but the effects of the decisions relating to the location of the offshore wind farms comprising the projects at issue, which, according to those fishermen, involve a full or partial ban on fishing activities and technical constraints that will make fishing unfeasible in the areas concerned. Accordingly, as suggested by the interveners in support of the Commission, the action against the contested decision is to a certain extent merely a continuation of the actions brought by the applicant fishermen before the national courts against the decisions by the French authorities relating to those projects. It is apparent from the second subparagraph of Article 194(2) TFEU that the Treaties do not affect the right of the Member States to determine the conditions for exploiting their energy resources, their choice between different energy sources and the general structure of their energy supply (see, to that effect, judgment of 22 September 2020, *Austria* v *Commission*, C-594/18 P, EU:C:2020:742, paragraph 48).

102 Consequently, even though the applicant fishermen may have an interest in disputing the French authorities' decisions and choices regarding the exploitation of offshore wind energy before the national courts, on the ground of the potential effects of that exploitation on their situation, that fact cannot however suffice to give them the status of interested parties in a formal investigation procedure concerning the payment of State aid to the undertakings participating in implementation of those decisions and choices.

103 In the second place, the fact that the applicant fishermen, in their view, carry on an important activity in the public interest, which enjoys a particular status under Article 39 TFEU, cannot, contrary to their assertions, be taken into account in the present case.

104 In that regard, first of all, it is indeed necessary to bear in mind, as the applicant fishermen do, that the objectives defined in Article 39 TFEU, which can be transposed to the common fisheries policy by virtue of Article 38(1) TFEU, include that of ensuring a fair standard of living for the agricultural community, and that, in pursuing those objectives, account must be taken of, inter alia, the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions.

105 Nevertheless, in the present case, it must be noted that, according to paragraphs 74 to 79 of the contested decision, the purpose of the aid at issue is to develop the production of electricity from renewable sources with the aim, in particular, of contributing to the French Republic's objective of increasing the share of renewable energy sources in the final consumption of electricity. Those aims are completely unconnected with the objectives of the common fisheries policy, defined in Article 39 TFEU.

106 Next, it should be recalled that, as regards aid such as the aid at issue, granted under Article 107(3)(c) TFEU, the Court of Justice has held that, under that article, State aid must meet two conditions, the first being that it must be intended to facilitate the development of certain economic activities or of certain economic areas and the second, expressed in negative terms, being that it must not adversely affect trading conditions to an extent contrary to the common interest. That article therefore does not make the compatibility of aid dependent on its pursuing

an objective of common interest, without prejudice to the fact that decisions adopted by the Commission on that basis must ensure compliance with EU law (judgment of 22 September 2020, *Austria* v *Commission*, C-594/18 P, EU:C:2020:742, paragraphs 19 and 20).

107 Accordingly, the matter of whether the objectives of common interest referred to in Article 39 TFEU should be taken into account when examining the aid at issue, as the applicant fishermen suggest, is irrelevant for the purposes of the conditions laid down in Article 107(3)(c) TFEU, set out in paragraph 106 above. Those objectives cannot therefore be taken into account in determining whether the applicant fishermen are interested parties. An interested party's right to submit observations in the context of the formal investigation procedure and, therefore, as recalled in paragraph 62 above, to dispute a decision not to raise objections, constituting a refusal by implication to initiate that procedure, must be examined in the light of the objective of that procedure which is, in particular, to enable the Commission to carry out all the requisite consultations where an initial examination of aid has not enabled it to overcome all the difficulties involved in determining whether the aid is compatible with the internal market (see, to that effect, judgment of 3 September 2020, *Vereniging tot Behoud van Natuurmonumenten in Nederland and Others* v *Commission*, C-817/18 P, EU:C:2020:637, paragraph 76 and the case-law cited).

108 Lastly, in any event, the alleged likelihood that the projects at issue will affect the carrying on of fishing in the areas concerned as well as fish stocks and the marine environment cannot, even assuming it to be established, prove that the aid at issue conflicts with the objects defined in Article 39 TFEU.

109 First, because they are very general, the objectives defined in Article 39 TFEU cannot be called into question on the basis of a potential adverse effect that those projects may have on the activities of the applicant fishermen.

110 Secondly, as already indicated in paragraph 81 above, the applicant fishermen do not have an unconditional right to use the maritime public space covered by their fishing grounds and, as they themselves state, their activities are already subject to limitations as a result of the rules applicable to those activities. Furthermore, as is apparent from, inter alia, the maps relating to their fishing effort annexed to the application, the sites where the projects at issue are located cover only part of those grounds and it has been neither claimed nor established that those projects are likely to jeopardise their standard of living or the social structure of small-scale fishing in those grounds. Furthermore, as already noted in paragraph 80 above, contrary to what those applicants appear to be suggesting, the documents submitted by the French Republic illustrate the wish on the part of the French authorities to enable the fishing activities and offshore wind farms concerned to coexist.

111 Thirdly, the applicant fishermen claim, in the reply, that, in any event, they have an interest in bringing proceedings against the contested decision on the basis of the actions brought by some of them before the national courts against the operating licences for two of the projects at issue.

112 In that regard it is sufficient to recall that, according to consistent case-law, an interest in bringing proceedings and *locus standi* are distinct conditions for admissibility which must be satisfied by a natural or legal person cumulatively in order to be admissible to bring an action for annulment under the fourth paragraph of Article 263 TFEU (see judgment of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraph 62 and the case-law cited). However, even if the proceedings before the national courts gave the applicant fishermen an interest in

bringing proceedings against the contested decision, it should be noted that, as is apparent in particular from the case-law summarised in paragraph 62 above, whether or not an applicant is an interested party within the meaning of Article 1(h) of Regulation 2015/1589 and entitled, on that basis, to dispute a decision not to raise objections is a matter of that applicant's *locus standi*.

113 It is apparent from the foregoing that the applicant fishermen have not demonstrated to the requisite legal standard that the aid at issue is likely to have a specific effect on their situation. The action against the contested decision, in so far as concerns those applicants, must therefore be dismissed as inadmissible.

Whether the first applicant is an interested party

114 As regards the first applicant, a cooperative set up by the fishermen in Tréport and neighbouring ports to mutualise the purchase and resale of fuel, lubricants and fats (see paragraph 1 above), it should be noted that its activity is determined by the economic decisions of its customers, not by the payment of the aid at issue. There is therefore, in any event, no link between the payment of aid and the carrying on of that activity, and even less so since, as is apparent from the annexes to the application submitted on that matter, those customers are not confined to the applicant fishermen but include some 70 professionals registered in Hauts-de-France, Normandy and Brittany. Moreover, the maps showing the density of use by vessels that are customers of the first applicant, which were also submitted in the case file, suggest a larger scope of activity than that of the applicant fishermen. It follows that it has not, in any event, been demonstrated that the aid at issue is likely to have a specific effect on its situation and that the first applicant cannot be regarded as an interested party. Consequently, the action against the contested decision, in so far as concerns that applicant, must also be dismissed as inadmissible.

115 In the light of the foregoing, there being no need to examine the Commission's arguments to the effect that the applicants do not have a particular status within the meaning of the judgment of 15 July 1963, *Plaumann* v *Commission* (25/62, EU:C:1963:17), and, in particular, to the effect that their position on the market would not be substantially concerned by the aid at issue, it must be found that none of the applicants is entitled to bring proceedings against the contested decision.

116 The action must therefore be dismissed as inadmissible.

Costs

117 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

118 Since the applicants have been unsuccessful, they must therefore be ordered to pay the costs, in accordance with the form of order sought by the Commission.

119 The Vice-President of the General Court having reserved the costs in the interim measures proceedings, by order of 2 July 2021, *Bourel and Others* v *Commission* (T-777/19 R, not published, EU:T:2021:407), it is necessary to rule on those costs. In that regard, since the sixth to eleventh applicants have been unsuccessful in those proceedings, they must be ordered to pay the costs of those proceedings, in accordance with the form of order sought by the Commission.

120 In accordance with Article 138(1) of the Rules of Procedure, the French Republic must bear its own costs.

121 Under Article 138(3) of the Rules of Procedure, the General Court may order an intervener other than those referred to in paragraphs 1 and 2 to bear its own costs.

122 In the present case, it must be held that the interveners other than the French Republic must bear their own costs.

On those grounds

THE GENERAL COURT (Ninth Chamber, Extended Composition)

hereby:

1. **Dismisses the action;**

2. **Orders Coopérative des artisans pêcheurs associés (CAPA) Sarl and the other applicants whose names are set out in the annex to pay the costs;**

3. **Orders David Bourel and the other applicants in Case T-777/19 R whose names are set out in the annex to pay the costs of the interim measures proceedings;**

4. **Orders the French Republic, the comité régional des pêches maritimes et des élevages marins des Hauts-de-France (CRPMEM), the Fonds régional d'organisation du marché du poisson (FROM NORD), the Organisation de producteurs CME Manche-Mer du Nord (OP CME Manche-Mer du Nord), Ailes Marines SAS, Éoliennes Offshore des Hautes Falaises SAS, Éoliennes Offshore du Calvados SAS, Parc du Banc de Guérande SAS, Éoliennes en Mer Dieppe Le Tréport SAS and Éoliennes en Mer Îles d'Yeu et de Noirmoutier SAS to bear their own costs.**

van der Woude Costeira Gratsias

Kancheva Perišin

Delivered in open court in Luxembourg on 15 September 2021.

[Signatures]