OPINION OF ADVOCATE GENERAL COSMAS

delivered on 23 September 1997 *

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* Original language: Greek.

I — Introductory observations

1. In the present case the Court is called upon to adjudicate on the appeal brought under Article 49 of the EEC Statute of the Court of Justice against the order of 9 August 1995 of the Court of First Instance of the European Communities. [1] The order appealed against dismissed the action brought by certain environmental associations and individuals, pursuant to the fourth paragraph of Article 173 of the EC Treaty, for annulment of the Commission Decision to pay to the Spanish Government, in addition to amounts initially granted, ECU 12 000 000 to cover expenditure incurred in the construction of two electricity-power stations in the Canary Islands. That decision, according to the applicants, was taken between 7 March 1991, the date of adoption of Commission Decision C(91)440 granting financial assistance for the works in question, and 29 October 1993, when the Commission confirmed that the abovementioned amounts had already been disbursed to the Spanish Government.

2. At the outset, it is worth noting that the Court will be required in this case to form a view as to the manner and scope of application of the fourth paragraph of Article 173 of the EC Treaty in circumstances in which the applicants base the legal interest on which they rely on the consequences for the environment alleged to flow from the Community institution's act that is being challenged.

II — Facts and procedure

3. The facts of the case under examination, as described in the order appealed against, may be stated as follows:

By Decision C(91) 440 adopted on 7 March 1991 pursuant to Council Regulation (EEC) No 1787/84 of 19 June 1984 on the European Regional Development Fund, [2] as amended by Council Regulation (EEC) No 3641/85 of 20 December 1985, [3] the Commission agreed to grant the Kingdom of Spain financial assistance from the European Regional Development Fund ('the ERDF') up to a maximum of ECU 108 578 419 for the construction of two electricity-power stations in the Canary Islands, on Gran Canaria and Tenerife, by Unión Eléctrica de Canarias SA ('UNELCO'). That financing was to be spread over four years, the first instalment being payable on adoption of aforementioned Decision C(91)440. Subsequent instalments of aid could be reduced or suspended if examination of progress of the works were to reveal irregularities and, in particular, any significant alteration affecting the implementation of the decision for which

1 — Order of the Court of First Instance of 9 August 1995 in Case T-585/93 *Stichting Greenpeace Council and Others* v *Commission* [1995] ECR II-2205.

2 — OJ 1984 L 169, p. 1.

3 — OJ 1985 L 350, p. 40.

the Commission's approval had not been sought. That condition was laid down in Article 5 of the aforementioned Commission Decision, and also in paragraphs A.20, A.21 and C.2 of Annex III thereto.

4. As early as 23 December 1991, two of the appellants had informed the Commission by letter that, as regards the works commenced on Gran Canaria, UNELCO had failed to undertake an environmental impact assessment study in accordance with the applicable Community provisions. [4] Furthermore, another of the appellants reported to the Commission, by letter dated 23 November 1992, that UNELCO had started construction work on Gran Canaria and Tenerife without the Comisión de Urbanismo y Medio Ambiente de Canarias (Canary Islands Commission for Planning and the Environment, 'CUMAC') having issued its environmental impact statement in accordance with the applicable national legislation.

5. In fact, on 3 December 1992, CUMAC issued two environmental impact statements relating to the construction of the power stations on Gran Canaria and Tenerife. Administrative appeals against those statements were lodged, on 26 March 1993 and 2 April 1993 respectively, by local environmental protection associations which are amongst the appellants in the present proceedings. [5] On 18 December 1993 Greenpeace Spain, an environmental protection association responsible in Spain for the attainment in that country of the objectives of Stichting Greenpeace Council ('Greenpeace'), a nature conservancy foundation established in the Netherlands and the first appellant, brought proceedings before the national courts challenging the validity of the administrative authorizations issued to UNELCO by the competent Spanish administrative authorities.

6. At the same time, Greenpeace initiated a series of contacts with the Commission. In particular, by letter dated 17 March 1993, Greenpeace asked the Commission to confirm whether Community structural funds had been disbursed for the construction of the two power stations in the Canary Islands and to inform it of the date of release of those funds. In its reply of 13 April 1993, the Director General of Directorate-General XVI of the Commission recommended Greenpeace to 'read' Decision C(91) 440 which gave details of the conditions of the grant of Community support and of the financing plan. By a further letter of 17 May 1993, Greenpeace asked the Commission for full disclosure of measures which it had taken in regard to the construction of the two power stations in the Canary Islands, in accordance with Article 7 of Council Regu-

4 — Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40).

5 — Those associations are Tagoror Ecologista Alternativo (TEA) and Comisión Canaria contra la Contaminácion (CIC).

lation (EEC) No 2052/88 of 24 June 1988, [6] which provides: 'Measures financed by the Funds (...) shall be in keeping with the provisions of the Treaties, with the instruments adopted pursuant thereto and with Community policies, including those concerning (...) environmental protection.' By letter dated 23 June 1993, the Director General of DG XVI replied to Greenpeace that it was unable to provide the information requested since it concerned the Commission's internal decision-making procedures, but gave the assurance that its decision was taken 'only after full consultation between the various services concerned.' On 29 October 1993, a meeting took place in Brussels between Greenpeace and the competent officials of Directorate-General XVI of the Commission, specifically concerning the financing by the ERDF of the construction of the power stations on Gran Canaria and Tenerife.

7. On 21 December 1993, the appellants brought an action before the Court of First Instance for annulment of the abovementioned Commission decision to continue financing of the works. The Kingdom of Spain intervened in the proceedings before the Court of First Instance. In its abovementioned order of 9 August 1995 the Court of First Instance upheld the objection of inadmissibility raised by the Commission and on that ground dismissed the action.

6 — Council Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 185, p. 9).

8. The unsuccessful parties at first instance appealed against that order, requesting the Court to set aside the order, to declare admissible the action brought before the Court of First Instance and to order the Commission to pay the costs. The Commission requests the Court to dismiss the appeal or, in the alternative, to dismiss the original application as inadmissible on one of the other grounds advanced by the Commission at first instance and, finally, to order the appellants to bear the costs. For its part, the Kingdom of Spain seeks the dismissal of the appeal, affirmation of the correctness of the order at first instance, and an order for costs against the appellants.

III — The order appealed against

9. In the order appealed against the Court of First Instance examined whether the applicants had standing to bring the action pending before it. In so doing it distinguished between the applicant individuals and applicant environmental associations.

10. (a) As regards the former, it based itself on the settled case-law of both the Court and the Court of First Instance, according to which: '(...) persons other than the addressees may claim that a decision is of direct concern to them only if that decision affects them by reason of certain attributes which are peculiar to them, or by reason of factual circumstances which differentiate them from all other persons and thereby distinguish them individually in the same way as the

person addressed.' [7] In so doing, it did not follow the interpretative approach to the fourth paragraph of Article 173, contended for on behalf of the applicants to the effect that the hitherto restrictive case-law cannot be transposed to situations in which the legal interests affected by the contested decision are not economic in nature but arise from the negative environmental impact of the unlawful conduct by the Community institutions. The Court of First Instance held in that connection that the essential criterion applied by the Court of Justice in its settled case-law, namely, 'in substance, a combination of circumstances sufficient for the third-party applicant to be able to claim that he is affected by the contested decision in a manner which differentiates him from all other persons — remains applicable whatever the nature, economic or otherwise, of those of the applicants' interests which are affected'. [8] Reliance solely on the harm likely to be suffered, generally and in the abstract, by individuals who cannot be determined in advance '(...)in a way which distinguishes them individually in the same way as the addressee of a decision (...)' [9] cannot suffice to confer *locus standi*. The Court of First Instance further considers that that case-law constitutes the only correct interpretation of the fourth paragraph of Article 173 of the Treaty. In its order it expressly states that the contested decision must directly and individually affect the applicant. That view of the matter cannot be affected either by the finding that there has been a tendency in recent years by the competent national courts to make *locus standi* solely dependent on the existence of a 'sufficient' interest on the part of the applicants. [10] For the above reasons, the Court of First Instance held that it had to be examined whether, in the case pending before it, the contested decision was of individual concern to the applicants. The Court of First Instance held that it was not, in light of two matters of relevance in its view, enlarged upon in paragraphs 54 to 56 of the order appealed against, which read as follows:

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

7 — Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, Case 231/82 *Spijker* v *Commission* [1983] ECR 2559, Case 97/85 *Deutsche Lebensmittelwerke and Others* v *Commission* [1987] ECR 2265, Case C-198/91 *Cook* v *Commission* [1993] ECR I-2487, Case C-225/91 *Matra* v *Commission* [1993] ECR I-3203, Case T-2/93 *Air France* v *Commission* [1994] ECR II-323 and Case T-465/93 *Consorzio Gruppo di Azione Locale 'Murgia Messapica'* v *Commission* [1994] ECR II-361.

8 — Paragraph 50 of the order appealed against.

9 — Paragraph 51 of the order appealed against.

10 — That argument based on comparative law was developed at some length by the applicants.

12. The applicants thus cannot be affected by the contested decision other than in the same manner as any other local resident, fisherman, farmer or tourist who is, or might be in the future, in the same situation (Case 231/82 *Spijker,* cited above, paragraph 9, and the order of 21 February 1995 in Case T-117/94 *Associazione Agricoltori della Provincia di Rovigo and Others* v *Commission* [1995] ECR II-455, paragraph 25).

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

14. (b) As regards *locus standi* of the applicant associations, the Court of First Instance followed settled case-law according to which an association formed to further the collective interests of a category of persons does not have *locus standi* to challenge a measure adopted by a Community institution affecting the general interests of that category where the members of that association do not have standing to do so individually, [11] unless that association had played a role in a procedure which led to the adoption of an act within the meaning of Article 173 of the Treaty, subject to the proviso, certainly, that the particular role is of such a nature as to justify admissibility of the action brought by the association, even though its members are not directly and individually affected by the act in question. [12]

15. In that context it is stated in the order appealed against that the applicant associations did not adduce any special circumstances to demonstrate the individual interest of their members as opposed to that of any other person residing in the areas of Gran Canaria and Tenerife. 'The possible effect on the legal position of the members of the applicant associations cannot, therefore, be any different from that alleged here by the

11 — The Court of First Instance relied (a) on judgments of the Court of Justice in Joined Cases 19/62 to 22/62 *Fédération Nationale de la Boucherie en Gros et du Commerce en Gros des Viandes and Others* v *Council* [1962] ECR 491; Case 72/74 *Union Syndicale* v *Council* [1975] ECR 401; order of the Court of Justice in Case 60/79 *Producteurs de Vins de Table et Vins de Pays* v *Commission* [1979] ECR 2429; judgment of the Court of Justice in Case 282/85 *DEFI* v *Commission* [1986] ECR 2469; order of the Court of Justice in Case 117/86 *UFADE* v *Council and Commission* [1986] ECR 3255, paragraph 12, and (b) on the judgment of the Court of First Instance in Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and Others* v *Commission* [1995] ECR II-1971, paragraphs 58 and 59.

12 — Judgments of the Court of Justice in Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219 and Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125.

applicants who are private individuals.' [13] Consequently, in so far as the applicants in the present case could not be considered to be individually concerned by the contested decision, nor in logic, according to the Court of First Instance, could the members of the applicant associations.

16. The Court of First Instance went on to examine whether the existence of contacts between one of those associations, Greenpeace, and the Commission was sufficient to confer *locus standi* on Greenpeace. The reply given to that question was in the negative since it was considered, in the first place, that 'the Commission did not, prior to the adoption of the contested decision, initiate any procedure in which Greenpeace participated; nor was Greenpeace in any way the interlocutor of the Commission with regard to the adoption of the basic Decision C(91) 440 and/or of the contested decision' [14] and, secondly, that 'the correspondence which took place between Greenpeace and the Commission and its subsequent meeting with members of the Commission's staff were for purposes of information only, since the Commission was under no duty either to consult or to hear the applicants in the context of the implementation of Decision C(91) 440.' [15]

17. On those grounds the Court of First Instance, in its abovementioned order, dismissed the action in its entirety as inadmissible, on the ground that the applicants were not 'individually concerned' by the contested decision, without further examination of the remaining pleas of inadmissibility raised by the Commission.

13 — Paragraph 60 of the order appealed against.
14 — Paragraph 62 of the order appealed against.
15 — Paragraph 63 of the order appealed against.

IV — Legal framework

18. As mentioned above, the legal discussion turns on the interpretation of the fourth paragraph of Article 173 of the EC Treaty, which reads as follows: 'Any natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.'

V — Arguments of the parties

A — *The appellants' arguments*

19. (a) In their pleadings the appellants begin by setting out the relevant legal context for the solution of the present case which, in their view, was incorrectly appraised by the Court of First Instance. Thus, they consider that the lower court, in applying the fourth paragraph of Article 173 of the Treaty, ought to have taken account of the following matters: under Commission Decision C(91)440, which expressly refers in its preamble to the necessity of carrying out the works which are the subject of financing in compliance with the requirements of Community law on

environmental protection and, in particular, with Directive 85/337/EEC, owing to the likely impact of the works on the environment, the Commission was required, if it observed that during the construction works 'Community policy' [16] was not being complied with, to withhold payment of Community funds, to notify the competent national authorities and to determine the measures to be taken. Furthermore, Council Regulation (EEC) No 2052/88, pursuant to which abovementioned Decision C(91)440 was adopted, expressly provides that works subject to financing are to comply with Community provisions on environmental protection.

20. From the foregoing the appellants infer that, in implementing Decision C(91)440, the Commission ought, on the one hand, to have systematically monitored whether the construction projects benefiting from financing were being carried out in compliance with Community law and, in particular, with Directive 85/337/EEC and, on the other, to have refused to disburse further funds if it observed non-compliance with Community provisions on environmental law. They further consider that, inasmuch as the construction projects were commenced before an environmental impact assessment had been obtained and the Commission was aware of that irregularity, the decision by the latter to disburse to Spain further funds amounting to ECU 12 000 000 is in direct breach of its abovementioned obligations.

21. In that regard the appellants see fit to recall that, in accordance with their interpretation of Directive 85/337/EEC, the latter instrument confers a series of rights on 'people who may be concerned' by public and private projects likely to have significant effects on the environment, including a right of access to information relating to the project concerned and the right 'to express an opinion before the project is initiated'. [17] There are, then, certain rights which are conferred on individuals in connection with environmental protection on which the persons entitled may directly rely, inasmuch as the relevant provisions of Directive 85/337/EEC have been adjudged by the Court of Justice [18] to be of a clear and unconditional nature, thus producing direct effects in the domestic legal order.

22. In summary form, the reasoning on which the appellants' claim for judicial protection is based is as follows:

— The Commission was under a specific obligation not to disburse payments and to withhold financing of the relevant works if it found that they were being carried out in contravention of Community law.

16 — Seventh recital in the preamble to Decision C(91)440.

17 — Article 6(2) of Directive 85/337/EEC.

18 — The appellants cite the judgment in Case C-431/92 *Commission* v *Germany* [1995] ECR I-2189, paragraphs 37 to 40.

— In fact, the works were commenced without a prior environmental impact assessment in contravention of the provisions of Directive 85/337/EEC which, in its turn, confers rights on a certain category of Community nationals.

— Consequently, by not withholding the additional financing, even though it had been informed in due time of the abovementioned infringement, the Commission violated its obligations under Community law which consist, at least in part, in the defence of the appellants' right to protection of the environment arising in general out of Community law and, in particular, out of the abovementioned provisions of Directive 85/337/EEC.

23. (b) The appellants contend that the Court of First Instance erred in its interpretation and application of Article 173 of the EC Treaty because it did not apply the proper criteria for assessing whether the applicants before it were individually affected, within the meaning of Article 173 of the EC Treaty, by the contested decision adopted by the Commission. In particular, the Court of First Instance followed the case-law of the Court of Justice developed solely in the context of economic issues to the effect that an individual must belong to a 'closed class' in order to be individually concerned by a Community act. For that reason, the appellants assert, the Court of First Instance did not take account of the specific nature and character of the 'environmental legal interest', since indeed the Court of Justice has not hitherto adjudicated on the question of *locus standi* of individuals, where they allege that the legal interest affected is that of environmental protection.

24. The appellants consider that the interpretative approach followed by the Court of First Instance creates a vacuum in the judicial protection afforded by the Community legal order, whenever it is a question of reviewing compliance by Community institutions with Community environmental legislation. Since the interest in environmental protection is common to and is shared by all Community citizens, there cannot, in the event of environmental harm, be a closed class of persons affected by harm to the environment, at least not in the sense attributed to the notion of a closed class by the Court of First Instance. It may be clearly inferred from the order appealed against, the appellants assert, that the application, in cases concerning the environment, of the traditional case-law to the effect that an act must be of individual concern to the applicant will have the practical effect of never allowing individuals to challenge Community measures which affect their environmental interests. The legal vacuum becomes more apparent from the finding that, in cases such as the present dispute, privileged applicants under Article 173 (that is to say Member States, Council and Commission) are not interested in availing themselves of the possibility afforded them by the second paragraph of Article 173.

25. Nor, moreover, can it be maintained, in the appellants' view, that that vacuum may

be filled by the possibility afforded to individuals not having *locus standi* of bringing proceedings before a national court in order to vindicate their rights, having recourse to the legal remedies available under national law. In the present case, the proceedings brought before the Spanish courts can only concern the legality of national acts and non-compliance by the Spanish authorities with their obligations under Council Directive 85/337/EEC. Conversely, the legality of the Commission decision challenged before the Court of First Instance cannot be called in question in the context of national proceedings, since the Spanish courts do not have jurisdiction to review the legality under Community law of payment by the Commission of certain funds for the financing of works. [19]

26. The appellants go on to stress that the solution adopted by the Court of First Instance in the order appealed against directly contrasts with that of courts of the Member States, and with recent developments in international law. In that connection the appellants cite a series of comparative studies from which it may be inferred that the legal systems of the Member States have all developed in the direction of a widening of the procedural right of citizens to seek judicial protection in cases in which their legal interests in environmental protection are infringed. Indeed, the appellants observe that, if they had been required to bring proceedings before a court of a Member State, actions brought by some or all of them would have been adjudged admissible.

27. Moreover, it is contended that the restrictive interpretation adopted by the Court of First Instance in the order appealed against runs counter to developments in Community and international law in relation to environmental protection. Reliance is placed on case-law of the Court of Justice in which environmental protection has been proclaimed as 'one of the Community's essential objectives' [20] and in which EC environmental legislation has been held to be capable of creating rights and obligations for individuals. [21] Reference is also made to the Fifth Environmental Action Programme approved by the Council and by the representatives of the Member States, [22] to Principle 10 of the Rio Declaration, to Agenda 21, to the Council of Europe Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, to recent judgments of the Court of Human Rights in Strasbourg, and to the system of administrative review introduced by the World Bank as from 1993 in the case of activities which pose a threat to the environment.

19 — The appellants cite the judgment of the Court of First Instance in Case T-3/93 *Air France* v *Commission* [1994] ECR II-121, paragraph 69, in which it is expressly stated that the existence of a remedy before the national courts cannot preclude the possibility of contesting the legality of a decision adopted by a Community institution directly before the Community judicature under Article 173 of the Treaty.

20 — Judgments in Case 240/83 *Procureur de la République* v *Association de Défense des Brûleurs d'Huiles Usagées* [1985] ECR 531, paragraph 13; and in Case 302/86 *Commission* v *Denmark* [1988] ECR 4607, paragraph 8.

21 — Judgments in Case C-131/88 *Commission* v *Germany* [1991] ECR I-825, paragraph 7: and in Case C-361/88 *Commission* v *Germany* [1991] ECR I-2567, paragraphs 15 and 16.

22 — Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 1 February 1993, on a Community programme of policy and action in relation to the environment and sustainable development (OJ 1993 C 138, p. 1).

28. In light of the foregoing, the appellants propose a different interpretation of the fourth paragraph of Article 173 of the Treaty. In order to ascertain whether an individual is affected individually by a Community act when that person pleads damage to the environment caused by an infringement by the Community institutions of their obligations under Community law, the Community judicature should, according to the appellants' reasoning, require the applicant to demonstrate that:

29. (a) he/she has personally suffered (or is likely to suffer) some actual or threatened detriment as a result of the allegedly illegal conduct of the Community institution concerned, such as a violation of his or her environmental rights or interference with his or her environmental interests;

(b) the detriment can be traced to the act challenged; and

(c) the detriment is capable of being redressed by a favourable judgment.

30. It is contended on behalf of the appellants that they satisfy these three criteria. As to the first criterion, they reiterate the evidence relied on before the Court of First Instance in which they described the nature and extent of the detriment suffered as a result of the Commission's acts. As to the second criterion, they point out that the abovementioned harm can be traced to the Commission's acts because the national (Spanish) authorities have no discretion as to the use to which the funds advanced pursuant to Decision C(91)440 are to be put. In other words, in disbursing the necessary funds to Spain to continue the construction of projects being carried out in a manner contrary to provisions of Community environmental law and, in particular, to Directive 85/337/EEC, the Commission directly contributed to the detriment suffered by the appellants as a result of the harm to the environment. As to the third criterion, it is submitted that the abovementioned detriment would be capable of being redressed if a court judgment were to annul the Commission decision to continue financing the works. For, if the necessary funding for the continuation of the projects were not available, it is to be expected, the appellants maintain, that work on the power stations would be suspended.

31. Specifically in relation to the appellant environmental associations, it is stated in the notice of appeal that those associations should be recognized as having standing because one or more of their members belong to the category of persons who, under the fourth paragraph of Article 173, are entitled to bring an action before the Court of First Instance, and also because they can rely in their own right, in order to have their standing recognized, on the fact that their primordial objective is the protection of the environment and that specifically included in their objects, moreover, is protection of the environment in the geographical area in which the works in question are

being carried out. Specifically concerning the role of the representative organizations or associations and the need to recognize their procedural right of action before the Community judicature, whenever a Community act affects the interests and objectives for whose protection and furtherance they were formed, the appellant organizations and associations refer to the judgment of the Court of First Instance in *Associazione Italiana Tecnico Economica del Cemento and Others* v *Commission*, [23] and to the Opinion of Advocate General Lenz in *CIDA* v *Council*. [24]

32. In conclusion, the appellants consider that the solution proposed by them is the most apposite, and refer to the Court's *Plaumann* judgment [25] from which they infer that the procedural criteria of Article 173 are not to be narrowly construed.

B — *The Commission's arguments*

33. The Commission observes at the outset that, even if the interpretative approach to Article 173 contended for on behalf of the appellants were accepted, the latter do not satisfy the criteria on which they rely. But, in any event, it considers that the solution proposed by the appellants cannot be adopted because it would be tantamount to abandoning the express requirement of the fourth paragraph of Article 173 that an applicant must be individually concerned by the contested measure. [26] It is further pointed out by the Commission that the Court has never departed from its settled case-law to the effect that persons other than addressees of a decision may claim that a decision is of individual concern to them only if it affects them by reason of certain attributes peculiar to them or by reason of circumstances differentiating them from all other persons and, by virtue of that fact, distinguishes them individually in the same way as the addressee. That definition is also to be found in the grounds of the judgments in Cases 11/82 *Piraiki-Patraiki* v *Commission* [1985] ECR 227, C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501 and Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills* v *Commission* [1995], relied on by the appellants in support of the *contra legem* interpretation which they propose. In that way, the Commission says, the appellants are substituting for the letter of the law their own formulation in accordance with which it is

23 — Joined Cases T-447/93, T-448/93 and T-449/93 *Associazione Italiana Tecnico Economica del Cemento and Others* v *Commission* [1995] ECR II-1971, paragraphs 53 to 62.

24 — Case 297/86 *CIDA* v *Council* [1988] ECR 3531; paragraph 15 of Opinion: 'Nor should it be overlooked that, unlike Cases 282/85 and 117/86, this case is not concerned with a measure which primarily affects the interests of the members of an association and not the association's own interests. The question under discussion is the appropriate degree of participation of economic and social categories in the Economic and Social Committee, which the Council must assess under Article 195 of the EEC Treaty. In such a situation, nothing could be more natural than to leave the defence of the interests of the various categories referred to in Article 195 to organized groups, that is to say associations, especially since the individual members of the group, since they are not individually affected, are generally not entitled to bring an action before the Court.'

25 — See footnote 7 above.

26 — For that reason, according to the Commission's arguments, the elements of comparative law relied on by the appellants are not relevant. On the one hand, the international texts on which they base their view have no binding effect. On the other hand, judicial developments in the legal systems of the Member States cannot be transposed, the Commission maintains, to Community procedural law. At national level there is no procedural requirement such as that imposed by the fourth paragraph of Article 173 of the Treaty that the contested measure must individually concern the applicant.

sufficient to demonstrate that a Community act 'personally' and not necessarily 'individually' concerns the applicant for the latter to acquire *locus standi* before the Community judicature. In particular, the Commission points out that, if one were ultimately to abandon the interpretative approach which requires a person, under the fourth paragraph of Article 173, to be 'differentiated' in relation to the contested measure, then that measure would no longer be required to concern the applicant 'individually': it would be sufficient for him to be 'personally' concerned. That *contra legem* interpretation would result, in the Commission's view, in every inhabitant of the islands of Tenerife and Gran Canaria being recognized as having a legal interest in challenging the measure at issue adopted by the Commission. [27]

34. The Commission goes on to point out that, in its view, the appellants cannot validly argue that the solution adopted by the Court of First Instance in the order appealed against creates a legal vacuum in judicial protection and review of conformity by the Community institutions with Community environmental legislation. In particular, it stresses that the appellants are entitled, in so far as the environmental dimension of the works subject to financing is concerned, to bring proceedings before the Spanish courts, and that certain of them had availed themselves of that right. Nevertheless, neither the financing, as such, of the works nor the role of the Commission in monitoring whether Spain is observing the relevant Community provisions concerns the appellants. Consequently, they do not have a legal interest in obtaining a judicial determination in relation to those questions. The absence of a legal interest cannot be remedied by the elements of comparative law relied on by the appellants in their pleadings.

35. As to the rights which the appellants maintain may be inferred from Directive 85/337/EEC, the Commission makes the following observations: even though that directive, as regards certain at least of its provisions, may produce direct effects, reliance on it cannot avail the appellants in the context of the present proceedings. Even if it is acknowledged that the appellants, or certain of them, derive certain individual rights at the level of national law from the directive, those rights do not go so far as to afford them the possibility of contesting the legality of an act, such as Decision C(91)440, before the Court of First Instance or to differentiate them, for the purposes of the fourth paragraph of Article 173, in relation to the contested act.

36. The Commission also rebuts the submission contained in the appeal to the effect that the appellant environmental associations have *locus standi* because, on the one hand, one or more of their members are individually affected by the contested measure and, on the other, as representative organizations whose object is the protection of the environment in the Canary Islands, they auto-

27 — That is to say, the potential applicants would amount to tens, if not hundreds, nay, thousands, of persons. In the Commission's view, that argument is not affected by the vague position adopted by the appellants in their pleadings to the effect that 'it is clear that, in the present case, most of the inhabitants of Tenerife and Gran Canaria would not satisfy the conditions actually proposed by the appellants.'

matically have a legal interest in matters concerning the environment. [28]

37. Furthermore, the Commission observes that the notice of appeal does not repeat the submission put forward at first instance to the effect that two at least of the appellants have standing by virtue of the fact that they had lodged complaints with the Commission concerning the conditions under which the relevant construction works were being carried out. It infers from this that the appellants have tacitly abandoned that submission. Finally, the Commission requests the Court, should it decide to set aside the order of the Court of First Instance, to adjudicate on the two other objections of inadmissibility raised at first instance. For it has come to the conclusion that the legal redress sought by the appellants before the Court of First Instance could be granted only in the event of an amendment of the fourth paragraph of Article 173 of the Treaty.

38. At the hearing, the Commission further pointed out that construction of one of the electricity-power generating plants had already been started in 1990, that is to say before the issue of Community financing of the works arose. The appellants ought therefore to have taken steps, as at that moment in time, to oppose the carrying out of the works or, at least, the financing of them, by challenging the original Commission Decision C(91)440. However, they failed to show due diligence and, for that reason, brought proceedings at a later date against the decision to continue the financing. The Commission's representative also stated that the decision to continue financing of the works was taken after there had been found to be no infringement of the provisions of Directive 85/337/EEC. Thus, the Commission carried out the review which it had bound itself to do under the original Decision C(91)440.

39. It further pointed out that the Community legal order also affords legal protection to persons which goes beyond the strict confines of the fourth paragraph of Article 173 of the Treaty. It recalled in that connection recent legislative developments concerning access by citizens to the archives of the Community institutions, the right of petition to the European Parliament and the possibility of bringing a matter before the Ombudsman. Conversely, no easing of the procedural restrictions laid down in the fourth paragraph of Article 173 can be expected, nor has there been any such proposal in the context of the Intergovernmental Conference.

C — *The Spanish Government's arguments*

40. For its part, Spain proposes that the appeal be dismissed on the basis of the arguments set out below. It begins by rehearsing the case-law of the Court on the issue of

28 — The Commission points out that that criterion is unsupported by authority, save for the Opinion of Advocate General Lenz in Case 297/86 (see footnote 24 above), which was not followed by the Court.

locus standi of individuals, from which it infers that, in order for individuals to bring an admissible claim before the Community judicature, they must be individually concerned by the act which they are contesting, in the sense that it affects those persons by reason of certain attributes peculiar to them or by reason of circumstances in which they are differentiated from all other persons and, by virtue of those factors, distinguishes them individually in the same way as the addressee of the decision. Consequently, Spain maintains, the only Community acts open to challenge are those concerning a closed class of persons which is ascertained or ascertainable at the time of adoption of the act and whose rights the author of the act has sought to regulate. For that purpose, it is not enough that it may be possible to ascertain with a greater or less degree of accuracy the number or even the identity of the persons to whom a measure applies, if the first of these three elements is not also present, that is to say if there are no circumstances which differentiate and distinguish them in the same way as the person addressed. [29] Thus, the Court confers the right to challenge a Community act only on the addressees thereof and on persons who may be equated with them.

41. As a logical consequence, the appellants, who were not the addressees of the act which they are contesting and cannot be equated with the addressee of that act, namely Spain, do not have *locus standi* and the Court of First Instance was right to dismiss their action. For that reason, the appellant environmental associations do not have *locus standi*. Also, it would be contrary to the principle of legality for the actions of the environmental associations to be adjudged to be admissible and at the same time for the actions brought by natural persons to be dismissed, that is to say for a wider legal interest to be conferred on representative associations than on individuals. As to the latter, the Kingdom of Spain observes that they also lack *locus standi* to challenge the decision of the Commission to continue the financing. For one thing, they do not invoke circumstances or attributes peculiar to them which distinguish them individually in the same manner as the addressee of the contested decision. [30]

42. Consequently, they do not belong to any closed class of persons, ascertained or ascertainable at the time of adoption of the act, nor are they in a position analogous to that of the addressee thereof. Again, as regards those appellants who had submitted complaints to the Commission, that fact does not suffice to distinguish them, because the

29 — Reference is made to the order of the Court in Case C-257/93 *Van Parijs* v *Council and Commission* [1993] ECR I-3335, and to the order of the Court of First Instance in Case T-476/93 *FRSEA and FNSEA* v *Council* [1993] ECR II-1187, and the judgment of the Court in Case C-209/94 P *Buralux and Others* v *Council* [1996] ECR I-615.

30 — In accordance with the reasoning adopted by the Kingdom of Spain, if the interpretative approach advocated by the appellants were accepted, then a legal interest would have to be recognized in the case of any person invoking the impact of an interference with the environment in connection with fishing, farming, public health, tourism, quality of life, children's education, damage to the interests of taxi-drivers, local workers, tourists, windsurfers, and those concerned with the protection of bird-life. Consequently, the appellants are affected by the contested act just as much as any other individual carrying on any kind of activity in the area.

Commission is not under any obligation to initiate proceedings under Article 169 of the Treaty, whenever it receives a complaint in that connection. [31] For all the abovementioned reasons, the Kingdom of Spain agrees with the solution adopted by the Court of First Instance in the order appealed against.

43. The Kingdom of Spain goes on to counter the appellants' argument concerning the creation of a legal vacuum in judicial protection caused by an inability to review infringements by the Commission in matters of environmental protection. It stresses that, in keeping with the system established by the Treaties, individuals enjoy the legal protection ensured by national courts which are the ordinary courts under the Community judicial system. Accordingly, only the Member States and Community institutions have a legal interest in seeking the annulment of measures of a general nature, as is clearly indicated by Article 173 of the Treaty and laid down by the relevant case-law of the Court. Moreover, in light of the characteristics of the present case, the Kingdom of Spain considers that, in actual fact, the appellants are attempting to fabricate a dispute before the Community judicature. Under the guise of a challenge to the legality of a Community act, they are in fact seeking to prompt the Community judicature to adjudicate on the legality of an act of a national authority and, indirectly, to annul it. Specifically, the appellants rely on no financial interest in connection with the mode of operation of the ERDF but, in a general and undefined manner, on their interest in environmental protection which can be affected only by the act of a national authority.

44. Thus, even if it were accepted that the competent Spanish authorities infringed the provisions of Community law on environmental protection which, in so far as they have been transposed into the national legal order, constitute provisions of national law, there would then be an infringement of a national rule of law by a national public authority, in which case the dispute arising would fall within the exclusive competence of the national courts which, in a proper case, would be able to request the Court of Justice for a preliminary ruling on the interpretation of the relevant provisions of Community law. [32] Finally, Spain submits, since the Commission decision at issue merely gives effect to Decision C(91)440, it neither affects nor can affect the environment or, in any event, the rights which the appellants might derive from the protection thereof. For that reason, Spain submits, there can be no question of an infringement of the rights of the citizen deriving from the protection of the environment.

31 — Judgment in Case 247/87 *Star Fruit Company* v *Commission* [1989] ECR 291.

32 — Spain refers to the judgment in Case C-97/91 *Borelli* v *Commission* [1992] ECR I-6313 in which it was held that the Court is not competent to decide on the legality of an act adopted by a national authority even though that act was adopted in the context of a procedure for the adoption of a Community decision.

45. Spain goes on to stress that, in its view, apart from having no individual interest, the appellants also have no direct interest in challenging the Commission decision to continue the financing. It points out in that connection that Decision C(91)440, and acts adopted in implementation thereof, are of a financial nature and relate only indirectly to the environment, in the same way as any area of human activity.

46. Finally, the representative of Spain maintained at the hearing before the Court that the change in case-law advocated by the appellants could not be regarded as expedient since it would result in the enshrinement of an *actio popularis* for environmental questions. Protection of the environment, moreover, was but one legal concern among so many others within a legal system and there was no justification whatever for according it any different procedural treatment.

VI — My views on the appeal

47. I consider it important to stress, at the outset, the novelty of the present case. For the first time, the Court is being asked to form a view on a series of legal issues which were not dealt with in the context of the *An Taisce* and *Associazione Agricoltori della Provincia di Rovigo* [33] cases, whose subject-matter concerned environmental protection. The issue before the Court in this case concerns the interpretation of the fourth paragraph of Article 173 of the Treaty. The legal debate turns on the precondition laid down in the abovementioned provision to the effect that, in order for a natural or legal person to be able to challenge decisions of Community institutions addressed to another person, those decisions must be 'of direct and individual concern' to the former. That wording has imposed a significant procedural limitation on the right of action before the Community judicature and is appraised, moreover, of the Court's own

33 — Order in Case C-325/94 P *An Taisce and WWF (UK)* v *Commission* [1996] ECR I-3727, and judgment in Case C-142/95 P *Associazione Agricoltori della Provincia di Rovigo and Others* v *Commission* [1996] ECR I-6669.
In the first of these two cases the Court gave judgment on an appeal brought by two environmental associations against the judgment by the Court of First Instance dismissing as inadmissible their action for annulment of a Commission decision. In that decision the Commission refused to suspend or revoke the grant of appropriations from the Structural Fund for the construction of a nature observatory in Ireland. The Court of First Instance based its order in that case on the ground that it had not been proven that the Commission had decided not to make use of its power under the relevant Community provisions in relation to the suspension or reduction of Community funding for the construction of the abovementioned centre, a power which, according to the Court of First Instance, is always available. That view of the matter was upheld by the Court of Justice, as is apparent from paragraphs 30 and 31 of its judgment.
In the second of the two cases the appellants (local occupational associations and individuals) had appealed against an order of the Court of First Instance dismissing as inadmissible their action for annulment of a Commission decision approving funding for the protection of the residents and natural environment of the Padua delta zone in Italy under Council Regulation (EEC) No 1973/92 of 21 May 1992. The Court of Justice upheld the view taken by the Court of First Instance that the applicants were not affected individually by the contested act because, contrary to their assertions, Community law did not confer on them a right to participate in the procedure for structuring the programme of funding actions.
It may be observed, then, that in those two cases the Court of First Instance in whole or in part founded its view as to the inadmissibility of the actions on grounds other than those adopted in the present case.

motion. [34] I consider that, in order that the dispute pending before the Court may be fully ventilated, the Court will need to give replies to the questions set out below:

48. First, can the contested Commission decision 'concern' the appellants in the sense that they are able to derive a judicially protected right or legal interest from the interest, within the Community legal order, in conservation of the environment? Secondly, if the first question is answered in the affirmative, was the Court of First Instance right to hold that that decision did not 'individually' concern the persons challenging it? Thirdly, if the second question is answered in the negative, was there any other obstacle to admissibility of the originating application?

A — *As to the possibility of a Community national deriving a judicially protected right or legal interest from the interest, within the Community legal order, in conservation of the environment*

49. The fourth paragraph of Article 173 of the Treaty lays down the condition that a natural or legal person bringing an action against a decision of a Community institution must be the holder of some right or legal interest which is affected by the contested act. That condition, which does not apply to the privileged parties mentioned in the second paragraph of that article, generally consists in the express requirement that the applicant be directly and individually affected by the contested act. Where the contested act exhibits those characteristics, it is rare that that condition of a legal interest will not be satisfied. [35] In any event, the existence of a legal interest is one of the elements of admissibility of the action examined by the Community judicature. [36]

50. I believe that that issue must be examined at the outset, precisely on account of the particular features of the present case. Moreover, the Community judicature has not hitherto adjudicated upon the existence of an 'environmental legal interest'. For that reason, it is useful to clarify the position occupied by the issue of environmental protection in the Community legal order and to analyse the Court's case-law on that question.

(a) Public dimension of environmental protection

51. In the first place, there can be no doubt that ensuring the quality of the environment is directly linked to what might be termed

34 — Pursuant to Article 92(2) of the Rules of Procedure of the Court. See order in Case 13/86 *Charlotte von Bonkewitz-Lindner* v *Parliament* [1987] ECR 1417, and judgment in Joined Cases C-305/86 and C-160/87 *Neotype Techmaschexport* v *Commission and Council* [1990] ECR I-2945, paragraph 18.

35 — Nevertheless, it is not improbable: see judgment in Case 60/81 *IBM* v *Commission* [1981] ECR 2639.

36 — As examples of cases in which the Court has accepted the existence of a legal interest, see judgments in Case 77/77 *BP* v *Commission* [1978] ECR 1513; Case 207/86 *Apesco* v *Commission* [1988] ECR 2151; and order of the Court in Case C-123/92 *Lezzi Pietro* v *Commission* [1993] ECR I-809.

the '*Community public interest*'. The Community judicature has proclaimed in its judgments that 'environmental protection is one of the fundamental objectives of the Community'. [37] Support for that view is, moreover, to be found in the letter of the Treaty. Following the revision of 7 February 1992, Article 2 of the Treaty states that 'the Community shall have as its task (...) to promote (...) growth respecting the environment (...).' For those purposes the activity of the Community is to comprise, pursuant to Article 3(k) of the Treaty, 'a policy in the sphere of the environment'. The general outlines of that policy are elaborated in Title XVI of the Treaty. That policy is to contribute, under Article 130r of the Treaty, *inter alia*, to 'preserving, protecting and improving the quality of the environment, protecting human health', and 'prudent and rational utilization of natural resources.' Paragraph 2 of Article 130r further provides that 'environmental protection requirements must be integrated into the definition and implementation of other Community policies.' [38] Secondary Community legislation has been enacted in order to give effect to the objectives of Article 130r of the Treaty; [39] it is the task of the Community judicature to ensure the correct application of that legislation.

52. From the foregoing illustration it may be inferred that the environment has a public dimension which constitutes a general Community interest whose protection is the responsibility of the Member States and the Community institutions, in accordance with

37 — See for example judgments in Case 240/83 *ADBHU* (see footnote 20 above), Case 302/86 *Commission* v *Denmark* (see footnote 20 above) and Case C-195/90 *Commission* v *Germany* [1992] ECR I-3141, paragraph 29, and my Opinion of 10 December 1996 in Case C-343/95 *Diego Cali*, paragraphs 55 to 64.

38 — For example, in Case C-2/90 *Commission* v *Belgium* [1992] ECR I-4431, paragraph 22 et seq., the Court seeks to reconcile the fundamental Community freedom of movement of goods enshrined in Article 30 of the Treaty with the requirement of environmental protection, as described in Article 130r of the Treaty. Thus, although I consider that waste products may be classified as goods within the meaning of Article 30 of the Treaty, in the final analysis, the imposition of restrictions on their circulation is accepted on the following grounds: 'The principle that environmental damage should as a matter of priority be remedied at source, laid down by Article 130r(2) of the Treaty as a basis for action by the Community relating to the environment, entails that it is for each region, municipality or other local authority to take appropriate steps to ensure that its own waste is collected, treated and disposed of; it must accordingly be disposed of as close as possible to the place where it is produced, in order to limit as far as possible the transport of waste.' (paragraph 34).
See also judgment in Case C-155/91 *Commission* v *Council* [1993] ECR I-939 in regard to the same subject-matter.

39 — By means of secondary Community legislation a number of significant obligations have been imposed on the Member States requiring them to ensure protection of the environment. The number of directives concerning the safeguarding of the environment is particularly considerable. An act or omission on the part of national authorities affecting the environment may cumulatively infringe not one but several directives. For example, following complaints by individuals against Greece concerning water quality in Lake Veyoritidas, the River Soulos and Payasitikos Bay, the Commission brought an action against Greece under Article 169 of the Treaty for the alleged infringement of Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (OJ 1976 L 129, p. 23). Nevertheless, in its allegations in the reasoned opinion it also referred to Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (OJ 1975 L 31, p. 1), as regards Payasitikos Bay, and to the following directives, as regards the particular situation of Lake Veyoritidas and the River Soulos: Council Directive 75/440/EEC of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States (OJ 1975 L 194, p. 26), Council Directive 79/869/EEC of 9 October 1979 concerning the methods of measurement and frequencies of sampling and analysis of surface water intended for the abstraction of drinking water in the Member States (OJ 1979 L 271, p. 44), Council Directive 80/778/EEC of 15 July 1980 relating to the quality of water intended for human consumption (OJ 1980 L 229, p. 1), Council Directive 78/659/EEC of 18 July 1978 on the quality of fresh water needing protection or improvement in order to support fish life (OJ 1978 L 222, p. 1), Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), and Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste (OJ 1978 L 84, p. 43). On that case, see the Opinion of Advocate General Tesauro of 26 June 1997 in Joined Cases C-232/95 and C-233/95 *Commission* v *Greece* [1998] ECR I-3343, I-3345.

the equilibrium established by the Treaty. [40] Thus, protection of the environment, as enshrined in primary Community law and as a matter of principle affirmed by the case-law of the Court, constitutes a fundamental obligation on the part of the 'public' authorities [41] — if Community institutions and national authorities may be subsumed under one and the same term. And it is in the implementation of that obligation that obligations on the part of individuals may arise. [42]

53. However, the fact that legality must be observed *per se* within the Community, including the obligation to protect the environment, does not automatically confer on a natural or legal person a right or legal interest enforceable by an action under the fourth paragraph of Article 173 of the Treaty. The Community legal order does not recognize an *actio popularis* [43] in environmental matters either. It is not, therefore, possible to rely, as the sole ground for claiming *locus standi*, on the legal vacuum which would be likely to be created by the fact that certain infringements by the Commission cannot with certainty be remedied if the task of submitting them for judicial review is entrusted exclusively to the Member States and the Community institutions, which do not in practice have an interest in that regard.

40 — An interesting example of the manner in which environmental protection may be secured as a result of a procedure between Community institutions and Member States may be found in the judgment in Case C-431/92 *Commission* v *Germany* [1995] ECR I-2189. In that case the Commission of the European Communities had brought an action under Article 169 of the Treaty for a declaration that Germany, by granting authorization for the construction of a new section of the Grosskrotzenburg power station without a prior environmental impact assessment, had failed to fulfil its obligations under Articles 5 and 189 of the EEC Treaty in conjunction with Council Directive 85/337/EEC. It is worth noting that the Commission did not proceed against Germany on the ground of an incorrect transposition of the directive in general but confined itself to the issue of the construction of the thermal power station. The Court acknowledged that the Commission may bring an action against a Member State under Article 169 on the sole basis of an actual interference with the environment contrary to secondary Community law. Indeed it considers it to be part of the Commission's task '*...in the general interest of the Community*, to ensure that the Member States give effect to the Treaty and the provisions adopted by the institutions thereunder and to obtain a declaration of any failure to fulfil the obligations deriving therefrom (...).' The Court also clearly distinguished between the need for environmental protection in the public interest and the existence or otherwise of rights conferred by Community law on individuals in connection with such protection. It stated at paragraph 26 that: 'In its application, the Commission complains that Germany has not observed, in a specific case, the obligation flowing directly from the directive to assess the environmental impact of the project concerned. The question which arises is thus whether the directive is to be construed as imposing that obligation. That question is quite separate from the question whether individuals may rely as against the State on provisions of an unimplemented directive which are unconditional and sufficiently clear and precise, a right which has been recognized by the Court of Justice.'

41 — On this point Community law is analogous to the national constitutional systems of Germany, Greece and the Netherlands. In those countries protection of the environment is expressly recognized as a fundamental obligation of the State, not necessarily corresponding to a general individual right of the citizen to require observance of that obligation.

42 — That does not, of course, mean that horizontal direct effect is conferred on directives with an environmental content (see footnote 58 below). See for example judgment in Case C-379/92 *Peralta* [1994] ECR I-3453, paragraph 59, on prohibition of dumping into the sea of noxious chemical substances, and the judgment in Joined Cases C-304/94, C-330/94, C-342/94 and C-224/95 *Tombesi and Others* [1997] ECR I-3561 concerning the application of Directives 41/156/EEC and 91/689/EEC on waste.

43 — Contrary to the situation prevailing, at least to some extent, in Spain and Portugal. The reason why the procedural criteria are so generous in those countries must be sought in the fact that the Constitutions in those states expressly enshrine a general constitutional right to the environment on the part of citizens (Article 45 of the Spanish Constitution and Article 46 of the Portuguese Constitution).

(b) Recognition by secondary Community law of rights in favour of individuals

54. However, the question of environmental protection in the Community legal order is not exhaustively treated by pointers to the existence of a general obligation imposed on Community and national authorities. Secondary Community law which, directly or indirectly, gives effect to the Community's environmental objectives, has created in favour of individuals certain specific rights of real substance, which are guaranteed by the national and Community judicial authorities. [44] Those rights, as a general rule, flow from the direct effect of directives whose subject-matter is concerned with environmental protection. For example, the Court held in Case C-131/88 *Commission* v *Germany* [1991] ECR I-825 [45] that Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances [46] '(...) seeks to protect the Community's groundwater in an effective manner by laying down specific and detailed provisions requiring the Member States to adopt a series of prohibitions, authorization schemes and monitoring procedures in order to prevent or limit discharges of certain substances. The purpose of those provisions of the directive is thus to create rights and obligations for individuals.' Advocate General Van Gerven observed in his Opinion in that case that the 'clear and precise implementation of the directive's provisions may also be important for third parties (for instance environmental groups or neighbourhood residents) seeking to have the prohibitions and restrictions contained in the directive enforced as against the authorities or other individuals'. [47]

55. The tendency of the case-law in favour of conferral on individuals of rights in connection with environmental protection or, at least, of the possibility of relying before national courts on the obligations imposed by secondary Community law on national authorities, is also confirmed by the recent judgment of the Court in the *Associazione Italiana per il World Wildlife Fund* case. [48] That case concerned a preliminary question which arose in the context of an action brought before the Italian courts by certain associations for nature protection, against a national decision determining the hunting calendar. Those associations maintained, *inter alia*, that there had been a breach of the principles contained in Council Directive 79/409/EEC on the conservation of wild birds. [49] The question raised concerned the

44 — Certainly, in the context of environmental protection, individuals may avail themselves of the other rights conferred on them by the Community legal order. Following adoption by the Commission of Decision 94/90 on public access to Commission documents (Decision 94/90/ECSC, EC, Euratom of 8 February 1994), certain environmental associations, the same ones which opposed the building of a nature observatory in Ireland (see above, footnote 33), requested access to all the Commission documents concerning examination of the construction project in point and the question whether structural funds could be used for that project. The Commission refused access, relying on protection of the public interest and its interest in the confidentiality of its deliberations. WWF (UK) brought an action against that refusal before the Court of First Instance which, by judgment of 5 March 1997 (Case T-105/95), annulled the refusal on the ground that it did not satisfy the requirements as to reasoning laid down in Article 190 of the Treaty, having first found that Decision 94/90 constituted an act capable of conferring on third parties rights which the Commission was obliged to observe (paragraph 55).

45 — Judgment of 28 September 1991, see footnote 21 above.

46 — OJ 1979 L 20, p. 43.

47 — Opinion in Case C-131/88, at paragraph 7.

48 — Judgment in Case C-118/94 *Associazione Italiana per il World Wildlife Fund* v *Regione Veneto* [1996] ECR I-1223. See also judgment in Case C-44/95 *Royal Society for the Protection of Birds* [1996] ECR I-3805.

49 — OJ 1979 L 103, p. 1.

conditions under which Article 9 of the directive permits Member States to derogate from the general prohibition on hunting protected species. In the final analysis, the Court conferred direct effect on that article, relying on its settled case-law according to which 'where by means of a directive the Community authorities have placed Member States under a duty to adopt a certain course of action, the effectiveness of such a measure would be diminished if persons were prevented from relying on it in proceedings before the courts, and national courts were prevented from taking it into consideration as an element of Community law'. [50]

56. I regard that judgment as constituting a typical example of the manner in which a general objective, such as environmental protection, when implemented by means of a series of provisions of secondary Community legislation, may result in securing for individuals the possibility of seeking judicial assistance in conserving the environment, even where such a right is not provided for directly and expressly by the Community legislature. [51]

57. That reasoning is also followed by the appellants when they maintain that Directive 85/337/EEC created certain rights in their favour which are affected by the Commission decision at issue. It should be noted that that directive constitutes one of the most significant achievements by the Community legislature in favour of environmental protection. Its objective is, as stated in the sixth recital in the preamble, to establish the principle of prior assessment of the significant effects which certain interferences with the environment are likely to have. Under Article 3 of the directive Member States are obliged to assess the direct and indirect impact of a project on human beings, fauna and flora, soil, water, air, climate, landscape, material assets and the cultural heritage. The appellants consider that Articles 2, 3, 6 and 8 of that directive enshrine certain rights in favour of a group of individuals who are described in Article 6 of the directive under the term 'public concerned'.

50 — Paragraph 19 of the abovementioned judgment in Case C-118/94. It is worth noting that the Court has consistently taken the view (judgments in Case 236/85 *Commission* v *Netherlands* [1987] ECR 3989, Case 247/85 *Commission* v *Belgium* [1987] ECR 3029, Case 252/85 *Commission* v *France* [1988] ECR 2243, Case C-288/88 *Commission* v *Germany* [1990] ECR I-2721, Case C-355/90 *Commission* v *Spain* [1993] ECR I-4221, and Case C-435/92 *Association pour la Protection des Animaux Sauvages* [1994] ECR I-67) that Community legislation on the protection of wild birds seeks to preserve the 'common heritage', the management of which is entrusted to the Member States. In that sense the directives in question serve to protect the environment which exists as a Community public interest, in accordance with the reasoning elaborated hitherto, and do not appear to have in direct contemplation the securing of a right in favour of individuals. Moreover, notwithstanding the fact that the relevant directives have been in issue before the Court, the Court has not adjudicated on the question whether they produce direct effect in the domestic legal orders.

51 — Also of interest is the judgment of the Court in Case C-361/88 *Commission* v *Germany* (cited above at footnote 21) concerning the mandatory effect of Council Directive 80/779/EEC of 15 July 1980 on air quality limit values for sulphur dioxide and suspended particulates. The Court appears to link the existence of a public obligation on the part of the public authorities with regard to protection of human health with a corresponding right on the part of individuals. At paragraph 16 of the judgment, it is stated as follows: 'In that respect, it should be pointed out that the obligation imposed on the Member States to prescribe limit values not to be exceeded within specified periods and in specified circumstances, laid down in Article 2 of the Directive, is imposed "in order to protect human health in particular". It implies, therefore, that whenever the exceeding of the limit values could endanger human health, the persons concerned must be in a position to rely on mandatory rules in order to be able to assert their rights (...).' It is worth observing that it is human health which is taken to be the ground justifying the conferral of rights on individuals. Nevertheless, I consider that in that case public health constitutes a special objective directly related to environmental protection. Moreover, the link between environment and health is highlighted by the formulation of Article 130r of the Treaty.

58. Indeed, the Court has upheld the direct effect of Articles 2, 3 and 8 of Directive 85/337. [52] As regards the mandatory effect of Article 6(2) of the directive, Advocate General Elmer, in his Opinion in Case C-72/95, [53] observed as follows: 'According to Article 6(2) of the directive, it is for the Member States to ensure that any request for development consent and any information gathered are made available to the public and that the public concerned is given an opportunity to express an opinion before the project is initiated. The directive thus requires the Member States to introduce a consultation procedure to give individuals a right to express their opinion. Where a Member State's implementation of the directive is such that projects which are likely to have significant effects on the environment are not made the subject of an environmental impact assessment, the citizen is prevented from exercising his right to be heard. The Member State's own negligent implementation of the directive thus deprives the citizen of a right under the directive. ... In those circumstances my view is that Articles 2(1) and 4(2) of the directive, in conjunction with Article 6(2), confer rights on individuals'. [54]

59. I believe that, if the appellants are to be regarded as belonging to the 'public' which may be concerned by the projected construction of the two power stations in the Canary Islands, [55] then they are entitled to the rights conferred by Directive 85/337/EEC. Those rights are the following: first, the requirement that the projected interference with the environment be submitted for an appraisal of its impact before authorization is granted; secondly, projects for works impacting on the environment, namely those mentioned in Annex I to the directive or, under certain conditions, in Annex II thereto, must be drawn up in accordance with the procedure described in Articles 5 to 10 of the directive. In particular, that procedure gives the right, first, for information gathered to be made available to the public, secondly, to provide the public with the possibility of expressing its opinion before the project is started and, thirdly, to require that opinion to be taken into account in the context of the procedure for granting authorization. Accordingly, if the Commission's contested decision, under which it was decided to continue financing the works in Spain at issue in these proceedings, infringes those rights, then that decision did indeed 'concern' the appellants within the meaning of the fourth paragraph of Article 173 of the Treaty and the appellants were entitled, as a matter of principle, to challenge it. [56]

60. It follows from the foregoing that secondary Community law creates special

52 — See Case C-431/92 *Commission* v *Germany* (paragraph 39), cited above at footnote 40.

53 — Opinion in Case C-72/95 *Kraaijeveld and Others* v *Gedeputeerde Staten Van Zuid-Holland* [1996] ECR I-5431.

54 — Paragraph 70 of the Opinion. However, the Court did not expressly form a view on that issue because, on the basis of the factual circumstances of the case pending before the court making the reference, the parties had not raised a claim concerning their rights under Directive 85/337/EEC. On that ground, the Court confined itself to replying that Article 2(1) of Directive 85/337/EEC has direct effect and that a national court which, under national law, has the power to apply of its own motion rules of law not relied on must apply the abovementioned provision, even if it has not been invoked by the party concerned.

55 — It should be noted that Directive 85/337/EEC does not itself determine the 'public' to which the relevant provisions refer, which is not without its relevance. See below, paragraph 96.

56 — Of course, the fact that the Commission decision 'concerns' the appellants does not necessarily mean that it also affects them individually (see paragraph 66 below).

attendant rights to environmental protection which may naturally be safeguarded by recourse to the courts. However, if the rights to be vindicated, or the legal interests of the citizen in connection with the environment, go no further than this, then the protection provided by the Community legal order remains incomplete and fragmentary. First, judicially protected rights or legal interests exist only where rules of secondary Community law having direct effect in the domestic legal order have been adopted, [57] and cannot therefore arise when they involve the imposition of an obligation on an individual. [58] Secondly, reliance as against Community institutions on rights arising as described above, in annulment proceedings against acts of those institutions before the Court of First Instance, is in practice fraught with particularly severe obstacles. [59]

(c) Existence of a specific obligation on the Commission to monitor whether the works financed comply with Community environmental legislation

61. In addition to rights which Community law may expressly confer on individuals as against (primarily) national authorities, I consider that in certain specific cases Community rules relating to environmental protection directly impose on Community bodies specific and clear obligations whose observance may be judicially enforced by individuals affected. The Commission has such an obligation under primary and secondary legislation whenever it proposes to finance works likely to have an impact on

57 — It should also be emphasized that it is not always the rule that rights in favour of individuals may be derived from directives concerning environmental protection. It is instructive to note the position taken by the Court in its judgment in Case C-236/92 *Comitato di Coordinamento per la Difesa della Cava and Others* [1994] ECR I-483. In that case the question arose as to whether rights are conferred on individuals by Article 4 of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39) which is in the following terms: 'Member States shall take the necessary measures to ensure that waste is disposed of without endangering human health and without harming the environment and, in particular, without risk to water, air, soil and plants and animals, without causing a nuisance through noise or odours, and without adversely affecting the countryside or places of special interest.' Certain individuals had relied on the provision in question before the national courts, seeking annulment of the decision of a national authority involved in the application of that provision, on the ground that the domestic rules did not provide for the measures necessary to encourage processing and recycling of waste. The Court considered in the end that Article 4 of the directive indicated a programme to be followed and set out the objectives to be followed by the Member States in the performance of the specific obligations imposed on them by other articles of the directive. 'Thus, the provision at issue must be regarded as defining the framework for the action to be taken by the Member States regarding the treatment of waste and not as requiring, in itself, the adoption of specific measures or a particular method of waste disposal. It is therefore neither unconditional nor sufficiently precise and thus is not capable of conferring rights on which individuals may rely as against the State' (paragraph 14). See also judgment in Joined Cases 372/85, 373/85 and 374/85 *Ministère Public* v *Traen* [1987] ECR 2141.

58 — A characteristic example is afforded by the judgment of the Court in Case C-168/95 *Arcaro* [1996] ECR I-4705 concerning Council Directive 76/464/EEC on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community. After reiterating its settled position on the horizontal and non-horizontal effect of directives, the Court decided that provisions of directives which require a person discharging cadmium to seek and obtain authorization for that purpose cannot in and by themselves, and without the national legislation applicable in connection with the application of those provisions being taken into account, justify an aggravation or diminution of the discharger's criminal liability for infringement of those provisions.

59 — The principal obstacle is the fact that the infringement of rights enshrined in a directive as a rule stems from a decision made or action taken by a national body which, even if it relates to an act of a Community body, cannot be the subject of judicial review by the Community judicature. See judgment in *Borelli* (already cited in footnote 32). See also footnote 109 below.

the environment, which is the case here. In the case of the works at issue, moreover, and as was rightly pointed out by the appellants, the Commission acknowledged the existence of those obligations in Decision C(91)440 and, moreover, bound itself to observe them. Let us now examine this issue in greater detail.

62. I will begin by observing that the Treaty provisions concerning the environment are not mere proclamations of principle. Paragraph 1 of Article 130r may refer in general terms to the pursuit of objectives to which Community policy must contribute in the sector of the environment, and paragraph 2 may trace the general principles of that policy, but the last sentence of the first subparagraph of paragraph 2 of Article 130r of the Treaty appears to impose on the Community institutions a specific and clear obligation which could be deemed to produce direct effect in the Community legal order. It expressly states that: 'Environmental protection requirements must be integrated into the definition and implementation of other Community policies.'

63. It should also be pointed out that that obligation has not remained a 'dead letter' but has been imported into secondary Community law, and indeed in the context of legislation on the financing by the Community of certain actions having an impact on the environment. As referred to above, Article 7 of Regulation No 2052/88 provides: 'Measures financed by the Funds (...) shall be in keeping with Community policies, including those concerning (...) environmental protection.' Thus, in so far as the financing of the works for the construction of the two power stations in the Canary Islands is concerned, the Commission was obliged to take into consideration the aspect of environmental protection and it was right to bind itself to do so in Decision No C(91)440. [60]

64. I consider that the above obligations imposed on the Commission flow from a framework of rules which may in a proper case give rise for a certain category of individuals to the right to seek the assistance of the courts to secure compliance with those obligations. Moreover, it is not by chance that the Community judicature has already discerned the need to link the obligations imposed on national authorities by clear rules of secondary Community law relating to environmental protection with the possibility for individuals to secure compliance with those obligations through the courts. That is the conclusion to be inferred from the aforementioned case-law of the Court on

60 — Notwithstanding the assertions of the Spanish Government, I consider that the Commission did indeed bind itself in that way. It is stated in the preamble to Decision C(91)440: 'Whereas given the characteristics of this investment and its impacts it is compulsory to comply with Community law in this matter and, above all, with Directive 85/337/EEC.' Article 5 of the decision goes on to add that: 'Lack of compliance with any of the conditions mentioned in this Decision shall authorise the Commission to reduce or cancel the assistance granted (...).' It is further stated at point 2 of Section C of Annex III to the decision that: 'If the Commission observed that a certain operation has not complied with or is not complying with Community policy, it shall retain payment of Community funds for that operation and shall notify this to the authority responsible in the Member State for implementing the operation.'

the direct effect of Directives 80/68/EEC, 79/409/EEC and 80/779/EEC. More specifically, there is a discernible intention in that case-law on the part of the Community judicature not to leave monitoring of observance of that secondary Community law in the sole care of the privileged parties mentioned in the second paragraph of Article 173 of the Treaty because the legislation in question is perceived to be closely interrelated with the protection of a certain group of individuals. I am of the view that the same philosophy should inform the Court in cases, such as the present one, in which the Community rule does not merely impose obligations on Member States but directly concerns the activity of Community bodies. Moreover, the fact that the Commission does not itself intervene in the environment but merely finances an intervention in it does not necessarily mean that its decisions in that connection may not be likely to affect certain individuals, and indeed in a direct and individual manner. [61]

65. It must, I believe, be accepted that observance, in the present case, of the Commission's specific and clear obligation to take into account the safeguarding of environmental interests at the same time as adhering to the relevant Community legislation during the financing of the relevant works in the Canary Islands, is not of concern solely to the Commission but is also of relevance for certain individuals. The latter may seek judicial protection in the event of non-compliance with that obligation, provided of course that they satisfy the procedural requirements in that connection.

66. Finally, I consider that in the context of the present case the appellants were entitled to plead before the Court of First Instance, on the one hand, infringement by the Commission of their rights under Directive 85/337/EEC and, on the other, the damage they claimed to have suffered as a result of the fact that the Commission failed, as they maintain, to check, prior to continuation of the funding, whether the relevant works were being carried out in accordance with Community environmental legislation. Certainly, the foregoing considerations do not necessarily lead to the conclusion that the appellants' action before the Court of First Instance was admissible. The admissibility of their action depends on whether they satisfied the preconditions of the fourth paragraph of Article 173 of the Treaty and, in particular, the requirement that the contested decision must concern them individually. I now turn to analyse that issue.

61 — Particularly revealing in that connection is the recent judgment in Case C-395/95 P *Geotronics* [1997] ECR I-2271. In accordance with the settled case-law of the Court in the matter of public-works contracts financed by the European Development Fund, measures adopted by bodies acting on behalf of the Commission, whether approvals or refusals to approve, endorsements or refusals to endorse, are intended solely to establish whether or not the conditions for Community financing have been met, and are not — and cannot be — intended to interfere with the principle that the contracts in question remain national contracts for which the beneficiary States alone are responsible (see also judgments in Case 126/83 *STS* v *Commission* [1984] ECR 2769, Case 118/83 *CMC and Others* v *Commission* [1985] ECR 2325 and Case C-257/90 *Italsolar* v *Commission* [1993] ECR I-9).
None the less, the Court held that, in light of the specific nature of the *Geotronics* case, a Commission decision refusing a tender from a company, in the context of the PHARE programme, for the supply of electronic equipment to Romania, concerned that company individually. On that ground it set aside the judgment of the Court of First Instance which had held to the contrary. Thus, the fact that the Commission simply finances an activity, which it does not itself directly undertake, does not in principle preclude its decisions in that connection from affecting certain persons, and indeed individually.

B — *Whether the contested decision was of individual concern to the appellants*

67. As stated above, the Court of First Instance, in the order appealed against, came to the conclusion that the contested decision was not of individual concern to the applicants and, on that ground, adjudged the action to be inadmissible. It is that view of the matter taken by the Court of First Instance that the appellants are contesting in this appeal.

68. The appellants also challenge the adherence by the Court of First Instance to settled case-law to the effect that a decision of a Community institution can be of individual concern to persons other than the addressee thereof only if that decision affects them by reason of certain attributes peculiar to them, or by reason of factual circumstances which differentiate them from all other persons and thereby distinguish them individually in the same way as the person addressed. That is the major premiss of the legal reasoning followed by the Court of First Instance.

69. The appellants also developed their view before the Court of First Instance that the Community judicature, particularly in their case, should circumvent the strict procedural restrictions imposed by the aforementioned case-law. In that connection they rely on the specific nature of the environmental legal interest, on developments at national and international level in the direction of more effective judicial protection of legal interests of an environmental nature and on the danger of the legal vacuum in their legal protection created by the order appealed against. Indeed, they advance a series of criteria which, in their view, the Community judicature must assess when it is called upon to decide upon the admissibility of an action involving a question of damage to the environment.

70. I shall next examine the question whether the order of the Court of First Instance appealed against was correct. In so doing, I shall distinguish between (b) the position which it took as against applicant individuals and (c) that which it maintained as against the applicant environmental associations. However, before embarking on those issues, I consider it essential to refer to a problem discussed by the parties — which of course argued the point from opposing positions — touching on the quality and completeness of judicial protection afforded by the national (Spanish) courts (a).

(a) Judicial protection afforded by the national courts as a ground for denying *locus standi* to the appellants

71. The extent to which a natural person may seek and obtain judicial assistance within the national legal order is generally

one of the matters examined when inquiry is made into the correct interpretation and application of the procedural preconditions laid down in the fourth paragraph of Article 173 of the Treaty. Even though, from a theoretical viewpoint, I am opposed to the consideration of that factor because the possibility of seeking redress before the national courts does not preclude the possibility of directly calling in question before the Community judicature the legality of a decision of a Community institution, where the procedural requirements of the fourth paragraph of Article 173 of the Treaty are satisfied, [62] I do consider it necessary to stress the following further matters:

72. (i) First, I do not agree with the view put forward by the Spanish Government to the effect that the appellants were seeking a decision by the Community judicature on the legality of a decision of a national authority and for that reason had contrived the present dispute on the Commission's decision, which in reality does not concern them. It is my belief that the appellants are solely contesting the decision of a Community institution, and are alleging an infringement by that institution of a rule of Community law which, according to them, affects their legally protected rights and interests. [63] The fact that the contested Commission decision relates to construction works in Spain does not necessarily mean that persons desirous of contesting it have to proceed before the Spanish courts. Nor does it mean, at least in theory, that that decision may not, in and by itself, affect the rights and legal interests of certain persons, irrespective of whether any national administrative acts concerning those construction works subsist against which only the means of redress afforded by national law are available to the persons concerned.

73. (ii) Both the Commission and the Spanish Government further argue that the applicants could have secured adequate judicial protection if they had confined themselves to seeking redress before the national courts; in the proceedings for that purpose they could have raised the issue of the legality of the Commission decision to continue financing, whereupon, in the event of doubt, the national court could have referred a question

62 — Consequently, the quality of judicial protection afforded under national law cannot be used as a criterion in reviewing the correct interpretation of those procedural preconditions and whether on each occasion the relevant factual circumstances may be brought within them, particularly since it is not mentioned expressly in the fourth paragraph of Article 173 of the Treaty. Moreover, I can scarcely imagine the Community judicature embarking on a detailed appraisal of that quality, merely to compare it with the judicial protection which it itself affords. For that reason, the Court of First Instance was in my view correct not to draw any inferences from that issue, though invited to do so by the parties.

63 — That is also why, moreover, the reliance placed by Spain on the *Borelli* judgment (see above, footnote 32) is not on this point felicitous. The Court of First Instance was not requested by the appellants to adjudicate on the legality of a decision of the Spanish authorities adopted within the framework of the Community decision-making process, as was the case in *Borelli*. Thus, the appellants did not maintain that the contested Commission decision was unlawful on the ground that it was based on an unlawful decision adopted by or on irregularities on the part of the Spanish authorities. They are maintaining that the Commission did not check, as it ought to have done, the legality of the acts or omissions of the national authorities, solely in the light of Community law. Consequently, their argument is on a different footing from that of the *Borelli* judgment. In that case, the action was brought against a Community act which in law required the concurrence of the national authorities, and the applicants' arguments referred exclusively to the illegality of the opinion given at national level. Notwithstanding that fact, the *Borelli* judgment is not entirely irrelevant to the present case (see below at footnote 109).

in that connection to the Court of Justice for a preliminary ruling. They go on to stress that that solution was the most appropriate if it is borne in mind that the national court is the ordinary court having jurisdiction to apply Community law.

74. I think it useful to point out that, as is apparent from the documents in the case-file and from the submissions on behalf of the parties at the hearing before the Court, certain of the appellants sought to prevent the construction works in question by seeking the appropriate remedies before the competent national courts. Those proceedings are still pending. On the other hand, there is no question pending before the Court of Justice submitted for a preliminary ruling by a Spanish court on the issue of the legality of the relevant Commission decision to continue financing of the works on the Canary Islands. Nor do I see in what way the issue of the legality of that decision could be raised in the context of national proceedings. Those proceedings can concern only the lawfulness of the administrative authorizations granted for construction of the electricity-generating power stations, or of the environmental impact assessment. But, even if any such supplementary issue could, exceptionally, be raised, [64] the protection likely to be afforded by the national court would certainly not be as far-reaching and comprehensive as that which would have been secured by the appellants, had their action before the Court of First Instance been successful. The judgment of the national court could not extend to cover the issue of legality of the financing *per se* or, *a fortiori*, lead to the setting aside of the Commission decision to continue financing.

75. Finally, if the appellants satisfy the procedural requirements for contesting the Commission decision by means of an action under the fourth paragraph of Article 173 of the Treaty, then, whatever may be the possibilities of judicial protection under national law, those possibilities do not in the slightest act as a bar to their having *locus standi* before the Court of First Instance.

(b) *Locus standi* of the appellant individuals

76. First and foremost, I do not consider that the appellants are entitled to challenge the major premiss of the reasoning followed by the Court of First Instance, by arguing that in their case the fourth paragraph of Article 173 of the Treaty, as consistently interpreted by the Court of Justice, should not be applied. The strict and indeed restrictive criterion of admissibility according to which the contested act must be of individual concern to the applicants was expressly laid down by primary Community law. Properly construing that provision, the Court of First Instance is requiring persons who are not addressees of a decision of a Community institution to plead and prove the existence of certain attributes peculiar to them, or of factual circumstances which

64 — The only theoretical situation which I could imagine is one in which the Commission decision is relied on by the Spanish authorities before the national courts in order to justify commencement of the construction of the electricity-generating plants in the Canary Islands without an environmental impact assessment. In other words the Spanish authorities could argue that they did not proceed to draw up an impact assessment in accordance with Directive 85/337/EEC because that was not essential in the present case, as is corroborated, moreover, by the position adopted by the Commission which continued to finance the works. And then again, of course, in order to reject that argument, the national court (on the supposition that, under the directive, such assessment was mandatory) would not need to decide first on the legality of the Commission decision or, *a fortiori*, to refer a question to the Court for a preliminary ruling.

differentiate them and individually distinguish them from all other persons. [65] That view of the matter cannot be called in question either by the specific nature of the legal interest in environmental protection or by the matters relied on by the appellants concerning modern developments in national and international law in the matter of environmental protection. [66]

77. None the less, the appellants further submit that the Court of First Instance erred in law by misinterpreting the procedural rule contained in the fourth paragraph of Article 173 of the Treaty and drawing erroneous conclusions from the case-law of the Court of Justice on that rule. That ground of appeal is formally admissible and I now turn to examine it.

(i) *Existing case-law*

78. (aa) It is, I think, essential to refer to the Court's case-law in which the abovementioned procedural requirement has been interpreted and particularized. In the first place, it should be emphasized that, notwithstanding the apparent homogeneity of its judgments, at least in their formulation, the Court does not profess to adhere to an entirely immutable point of view. [67] Indeed, it is prepared to ease the procedural obstacles, when the specific nature of a case so requires, for the sake of affording more comprehensive judicial protection. [68]

79. In the first place, *locus standi* in favour of individuals presents no particular difficulties in cases where they have participated in the preparation of the contested act, [69] or where Community law has made provision for a special procedure prior to adoption of the contested act, in which those individuals may participate and submit their observations. On the basis of that reasoning, an action brought by a company, which complained to the Commission of an agreement contrary to Article 85 of the Treaty between

65 — In any event I will not dwell on the further element as to the manner in which the applicants are distinguished 'in the same way as the person addressed'. That specific requirement, which is not expressly laid down in the relevant provision of the fourth paragraph of Article 173 of the Treaty, is correctly demanded by the Community judicature in cases of an economic nature but cannot play the same role in cases such as the present one because, otherwise, it would deprive that provision of all effect. The result would be a *reductio ad absurdum* in which individuals or environmental associations, in proceedings against a decision of the Commission concerning the payment of financial aid to a Member State for works having an impact on the environment, are required to show that they are in law and in fact identical with the addressee of the decision, that is to say may be assimilated to the State to which the financing is allocated. In other respects the 'distinguishing' requirement in regard to applicants remains entirely legitimate and current.

66 — The procedural restrictions contained in the fourth paragraph of Article 173 of the Treaty cannot be called in question even where the interest at stake is the protection of the environment. The importance of preserving the environment, underlined by the Rio Declaration, Agenda 21 and other associated texts, cannot exempt the appellants from the aforementioned procedural restrictions. Furthermore, the Court recently held that the Fifth Environmental Action Programme, approved by the Council and representatives of the Member States on 1 February 1993, aims to create a framework for determining and giving effect to Community policy in the environmental sector, but does not contain binding rules of law (see *Associazione Agricoltori della Provincia* judgment (paragraph 32), cited above at footnote 33).

67 — I refer, for example, to the alteration in the case-law brought about by the Court in its judgment in Case C-152/88 *Sofrimport* [1990] ECR I-2477 in relation to an earlier authority. On that case, see below at paragraph 86.

68 — For example, the Court interpreted the relevant procedural criterion broadly and in a manner favourable to the applicants in its judgment in Case 294/83 *Les Verts* [1986] ECR 1339 in which it held that not only the political groups in existence when the decision of the President of the Parliament was taken on the allocation of credits authorized to cover the expenses of the political groups for the 1982 elections, but also groups unknown at that time, were entitled to bring proceedings against that decision.

69 — See judgment in Case 264/82 *Timex* v *Council and Commission* [1985] ECR 849 on the adoption of an anti-dumping regulation.

its competitors, against the Commission decision exempting that agreement under Article 85(3) from the prohibition laid down in Article 85(1), was held to be admissible. [70] Also held to have standing have been persons who complained to the Commission of unlawful State aid and submitted observations in the procedure under Article 93(2) of the Treaty. [71]

80. The justification, in the final analysis, for the Court's upholding the admissibility of the actions in the above cases was elucidated in *Cofaz* [72] as follows: 'It is clear from a consistent line of decisions of the Court that persons other than those to whom a decision is addressed may claim to be concerned within the meaning of the second paragraph of Article 173 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 (...). More particularly, as regards the circumstances referred to in that judgment, the Court has repeatedly held that where a regulation accords to applicant undertakings *procedural guarantees* entitling them to request the Commission to find an infringement of Community rules, those undertakings should be able to institute proceedings in order to protect their legitimate interests (...)' (emphasis added). [73]

81. Conversely, where such a procedure is not provided for under Community law, it is difficult for individuals in an analogous situation to those mentioned above to secure protection by the Community judicature. [74]

82. (bb) In other cases actions brought by individuals frequently run up against the

70 — The Court in that case based itself on the significance of the procedure under Article 3 of Regulation No 17/62 under which certain persons are authorized to request the Commission to establish an infringement of Article 85 of the Treaty. Accordingly, it is logical for the same persons to have access to the courts in order to protect their legal interests recognized by Regulation No 17/62 (see judgment in Case 26/76 *Metro* v *Commission* [1977] ECR 1875).

71 — Judgment in Case 169/84 *Cofaz and Others* v *Commission* [1986] ECR 391; judgment In Case C-198/91 *Cook* v *Commission* [1993] ECR I-2487. The same applies, where the procedure under that paragraph was not followed by the Commission, to persons who could have submitted observations, had the Article 93(2) procedure been implemented (judgment in Case C-225/91 *Matra* v *Commission* [1993] ECR I-3203). In that judgment the Court emphasized the special nature of the procedure under Article 93(2) of the Treaty and the right to a hearing afforded by that procedure to 'interested' parties. It is to be noted that a competitor undertaking may likewise challenge a Commission decision finding that a merger decision between undertakings is compatible with the common market, where that undertaking submitted observations under the procedure laid down in Regulation No 4064/89 and received the reply that its observations would be fully taken into consideration. A competing undertaking may even contest a statement by the Commission that the merger in question does not have a Community dimension and thus does not come within the scope of Regulation No 4064/89. That is also the position hitherto taken by the Court of First Instance in Case T-2/93 *Air France* v *Commission* [1994] ECR II-323 and in Case T-3/93 *Air France* v *Commission* (cited above at footnote 19).

72 — See footnote 71 above.

73 — Paragraphs 22 and 23 of the judgment.

74 — For example, a Commission decision granting EAGGF financing to certain undertakings cannot be challenged by competitors of those undertakings (judgment in Joined Cases 10/68 and 18/68 *Eridania* v *Commission* [1969] ECR 459). For the same reason, moreover, persons in receipt of State aid are not deemed to be individually affected by a Commission decision declaring such aid incompatible with the common market (judgment in Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy* — see footnote 12 above).

Court's settled case-law to the effect that a measure cannot concern applicants individually when it applies to objectively defined situations and produces legal effects on categories of persons determined in a general and abstract manner. It should also be noted that whether a measure challenged is objective in nature must not be confused with the number of persons affected by it. A single person may be affected by a decision, but that does not mean that such person is 'individually' affected by it for the purposes of the fourth paragraph of Article 173 of the Treaty. [75] Again, '(...) the possibility of determining more or less precisely the number or even the identity of the persons to whom a measure applies by no mean implies that it must be regarded as being of individual concern to them as long as it is established that such application takes effect by virtue of an objective legal or factual situation defined by the measure in question (...)'. [76]

83. (cc) Furthermore, the Court appears to accept that an act is of individual concern to the applicant only where he belongs to a 'closed class' of persons. I nevertheless believe that in that regard the Court's case-law shows evidence of significant developments and fluctuations.

(1) Initially, as for example in the *Toepfer* [77] and *Bock* [78] cases, the Court deemed it decisive, in favour of the admissibility of an action, that 'the number and identity of importers concerned in this way was already fixed and ascertainable' before the date of adoption of the decision. It also considered that the Commission was in a position to know that its decision would affect the interests and situation of those importers 'alone'. It went on to conclude that 'the factual situation thus created differentiates the latter from all other persons and distinguishes them individually just as in the case of the person addressed'. [79]

(2) Subsequently, the Court appears to have determined the closed class of potential applicants to whom a contested decision is of individual concern in a manner more favourable to individuals than was originally the case. In *Piraiki-Patraiki*, [80] a case concerning an action for the annulment of a Commission decision authorizing France to adopt protective measures against imports of cotton yarn

75 — See for example judgment in *Spijker* (cited above at footnote 7). In that judgment it was held that the decision whereby the Commission permitted Belgium, Luxembourg and the Netherlands to exclude products such as brushes, brooms and similar products imported from China did not concern the applicant in spite of the fact that it was at the time the sole importer into those Member States of the relevant products. The Court considered that the Commission decision affected the applicant *qua* importer of those products in the same way as any other undertaking actually or potentially in the same situation.

76 — Judgment in Case C-209/94 P *Buralux* [1996] ECR I-615, paragraph 24. See also judgment in Case C-264/91 *Abertal and Others* v *Council* [1993] ECR I-3265, paragraph 16.

77 — Judgment in Joined Cases 106/63 and 107/63 *Toepfer* v *Commission* [1965] ECR 405.

78 — Judgment in Case 62/70 *Bock* v *Commission* [1971] ECR 897.

79 — See *Bock*, cited above (paragraph 10).

80 — Case 11/82 *Piraiki-Patraiki* v *Commission* [1985] ECR 207.

of Greek provenance, brought by a group of Greek exporters, the Court stated that: '(...) it must be held that the fact that, before the adoption of the decision at issue, they had entered into contracts which were to be carried out during the months to which the contracts applied constitutes a circumstance which distinguishes them from any other person concerned by the decision, in so far as the execution of their contracts was wholly or partly prevented by the adoption of the decision'. [81] It is noteworthy that in that case the Commission called in question the admissibility of the actions in reliance on the fact that, when it adopted its decision, it was unaware of the number of contracts which had been entered into in respect of the period covered by the decision. The Court held that 'in that respect it must be observed that the reply to be given to the question whether and to what extent the Commission was aware which Greek exporters had entered into contracts covering the period of application of the contested decision depends on the interpretation given to Article 130 of the Act of Accession, and in particular on the question whether the Commission, before authorizing a protective measure under that provision, *is obliged to make appropriate enquiries as to the economic effects of the decision to be taken* and the undertakings which would be affected by it (...)'. [82] I would observe that in that judgment the Court distanced itself from the condition originally laid down concerning definition of the 'closed class', namely that the persons comprising that closed class had of necessity to be known to the authority adopting the contested act at the time of its adoption. In coming to the view which it took on the matter, the Court took account of the special nature of the Commission's obligations when adopting the contested decision and the interrelation between those obligations and protection of the applicants' legal interests.

84. That judicial trend was reaffirmed in *Sofrimport*. [83] The case concerned an action brought by an importer of apples from Chile against the Commission regulation suspending the issue of import licences for that fruit and determining import quotas. Notwithstanding the Advocate General's Opinion to the contrary, [84] the Court considered importers of Chilean apples which were in transit when the regulation at issue was adopted 'to constitute a restricted group which is sufficiently well defined in relation to any other importer of Chilean apples and cannot be extended after the suspensory measures in question take effect'. [85] It may be seen that the Court no longer refers to persons defined in number and identity but to 'a restricted group', 'sufficiently well defined'.

81 — Paragraph 19 of the *Piraiki-Patraiki* judgment cited in the preceding footnote.

82 — Paragraph 21 of the *Piraiki-Patraiki* judgment cited above at footnote 80 (emphasis added).

83 — Cited above at footnote 67.

84 — Opinion of Advocate General Tesauro of 22 November 1989, *Sofrimport* [1990] ECR I-2492.

85 — Paragraph 11 of the *Sofrimport* judgment, cited above at footnote 67.

85. In reaching that conclusion, the Court had regard, as in *Piraiki-Patraiki*, to the Commission's specific obligations, under the applicable Community law, in regard to the framing of its contested decision. In actual fact, a Council regulation had imposed on the Commission the requirement to take into consideration, when adopting protective measures, the specific situation of goods in transit to the Community. It is also noteworthy that in *Sofrimport* it is expressly stated that, where a Community rule affords special protection to a specific group of importers, 'they must therefore be able to enforce observance of that protection and bring legal proceedings for that purpose'. [86]

86. The *Sofrimport* judgment is also of interest from another point of view. In that judgment the Court accepted that it was possible for there to be a 'closed class' of persons — entitled to bring an action under Article 173 of the Treaty — within an 'open class' of persons to whom that procedural possibility is not available. Thus, the Community act does not need to concern solely the members of that closed class (in *Sofrimport* a specific group of importers), but may also affect, in an objective manner of course, persons comprising the open class of actual or potential importers. [87] None the less, it is essential for that closed class to be 'sufficiently well defined'. [88] For the purposes of such definition, the Court attached particular importance to the nature and extent of the Commission's obligations under the applicable legislation.

(3) I wish now to draw attention to two judgments of the Court which highlight the importance attached by the Community judicature to the effects which the contested decision is likely to have on the applicant. Those effects may give rise to a factual situation which sufficiently 'distinguishes' the applicant.

87. In *Extramet*, [89] an importer sought the annulment of a regulation imposing anti-dumping duties on imports into the Community of certain products from China and

86 — Paragraph 12 of the *Sofrimport* judgment.

87 — The Court appears to have abandoned the opposing viewpoint which it had adopted in Case 45/81 *Moksel* [1982] ECR 1129. In that case an exporter of beef meat had brought an action against a Regulation suspending advance fixing of export refunds for beef meat, relying for *locus standi* on the fact that it belonged to a closed class, known in advance and fully ascertained, of undertakings which had lodged requests for refunds before the entry into force of the regulation and whose requests were still pending. The Court did not accept the applicant's submissions, notwithstanding the Advocate General's Opinion to the contrary, taking the view that the class of persons in the aggregate concerned by the regulation was not closed. 'Since Article 1 of Regulation No 3318/80 concerns both earlier applications and those lodged during the period of suspension, the nature of the contested measure as a regulation is not called in question merely by the fact that it may be possible to determine the number or even the identity of certain traders concerned, especially where such a possibility by definition did not exist for other traders also covered by Regulation No 3318/80' (paragraph 17 of the judgment).

88 — Paragraph 11 of the *Sofrimport* judgment, cited above at footnote 67.

89 — Judgment in Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501.

the Soviet Union. On the basis of the case-law as it then stood, a distinction was made between producers, exporters and the complainants, on the one hand, and independent importers, on the other. As regards the latter, the issue of admissibility was dealt with by the Court in a particularly succinct manner. [90] Consequently, Extramet, as an independent importer of calcium metal, could not be deemed to be affected by the contested regulation having regard to its status, which did not differentiate it from any other undertaking already carrying on the same activities or capable of doing so in the future. [91]

88. None the less, Advocate General Jacobs proposed that the Court should remove that obstacle, stating as follows: 'I am accordingly of the opinion that the Court should recognize that a measure imposing an anti-dumping duty is of direct and individual concern to any undertaking which is able to establish (...) that it is identified, explicitly or implicity, by the measure in question (...). The Court should in my view clarify the case-law by expressly acknowledging that, at least in the anti-dumping field, it is not necessary for an applicant, in order to establish standing, to address the additional question of whether the contested measure constitutes a regulation or a decision.

This approach accords with the purpose of Article 173, which is designed to enable persons to challenge measures having a *particular impact* on them, while limiting the right to challenge regulations so that there is no risk of their annulment being sought by an unlimited class of applicants. (...)'. [92]

89. For its part the Court, after recalling that an anti-dumping regulation may affect undertakings owing to certain attributes peculiar to them and which differentiate them from all other persons, held that 'the applicant has established the existence of a set of factors constituting such a situation which is peculiar to the applicant and which differentiates it, as regards the measure in question, from all other traders. The applicant is the *largest importer of the product* forming the subject-matter of the anti-dumping measure and, at the same time, the *end-user of the product*. In addition, its business activities depend *to a very large extent* on those imports and are *seriously affected*

90 — Regulations imposing temporary and definitive antidumping duties have been held to constitute, as regards independent importers, 'measures of general application ... because they apply to objectively determined situations and entail legal effects for categories of persons regarded generally and in the abstract' (judgment in Case 307/81 *Alusuisse* v *Council and Commission* [1982] ECR 3463, paragraph 9). In accordance with its settled case-law, the Court had refused to recognize a right of action in favour of independent importers even where the case concerned the sole importer within a State of the product on which the duty was imposed (orders in Case 279/86 *Sermes* v *Commission* [1987] ECR 3109 and in Case 205/87 *Nuova Ceam* v *Commission* [1987] ECR 4427) on the ground that 'a measure does not cease to be a regulation because it is possible to determine the number or even the identity of the persons to whom it applies at any given time as long as it is established that such application takes effect by virtue of an objective legal or factual situation defined by the measure in relation to its purpose' (judgment in Case 6/68 *Zuckerfabrik Watenstedt* [1968] ECR 595, and *Alusuisse* (paragraph 11)).

91 — In other words, the regulation, as regards independent importers, could not be regarded as equivalent to a decision concerning them individually but contained general and abstract rules of law which by their nature did not affect persons individually.

92 — Paragraphs 75 and 76 of the Opinion (emphasis added).

by the contested regulation in view of the limited number of manufacturers of the product concerned and of the difficulties which it encounters in obtaining supplies from the sole Community producer, which, moreover, is its main competitor for the processed product'. [93]

90. In *Codorniu* [94] the Court was called upon to adjudicate on an action brought by a Spanish producer of sparkling wine against a provision of a regulation laying down the conditions for use of the term 'crémant' for sparkling wines. The Council raised an objection of inadmissibility, contending that that measure was of a purely legislative nature and did not concern the applicant, except in its capacity as a producer using the term 'crémant', that is to say in the same way as it concerned any other producer in the same situation. In his Opinion in that case, [95] Advocate General Lenz found first, as a matter of undisputed fact, that the contested measure was of a legislative nature. Notwithstanding that fact, he did not consider that the action should be dismissed without more ado as inadmissible, or that detailed examination was required of the question whether the measure in point, though overall of a legislative nature, nevertheless had the effect of a decision as regards the applicant. Instead, he examined whether the measure was of 'individual' concern to the applicant. In order to reply to that question, the Advocate General first considered whether, amongst the undertakings to which the prohibition on use of the term 'crémant' was of concern, there could be identified a category comprising a fixed number of persons which could not be enlarged after adoption of the measure at issue. The applicant undertaking did in fact come within that clearly defined category. [96] However, that factor is not sufficient because, in accordance with the case-law, there must be a specific connection between the applicant's situation and the contested measure. A particular link of that kind, which also enables the 'class' of potential applicants under the fourth paragraph of Article 173 of the Treaty to be determined, may be that identified in the *Extramet* judgment. The relevant criterion is the *effects* which a measure has on a certain undertaking and which may be differentiated from the effects of that measure on other persons. [97] Finally, the Advocate General, having regard to all the evidence adduced by the applicant in connection with the impact on it of the contested measure, concluded that 'the applicant is also distinguished from the category of traders affected by the *effects* which the measure has on its undertaking, and the measure is thus of individual concern to it'. [98] The Court reached the same conclusion

93 — Paragraph 17 of the *Extramet* judgment, cited above at footnote 89 (emphasis added).

94 — Judgment in Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853.

95 — Opinion of 27 October 1992.

96 — That is to say, producers using the term 'crémant' before entry into force of the regulation at issue.

97 — The criterion of effects on the situation of the applicant is not applied only in *Extramet* and *Codorniu*. Also in cases where the applicants participated in the preparation of the contested act and thus appear to be individually affected by it (see paragraph 79 above), the Court accepts that the preconditions of Article 173 are met only if the damage which the applicants are likely to sustain is of a certain seriousness. Thus, undertakings which participated in the procedure under Article 93(2) of the Treaty in order to oppose State aid have standing to bring an action before the Community judicature '(...) provided, however, that their position on the market is significantly affected by the aid which is the subject of the contested decision (...)' (see *Cofaz*, cited above at footnote 71, paragraph 25).

98 — Paragraph 64 of the Opinion.

on the basis of evidently more elliptical reasoning. [99]

91. The significance and extent of mitigation by the Court, in *Extramet* and *Codorniu*, of the rigour of the case-law should not, however, be overstated. At least I infer as much from the *Buralux* judgment mentioned above. [100] In that case the Court, on appeal, upheld as correct an order of the Court of First Instance which had dismissed as inadmissible an action for annulment of provisions of a regulation concerning the monitoring and control of shipments of waste within the Community. The action had been brought by undertakings engaged in the collection, shipment and dumping of household waste. The Advocate General proposed that the Court should declare the action brought by one of the undertakings to be admissible under the *Extramet* [101] criteria. The Court did not follow that proposal, regarding as decisive the fact that the legal effects which the contested regulation was likely to produce concerned categories of persons in a general and abstract manner.

92. I do not believe, however, that that judgment constitutes a departure from *Extramet*. The Court was seeking to exclude cases in which an increasingly broad interpretation and application of the procedural provisions of the fourth paragraph of Article 173 of the Treaty would lead to recognition of a right of action by individuals against rules of Community law and not against individual decisions. In other words, in *Buralux*, the Court wished to safeguard the legislative nature of the regulation, as it did in *Deutz and Geldermann*. [102]

(ii) *The procedural restrictions in the fourth paragraph of Article 173 of the Treaty and the particular nature of the present dispute*

93. (aa) I shall first examine whether, on the basis of the inferences to be drawn from the case-law referred to above, the contested decision of the Commission to continue financing of the construction works for the two power stations in the Canary Islands may be deemed to be of individual concern to the appellants.

99 — 'Codorniu registered the graphic trade mark "Gran Cremant de Codorniu" in Spain in 1924 and traditionally used that mark both before and after registration. By reserving the right to use the term "crémant" to French and Luxembourg producers, the contested provision prevents Codorniu from using its graphic trade mark. It follows that Codorniu has established the existence of a situation which from the point of view of the contested provision differentiates it from all other traders' (paragraphs 21 and 22 of the judgment).

100 — Case C-209/94 P *Buralux* v *Commission* [1996] ECR I-615; and see footnote 29 above.

101 — 'On the basis of these criteria it may very well be assumed that in this case the appellants by reason of special personal circumstances are differentiated from all other persons concerned. Buralux, together with its partners, is the largest importer, at least in the France/Germany area, and as it cannot fulfil its continuing contracts it is affected particularly seriously by the regulation and the import prohibition envisaged therein. These contracts are almost all valid beyond the date on which the regulation was to become applicable. In my view it may therefore be stated that in this case it is of individual concern to the appellants' (Opinion of Advocate General Lenz, paragraph 33).

102 — Judgment in Case 26/86 *Deutz and Geldermann* [1987] ECR 941. On that point, see paragraphs 100 and 101 below.

94. As I stated above, the appellants have relied in support of their action both on the specific obligations imposed on the Commission on adoption of the contested act, requiring it to monitor whether the works were progressing in conformity with Community environmental law, and on the rights which they consider are conferred on them by Directive 85/337/EEC in connection with the environmental impact assessment for works such as those in the present case. However, they do not call in question the correctness of the lower court's reasoning to the effect that the fact that certain of the appellant individuals lodged complaints with the Commission or exchanged correspondence with it does not in itself suffice for the contested act to be deemed to concern them individually. [103] Consequently, I shall not dwell on that issue.

95. It could nevertheless be argued that, whilst for the adoption of the contested decision no direct provision is made for participation by interested parties, [104] none the less, the procedure laid down in Article 6(2) of Directive 85/337/EEC [105] should be regarded as such a participatory procedure in relation to the adoption of the contested decision. Thus, Community law may not have included individuals in the procedure for preparation of Commission decisions on financing of works having an environmental impact, but it does require the Commission to verify prior to continuation of financing whether the relevant works are being carried out in conformity with Community provisions, including the provision contained in Directive 85/337/EEC allowing the 'public concerned' to participate in the drawing up of the environmental impact assessment. It could be inferred from the combination of those obligations on the Commission and from the rights in favour of the 'public concerned' conferred by Directive 85/337/EEC that those persons comprising the 'public concerned' are sufficiently differentiated in relation to the contested act. They are therefore distinguished from all other persons because Directive 85/337/EEC has afforded them concrete procedural guarantees analogous to those in *Cofaz*, *Metro* and *Matra*, [106] cited above. In other words, by dint of reasoning by analogy, it might be inferred from the Commission's specific obligation to monitor whether the works financed are progressing on the basis of Community environmental law — and, thus, in accordance with the provisions of Directive 85/337/EEC — that the persons on whom rights are conferred by Directive 85/337/EEC constitute a 'closed class' and thus have *locus standi* by analogy with the *Piraiki-Patraiki* and *Sofrimport* cases. [107]

96. I cannot adhere to that view or, at least, cannot regard it as founded on existing case-law. The procedural guarantees relied on by the appellants are contained in the text of a directive and not a regulation, unlike the situation before the Court in *Cofaz* and *Metro*. That difference is not without impor-

103 — See paragraph 56 of the order appealed against.

104 — For a discussion of an analogous problem see Case C-142/95 P, cited above at footnote 33.

105 — See paragraphs 58 and 59 above.

106 — See footnotes 70 and 71 above.

107 — See footnotes 80 and 67 above.

tance. Regulations and directives do not have the same binding effect as to their content. Furthermore, the cases in which the Court founded itself, in conferring *locus standi* on applicants, on the existence of procedural guarantees were concerned purely with Community-law procedures, implemented exclusively by Community bodies. In contrast, the procedure for drawing up an environmental impact assessment is national in character, is governed by rules of both Community and national origin and is a matter for national authorities. But, irrespective of those differences, [108] it would be difficult to equate the procedure provided for in Directive 85/337/EEC with the procedure for the adoption of the contested Commission decision, in respect of which there is no direct provision for participation by interested parties. Finally, it does not follow from the nature of the obligation imposed on the Commission in connection with the adoption of the contested act that a group of individuals has *locus standi* to bring proceedings in the event of any infringement of that obligation. That obligation consists in the monitoring of the application of Community legislation by the national authorities which implement the funded projects and does not expressly concern the protection of certain persons. But even if the monitoring obligation — because it extends to cover the correct application of Directive 85/337/EEC — is deemed to include those provisions of that directive which provide for participation of the 'public concerned' in the drawing up of the environmental impact assessment, that does not automatically mean that those persons comprising the 'public concerned' are individually affected by the contested Commission decision. The 'public concerned' under Directive 85/337/EEC cannot be regarded as constituting a 'closed class' as defined in the Court's case-law. Moreover, the concept of 'public concerned' is not sufficiently defined by Directive 85/337/EEC. The definition of that term is left to the national courts. Thus, in Directive 85/337/EEC Community law dictates the protection of a group of persons which, however, it does not precisely define. [109]

97. Accordingly, no inference may be drawn directly, either from the obligations imposed

108 — Those differences are not so crucial if it is accepted that, for the purposes of Directive 85/337/EEC, national authorities are in essence exercising a Community competence conferred on them by the directive, that is to say in the context of rules of Community law. That observation cannot, however, detract from the national character of acts adopted by national bodies pursuant to Directive 85/337/EEC.

109 — Moreover, if, finally, a Commission decision, such as the one at issue, were deemed individually to affect those persons constituting the public to which Directive 85/337/EEC refers, then, whenever an environmental impact assessment is required for infrastructure works benefiting from financing (most frequently the case), a particularly wide category of persons could bring proceedings before the Community judicature against decisions of the Commission concerning financing of the works, basing their *locus standi* on the non-existence of or defects in the environmental impact assessment. A development of that kind would run directly counter to the judgment in *Borelli* (see footnote 32), according to which the Court does not have jurisdiction to decide upon the lawfulness of acts of a national authority, even where the national act is adopted in the framework of the Community decision-making procedure. In any event, however, the majority of such proceedings would be inadmissible for lack of any legal interest. We would thus arrive at the paradoxical situation in which the procedural conditions laid down in the fourth paragraph of Article 173 of the Treaty — that the contested act must individually affect the applicant — would be met more readily than the requirement of the existence of a legal interest.
It might, finally, be objected that relaxation to such an extent of the *locus standi* conditions is justified in extreme cases, such as the present one, that is to say where the Commission declines to perform its supervisory function in order to bring to an end a substantial irregularity, such as failure to obtain an environmental impact assessment. I cannot adopt that view of the matter, even though I acknowledge its expediency, because I would then be interpreting the procedural requirements as to admissibility after first appraising the substance of the dispute, and thus in a manner which would be methodologically incorrect. However, I would also refer to the view which I develop in footnote 128 below.

on the Commission on adoption of the contested act or from the provisions of Directive 85/337/EEC, to the effect that the contested act of the Commission individually concerned the appellant individuals within the meaning of the fourth paragraph of Article 173 of the Treaty, as interpreted in the Court's case-law.

98. (bb) In light of the foregoing, the Court of First Instance in fact faithfully followed the case-law established hitherto. If the sole criterion of correct interpretation of th fourth paragraph of Article 173 of the Treaty is the reiteration of the viewpoint hitherto judicially accepted, then the order appealed against is unimpeachable.

99. Nevertheless, I take the view that the Court should examine the possibility of taking a further step forward from certain of its hitherto settled positions. The point on which I consider it expedient to submit to particular examination the solution adopted by the Court of First Instance, and on which the need for advancement in the case-law is brought into sharp relief, is that part of the lower court's reasoning in which the Commission's contested decision is deemed not to concern the appellants individually on the ground that it affected them in the same way as any other person living, staying or carrying on business on Gran Canaria and Tenerife. According to the Court of First Instance, the contested decision 'for them (...) is a measure whose effects are likely to impinge on, objectively, generally and in the abstract, various categories of person (...)'. [110]

100. In the first place, I consider it relevant to emphasize that the general and abstract nature of the impingement on the appellant individuals, on which the order of the Court of First Instance dismissing their action is based, is not due to the legislative nature of the Commission's contested decision. The significance of that point may, of course, be doubted. In accordance with existing case-law, if a person is affected by an act, whether of an individual nature or in the nature of a regulation, in a general and abstract manner, that finding suffices to deny that person *locus standi*, without the need for further distinction as between the legislative or non-legislative nature of that act. [111]

101. Yet I do not believe that the nature of the contested act is entirely without importance. When that act is of a legislative nature, the Court is particularly strict in denying individuals a right of action, precisely in order to safeguard the legislative nature of the act. [112] In accordance with the expressly formulated intention of the framers of the Treaty, a rule of Community law cannot form the subject-matter of proceedings brought by persons other than those mentioned in the second paragraph of Article 173 of the Treaty. That specific bar does not apply in cases where the contested act does not contain rules of law, thus where the

110 — See paragraph 54 of the order appealed against.

111 — See, for example, the judgment in Case 97/85 *Deutsche Lebensmittelwerke* v *Commission* (cited above at footnote 7). Proceedings brought by sellers of margarine against the Commission decision in favour of Germany in connection with the promotion of sales of butter in the West Berlin market were held to be inadmissible. According to the Court's judgment, 'although the contested decision affects the applicants, that is only because of the effects it produces on their position on the market. In that regard, the decision is of concern to the applicants just as it was to any other person supplying margarine on the West Berlin market while the contested operation was in progress, and it is not therefore of individual concern to them for the purposes of the second paragraph of Article 173 of the EEC Treaty' (paragraph 11).

112 — See paragraph 92 above.

general and objective nature of the results produced by the act are due not to its legislative nature but to its *subject-matter*. In this problematical context, I believe the appellants' submission as to the particular nature of the consequences which an intervention in the environment has, or is likely to have, to be worthy of consideration.

102. For environmental protection is indeed a matter of general interest. Conservation of the environment is a legal interest theoretically shared by all natural persons; it thus has a communal dimension. [113] Furthermore, the more significant is the intervention in or impingement on the environment, the greater is the number of persons affected thereby.

103. That unexceptionable statement cannot of course lead, on account of the special nature of the environmental legal interest, to the setting aside of the procedural requirements laid down in the fourth paragraph of Article 173 of the Treaty. The conferral of a right of action before the Court of First Instance on every person whose interest in conservation of the environment is affected by an act of a Community institution would be tantamount to acceptance of an *actio popularis* in all cases having an environmental dimension. As I stated above, [114] a departure in the case-law in that direction is impossible because, apart from the practical obstacles which would be encountered, it would run counter to the letter of the fourth paragraph of Article 173 of the Treaty. It would equally be impossible to lay down specifically for cases raising issues of environmental protection requirements as to *locus standi* which differ from those contained in the abovementioned provision. In the final analysis, the starting-point for appraisal of *locus standi* cannot but be the same in all cases, irrespective of the subject-matter of the dispute: the applicant must be individually affected by the act which he contests.

104. The points which I have made concerning the particular characteristics of the legal interest in the environment and its protection are not intended to overturn the settled positions described above, but to secure what is, in my view, the correct application of the fourth paragraph of Article 173 of the Treaty. [115] In light of the particular nature of the issue of environmental protection, I consider that the Community judicature, in particular in cases where that protection is likely

113 — For that reason, moreover, it has been recognized in certain Member States as a fundamental social right.

114 — See paragraphs 53 and 76 above.

115 — I believe, moreover, that judicial protection within a legal order governed by the rule of law must seek to safeguard the rights and interests conferred by that legal order on persons subject to it. The procedural dimension of the legal interest, as the precondition of admissibility of a legal action, cannot be distinguished in an absolute manner from the substantive dimension of the legal interest, which the legal order seeks to safeguard in favour of the person entitled. Thus, account should be taken of the particular nature of each interest protected by the Community legal order in determining the specific procedural conditions under which the person in whose favour the rules enshrining that interest were created may seek judicial assistance in upholding those principles. I further believe that to interpret the written procedural rules in such a manner as entirely to debar a person entitled to a right or legal interest (in the substantive sense of that term) from access to justice to defend his interests under the legal order, first, renders nugatory recognition by substantive law of those rights and legal interests and, secondly, must be regarded as wrong in law, inasmuch as the procedural provisions are laid down by the legal order in order to provide a structural framework, in so far as practicable, to give effect to the rights or legal interests conferred on persons subject to it, and not — absolutely and uniformly — in order entirely to debar them from judicial protection. Otherwise, if persons enjoying the protection of certain rules of law are completely debarred by procedural rules from obtaining judicial protection, the legal order is simply abdicating its function.

to have been undermined by a non-legislative act of a Community body, must not rest content with the self-evident finding that the likely harm to the environment by its very nature affects categories of persons in a general, objective and abstract manner, and must not, on that ground alone, dismiss the action brought. That is particularly so when the Community body was under a specific and clear obligation to take account, on adoption of the contested decision, of the factor of conservation of the environment. [116] On this point, then, I would draw the attention of the Court to a possible and, in my view, appropriate easing of the requirements laid down in the case-law. Allow me to explain:

A decision which has an impact on the environment does indeed affect, or may affect, large categories of citizens in a general and abstract manner. None the less, it is not impossible for one or more of the persons affected, who constitute a 'closed class', to be particularly affected, and thus to be distinguished from any other person, that is to say to be differentiated for the purposes of the fourth paragraph of Article 173 of the Treaty. An intervention in the environment, such as that in point in the present case, is located in a specific geographical area, and the extent of its impact is lessened the further away one is from the area of the intervention. [117] Accordingly, persons close to the construction works suffer its consequences in a different, more intense manner than persons farther away, the latter being at a greater radius from the epicentre of the intervention in the environment. By way of logical extension, it may be argued that persons near the epicentre comprise a particularly closed and defined 'class', who find themselves in a situation which differentiates them from any other person. It is then the task of the courts to determine, on the basis of the appropriate criteria, the breadth of that closed class, the width of its radius. By logical extension, persons within that class should be regarded as having *locus standi* to bring an action against the decision occasioning consequences for the environment.

105. The criteria may not only be geographical. Geographical proximity — referred to in Article 130r(2) of the Treaty [118] — is certainly useful, particularly in cases such as the present one, but will have to be weighed together with the nature of the consequences which the intervention in the environment will or is likely to have, [119] and principally having regard to the extent, that is to say the gravity, of those consequences. [120] Those are, moreover, the matters chiefly taken into

116 — See paragraphs 62 to 65 above.

117 — This phenomenon may be likened to the throwing of a stone into a lake which creates on the surface of the water a series of concentric circles. Etymologically, moreover, the notion of a circle is inherent in the term 'environment'. For example, in Greek, the word for environment ('perivallon') comes from 'peri' (around) and 'vallo' (throw); in French or English from the word 'envirun'; and the German equivalent 'Umwelt' is made up of 'um' (around) and 'Welt' (world). Thus, that term refers to an object which encompasses something else, that is to say encloses and embraces it.

118 — 'Community policy (...) shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should *as a priority be rectified at source* (...)' (emphasis added).

119 — For example, construction of a conventional power station would be dealt with differently from that of a nuclear power station.

120 — The gravity of the consequences was, moreover, one of the basic criteria taken into account in drawing up the annexes to Directive 85/337/EEC and distinguishing the works for which a mandatory environmental impact assessment is required from those for which such assessment is optional.

account by the national courts in the Member States in disputes of this kind. [121]

106. That reasoning is not entirely foreign to existing case-law. As I have said, it is possible for an act to concern both an open class of persons (in environmental matters that class is especially wide) without *locus standi* to challenge it and a closed class of persons who do have that procedural possibility. [122] Furthermore, the gravity of the impact which a measure has or may have on a person may bring about a situation which distinguishes that person from all others, as was held to be the case in *Extramet* and *Codorniu*. [123]

107. The interpretative approach I am advocating constitutes, in my view, the appropriate way, in cases such as this, in which to particularize the procedural condition that the contested act must concern the applicant individually. In my opinion, it cannot be maintained that this approach no longer seeks to 'differentiate' the applicant but to establish whether the applicant is affected personally by the act. [124] The applicant's individual relationship to the contested act continues to be the decisive criterion also under the solution now advanced. Admittedly, on this view of the matter, the requirement of differentiation is assimilated to that of the existence of an individual legal interest and is perhaps identical with it, albeit that the Community judicature has hitherto not

121 — See, for example:
- English law: in *R* v *Secretary of State for Trade and Industry, ex parte Duddridge and Others* [1995] ELR 151 the decision of a public authority not to limit by regulation electromagnetic emissions from electricity cables may be challenged before the courts by parents residing in the area in which new electricity cables are placed, relying solely on the increased danger of leukaemia to which their children are exposed as a specific consequence of high electromagnetic levels.
- Belgian law: *Conseil d'État, Ville de Liège et Heze, 20.9.1991, No 37.676.* Proceedings by neighbour to quash decision approving installation of plant using substances harmful to environment held to be admissible.
- Netherlands law: *Raad Van State, Afdeling Bestuursrechtspraak (Council of State, Administrative Law Section), 18.6.96, AB 1996, 313.* Inhabitants of a village may invoke expected reduction in road safety in their village in order to challenge projected works.
- German law: *Bundesverwaltungsgericht (Fed. Admin. Ct.), 1.12.82, BVerwGE 66, p. 307 (crab-fishermen case)*: proceedings held to be admissible brought by fishermen against decision approving dumping at sea of liquid toxic waste on ground of reduction in fish population as a result of dumping of waste.
- Italian law: *T. A. R.* Lazio, 20.1.95, No.62, Foro Italiano 1995, II-460. Inhabitants of an area may invoke their right to quality of life (interesse di vita) in order to challenge permission to build shopping and trading centre in their area.
- Greek law: *Simvoulio tis Epikratias (Council of State) 2281/1992*: Inhabitant of the centre of a large town held to have *locus standi* to seek the quashing of decisions authorizing clearance of wooded area on edge of town. Held that the town and threatened woods belonged to same geographical basin which 'constituted an unbroken ekistic whole with very few green spaces in constant diminution. Thus, the unfavourable consequences for the ecological balance and for the quality of life of its inhabitants of the decisions leading to clearance of a wooded area in that basin are experienced not only by those in its immediate vicinity but also by those in more distant and lower-lying areas, and indeed in some cases more intensely by the latter.'
- French law: Vicinity constitutes the principal criterion of *locus standi* for natural persons in planning cases *(Conseil d'État, 22.10.86, Reynaud, Lebon, p. 652).* In determining vicinity regard is had, in addition to distance from proposed works, to nature and gravity of consequences arising. Thus, an applicant challenging building permit for large shopping centre *(Conseil d'État, 24.6.91, Soc. Interprovence Côte d'Azur, Lebon, p. 1110)* does not need to be in such close proximity to the works as an applicant challenging construction works having less significant environmental impact (*CE 17.6.91, Renauld, Lebon, p. 1110*). See also *R. Chapus, Droit du Contentieux Administratif, LGDJ, 6th Ed., 1996, No 438).*

122 — See above my observations on the *Sofrimport* judgment, paragraph 84 et seq.

123 — Nevertheless, it cannot of course be maintained that the solution here advocated may be directly drawn from dicta in the Court's existing case-law. Those dicta are merely indicative of the interpretative possibilities open to the Community judicature in the context of the application of the fourth paragraph of Article 173 of the Treaty.

124 — On that point I refer to the relevant arguments of the Commission, at paragraph 33 above.

been accustomed to that assimilation. I do not believe, however, that, in particular in cases such as the present one, to approximate the Court's reasoning on the individual nature of the effect on the applicant to the reasoning followed by the majority of national courts in determining the legal interest of the individual, runs counter to the formulation and spirit of the fourth paragraph of Article 173 of the Treaty or to the underlying rationale of the Court's existing case-law, even if it does not constitute a linear continuation of that case-law.

108. Moreover, I do not believe that the above 'class' of persons having *locus standi* which will emerge from the application of the interpretative approach advocated is not sufficiently 'closed' and defined, especially if it comprises persons who already enjoy, before the entry into force of the contested act, the environmental interests which that act is likely to affect. [125] Therefore, protection should be afforded to natural persons who had previously secured, perhaps even over a long period of time, a quality of life which is likely to be particularly severely affected by the act of the Community institution. It is worth remembering that the Court, in its case-law to date, appears to accept the *locus standi* of non-privileged parties in cases where they invoke the protection of an acquired right. At least, that interpretation may be inferred from the judgments in *Bock*, *Piraiki-Patraiki* and *Sofrimport*. [126] I consider therefore that the situation of a natural person who was already enjoying environmental protection of a certain quality, before the alteration likely to be brought about by the contested act of the Community institution, is analogous to the situation of the applicants in the above cases and is equally deserving of judicial protection.

109. Again, the adequacy of the definition of the closed class of natural persons with *locus standi* depends on the criteria which the Community judicature will apply. I have already said that, in my view, the severity with which the quality of life of the applicant, or any other interest connected with the environment, is likely to be affected will be particularly considerable so as to bring him within the class of persons having *locus standi*, regard being had to the nature of the environmental intervention and the applicant's situation. However, the criterion cannot be a mathematical one. A Community act concerning construction works, such as an electricity-generating station, irrespective of whether it is built on an island with many inhabitants, such as Gran Canaria or Tenerife, or on an island with very few, affects them either generally and in an abstract manner — in which case no question of *locus standi* arises — or individually, irrespective of their number. The criteria by which it is to be judged whether an applicant has *locus standi* remain the same.

125 — That criterion is also to be found in *Sofrimport* (cited above at footnote 67), *Codorniu* (cited above at footnote 94), and *Extramet* (cited above at footnote 89).

126 — See above, footnotes 78, 80 and 67.

110. I now come to the application of the above observations to the present case. The natural persons who brought proceedings before the Court of First Instance are not relying on precisely the same legal and factual situations. Certain of them say that they reside in areas which are a short distance from the works in question, others that they are owners of real estate in those areas, and others that they carry on some occupational activity there. Others refer to the negative impact which the construction works in question will have on the health of inhabitants, on tourism, on fishing, on farming, education of the young, local flora and fauna or occupations in connection with windsurfing. Finally, some of the parties cite health problems associated with the impact on the environment of the construction works.

111. The above submissions and the factual evidence relating to them were taken into consideration by the Court of First Instance, which examined them at paragraphs 35 and 36 of the order appealed against and concluded that the action should be dismissed. The legal classification of the above submissions and evidence falls within the purview of appellate review. However, contrary to the appellants' assertions, and again in light of the restrictive interpretation, as set out above, of the fourth paragraph of Article 173 of the Treaty, I do not consider that the Court of First Instance erred on this point. It did not have before it sufficient evidence for it to accept that the probable impingement on the environment individually affects the natural persons belonging to the closed class and, specifically, that the applicants before it are affected, by virtue of the legal and factual situation peculiar to them, in such a way as to differentiate them from all other persons. Thus, the Court of First Instance — correctly — did not deduce from the matters relied on by the applicants that the latter were 'differentiated' in regard to the contested act and thus had *locus standi* to bring an action under Article 173.

112. In particular, certain of the applicants vaguely [127] relied on the fact that they reside 'very close' to the units under construction, without, however, its being possible to deduce from that unsupported submission that their situation differs from that of other persons. Nor is it possible to discern the reason why arable production, fishing, tourism or other activities are affected by the construction works in question, and to what extent, or whether the likely impact on such activities especially affects the applicants with particular severity, so as to justify granting them *locus standi*. Equally general and abstract is the invocation of harm to health likely to be occasioned by the carrying out of the works in question.

113. Subject to those essential clarifications, I consider that the view taken by the Court

127 — With the sole exception of one appellant who, without giving further particulars, merely stated that she is the owner of real estate ten kilometres away from the construction works in question.

of First Instance in paragraph 54 of the order appealed against is correct. [128]

(c) *Locus standi* of the appellant environmental associations

114. As stated above, the Court of First Instance held that the environmental associations which had brought proceedings before it, that is to say Greenpeace, TEA and CIC, are not affected individually by the contested act within the meaning of the fourth paragraph of Article 173 of the Treaty and thus do not have *locus standi*. In particular, according to the reasoning of the Court of First Instance, the environmental associations did not have that procedural possibility because, first, its members could not independently bring annulment proceedings and, secondly, those associations did not play any special role in the procedure which led to the adoption of the contested decision such as to give them *locus standi* under the Court's existing case-law. [129]

115. The appellant associations do not call in question the second limb of the lower court's reasoning. [130] I will dwell no longer on this issue. Again, in my view correctly, the Court of First Instance followed the settled case-law of the Court of Justice which makes the *locus standi* of an association dependent on that of its members. [131] In

128 — Nevertheless, there are also arguments in favour of precisely the opposite viewpoint, which have as the major premiss of their legal reasoning the interpretative approach which I advocate above. In fact, in the present case, the Commission is under a clear and specific obligation to monitor whether the works financed are being carried out in accordance with Directive 85/337/EEC. Under the applicable legislation, commencement and continuation of the construction of the electricity-generating stations, such as the ones in question, depend upon the prior obtaining of an environmental impact assessment and, hence, it may be presumed that those works may have an unfavourable impact on the environment. The importance attached by both Community and national law to that assessment should indeed be emphasized. Whether those works can be implemented and under what specific terms and conditions will in the end be determined by that assessment. Prior to completion of the assessment, it is not possible accurately to determine the impact which the works in question will have on the environment or, *a fortiori*, whether those works should be carried out and, by logical extension, whether they should be financed by Community funds. Accordingly, it is perhaps excessively strict for individuals desirous of challenging a Commission decision continuing financing of the works in question to be required fully to prove the damage they are likely to sustain as a result of those works, since, precisely because there is no environmental impact assessment, the consequences of the works in question for the environment remain essentially unknown. A special rule should thus be implied that, when there is no environmental impact assessment for a given set of works, persons challenging the Commission decision granting financial aid for the carrying out of those works, when required to show why the contested act affects them individually in accordance with the provisions of the fourth paragraph of Article 173 of the Treaty, should not be obliged to provide full and concrete proof of the effects on their individual situations owing to the actual or potential environmental impact of the works financed. It may then suffice for them to invoke their status as residents of the wider area in which the works in question are being carried out or as persons carrying on occupations in that area. Under that interpretation, the matters relied on by the appellants in the present case were in principle sufficient for them to be deemed to be affected individually by the contested act, in which case the order of the Court of First Instance is wrong in law and should be set aside.

129 — See judgments in *Van der Kooy* and *CIRFS* (cited above at footnote 12).

130 — Neither the complaints to the Commission nor the communication which those environmental associations had with it may be said to amount to participation by them in a special Community procedure thus differentiating them in relation to the contested act.

131 — See, for example, judgments in Joined Cases 19/62 to 22/62 *Fédération Nationale de la Boucherie en Gros and Others* v *Council*, Case 72/74 *Union Syndicale and Others* v *Council*, Case 282/85 *DEFI* v *Commission* (cited above at footnote 11) and Case 191/82 *FEDIOL* v *Commission* [1983] ECR 2913.

light of that case-law and of the fact that the *locus standi* of the appellant individuals in the present case must be precluded in accordance with the foregoing analysis, the Court of First Instance, I think correctly, dismissed the action brought before it by the environmental associations. At any rate, that is the solution dictated by the existing case-law of the Court of Justice.

116. None the less, the appellant associations argue that, in general, legal persons which represent the interests of a group of persons should be recognized as having the right to bring proceedings against a Community act where one or more of their members would have *locus standi* to do so or where that legal person can show the existence of a specific right or interest. As regards the second alternative basis of *locus standi* which they put forward —which, it is to be noted, finds no support in existing case-law — the appellant associations make the following observations: in their view, the Court ought to recognize the existence of a specific interest on the part of environmental associations to bring annulment proceedings against acts which jeopardize environmental protection, even where their members or other natural persons cannot show themselves to be individually affected by such an act. In that way, it is contended on behalf of the appellants, it is possible to ensure adequate judicial protection in favour of natural persons who, though affected by a Community act having negative consequences on the environment, do not comprise a closed class of persons, in accordance with the Court's case-law cited above, and thus cannot directly challenge such an act. [132]

117. The Court is thus invited to embark on a further extension of its case-law. For my part, I consider it desirable to set out the following observations. First, I believe that a relaxation by the Court, to the extent sought, of the criteria of admissibility could be abused and lead to aberrant consequences. Natural persons without *locus standi* under the fourth paragraph of Article 173 of the Treaty could circumvent that procedural impediment by setting up an environmental association. Moreover, whilst the number of natural persons, that is to say citizens of the European Union, however high it may be, none the less remains limited, the number of environmental associations capable of being created is, at least in theory, infinite. But, even if that obstacle could be overcome, for example, by conferring *locus standi* only on associations constituted prior to adoption of the contested measure, account would have to be taken of the fact that, within the European Union, the number of legal persons which have as their object the protection and conservation of the environment is today

132 — The appellant associations also stress that to confer on them *locus standi* would enable judicial review of Community measures concerning the environment to be exercised in a more consistent and coherent manner.

particularly high. If the Court were ultimately to follow the proposal of the appellant associations, in future every measure of a Community institution concerning the environment or having an impact on it could be expected, on each occasion, to form the subject-matter of proceedings brought by a plethora of environmental associations.

118. For those reasons and notwithstanding the recent developments in national and international law, I continue to have significant reservations concerning the expediency of the departure from existing case-law sought by the appellant associations. Moreover — and this I think is the decisive argument — to give to environmental associations the possibility of challenging Community measures concerning the environment would, notwithstanding the positive consequences which might well flow from this, run counter to the letter of the law, in this case of Article 173 of the Treaty. The Community legislature has divided applicants into two categories, namely those mentioned in the second and those mentioned in the fourth paragraphs of Article 173. To accept the interpretative approach advocated by the appellant associations would be tantamount to creating a third category *extra legem*. In other words, between the privileged parties mentioned in the second paragraph, who are not required to invoke any legal interest, and the parties mentioned in the fourth paragraph, who must be directly and individually affected by the contested measure, there would be interposed the environmental association, which would be presumed to have *locus standi* whenever the contested measure concerns the environment or any impact on it. In conclusion, I believe that the departure from case-law advocated, irrespective of whether or not it is desirable, remains unfeasible [133] on the basis of existing written law.

119. From all the foregoing, I conclude that the order of the Court of First Instance appealed against is unimpeachable and there can be no question of its being set aside. Moreover, there is no need to examine the remaining objections of inadmissibility raised by the Commission and Spain, that is to say whether a decision to continue financing infrastructure works can directly affect the rights or interests of the appellants or whether that measure, by its very nature, can constitute the subject-matter of proceedings under the fourth paragraph of Article 173 of the Treaty.

133 — Moreover, I do not see why *locus standi* should be granted in that way as a privilege only to environmental associations and not to other legal persons of a representative nature. Invocation of the special nature of environmental protection, extensively canvassed above, cannot, in my view, justify different treatment of environmental associations in relation to associations which have other, analogous objects.

VII — Conclusion

120. In light of the foregoing I propose that the Court should:

— dismiss the appeal in its entirety, and

— order the appellants to pay the costs.