

**CASE T-330/18 - resubmitted**

**ARMANDO FERRÃO CARVALHO and others**

**Applicants**

**-and-**

**THE EUROPEAN PARLIAMENT  
THE COUNCIL**

**Defendants**

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**SUMMARY OF THE PLEAS IN LAW AND  
THE MAIN ARGUMENTS RELIED ON IN THE APPLICATION**

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**I. PARTIES**

1. **Applicants' names and addresses** The applicants are 36 individuals (in 10 different families) and one organization. The first-named applicant is Armando Ferrão Carvalho, [REDACTED]  
[REDACTED]  
The names and addresses of the other applicants are set out in Attachment 1 to this Summary.
2. **Representatives** The Applicants are represented by: Professor Dr Gerd Winter, Professor of Public Law, University of Bremen; Dr Roda Verheyen, Attorney at Law, Rechtsanwälte Günther, [REDACTED] Germany; Mr Hugo Leith, Barrister, Brick Court Chambers, [REDACTED]
3. **Defendants** The Defendants are the European Parliament and the Council.

**II. SUBJECT-MATTER**

4. **Application for annulment pursuant to Article 263 TFEU** The applicants seek annulment in part of:
  - a. Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814; (Emission Trading Directive, ETS)
  - b. Regulation of the European Parliament and of the Council on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013, position of the European Parliament of 17 April 2018 and decision of the Council 26 April (not yet published in the Official Journal); (Effort Sharing Regulation, ESR)and

- c. Regulation of the European Parliament and of the Council on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU, position of European Parliament of 17 April 2018 and decision of the Council of 26 April 2018 (not yet published in the Official Journal). (LULUCF Regulation)
5. These measures (collectively, the “**GHG Emissions Acts**”) regulate the emission of greenhouse gases from certain economic sectors. They allow emissions of green-house gases over 2021-2030 at a level starting in 2021 at 80% of the emissions produced in 1990, reducing to 60% by 2030, thus imposing a reduction overall of 40% by 2030 of 1990 levels. The Applicants contend that this reduction is insufficient and unlawful and so seek annulment of so much of the GHG Emissions Acts as establish the targeted level of reduction.
  6. **Action to establish non-contractual liability** The applicants’ case is that the Union bears responsibility for the past and ongoing emission of greenhouse gases at unlawfully high levels, causing dangerous climate change, and causing the applicants to suffer damage (now and in future). The applicants seek injunctive relief to restrain the breach of duty, requiring the Union to adopt deeper emissions reduction targets.
  7. The applicants also make a contingent **Application for Measures of Inquiry** under Arts. 88 and 91 of the Rules of Procedure. The applicants rely on a significant volume of evidence to support their case. In the event the Court has doubts as to the causal connection between greenhouse gas emissions, climate change, and damage to the applicants, or as to the measures available to reduce emissions further, the applicants invite the Court to appoint an expert or experts.

### III. FORM OF ORDER SOUGHT

8. The applicants claim that the Court should:
  - a. Declare the GHG Emissions Acts unlawful insofar as they allow the emission between 2021 and 2030 of a quantity of greenhouse gases corresponding to 80% of the 1990 emissions in 2021 and decreasing to 60% of the 1990 emissions in 2030.
  - b. Annul the GHG Emissions Acts insofar as they set targets to reduce GHG emissions by 2030 by 40% of 1990 levels, and in particular: Art. 9 para 2, ETS Directive; Art. 4 para 2, and Annex I, ESR; and Art. 4, LULUCF Regulation.
  - c. Order the Defendants to adopt measures under the GHG Emissions Acts requiring a reduction in greenhouse gas emissions by 2030 by 50%-60% of 1990 levels, or such higher level of reduction as the Court thinks fit.
  - d. In the alternative, if the Court is not minded to grant an injunction and its decision to annul the reduction targets comes too late to allow for a modification of the relevant provisions before 2021, the applicants claim that the Court should order that the contested provisions of the GHG Emissions Acts shall remain in force until a defined date, by when they must be modified in accordance with the higher rank legal requirements.
  - e. Order the Defendants to bear the costs of the proceedings.

#### IV. PLEAS IN LAW AND MAIN ARGUMENTS

9. In support of the **application for annulment**, the applicants rely on the following 4 cumulative pleas in law.
10. **1<sup>st</sup> plea in law** The Union is obliged by rules of higher rank law to avoid harm caused by climate change, under the customary international law duty prohibiting states from causing harm and to prevent damage under Article 191 TFEU. The Union is likewise obliged to prevent infringements of fundamental rights protected by the Charter caused by climate change. These rights include the right to life and physical integrity, the right to pursue an occupation, the right to property, the rights of children and the right to equal treatment.
11. **2<sup>nd</sup> plea in law** Given the causal connection between the emission of greenhouse gases and dangerous climate change, the Union is responsible for taking measures to regulate emissions of greenhouse gases from within the Union to avoid this harm and to prevent infringements of fundamental rights.
12. **3<sup>rd</sup> plea in law** Climate change is already causing harm and infringements of fundamental human rights and will continue to do so. Any further emission of greenhouse gases contributing to these effects will therefore be unlawful unless that emission can be justified on objective grounds, and where the Union has sought to make reductions to the extent of its technical and economic capability.
13. **4<sup>th</sup> plea in law** No such justification is available to the Union in adopting the targets set by the GHG Emissions Acts for the following reasons:
  - a. The targets authorise emissions in quantities that significantly exceed the EU's equitable share of the budget of emissions implied by the objective set by the Paris Agreement of a maximum increase in global average temperature of 1.5°C or well below 2°C.
  - b. The targets were set without the Defendants examining the extent of the technical and economic capability of the Union to make reductions. The targets chosen were rather selected as the most cost-effective means of meeting a prior long term emissions target, which has since been superseded by the Paris Agreement.
  - c. The evidence (available to the Defendants) shows that the Union did in fact have the capability to pursue measures providing for reductions in greenhouse gases of at least 50%-60% below 1990 levels by 2030.
14. In support of the action for non-contractual liability, the applicants rely on the following pleas in law.
15. **1<sup>st</sup> plea in law** The Union is obliged by higher rank law to avoid inflicting the harm caused by climate under customary international law and to prevent damage under Article 191 TFEU. It is also obliged to avoid and prevent infringements of fundamental rights arising from climate change under the Charter.
16. **2<sup>nd</sup> plea in law** The Union has been, through its responsibility for the emission of greenhouse gases, in breach of these duties at earlier times:
  - a. It was in breach of the duty to avoid inflicting harm since 1992, when the UN Framework Convention on Climate Change was adopted and knowledge of climate change became general.
  - b. The Union's breach of duty was compounded in 2009, when both Article 191 TFEU and the Charter were in force.

- c. At these points in time the continued emission of greenhouse gases would be prohibited unless that conduct was objectively justified. The Union has not and cannot contend that the level of emissions that it continued to permit throughout this period were consistent with its technical and economic capacity to reduce emissions.
17. **3<sup>rd</sup> plea in law** The Union continues to be in breach of its obligations now, in adopting the emissions reductions targets in the GHG Emissions Acts. As set out in the pleas in law in the action for annulment, the GHG Emissions Acts fail to reduce emissions, and allow the continued release of emissions, at levels that are unlawful and cannot be justified.
18. **4<sup>th</sup> plea in law** The Union's breach of obligations is a sufficiently serious breach of a rule of law conferring rights on individuals. The Union has no discretion to decline to consider or adopt measures within its technical and economic capability for the reduction of emissions.
19. **5<sup>th</sup> plea in law** The breaches of duty have caused dangerous climate change which has caused material damage to certain of the applicants and will cause further and additional types of damage to the applicants in the future.
20. **6<sup>th</sup> plea in law** The Union is obliged to ensure its conduct conforms with its legal obligation to make emissions reductions commensurate with its technical and economic capability, which the evidence shows to be a reduction of at least 50%-60% by 2030 of 1990 level emissions. The applicants seek an injunction from the Court to this effect.