

**In the General Court of the European Union  
- Registry -  
Rue du Fort Niedergrünwald  
L-2925 Luxemburg**

**Case T – 330/18**

**ARMANDO FERRÃO CARVALHO & others**

**Applicants**

**and**

**THE EUROPEAN PARLIAMENT  
THE COUNCIL**

**Defendants**

---

**APPLICATION TO INTERVENE  
on behalf of Arbeitsgemeinschaft bäuerliche Landwirtschaft e.V. (AbL)**

---

1. On 13 August 2018, a notice initiating the above-named proceedings was published in the Official Journal of the European Union, as per article 79 of the Rules of Procedure of the General Court ('RPGC'). Pursuant to the second paragraph of article 40 of the Statute of the Court of Justice of the European Union ('Statute') and article 142 et seq. of the RPGC, the German non-profit association AbL hereby applies for permission to intervene. Each of the requirements for an application to intervene, as stated in article 143 of the RPGC, will be addressed, in turn.
2. The applicant for leave to intervene is Arbeitsgemeinschaft bäuerliche Landwirtschaft – translates approximately "Small Farmer's Working Group on Agriculture" (hereinafter 'AbL'). AbL is a non profit organisation established under German Law, founded in 1981.

AbL's address is the following: Bahnhofstr. 31, D 59065 Hamm, Germany. It is represented by its Executive Director and Board. The power of Attorney is provided in **Annex 0**.

3. The legal representative of AbL is Dr. Ulrich Wollenteit of Rechtsanwälte Günther, Mittelweg 250, D-20148 Hamburg, Germany. He has proven to the Court his ability to act in compliance with article 78(4) of the RPGC through the e-curia application. We confirm that the Court Registry may serve documents on us via e-Curia.

**Description of the case (article 143(2)(a) RPGC)**

4. The case before the General Court is comprised of the following:
  - a. An application for annulment, under article 263 of the Treaty on the Functioning of the European Union ('TFEU'); and
  - b. A claim in tortious liability, under article 340 of the TFEU.
  
5. The case arises from the adoption by the European Parliament and the Council of three legal acts (collectively 'the GHG Emissions Acts'):
  - a. The 2018 amendment of Directive 2003/87/EC (the 'Emissions Trading System' or 'ETS Directive');<sup>1</sup>
  - b. Regulation (EU) 2018/842 (the 'Effort Sharing Regulation' or 'ESR Regulation');<sup>2</sup> and
  - c. Regulation (EU) 2018/841 (the 'LULUCF Regulation').<sup>3</sup>
  
6. The Applicants in the case contend that these legal acts entail failure by the European Union ('EU') to meet urgent responsibilities to limit emission of greenhouse gases ('GHGs') and to avoid harm caused by climate change, and breach of *inter alia* the following:
  - a. The Charter of Fundamental Rights: articles 2 and 3 (the rights to life and physical and mental integrity), articles 15 and 16 (the right to work and the freedom to conduct a business), article 17 (the right to property), articles 20 and 21 (the rights of equal treatment), and article 24 (the rights of the child);
  - b. Various treaty obligations, under *inter alia* the TFEU, the Treaty on European Union and the Paris Agreement 2015; and

---

<sup>1</sup> 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, OJ L 76/3.

<sup>2</sup> Regulation (EU) 2018/842 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, OJ L 156/26.

<sup>3</sup> Regulation (EU) 2018/841 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) 525/2013 and Decision 529/2013/EU OJ L 156/1.

- c. Customary international law, including the 'no harm principle' and the 'precautionary principle'.
7. The Applicants in the case seek the following remedies/forms of orders:
- a. Declaration that the GHG Emissions Acts are unlawful insofar as they allow emission, between 2021 and 2030, of a quantity of GHGs corresponding to 80% of 1990-level emissions in 2021, decreasing to 60% of 1990-level emissions in 2030;
  - b. Annulment of the GHG Emissions Acts insofar as they set the above targets for emissions in 2021 and 2030; and/or
  - c. An order/injunction requiring that the Defendants adopt measures under the GHG Emissions Acts requiring a reduction in GHG emissions by 2030 by at least 50-60% of 1990 levels, or such higher levels of reduction as the Court thinks fit; or
  - d. In the alternative, an 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 Union's legal obligations.

**Description of the main parties (article 143(2)(b) RPGC)**

8. The Applicants in the case are children and their parents, working in agriculture and tourism, who are and will increasingly be adversely affected in their livelihoods and their physical well-being by climate change (through effects including droughts, flooding, heat waves, sea level rise and the disappearance of cold seasons). They are from countries across the EU and the world, and include adults of working age, retired persons, and children. They are engaged in a range of economic activities, including the cultivation of crops, forestry management, animal herding, and eco-tourism. They are supported and joined by an association of indigenous Sami youth, 'Sáminuorra'. In the tradition of the indigenous Sami people, the members of this organisation live and work around reindeer husbandry, which provides employment and produce for sale.
9. The Defendants are the European Parliament and the Council.

**Proof of legal existence (articles 143(4) and 78(4) RPGC)**

10. In compliance with article 78(4) of the RPGC, recent proof of the existence in law is provided in the form of its statute of association:

**Annex 1** is a copy of the original registry copy of 1981 in German. This document is only supplied to show the original registration with the General Court (Amtsgericht, AG) in Böblingen. The registry jurisdiction has since been referred to the AG Stuttgart and the (now) to the AG Hamm, Westfalen.

**Annex 2** is an English translation of the current statutes, 19<sup>th</sup> November 2016

**Annex 3** is a copy of the most recent official registry Registry AG Hamm Number 2303 in German (with number and stamp)

**Annex 4** is the translation of Annex 3 into English

**Form of order sought supported by the proposed intervener (article 143(2)(e)RPGC)**

11. AbL supports the forms of order sought by the Applicants in the main proceedings. These forms of order are listed above, at paragraph 7 of this application.

**Circumstances establishing the right to intervene (article 143(2)(f) RPGC)**

12. AbL has an interest in the result of the case within the meaning of the second paragraph of article 40 of the Statute.

13. According to § 1 of its Statutes of Association (Annex 2) AbL is a

“voluntary, nationwide union of peasants, shepherds, beekeepers, gardeners and citizens interested in agriculture and agricultural policy”

AbL’s membership is comprised of about 2.500 individual members, of which about 90 % are active farmers, who in accordance with the Statutes of Association “make a valuable contribution to the survival of our planet”. The rest are consumers.

14. AbL is divided in in the Federal Association, Regional Associations and the Young Association on Peasant Farming (§ 2. 2 of the Statutes, **Annex 2**)

15. AbL is democratically constituted. It is governed by the General Assembly of all members, the Executive Board elected by the General Assembly, and the AbL Council which consists of delegates from the Executive Board, the regional associations and the Young Working Group on Peasant Farming (§§ 8 – 12 of the Statutes, **Annex 2**).

16. AbL’s purpose is set out in the preamble of AbL’s Statute (**Annex 2**) as follows:

In solidarity with farmers and in close cooperation with civil society, AbL is active for rural farming in the future and for the farmers. It fights:

- **for the preservation of many farms and jobs**
- for just and humane living conditions in the countryside and in the cities
- for economic, social, cultural rights
- **for a careful handling of the common goods soil, water, air**

- **for the conservation of biodiversity and for the welfare of livestock**<sup>4</sup>
- for global food sovereignty.

17. According to § 3. 2 of its Statute (**Annex 2**) AbL pursues its goals by

- a) publishing the journal "Independent Farmers Voice" (formerly "Bauernblatt"),
- b) organizing and promoting peasant resistance to injustice, arbitrariness and risk technologies with and on behalf of the persons concerned;
- c) supporting the development of forms of self-help and solidarity,
- d) promoting the opportunity to engage with agricultural policy issues and positions, as well as promoting expertise through events, meetings and training;
- e) representing the interests of the association and its members vis-à-vis political bodies and decision makers,**
- f) cultivating and promoting the cooperation of peasant representatives and social organizations at national, European and international level.  
[emphasis added]

18. It is settled case law that the interest in the result of the case, within the meaning of article 40 of the Statute, must be defined in the light of the precise subject-matter of the dispute<sup>5</sup>, and be direct and existing.<sup>6</sup>

22. The subject matter of the case is the protection of mostly farmers and their families against climate change and its harmful effects, including droughts, flooding, loss of the winter season, and heat waves as well as other extreme events which will become more frequent and more intense as more greenhouse gases are released into the atmosphere. More generally the case set out a general temperature increase, resulting changes in blooming patterns but mostly an increase of extreme weather events and in consequence the unpredictability of agricultural operations. Should the court decide in favour of the applicants in the main proceedings, and the EU in consequence would establish stricter emission reduction targets, this will have a direct and existing effect on the farmers organised in AbL, and on AbL as the representative of the farmers' collective interest. In the contrary scenario, if the court decides against the plaintiffs, this will increase the risk to AbL members from the impacts of climate change and would determine the future work of AbL on this crucial issue. In accordance with its

---

<sup>4</sup> Emphasis added

<sup>5</sup> See: C-385/15 P(I) *Metalleftiki kai Metallourgiki Etairia Larymnis Larko v Commission*, order of 6 October 2015, EU:C:2015:681, para. 6; Case 111/63 *Lemmerz-Werke v High Authority*, EU:C:1964:82, order of 25 November 1964, at 717; Case T-14/00 *Coöperatieve Aan- en Verkoopvereniging Ulestraten, Schimmert en Hulsberg and Others v Commission*, order of 4 February 2004, EU:T:2004:32, para. 11.

<sup>6</sup> See footnote above and Joined Cases C-151/97 P(I) and C-157/97 P(I) *National Power and PowerGen v Commission*, EU:C:1997:307, order of 17 June 1997, para. 53; Case T-138/98, *ACAV and Others v Council*, EU:T:1999:121, order of 3 June 1999, para. 14.

statutes, AbL is called upon to represent its members in this case exactly due to the massive impact climate change is already having on its members.

23. In its activities in relation to climate protection AbL has focussed on two functions: The collection and dissemination of experiences made by AbL members and other farmers, and the rendering of policy advice and activist campaigns.

#### **Collecting and disseminating experiences of members**

24. AbL collects empirical information from its farmer members about their experiences with climate change effects on their farming activities. It uses this evidence to raise awareness in publication and as stakeholder in policy processes in Germany and the EU.

25. To cite just two recent cases: One member, an agricultural holding, cultivates 320 ha crop land in the German state of Mecklenburg-Vorpommern. The 2018 drought caused a reduction in harvest of 30% as compared with the average of the last 6 years. Another holding in Northrhine-Westfalia tends to ca. 100 cattle. It produces the fodder on 60 ha pasture which has been sufficient for feeding the animals. In 2018 the harvest was 40% lower than average so that feed had to be bought on the market at as high cost as 20.000.-€. 10 animals had to be slaughtered, 10 more will need to be slaughtered later because the prices for hay and feed are high due to the demand. A recent more systematic inquiry by Deutsche Milchkontor revealed that around 90 % of the 239 members surveyed to date expect yields of grass and maize to decline by 20 to 40 %. About a third assume that the number of lactating cows will have to be reduced by up to 10 %. with 13% of expecting that animal reduction of over 20% will be necessary due to a changing climate. Approximately 37% of respondents said they would cut milk volumes by up to 5%, with a further 35% planning to cut milk consumption by 10%.

26. AbL will continue to collect, structure and disseminate data taking a long-term perspective and covering the entirety of agricultural branches, to inform decision makers and to achieve its statutory aim of protecting the interest of its members and the environment in which they farm.

#### **Advisory and activist commitments**

27. AbL has followed two objectives when acting as policy advisor and stakeholder: to educate the agriculture sector itself concerning its role as emitter of GHG, and pushing government to take stricter measures in relation to all emitters. This function directly corresponds to the non-ETS targets set in the 'Effort Sharing Regulation' and also to the LULUCF-Regulation which targets mostly agriculture and forestry. Its members are therefore also addressees of those two Regulations.

28. Since 2011 AbL has coordinated and organised yearly manifestations called "Wir haben es satt" ("we are fed up") with over 20.000 participants as a side-event of

the Berlin “Internationale Grüne Woche”, the main national agricultural fair. The manifestations have propagated a change in agricultural practices among others in order to protect the stable climatic conditions necessary for agriculture.

29. The world climate summit in Bonn in November/December 2017 was used by AbL to intensify the discussion "Agriculture as a victim and as a perpetrator" of and on climate change. Numerous discussions took place, including with members of the world wide association of farmers “La Via Campesina” from Africa, South America, Asia. A joint declaration was issued entitled "Rural agroecology can change the world and cool the planet."
30. AbL supported the editing and publication of a Report “Agriculture at a Crossroads”. (**Annex 5** (Synthesis Report)). This report, commonly known as the World Agriculture Report, of 2008, by the International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD) presents findings and recommendations for future farming including key messages and recommendations, facts and figures as well as new insights from other publications.. This report and its summary brochure was updated and translated into German to especially point out interrelations between industrialised agriculture and climate change.
31. In January 2018, AbL submitted a proposal to the discussions about a reform of the EU agricultural policy. The proposal is entitled “Vorschlag für eine gerechte Agrarpolitik nach 2020” („Proposal for an equitable agricultural policy after 2020“, **Annex 6**). The proposal advocates *inter alia* that EU direct payments shall be qualified with a points system supporting climate friendly agriculture.
32. In 2010 AbL together with the non-profit organisation Germanwatch created and organised the photo exhibition “Mensch Macht Milch” (“Humans, Power, Milk”) which shows the struggling of small and medium farmers in the dairy sector, *inter alia* due to climatic changes. This exhibition was already displayed at 100 different locations in Germany and is still being shown.
33. As a reaction to the extended times of drought in the summer of 2018 AbL has published various policy papers. Most importantly it continues to call for better climate protection (**Annex 7**). AbL is critical about a general scheme of compensation for losses as currently practiced in Germany and argues in favor of better climate protection and fair product prices as a more sustainable mitigation and adaptation strategy (**Annex 8**). It also called for an agricultural summit to determine climate protection and adaptation options for agriculture in Germany and Europe (**Annex 9**).
34. Should the court decide to join AbL as an intervener, AbL is in the position to add relevant context and content to the proceedings since it can testify to the current

effects of climate change on the plaintiff families and can add understanding to the link between the impacts and the economic context of European farmers.

### **Conclusion**

35. For the foregoing reasons, AbL respectfully requests that the Court grant its application for leave to intervene in support of the form of order sought by the Applicants in the case.

**Dr. Ulrich Wollenteit**  
**24<sup>th</sup> September 2018**

### **SCHEDULE OF ANNEXES**

Annex 0	Power of Attorney
Annex 1	Original registry copy of 1981
Annex 2	English statutes, 19 <sup>th</sup> November 2016
Annex 3	Official registry AG Hamm 2018
Annex 4	English translation of Annex 3
Annex 5	Synthesis Report "Agriculture at Crossroads"
Annex 6	Proposal for an equitable agricultural policy after 2020
Annex 7	Farmers need climate protection and fair prices
Annex 8	Press release on the drought situation in agriculture
Annex 9	Rural farms threatened by extreme drought