

To the General Court of the European Union
- Registry -
Rue du Fort Niedergrünewald
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 Climate Action Network Europe**

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, Climate Action Network Europe 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.

The applicant for leave to intervene is Climate Action Network Europe (hereinafter 'CAN Europe'), a non-profit organisation established in the year 2000 under

Belgian Law. CAN Europe's address is: Rue d'Edimbourg 26, B-1050 Brussels, Belgium.

2. Address for service is provided with:
Rechtsanwälte Günther, Mittelweg 250, D-20148 Hamburg, Germany.

In compliance with article 77 of the RPGC, we confirm that the Court Registry may serve documents on us via e-Curia.

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

3. 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.
4. 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');¹
 - b. Regulation (EU) 2018/842 (the 'Effort Sharing Regulation' or 'ESR Regulation');² and
 - c. Regulation (EU) 2018/841 (the 'LULUCF Regulation').³
5. 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

¹Directive (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.

²Regulation (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.

³Regulation (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’.
6. 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 maximum 80% of 1990-level emissions in 2021, decreasing to maximum 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 to no more than 50% 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)

7. 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.
8. The Defendants are the European Parliament and the Council.

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

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

Annex 1 is the original statute of association of 2000 together with the registry certification as published in the official publication (“*Moniteur Belge*”) in Dutch. It certifies that Climate Action Network Europe was registered formally on 15th February 2000 and that the formal registry has assigned the registration number: 42892000 and order no. 470450296. A

full English translation of this version of the statutes is omitted since the statutes have since changed.

Annex 2.1 is the current version of the statute of association in English.

Annex 2.2 is the original copy of this statute in Dutch taken from the *Moniteur Belge*

Annex 3 is the most recent proof of change in the composition of CAN Europe's board of directors. This Annex is a copy of the official publication in *Moniteur Belge* of 28th May 2018 and is only submitted to testify to the fact that the association is under current supervision of legality of the official registry. An English translation is omitted as the content is of no significance to the application. Full translations can be provided at any time.

The highest authority of CAN Europe is its General Assembly, which elects a Board of Directors to lead the organisation (article 11 of the statute of association, **Annex 2.1**), which in turn has assigned the management of the organisation to its Director in accordance with article 14 of the statute of association (**Annex 2.1**). Currently this position is held by Mr. Wendel Trio.

Particulars of the status and address of the applicant's representative (articles 143(2)(d), 143(4), 78(4), 51(2), and 51(3) RPGC)

10. The representatives of CAN Europe are Marc Willers QC and Richard Reynolds of Garden Court Chambers and Dr. Ulrich Wollenteit of Rechtsanwälte Günther (as solicitors).
11. The addresses of the representatives are the following:

Marc Willers QC and Richard Reynolds,
Garden Court Chambers, 57-60 Lincoln's Inn Fields, London, WC2A 3LJ, United Kingdom.

Rechtsanwälte Günther, Dr. Ulrich Wollenteit, Mittelweg 250, D-20148 Hamburg, Germany.

In compliance with article 78(4) of the RPGC, the documents referred to in articles 51(2) and (3) of the RPGC are provided separately.

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

12. CAN Europe supports the forms of order sought by the Applicants in the proceedings. Those forms of order are listed above, at paragraph 6 of this application.

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

13. CAN Europe has an interest in the result of the case within the meaning of the second paragraph of article 40 of the Statute.
14. It is settled law that:
- a. The concept of an interest in the result of the case, within the meaning of article 40, must be defined in the light of the precise subject-matter of the dispute.⁴
 - b. The interest must be direct and existing.⁵
 - c. The interest must be in *“the ruling on the forms of order sought” / “the operative part of the final judgment which the parties ask the Court to deliver”*, which is distinct from an interest in relation to the pleas in law put forward.⁶ The latter is not enough.

A representative organisation

15. CAN Europe meets the test for intervention as a representative organisation.
16. It is established case-law that intervention is permissible by an association that represents *“... a significant number of undertakings active in the sector concerned, if its objects include the protection of the interests of its members, if the case may raise questions of principle affecting the functioning of the sector concerned and if the interests of its members may therefore be affected significantly by the forthcoming judgment ...”*⁷
17. The proceedings are concerned with the environment sector and, specifically, with whether the Union's target for a reduction in GHG emissions is sufficient to reduce or avoid harm to the environment. CAN Europe is a member based organisation with a membership of over 150 organisations from 35 European countries, representing over 1,700 non-governmental organisations and more than 40 million persons (see its list of members at **Annex 4**).

⁴ 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.

⁵ See footnote 4 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.

⁶ *Ibid.*

⁷ See: Case T-429/13 *Bayer CropScience AG v European Commission*, order of 21 October 2014, ECLI:EU:T:2014:920, para. 22; Case T-87/92 *Kruidvat v Commission* [1993] ECR II-1375, para. 14, and Case T-253/03 *Akzo Nobel Chemicals and Akros Chemicals v Commission* [2004] ECR II-1603, para. 21; Case T-245/11 *ClientEarth and The International Chemical Secretariat v European Chemicals Agency*, order of 18 October 2012, para. 12; Joined Cases C-151/97 P(I) and C-157/97 P(I) *National Power and PowerGen* [1997] ECR I-3491, para. 66; Case T-53/01 R *Poste Italiane v Commission* [2001] ECR II-1479, order of the President of the General Court, para. 51,

18. CAN Europe's statutory objective is to *"to reduce human induced climate change to an acceptable ecological level"* and includes the protection of the interests of its members (article 3 of CAN Europe's statute of association, **Annex 2.1**). A list of examples of CAN Europe's activities is given in the final section of this application, demonstrating what steps it has taken as a stakeholder to protect its members' interests and represent them in the context of the EU's development of its GHG emissions targets and its law making process.⁸ A key part of CAN Europe's unique representative function is achieved through the presentation of collective NGO positions to decision makers, with the aim of increasing the collective impact of NGOs on decisions to be made. The process for adopting CAN Europe positions is provided at **Annex 5**. These common positions empower civil society organisations to influence the design and development of effective climate change policy in Europe.
19. It is obvious that the forms of orders sought by the Applicants are concerned with environmental protection, an area in respect of which the Union and the Member States share competence (article 4(2)(e) of the TFEU). More specifically, the proceedings are concerned with whether the Union's target for a reduction in GHG emissions is sufficient to reduce or avoid harm to the environment. The case concerns the question whether the emissions targets enshrined in the GHG Emissions Acts (to 80% of 1990 levels by 2020 and to 60% of 1990 levels by 2030) are lawful; and whether the Union will be required to pursue greater reductions.
20. CAN Europe has actively campaigned for the inclusion of stronger emission reduction targets in the GHG Emissions Acts and contends that the targets laid down in those Acts are simply too low to address climate change properly in accordance with the Paris Agreement and that their adoption would lead to a breach of fundamental rights. CAN Europe's interest is affected by the outcome of the case: should the Applicants obtain the relief they seek then the EU would be obliged to revise and increase its emissions reduction targets in order to meet its international obligations and avoid such a breach of fundamental rights. Furthermore, the GHG Emissions Acts affect the whole sector relating to the regulation of climate change in the Union, and would therefore significantly affect the interests of CAN Europe's members, and CAN Europe's statutory objective.

An environmental organisation

21. CAN Europe also meets the test for intervention as an environmental organisation with a direct and present interest in the result of the case.
22. It is established case-law that *"[...] insofar as concerns applications for leave to intervene submitted by organisations for the protection of the environment, the requirement for a direct and present interest in the result of the case means*

⁸ See Case T-245/11 *ClientEarth and International Chemical Secretariat v ECHA*, order of 18 October 2012, ECLI:EU:T:2012:557, para 21.

either that the scope of the activities of such organisations should coincide with that of the region and sector concerned by the proceedings before the General Court or, where the scope of their activities is wider, that they should be actively involved in protection programmes or studies relating to the region and sector concerned, the viability of which may be jeopardised if the contested measure were adopted ...”⁹.

23. The scope of the activities of CAN Europe coincides with that of the region and sector concerned by the proceedings before the General Court. The region concerned by the proceedings is primarily the European Union. The sector concerned is the environment sector and specifically, the regulation of GHG emissions that contribute to climate change. CAN Europe’s geographical sphere of activity is Europe and the EU in particular (see article 5 of its statute of association, **Annex 2.1**). The aim of CAN Europe is to reduce human-induced climate change to an acceptable ecological level (article 3(1) of its statute of association, **Annex 2.1**). CAN Europe seeks to accomplish this aim by the following means, among others (article 3(2) and (3) of its statute of association):
- a. Co-ordinating European efforts, on behalf of its member organisations, in respect of tackling climate change;
 - b. Improving public awareness regarding problems of and solutions to climate change, through press-campaigns;
 - c. Monitoring and encouraging the implementation of policies and measures to combat climate change;
 - d. Encouraging the implementation of legislation to combat climate change;
 - e. Representing its member organisations and institutions whenever required in the interest of the environment and the interests of those organisations.
24. A theme in the protective and representative activities set out below is CAN Europe’s efforts to establish that the EU’s climate target of an “*at least 40%*” reduction in GHG emissions by 2030 is not consistent with the EU’s obligations under the Paris Agreement to hold the increase in temperature to well below 2°C and pursue efforts to limit the increase to 1.5°C. CAN Europe has been calling for much stronger 2030 targets, namely an “*at least 55%*” GHG emissions reduction.

Other relevant matters

25. The intervention of CAN Europe may obviate the need for multiple interventions. The Court of Justice has stated that the adoption of a broad interpretation of the right of associations to intervene is intended to facilitate assessment of the

⁹ See Case T-429/13 *Bayer CropScience AG v European Commission*, order of 21 October 2014, ECLI:EU:T:2014:920, para. 73.

context of cases, whilst avoiding multiple individual interventions which would compromise the effectiveness and proper course of the procedure.¹⁰

26. Further, if granted permission to intervene, CAN Europe is in a position to add relevant content to the proceedings. CAN Europe has followed and commented on the challenged GHG Emissions Acts since they were drafted and negotiated, and is intimately familiar with the inadequacy of the GHG emission reduction target of at least 40% from 1990 levels by 2030.

Examples of CAN Europe's recent work

27. The following overview of CAN Europe's role as a stakeholder in the context of the EU's development of its GHG emissions targets and law making process is provided in support of the above submissions:
- a. **Contribution to EU consultations on behalf of members:** Since 2011, CAN Europe has made thirty-six submissions to consultations regarding the EU law making process (see **Annex 6**).
 - b. **Research and publications setting out its members' position on key issues:**
 - i. In November 2013, CAN Europe developed its position paper on post-2020 EU climate and energy targets (**Annex 7**), setting out what emissions targets would amount to a fair contribution by the EU to the effort to avoid dangerous climate change.
 - ii. In September 2015, CAN Europe published a report on the EU's Intended Nationally Determined Contribution¹¹ (**Annex 8**), analysing the impact of the "at least 40%" target.
 - iii. In 2016 CAN Europe published a series of briefing papers on the revisions needed to EU and Member States' climate and energy targets to make them compatible with the Paris objectives (**Annex 9**).
 - iv. In July 2016, CAN Europe published its report on the 2030 climate targets for the EU Member States (**Annex 10**).
 - v. During the legislative process of the three GHG Emissions Acts, CAN Europe prepared a number of briefings and evaluations setting out its members' position on the three GHG Emissions Acts.

¹⁰See 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, the order of the President of the Court of Justice, 17 June 1997, EU:C:1997:307, para. 66

¹¹Intended Nationally Determined Contributions (INDCs) is a term used under the United Nations Framework Convention on Climate Change (UNFCCC) for reductions in GHG emissions that all countries that signed the UNFCCC were asked to publish in the lead-up to the 2015 United Nations Climate Change Conference held in Paris, France, in December 2015.

- vi. In July 2016, a briefing paper was published by CAN Europe highlighting how Member States may seek to reduce their efforts to cut emissions in the non-ETS sector (**Annex 11**).
- vii. In July 2016, CAN Europe published its evaluation of the European Commission's ESR proposal, setting out its members' concerns that the ESR would not provide adequate protection, and would not be in line with the objectives of the Paris Agreement.

c. **Dialogue and negotiation with governments and the EU:**

- i. Prior to the adoption of the GHG Emissions Acts by the European Parliament and the Council, CAN Europe organised a number of meetings and submitted detailed observations to governments, MEPs and other key European Parliament decision-makers setting out CAN Europe and its members' position on the incompatibility of the GHG Emissions Acts with the Paris Agreement and other legal obligations.¹²
- ii. During 2016 and 2017, CAN Europe coordinated and facilitated close to 50 NGO meetings held with the Climate Action and Energy Commissioner Miguel Arias Cañete and his cabinet members in order to express the need for defining a higher 2030 climate target for the EU and its Member States (see **Annex 12.1 and 12.2** showing statistical detail from an independent source and the EU Commission). Numerous meetings were also held with the Director and heads of units of DG Clima, all aimed at sharing the position of European civil society on the need to increase the EU's 2030 climate target and to reform the EU's climate policy.
- iii. For the ETS plenary discussion in February 2017, CAN Europe arranged meetings with several key MEPs in Strasbourg and distributed its positions, voting recommendations and communication material ahead of the vote. In addition, CAN Europe sent voting recommendations to all Members of Parliament and met with key EP decision-makers, notably the rapporteur, and their respective assistants and advisors, communicating to them the main elements of its position paper and voting recommendations (see **Annexes 13.1 and 13.2** as well as **Annex 14**).
- iv. Prior to the Environment Council in February 2017, CAN Europe met with climate attachés and kept track of Member States' positions with regards to the ETS revision (**Annex 15**). CAN Europe sent an open letter to environment ministers, setting out the reforms required to the ETS to meet the obligations of the Paris Agreement (**Annex 16**). Following the Council, CAN Europe published an evaluation of the adequacy of the agreed revision of the ETS (**Annex 17**).

¹²See Case T-245/11 *ClientEarth and International Chemical Secretariat v ECHA*, order of 18 October 2012, ECLI:EU:T:2012:557, para 20.

- v. During the C20 summit in Hamburg in June 2017, CAN Europe organised a workshop on carbon pricing and ETS (**Annex 18**).
 - vi. Throughout 2017 CAN Europe held bilateral meetings with numerous MEPs and climate attachés to press for the increase of the EU's climate target through the GHG Emissions Acts.
 - vii. In 2017 CAN Europe also helped organise two major events relating to the ESR: one in the European Parliament in April 2017 on "*ESR and Agriculture*"; and one side event at the COP23 in Bonn on how to design the ESR to capture early action properly and avoid loopholes (**Annex 19**).
 - viii. In preparation for the vote on the EU ETS in the European Parliament on 14 February 2017, CAN Europe, together with Wemove.eu, Carbon Market Watch, Oxfam, Sandbag and WWF, organised a petition campaign which called on MEPs to support genuine and ambitious reform of the European ETS for the period 2021-2030 and was signed by nearly 100,000 EU citizens.
- d. **Other types of campaigning:**
- i. In October 2017 CAN Europe launched a communications campaign in relation to the ESR ahead of the ENVI Council (**Annex 20.1, 20.2. and 20.3**).
 - ii. CAN Europe has actively campaigned about the EU's 2030 climate and energy targets, as explained in its 2014 annual report (**Annex 21**). The 2014 report emphasised that through these campaigns, CAN Europe succeeded in having some influence on the outcome of the 2030 climate and energy package
 - iii. In 2016, CAN Europe played a key role in the establishment of the Coalition for Higher Ambition, an unprecedented gathering of representatives of businesses, trade unions, local authorities and NGOs. This coalition, which represents major stakeholders from across the European economy, published two statements addressed to the European Commission, EU environment ministers and Heads of State and Government (**Annex 22**), highlighting the importance of higher climate targets.
 - iv. CAN Europe closely followed the publication of the three GHG Emissions Acts in the Official Journal and informed its members about the process (see, for example, **Annex 23**).

Conclusion

For the foregoing reasons, CAN Europe 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.

20th September 2018

**Marc Willers QC
Richard Reynolds
Dr. Ulrich Wollenteit**

SCHEDULE OF ANNEXES

- Annex 1:** Moniteur Belge, 15 February 2000
- Annex 2.1:** Climate Action Network (CAN) Europe Statutes 2005
- Annex 2.2:** Moniteur Belge 12 September 2005
- Annex 3:** Moniteur Belge 28 May 2018
- Annex 4:** CAN Europe membership list –
- Annex 5:** Process for adopting CAN Europe positions.
- Annex 6:** CAN Europe Submissions to Consultations
- Annex 7:** Position paper on post-2020 EU climate and energy targets
- Annex 8:** Gigatonne Gap in the EU pledge for Paris Climate Summit
- Annex 9.1:** CAN Europe Post-Paris Briefing on relevant EU climate and energy topics – Rules for emissions from Land Use, Land Use Change and Forestry (LULUCF)
- Annex 9.2:** CAN Europe Post-Paris Briefing on relevant EU climate and energy topics – Adoption of National Targets for non-ETS emissions
- Annex 9.3:** CAN Europe Post-Paris Briefing on relevant EU climate and energy topics – Review of the 2030 Greenhouse Gas Emission Reduction Target
- Annex 10:** No cheating from the start 2030 climate targets for EU Member States
- Annex 11:** Briefing: A trick list of how countries can avoid climate action in their non-ETS sectors
- Annex 12.1:** CAN Europe’s meeting lists from EU transparency watch (list of meetings are also added)
- Annex 12.2:** Meetings of Cabinet members of Commissioner Miguel Arias Cañete with organisations and self-employed individuals
- Annex 13.1:** CAN Europe’s position on the ETS revision, December 2016

- Annex 13.2:** CAN Europe voting recommendations for the EP Plenary vote on the ETS Reform Proposal, February 2017
- Annex 14:** CAN Europe analysis on the outcome of the EU Parliament Plenary Vote of the ETS Reform
- Annex 15:** CAN Europe's internal document on Member State positions.
- Annex 16:** Letter to Environment Ministers ahead of the Council on the ETS reform
- Annex 17:** CAN Europe's analysis and the summary of the Environment Council agreement on the ETS reform –
- Annex 18:** CAN Europe workshop invitation: Enhancing climate action through effective carbon pricing and fossil fuel subsidy reform - C20 Summit, June 18-19, Hamburg Germany.
- Annex 19:** CAN Europe Side Event at COP23: Increasing action between now and 2020
- Annex 20.1:** Op-Ed of CAN Europe Director Wendel Trio in the Euroactiv - Europe's two-faced climate change game –
- Annex 20.2:** Press briefing: Europe's two-faced climate change game -
- Annex 20.3** Press release: EU governments face a litmus test for Paris Agreement commitment -
- Annex 21:** CAN Europe 2014 Annual Report
- Annex 22.1:** Statement from Coalition for Higher Ambition, 1 March 2016 -
- Annex 22.2** Statement from Coalition for Higher Ambition, 20 April 2016 -
- Annex 23.1:** E-Mail of 22. February 2018.
- Annex 23.2:** E-mail of 6. February 2018