ORDER OF THE COURT OF FIRST INSTANCE (First Chamber)
19 September 2006 *

In Case T-122/05,

Robert Benkö, residing at Kohfidisch (Austria),

Nikolaus Draskovich, residing at Güssing (Austria),

Alexander Freiherr von Kottwitz-Erdödy, residing at Kohfidisch,

Peter Masser, residing at Deutschlandsberg (Austria),

Alfred Prinz von und zu Liechtenstein, residing at Deutschlandsberg,

Marktgemeinde Götzendorf an der Leitha (Austria),

Gemeinde Ebergassing (Austria),

Ernst Harrach, residing at Bruck an der Leitha (Austria),

Schlossgut Schönbühel-Aggstein AG, established at Vaduz (Liechtenstein),

* Language of the case: German.

Heinrich Rüdiger Fürst Starhemberg'sche Familienstiftung, established at Vaduz,

represented by M. Schaffgotsch, lawyer,

applicants,

v

Commission of the European Communities, represented by M. van Beek and B. Schima, acting as Agents,

defendant,

APPLICATION for annulment of Commission Decision 2004/798/EC of 7 December 2004 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Continental biogeographical region (OJ 2004 L 382, p. 1),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (First Chamber),

composed of R. García-Valdecasas, President, J.D. Cooke and V. Trstenjak, Judges,

Registrar: E. Coulon,

makes the following

Order

Legal and factual context

1 On 21 May 1992 the Council adopted Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7; 'the Habitats Directive').

2 Article 2(1) of the Habitats Directive states that the aim of that directive is to contribute towards ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the EC Treaty applies.

3 Article 2(2) states that measures taken for its implementation are to be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.

4 According to the sixth recital in the preamble to the Habitats Directive, it is necessary, in order to ensure the restoration or maintenance of natural habitats and species of Community interest at a favourable conservation status, to designate special areas of conservation in order to create a coherent European ecological network according to a specified timetable.

5 Under Article 1(l) of the Habitats Directive, 'special area of conservation' is defined as 'a site of Community importance designated by the Member States through a statutory, administrative and/or contractual act where the necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of natural habitats and/or the populations of the species for which the site is designated'.

6 The first subparagraph of Article 3(1) of the Habitats Directive provides for the establishment of a coherent European ecological network of special areas of conservation, entitled 'Natura 2000', which is composed of sites hosting the natural habitat types listed in Annex I to the Habitats Directive, and habitats of the species listed in Annex II thereto, and which is to enable the natural habitat types and the species' habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range.

7 Annex I to the Habitats Directive lists the natural habitat types of Community interest whose conservation requires the designation of special areas of conservation; Annex II to the Habitats Directive lists the animal and plant species of Community interest whose conservation requires the designation of special areas of conservation.

8 Article 4 of the Habitats Directive provides for a three-stage procedure for the designation of special conservation areas. Under Article 4(1), each Member State is to propose a list of sites indicating which natural habitat types in Annex I and which indigenous species in Annex II to the Habitats Directive the sites host. Within three years of the notification of the Habitats Directive, that list is to be transmitted to the Commission together with information on each site.

9 Under Article 4(2) of the Habitats Directive, the Commission is to establish, from those lists, on the basis of the criteria set out in Annex III thereto and with the agreement of each Member State, a draft list of sites of Community importance. The list of the sites of Community importance is to be adopted by the Commission according to the procedure provided for in Article 21 of the Habitats Directive.

10 Article 4(4) of the Habitats Directive provides that, once a site of Community importance has been adopted in accordance with the procedure provided for in Article 4(2), the Member State concerned is to designate that site as a special area of conservation as soon as possible and within six years at the latest, establishing priorities in the light of the importance of the sites for the maintenance or restoration, at a favourable conservation status, of a natural habitat type in Annex I or a species in Annex II and for the coherence of the Natura 2000 network, and in the light of the threats of degradation or destruction to which those sites are exposed.

11 Article 4(5) of the Habitats Directive states that, as soon as a site is placed on the list of sites of Community importance established by the Commission, it is to be subject to Article 6(2), (3) and (4).

12 Article 6 of the Habitats Directive concerns measures necessary to ensure the protection of special areas of conservation. It provides:

'1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.'

13 On 7 December 2004 the Commission adopted, on the basis of Article 4 of the Habitats Directive, Decision 2004/798/EC adopting, pursuant to the Habitats Directive, the list of sites of Community importance for the Continental biogeographical region (OJ 2004 L 382, p. 1; 'the contested decision'). That list, appearing in Annex 1 to the contested decision, includes the following sites:

— AT1114813 Südburgenländisches Hügel- und Terassenland;

— AT1205A00 Wachau;

— AT1220000 Feuchte Ebene — Leithaauen;

— AT2242000 Schwarze und Weiße Sulm;

— AT3120000 Waldaist und Naarn;

— AT3122000 Oberes Donau- und Aschachtal.

14 Amongst the applicants, Peter Masser had for many years led a project concerned with the creation of a small electric power station on the site referenced AT2242000. The same also applies to Alfred Prinz von und zu Liechtenstein, who, in addition, is the property's owner.

15 The site referenced AT1220000 is on the territory of Marktgemeinde Götzendorf an der Leitha and of Gemeinde Ebergassing. Those two local authorities are situated in the *Land* of Lower Austria. They do not claim to be the owners of the plots of land on the sites designated by the contested decision.

16 Lastly, the other applicants are owners of plots of land on sites which are the subject of the contested decision and operate there agricultural and forestry holdings: Robert Benkö, Nikolaus Draskovich and Alexander Freiherr von Kottwitz-Erdödy for the site referenced AT1114813, Ernst Harrach for the site referenced AT1220000, Schlossgut Schönbühel-Aggstein AG for the site referenced AT1205A00 and Heinrich Rüdiger Fürst Starhemberg'sche Familienstiftung for the site referenced AT3122000.

Procedure

17 By application lodged at the Registry of the Court on 21 March 2005, the applicants brought the present action.

18 By separate document lodged at the Registry of the Court on 25 July 2005, the defendant raised an objection of inadmissibility pursuant to Article 114 of the Rules of Procedure of the Court of First Instance. The applicants lodged their observations on that objection on 2 September 2005.

19 By way of measures of organisation of procedure, the Court put questions in writing to the Republic of Austria and the Commission. The answers given to these questions within the time allowed were notified to all the applicants, who submitted observations in respect of them.

Forms of order sought

20 The applicants claim that the Court should:

— declare the action admissible;

— annul the contested decision in its entirety;

— in the alternative, annul the contested decision in respect of all the Austrian sites of Community importance (reference AT in Annex 1 to the contested decision);

— in the further alternative, annul the designation by the contested decision of the sites referenced AT1114813, AT2242000, AT1220000, AT1205A00, AT3122000 and AT3120000 as sites of Community importance;

— in the still further alternative, annul the designation of the sites designated in Annex 1 to the contested decision as sites of Community importance for habitats and species with a degree of representativeness and a global assessment of B, C and D (in the alternative, C and D or, in the further alternative, D only), in accordance with the standard data sheets of the Member States in respect of:

— all the sites included in the contested decision (in accordance with Annex 1),

— in the alternative, all the Austrian sites (reference AT in Annex 1),

— in the further alternative, only sites AT1114813, AT2242000, AT1220000, AT1205A00, AT3122000 and AT3120000;

— order the Commission to pay the costs.

21 The Commission contends that the Court should:

— dismiss the application as inadmissible;

— order the applicants to pay the costs.

Law

22 Pursuant to Article 114(1) of the Rules of Procedure, if a party so requests, the Court may rule on the question of admissibility without considering the merits of the case. Under Article 114(3), the remainder of the proceedings is to be oral, unless the Court decides otherwise. The Court finds that in the present case it has sufficient information from the case-file and that there is no need to open the oral procedure.

23 The Commission, after contesting the applicants' legal standing to bring proceedings, with the exception of the local authorities, and the nature of the contested decision as a measure open to challenge under the first paragraph of Article 230 EC, concentrates its objection of inadmissibility on the issue whether the decision is of direct and individual concern to the applicants within the meaning of the fourth paragraph of Article 230 EC. It is appropriate to consider this last contention first.

24 The fourth paragraph of Article 230 EC provides that '[a]ny natural or legal person may ... 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'.

25 Since it is not in dispute that the contested decision was not addressed to the applicants but only to the Member States, it is necessary to consider whether that decision is of direct and individual concern to them.

26 Since the legal situation of those applicants who are private individuals differs appreciably from that of the local authority applicants, which are not owners of plots of land on sites designated by the contested decision as sites of Community importance, it is appropriate to consider the situation of the two categories of applicants separately.

The issue of concern to private individual applicants

Arguments of the parties

27 After classifying the content of the contested decision as general rules of a legislative character and therefore the contested decision itself as a measure of general

application, the Commission maintains that the private individual applicants are not directly concerned within the meaning of the fourth paragraph of Article 230 EC. Since it is the legal situation and not the factual situation which is to be taken into consideration (Joined Cases T-172/98, T-175/98 to T-177/98 *Salamander and Others* v *Parliament and Council* [2000] ECR II-2487, paragraph 62), a possible depreciation in the assets of the private individual applicants brought about by the contested decision would not be sufficient grounds for the decision to be of direct concern to them.

28 According to the Commission, the provisions at issue are essentially provisions similar to those of a directive, which is not capable of imposing obligations on individuals. Thus, Article 6(2) to (4) of the Habitats Directive creates obligations only for the Member States and not for individuals.

29 The Commission observes that, in order to determine whether a measure is of direct concern to an applicant, it is necessary to ascertain whether the content of action by the Member States may be inferred from the contested provisions, without the Member States having a discretion. However, in the present case, it could not be determined when and, where appropriate, how the contested decision alters the private individual applicants' rights. Article 6(2) of the Habitats Directive allows the Member States discretion on at least two points: the question of knowing when a disturbance could be significant and the question of determining appropriate steps to avoid deteriorations and disturbances. Likewise, Article 6(3) and (4) of the Habitats Directive leaves discretion to the Member States in that it is only in the context of a specific plan or project that the requirement of an assessment of compatibility with conservation aims can have legal effects.

30 In relying, by analogy, on the order in Case T-223/01 *Japan Tobacco and JT International* v *Parliament and Council* [2002] ECR II-3259, the Commission asserts that Article 6(2) of the Habitats Directive does not put private individual applicants under any restrictions. According to the Commission, before restrictions on individuals under the Habitats Directive are conceivable, the Member State must always start by assessing and approving the need for intervention and then deciding

on the type of intervention which is appropriate. For example, the Member State may prohibit the use of certain real property completely, approve it, subject or not to fees and conditions, or by itself or through third parties prescribe measures designed to compensate those disadvantaged by the use at issue. According to the Commission, it follows from all of the foregoing that private individual applicants are not directly concerned by the contested decision.

31 The private individual applicants consider that it is of direct concern to them, since the Member States have no discretion concerning fundamental decisions. First, the contested decision lays down the selection and the definition of the sites. Secondly, the Habitats Directive lays down conclusive conservation objectives, leaving the Member States no freedom of action. According to the private individual applicants, Article 6(2) of the Habitats Directive provides for a prohibition on deterioration.

32 They concede that, under Article 6(2) of the Habitats Directive, Member States may take the steps which they consider appropriate to satisfy its objectives, but stress that those have already been fixed. According to the private individual applicants, in order to implement the contested decision, the Member States must adopt measures which disfavour them, since the Member States are at the very least obliged to transpose, without any discretion, the prohibition on deterioration within the meaning of Article 6(2) of the Habitats Directive, and the obligation to carry out an assessment of the implications for nature against the private individual applicants under Article 6(3) of the Habitats Directive. The acceptance of a plan or a project is subject to the condition of scientific certainty that there will be no negative repercussions, something which corresponds to a scientific assessment and not to a discretion. In addition, the Habitats Directive does not allow the Member States to make the rules more flexible or to derogate from them. That would lead to negative consequences for the private individual applicants.

33 The private individual applicants add that individuals are to respect the protection objectives laid down within the framework of the Habitats Directive and the obligations which flow therefrom. Individuals will not be in a position to evade the standards and objectives set by the Habitats Directive and the contested decision by invoking the failure to adopt transposed national rules, which is a mere question of form.

34 The local authority applicants as well as the private individual applicants counter the Commission's view that, should the present action be dismissed as inadmissible, the applicants would retain the possibility of raising the issue of the illegality of the contested decision before the national courts, which are bound to refer the issue of the legality of the contested decision to the Court of Justice pursuant to Article 234 EC, by stating that that procedural route would not allow the clarification of questions of fact and, since it would take approximately six years, would take too long. The Member States would in effect be required to transpose the Habitats Directive and to apply the relevant legislation to areas which were erroneously designated as sites of Community importance, so that the review of the legality of the contested decision by preliminary reference would come too late. They consider therefore that they would be denied effective judicial protection, in disregard of the principles of legal certainty and the effectiveness of Community law.

Findings of the Court

35 The Court's case-law shows that, for a person to be directly concerned by a Community measure, the latter must directly affect the legal situation of the individual and leave no discretion to the addressees of that measure who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from Community rules without the application of other intermediate rules (see Case C-386/96 P *Dreyfus* v *Commission* [1998] ECR I-2309, paragraph 43 and the case-law cited, and *Salamander and Others* v *Parliament and Council*, paragraph 52).

36 The same applies where the possibility for addressees not to give effect to the Community measure is purely theoretical and their intention to act in conformity with it is never in doubt (*Dreyfus* v *Commission*, paragraph 44).

37 The private individual applicants assert, inter alia, that the system of protection provided for in Article 6(2) to (4) of the Habitats Directive, which the contested decision applies to their lots of land, entails direct negative consequences for them, such as the prohibition on deterioration and the duty to evaluate the implications of projects carried out on site.

38 However, whilst it is true that Article 4(5) of the Habitats Directive provides that once a site is included in the list referred to in subparagraph 3 of Article 4(2), it becomes subject to the provisions of Article 6(2) to (4) of the Habitats Directive, it is necessary to ascertain whether or not the latter provisions leave some measure of discretion to the national authorities.

39 Article 6(2) of the Habitats Directive imposes a duty on Member States to take, in the special areas of conservation, 'appropriate steps to avoid ... the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive'. The adjective 'appropriate' used in that provision clearly indicates that Member States must determine on a case-by-case basis whether measures must be taken and, if so, what types of measures should be taken in order to avoid the deterioration of natural habitats and habitats of species and the disturbances affecting the species for which the areas were designated pursuant to Article 6(2) of the Habitats Directive. Moreover, appropriate measures to avoid the disturbances affecting the habitats and the species for which the areas were designated should be taken only on condition that 'such disturbance could be significant in relation to the objectives of this Directive'. The question whether a disturbance could be significant in relation to the objectives of the directive is thus left to the discretion of the national authorities.

40 It follows from those considerations that, contrary to the contentions of the private individual applicants, Article 6(2) of the Habitats Directive leaves discretion to the Member States (see, to that effect, the Opinion of Advocate General Kokott giving rise to the judgment in Case C-127/02 *Waddenvereniging and Vogelbeschermingsvereniging* [2004] ECR I-7405, at I-7409, point 133).

41 Under the first sentence of Article 6(3) of the Habitats Directive, any plan or project not directly connected with or necessary to the management of a site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, is to be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. It follows from that provision that only plans or projects which could significantly affect a site are to be subject to an assessment. Article 6(3) of the Habitats Directive makes the requirement for an appropriate assessment of the implications of a plan or project conditional on there being a probability or a risk that it will have a significant effect on the site concerned (Case C-6/04 *Commission* v *United Kingdom* [2005] ECR I-9017, paragraph 54).

42 Such a risk exists if it cannot be excluded on the basis of objective information that the plan or project will have a significant effect on the site concerned (*Waddenvereniging and Vogelbeschermingsvereniging*, paragraphs 44 and 45, and *Commission* v *United Kingdom*, paragraph 54). Nevertheless, the question whether or not and on the basis of which criteria a plan or a project fulfils that condition necessarily involves an appraisal on the part of the national authorities (see, to that effect, the Opinion of Advocate General Tizzano in Case C-98/03 *Commission* v *Germany* [2006] ECR I-53, at I-57, point 38). It follows that the Member States are not required to subject all plans or projects which are in the names of the private individual applicants to appropriate assessment of their implications for the site concerned.

43 Where the national authorities consider that a plan or project is capable of significantly affecting the site concerned, they are to proceed, under the first sentence of Article 6(3) of the Habitats Directive, in conjunction with the 10th recital in the preamble thereto, to an appropriate assessment of the implications of the said plan or project for the site concerned. The adjective 'appropriate' used in that provision indicates that the Member States have some discretion as to the type of assessment to carry out. According to the second sentence of Article 6(3) of the Habitats Directive, '[i]n the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public'. It is incumbent on national authorities, having regard to the conclusions of the assessment of the implications of the plan or project on the site concerned, to approve such a plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned. In that respect, the national authorities are to enjoy discretion, which they are to exercise according to the rules laid down by Article 6(3) of the Habitats Directive (see, to that effect, *Waddenvereniging and Vogelbeschermingsvereniging*, paragraphs 67 and 70).

44 Moreover, Article 6(4) of the Habitats Directive, to which the second sentence of Article 6(3) refers, provides, subject to certain conditions, for the possibility of authorising a plan or project owing to imperative reasons of overriding public interest, even where there is a negative assessment of the implications for the site for the purposes of Article 6(3) of the Habitats Directive. Clearly, the national authorities have some discretion as to whether a plan or a project is to be carried out for imperative reasons of overriding public interest.

45 Consequently, the Member States are not required to deny permission for plans or projects which are in the names of the private individual applicants. A potential denial of permission for one of those projects would result not from the Habitats Directive, but from the decision of each Member State to implement the contested decision and the Habitats Directive, case-by-case in one way rather than in another (see, to that effect, the orders in Case T-136/04 *Freiherr von Cramer-Klett and Rechtlerverband Pfronten* v *Commission* [2006] ECR II-1805, paragraphs 47 and 52; Case T-137/04 *Mayer and Others* v *Commission* [2006] ECR II-1825, paragraphs 60

and 65; and Case T-150/05 *Sahlstedt and Others* v *Commission* [2006] ECR II-1851, paragraphs 54 and 59. See also, to that effect and by analogy, *Salamander and Others* v *Parliament and Council*, paragraph 68, and the order in *Japan Tobacco and JT International* v *Parliament and Council*, paragraph 51 et seq.).

46 It follows from the foregoing that the inclusion of a site in the list of sites of Community importance gives no precise indication concerning the measures which are to be taken by the national authorities in accordance with the provisions of the Habitats Directive.

47 The private individual applicants claim that the contested decision will lead to serious economic consequences and legal problems, namely an increase in administration costs and the depreciation in the value of their real property. However, even if those consequences are the direct result of the Habitats Directive and the contested decision rather than of the anticipation by economic operators of their application by the Member States, they do not in any event influence the applicants' legal situation, but only their factual situation (see, to that effect, *Salamander and Others* v *Parliament and Council*, paragraph 62; and the orders in *Freiherr von Cramer-Klett and Rechtlerverband Pfronten* v *Commission*, paragraph 47; *Mayer and Others* v *Commission*, paragraph 60; and *Sahlstedt and Others* v *Commission*, paragraph 54).

48 The private individual applicants as well as the local authority applicants therefore rely essentially on their right to effective judicial protection.

49 In that respect, it is important to note that, on the one hand, by Articles 230 EC and 241 EC, and, on the other, by Article 234 EC, the Treaty has established a complete system of legal remedies and procedures designed to ensure judicial review of the legality of acts of the institutions, and has entrusted such review to the Community Courts (see, to that effect, Case 294/83 *Les Verts* v *Parliament* [1986] ECR 1339,

paragraph 23). Under that system, where natural or legal persons cannot, by reason of the conditions for admissibility laid down in the fourth paragraph of Article 230 EC, directly challenge Community measures of general application, they are able, depending on the case, either indirectly to plead the invalidity of such acts before the Community Courts under Article 241 EC or to do so before the national courts and ask them, since they have no jurisdiction themselves to declare those measures invalid (Case 314/85 *Foto-Frost* [1987] ECR 4199, paragraph 20), to make a reference to the Court of Justice by way of preliminary rulings on validity (Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677, paragraph 40).

50 Thus, it is for the Member States to establish a system of legal remedies and procedures which ensure respect for the right to effective judicial protection (*Unión de Pequeños Agricultores* v *Council*, paragraph 41).

51 In that context, in accordance with the principle of loyal cooperation laid down in Article 10 EC, national courts are required, so far as possible, to interpret and apply national procedural rules governing the exercise of rights of action in a way that enables natural and legal persons to challenge before the courts the legality of any decision or other national measure relative to the application to them of a Community act of general application, by pleading the invalidity of such an act (*Unión de Pequeños Agricultores* v *Council*, paragraph 42).

52 Therefore, whilst the applicants cannot apply for the annulment of the contested measure, they could challenge the national measures implementing the Habitats Directive and the contested decision affecting them and, in that context, they may still plead before the national courts adjudicating in accordance with Article 234 EC that the measure is unlawful (see, to that effect, Case C-70/97 P *Kruidvat* v *Commission* [1998] ECR I-7183, paragraph 49, and the order in Case T-45/00 *Conseil national des professions de l'automobile and Others* v *Commission* [2000] ECR II-2927, paragraph 26).

53 It follows from the foregoing that the contested decision is not of direct concern to the private individual applicants, without it being necessary to consider whether it is of individual concern to them.

The issue of concern to local authority applicants

Arguments of the parties

54 On the question of whether the local authority applicants are individually concerned, the Commission, after stressing the differences between the present case and those giving rise to the judgments in Case C-309/89 *Codorníu* v *Council* [1994] ECR I-1853 and in Case T-13/99 *Pfizer Animal Health* v *Council* [2002] ECR II-3305, claims that the general interest that a legal person such as a local authority, as an entity responsible for economic and social affairs within its jurisdiction, may have in obtaining a result that is favourable for its economic prosperity is not sufficient on its own to enable it to be regarded as being individually concerned for the purposes of the fourth paragraph of Article 230 EC (Case C-142/00 P *Commission* v *Nederlandse Antillen* [2003] ECR I-3483, paragraph 69). According to the Commission, every measure of Community law of general application imposing obligations on Member States may, depending on the institutional structure of the latter, mean that various national local authorities are required to honour those obligations. In the present case, the situation of the local authority applicants does not differ from that of the other national public law bodies territorially competent in respect of sites designated as sites of Community importance in the contested decision.

55 The local authority applicants Marktgemeinde Götzendorf an der Leitha and Gemeinde Ebergassing plead their position as local authorities whose inhabited areas are threatened by the designation of conservation areas and the objectives of protection. Those local authorities are individually concerned as local authorities

responsible for the management and protection of inhabited areas to which the contested decision relates. By reason of the contested decision, they are subject — arbitrarily and wrongly — to the legal regime of the Habitats Directive, leading to an infringement of their institutional competences.

56 The local authority applicants rely, in addition, on *Codorníu* v *Council*, and on their right to be heard.

57 Lastly, they plead, on the basis of the considerations set out at paragraph 34 above, that the dismissal of the present action as inadmissible will not guarantee them sufficient judicial protection. The Commission maintains, on the basis of the considerations set out in paragraph 34 above, the opposite view.

Findings of the Court

58 It is necessary to verify whether the local authority applicants are concerned by the contested decision, 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 (Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, at 107, and *Commission* v *Nederlandse Antillen*, paragraph 65).

59 The local authority applicants allege that their individual concern is based, inter alia, on their competence for the management and protection of the territory on which sites designated by the contested decision are to be found.

60 However, as the Republic of Austria states in its response of 6 April 2006 to a question asked by the Court, the provisions of Article 6(2) to (4) of the Habitats Directive fall, according to Austrian law, within the legislative competence of the *Länder*, except for the *Länder* of Vienna and Upper Austria, in respect of which that competence belongs, at least in part and in particular cases, to the local authorities. The applicants, in their statement of 16 May 2006 concerning the reply of the Republic of Austria, do not challenge this analysis. It follows from this that the local authority applicants, which are situated in the *Land* of Lower Austria, are not competent for the implementation of Article 6(2) to (4) of the Habitats Directive. It must therefore be ruled out that such a competence relates to them individually within the meaning of the fourth paragraph of Article 230 EC.

61 In any event, even if the local authority applicants were competent for the implementation of the Habitats Directive, that competence could not distinguish them individually within the meaning of the fourth paragraph of Article 230 EC. Their legal situation in that respect is indistinguishable from that of all other national authorities responsible for implementing the Habitats Directive and, in particular, Article 6(2) to (4) thereof.

62 It is true that the authorities competent at national level for the implementation of the Habitats Directive are required, under Article 6 of the Habitats Directive, to take the conservation steps necessary, inter alia those which aim to avoid the deterioration of natural habitats and the habitats of species (paragraph 2) and those which aim to assess appropriately the implications on the designated sites of plans or projects capable of having a significant effect on them (paragraph 3). However, the definition of sites of Community importance in the contested decision is of a general and abstract nature in so far as it is directed not at specific persons, but at pieces of territory. Whilst the latter are very restricted, they are however determined solely by reference to the name, surface area and geographical coordinates of the site, which are general and abstract criteria.

63 In the light of the general and abstract character of the definition of sites designated in the contested decision, the possible influence of obligations arising from the Habitats Directive on the exercise of the competence of the local authority applicants for the management and protection of the territory is exercised in the same way in respect of all other local authorities whose territory includes a site designated by the contested decision. In addition, as the Commission rightly points out in its objection of inadmissibility, every measure of Community law of general application imposing obligations on Member States may, depending on the institutional structure of the latter, mean that various national local authorities are required to honour those obligations. Therefore, the present situation does not distinguish the local authority applicants individually at all in comparison with the situation of other national public law bodies which are territorially competent in respect of sites designated as sites of Community importance in the contested decision.

64 In this respect, it is necessary to note that the general interest that a regional or local administrative entity, as an authority responsible for economic and social affairs within its jurisdiction, may have in obtaining a result that is favourable for its economic prosperity is not sufficient on its own to enable it to be regarded as being concerned, for the purposes of the fourth paragraph of Article 230 EC, by measures of general application (see, to that effect, Case C-452/98 *Nederlandse Antillen* v *Council* [2001] ECR I-8973, paragraph 64, and *Commission* v *Nederlandse Antillen*, paragraph 69).

65 The local authority applicants rely on *Codorníu* v *Council* as the basis of their standing to bring proceedings. However, they have not established that the contested decision has produced an adverse effect such as to prevent the exercise of a specific right in the sense of that judgment.

66 The local authority applicants allege that the contested decision has arbitrarily and wrongly subjected them to the legal regime of the Habitats Directive. However, that alleged error by the Commission in the designation of a part of the territory of the local authority applicants as sites of Community importance concerns only the

merits of the present action and cannot therefore distinguish the local authority applicants individually for the purposes of the fourth paragraph of Article 230 EC, as interpreted by the case-law.

67 Moreover, the local authority applicants do not possess the right to participate in the procedure which could distinguish them individually as contemplated in Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219, paragraph 22, or Joined Cases T-528/93, T-542/93, T-543/93 and T-546/93 *Métropole télévision and Others* v *Commission* [1996] ECR II-649, paragraphs 61 and 62).

68 In that respect, it is settled case-law that — in principle — neither the procedure for drawing up legislative measures nor those legislative measures themselves, as measures of general application, require, by virtue of the general principles of Community law such as the right to a hearing, the participation of the persons affected, since their interests are deemed to be represented by the political authorities called upon to adopt those measures (orders in Case T-109/97 *Molkerei Großbraunshain and Bene Nahrungsmittel* v *Commission* [1998] ECR II-3533, paragraph 60, and Case T-114/99 *CSR Pampryl* v *Commission* [1999] ECR II-3331, paragraph 50).

69 It also follows from the case-law (Case C-48/96 P *Windpark Groothusen* v *Commission* [1998] ECR I-2873, paragraph 47; see also, to that effect, Case C-135/92 *Fiskano* v *Commission* [1994] ECR I-2885, paragraphs 39 and 40) that a person's right to a hearing before adoption of an act concerning that person arises only where the Commission contemplates the imposition of a penalty or the adoption of a measure likely to have an adverse effect on that person's legal position. The right to be heard in the context of an administrative procedure affecting a specific person cannot be transposed to the context of a legislative process leading to the adoption of measures of general application. The line of settled case-law in competition cases, according to which the observations of undertakings suspected of having infringed rules of the Treaty must be heard before any measures, particularly penalties, are

taken against them, must be considered in its proper context and cannot be extended to the context of a Community legislative process culminating in the enactment of legislation involving a choice of economic policy and applying to the generality of the traders concerned (Case T-521/93 *Atlanta and Others* v *EC* [1996] ECR II-1707, paragraph 70).

70 The local authority applicants, as well as the private individual applicants, thus rely, essentially, on their right to effective judicial protection as the basis of their standing to bring proceedings.

71 For the reasons already set out in paragraph 48 et seq. of this order, that argument cannot be accepted.

72 It follows from all the foregoing that the contested decision is not of individual concern to the local authority applicants, without it being necessary to examine whether it is of direct concern to them.

73 It follows from all the foregoing that the application must be dismissed as inadmissible.

Costs

74 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby orders:

1. **The application is dismissed as inadmissible.**

2. **The applicants shall bear their own costs and pay those incurred by the Commission.**

Luxembourg, 19 September 2006.

E. Coulon

Registrar

R. García-Valdecasas

President