Appeal brought on 9 December 2016 by Greenpeace Energy eG against the order of the General Court (Fifth Chamber) of 26 September 2016 in Case T-382/15, *Greenpeace Energy eG* v *European Commission*

(Case C-640/16 P)

(2017/C 038/25)

Language of the case: German

Parties

Appellant: Greenpeace Energy eG (represented by: D. Fouquet, S. Michaels and J. Nysten, Rechtsanwälte)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the order of the General Court of 26 September 2016 in Case T-382/15, *Greenpeace Energy eG*, in regard to the appellant,

— refer the case back to the General Court for the purposes of a decision,

— order the respondent to pay the full costs of the proceedings, including legal and travel costs.

Grounds of appeal and main arguments

The appellant raises the following five grounds of appeal in support of its appeal:

1. The General Court evidently took the view that the third variation in the fourth paragraph of Article 263 TFEU requires that regulatory acts that are challengeable pursuant to that provision must have general application. Such a legal position must, however, be regarded as erroneous in law, especially in view of the wording as well as the origin of the provision, including the intention of the European Union legislature.

2. The General Court appears to assume that the requirement of direct concern in the case of legal acts which entail no implementing measures involves two separate criteria that are subject to separate examination. In the present case, however, that assumption must be refuted since, on the one hand, no further implementing measures within the meaning of that provision, neither through the United Kingdom nor through the European Commission, are necessary and, on the other hand, immediate effects on the market occur with the granting of aid, that is to say, immediate effects on competition are felt by the appellant.

3. The General Court criticises the inadequacy of the appellant's submission that it is directly and individually concerned. However, it thereby misjudges the information submitted or, at the very least, fails to take it sufficiently into account.

4. The General Court appears to take the view that a possibility of individualisation under the second variation in the fourth paragraph of Article 263 TFEU following the *Plaumann* case-law must already be rejected if there may be other undertakings that are affected by the effects on competition of the granting of aid in the same way as the appellant. In view of the case-law, however, in particular in Case C-309/89 *Codorniu*, this appears to be a legally incorrect, and, moreover, a restrictive, interpretation. Furthermore, the appellant refers to its submissions concerning the facts in the application, which make clear a sufficient possibility of individualisation but which clearly were not, or were not adequately, taken into account by the General Court.

5. The General Court appears to assume that effective legal protection against a Commission decision authorising aid can be provided through national courts. This would mean that the EU legislature, by imposing an obligation on the Member States to provide sufficient remedies (Article 19(1), second subparagraph, TEU), wishes to leave the review of individual acts of the EU institutions, such as the European Commission, to the courts of the Member States. This view cannot, however, be followed, whether by reason of the case-law of the Court of Justice on EU acts and the existing remedies or, in particular, by reason of the division of powers between national courts and the European Commission in State-aid law, and must accordingly be treated as constituting an error of law.