

Brussels, 02 May 2024

**TO THE PRESIDENT AND MEMBERS
OF THE GENERAL COURT OF THE EUROPEAN UNION**

APPLICATION FOR LEAVE TO INTERVENE

Pursuant to Articles 142 and 143 of the General Court's Rules of Procedure and
Article 40 of the Statute of the Court of Justice

Lodged by:

The Renewable Fuels Association, a membership corporation organized under the laws of the District of Columbia, U.S.A., having its principal office at 601 Pennsylvania Ave NW, Suite 200, North Building, Washington D.C. 20004, U.S.A.,

Growth Energy, a corporation organized under the laws of the District of Columbia, U.S.A., having its principal office at 1401 Eye Street NW, Suite 1220, Washington D.C. 20005, U.S.A.,

U.S. Grains Council, a corporation organized under the laws of the State of Illinois, U.S.A., having its principle office at 20 F Street NW, Suite 900, Washington D.C. 20001, U.S.A., and

LanzaJet, a corporation organized under the laws of the State of Delaware, U.S.A., having its principal office at 520 Lake Cook Road, Suite 680, Deerfield, Illinois 60015, U.S.A.,

represented by Mr. Brian Hartnett and Mr. William Sparks, both members of the Brussels Bar, and Mr. Oliver Geiss, member of the Frankfurt Bar, who are authorized to accept service at the law firm Squire Patton Boggs (UK) LLP, Avenue Louise 523, 1050 Brussels, Belgium, or via e-Curia,

INTERVENERS

In the proceedings relating to:

Case T-45/24

**ePURE and Pannonia Bio
v
European Parliament and Council**

brought before the General Court on 24 January 2024 seeking the annulment of Article 3, paragraph 8(c), Article 4, paragraphs 1, 4 and 5 as well as Annex I of Regulation (EU) 2023/2405

of the European Parliament and of the Council of 18 October 2023 on ensuring a level playing field for sustainable air transport, in so far as they exclude biofuels produced from food and feed crops and intermediate crops from the definition and/or minimum shares of sustainable aviation fuels and impose a minimum share for synthetic aviation fuels.

I. INTRODUCTION

1. This Application to Intervene is filed before the General Court of the European Union (“the General Court”) by the Renewable Fuels Association (“the RFA”), Growth Energy, the U.S. Grains Council and LanzaJet in connection with Case T-45/24, *ePURE and Pannonia Bio v Parliament and Council* (“the Main Proceedings”).¹ The Application to Intervene is submitted pursuant to Article 40, paragraph two of the Statute of the Court of Justice of the European Union (“the Court”) (“the Statute”).
2. In this Application to Intervene, the RFA, Growth Energy and the U.S. Grains Council shall be referred to together as “the Trade Associations”. The Trade Associations and LanzaJet shall be referred to together as “the Interveners”.
3. In the Main Proceedings, the European Producers Union of Renewable Ethanol (“ePure”) and Pannonia Bio Zrt. (“Pannonia”) (together “the Applicants”) seek the annulment of Article 3, paragraph 8(c), Article 4, paragraphs 1, 4 and 5, and Annex I (“the Contested Provisions”) of Regulation (EU) 2023/2405 of the European Parliament and of the Council of 18 October 2023 on ensuring a level playing field for sustainable air transport (“the ReFuelEU Aviation Regulation” or “the Regulation”), in so far as they exclude biofuels produced from food and feed crops and intermediate crops (together “crop-based biofuels”) from the definition and/or minimum shares of sustainable aviation fuels in the Regulation and impose a minimum share for synthetic aviation fuels.
4. The Contested Provisions, which are at issue in the Main Proceedings, restrict the supply of crop-based biofuels to the EU aviation sector. The Trade Associations represent the interests of American producers and suppliers of crop-based biofuels and other stakeholders in the biofuel industry. LanzaJet is a producer of sustainable aviation fuel made from crop-based ethanol, a type of biofuel, among other low carbon intensity ethanol feedstocks. For this reason, the Interveners seek leave and have standing to

¹ Notice of Action brought on 24 January 2024 by the European Producers Union of Renewable Ethanol and Pannonia Bio Zrt., published in the Official Journal of the European Union on 11 March 2024, Document 62024TN0045, OJ C, C/2024/1885, 11.3.2024, attached as **Annex I.1**.

intervene in support of the form of order sought by the Applicants, namely the annulment of the Contested Provisions.

5. As explained in Section IV of this Application to Intervene, the outcome of the Main Proceedings will have a significant effect on the members of the Trade Associations and LanzaJet. The Main Proceedings will address the question of whether crop-based biofuels – such as the ethanol that the Trade Associations’ members produce and export to the EU, and which LanzaJet uses to make sustainable aviation fuel – can *de facto* be excluded from sale to the EU aviation industry. The Main Proceedings will thus determine the fundamental issue of whether the members of the Trade Associations and LanzaJet can be denied access to an entire market in the EU, or whether the Contested Provisions that restrict such access should be annulled. The judgment in the Main Proceedings will also determine whether crop-based biofuels will continue to have the protections and legal classification granted to them under other acts of EU law, notably the successive iterations of the Renewable Energy Directive (“RED”), or whether the Regulation may remove such protections and alter such classification in relation to the aviation sector.
6. The Interveners are represented by Mr. Brian Hartnett and Mr. William Sparks, both members of the Brussels Bar, and Mr. Oliver Geiss, member of the Frankfurt Bar, who are authorized to accept service at the law firm Squire Patton Boggs (UK) LLP, Avenue Louise 523, 1050 Brussels, Belgium, or via e-Curia.² Annexed to this Application to Intervene are copies of the bar certificates of the attorneys of record, Powers of Attorney, and copies of the relevant corporate documents identifying the Interveners (**Annexes I.2 to I.7**).

II. THE INTERVENERS

7. The RFA, Growth Energy and the U.S. Grains Council are all trade associations that represent members of the American biofuels industry. More specifically, they represent *inter alia* American producers of renewable ethanol, which is a fuel produced from biomass (renewable organic material containing starches, sugars or cellulosic

² Alternatively, notices to the attorneys of the Interveners may be sent by email to brian.hartnett@squirepb.com, will.sparks@squirepb.com and oliver.geiss@squirepb.com.

materials), and is therefore a ‘crop-based biofuel’. LanzaJet is a producer of sustainable aviation fuel derived from ethanol, known as ‘alcohol-to-jet’ or ‘ATJ’, and the only active producer of its kind in the world. In the following section, we will briefly describe the American ethanol industry, including with regard to EU imports of American ethanol, before describing in more detail each of the Interveners.

1. The American Ethanol Industry

8. The U.S.A. is the world’s largest producer and exporter of ethanol, and accounts for almost half of all ethanol produced worldwide. Total global ethanol production in 2023 was c. 119 billion litres, of which c. 58.1 billion litres (c. 49%) was produced in the U.S.A. American ethanol production is more than ten times that of the EU, where total production in 2023 was c. 4.8 billion litres.³
9. By far the majority of American ethanol (98%) uses corn as a feedstock – hence, it is a ‘crop-based biofuel’.⁴ Ethanol is used primarily in the transport sector as a replacement for fossil fuels, in order to reduce greenhouse gas (“GHG”) emissions. Both the U.S.A. and the EU have for many years set targets for the replacement of conventional fossil fuel with biofuels for this purpose. As explained below, however, until recently, the EU only set specific minimum use obligations for biofuels in the road transport sector; prior to the adoption of the Regulation, there were no minimum use or supply obligations for biofuels in the aviation sector.
10. American ethanol producers, whom the Trade Associations represent, are a significant source of the biofuels consumed in the EU. In 2023, the EU imported c. 483 million litres (c. 127.6 million gallons) of ethanol from the U.S.A.⁵ Export sales to the EU generate substantial revenues for American ethanol suppliers, with an aggregate value

³ All figures are taken from the International Energy Agency: <https://www.iea.org/data-and-statistics/charts/share-of-global-ethanol-output-by-country-between-2017-and-2023> (website accessed on 20/03/2024), attached as **Annex I.8**.

⁴ See RFA, ‘2024 Ethanol Industry Outlook’, pages 3 and 25: https://d35t1syewk4d42.cloudfront.net/file/2666/RFA_Outlook_2024_full_final_low.pdf, attached as **Annex I.9**.

⁵ See RFA, ‘2023 U.S. Trade Statistical Summary’, page 3: <https://d35t1syewk4d42.cloudfront.net/file/2656/2023%20Ethanol%20Trade%20Summary.pdf> attached as **Annex I.10**.

in 2023 of c. €308.3 million (c. \$333.4 million).⁶ The strong trade flows from the U.S.A. have been stimulated by favourable prices in the EU, which make it a highly attractive market for American ethanol producers. According to the European Commission (“the Commission”), imports of ethanol from the U.S.A. to the EU increased by 96% between 2021 and 2022, and the EU is currently the U.S.A.’s third biggest ethanol export market.⁷

2. The Trade Associations

2.1 The RFA

11. The RFA was established in 1981 to protect and promote the interests of American ethanol producers. It was the first national trade association for the biofuel industry and was created shortly after the U.S. Environmental Protection Agency first allowed the blending of 10% ethanol with gasoline for motor fuel, which effectively created the market for ethanol as a replacement for fossil fuel in the American transport sector.
12. The RFA currently has 48 producer members, who together represent 31% of total American ethanol output by volume. A full list of the RFA’s members, identifying those that produce and supply crop-based biofuel, is attached as **Annex I.11**. Total ethanol production by the RFA’s members in 2023 exceeded 18 billion litres, equivalent to c. 31% of total U.S. production. The RFA’s members also export ethanol to the EU, and supplied c. 265 million litres of ethanol to the EU market in 2021-2023.
13. As well as representing ethanol producers, the RFA also has over 100 associate members and supporting members, which are not ethanol producers but are stakeholders at other levels of the biofuel value chain, such as suppliers of feedstock (*e.g.*, corn), suppliers of inputs and processing aids, and businesses involved in blending, marketing and retail sales of transport fuels.

⁶ See United States Department of Agriculture Foreign Agricultural Service database: <https://apps.fas.usda.gov/gats/default.aspx?publish=1> (website accessed on 26/03/24). Currency converted at European Central Bank average exchange rate (2023): US \$1 = €0.9229.

⁷ See Commission Implementing Regulation (EU) 2023/1777 of 14 September 2023 introducing retrospective Union surveillance of imports of renewable ethanol for fuel, Document 32023R1777, OJ L 228, 15.9.2023, p. 247.

2.2 *Growth Energy*

14. Growth Energy was founded in 2008 to represent biofuel producers and supporters of biofuels who are working to improve consumers' fuel choices, grow America's economy, and improve the environment for future generations.
15. Growth Energy currently has 97 producer members in the U.S.A. In total, Growth Energy's members produced more than 35 billion litres of ethanol in 2023, equivalent to c. 60% of total U.S. production. A full list of Growth Energy's members, identifying those that produce and supply crop-based biofuel, is attached as **Annex I.12**. As well as being consumed domestically, the ethanol produced by Growth Energy's members is exported to the EU, and the members supplied c. 763 million litres of ethanol to the EU market in the period 2021-2023.
16. Additionally, Growth Energy's network includes 119 associate members. The latter are all businesses associated with the ethanol production process and support the ethanol industry along the value chain.

2.3 *The U.S. Grains Council*

17. The U.S. Grains Council was founded in 1960 with the purpose of developing export markets for U.S. barley, corn, sorghum and related products, including ethanol. The Council has a full-time presence in 28 locations and operates programs in more than 50 countries, including in the EU, and has seven Advisory Teams (A-Teams) consisting of grain producers and agribusiness representatives that identify opportunities, set priorities and chart the course for the Council's activities every year, with one dedicated A-Team for Ethanol.
18. The U.S. Grains Council's membership is comprised of over 140 organizations, including grain and other feedstock producers, ethanol producers, agribusinesses, and producer groups. Both the RFA and Growth Energy are members of the U.S. Grains Council, hence the Council represents the interests of both those associations and their respective members in relation to export trade and related matters. The Council also has members in their own right that produce crop-based biofuel, such as Green Plains Inc. (the third largest ethanol producer in America) and Valero Energy Corporation.

Through its own members and through the members of the RFA, Growth Energy and a third trade association, the American Coalition for Ethanol, which is also a member of the Council, the U.S. Grains Council represents almost the totality of ethanol producers in America.

3. LanzaJet

19. LanzaJet is a U.S. incorporated company that was launched in 2020 by LanzaTech, a provider of carbon recycling technology, a leading Canadian energy company, Suncor Energy Inc., and Mitsui & Co, Inc., a leading Japanese trading and investment company. It is currently owned by those investors as well as British Airways, Shell Ventures, Microsoft Corporation, and Southwest Airlines. LanzaJet is the world's first and only active producer of sustainable aviation fuel that uses ethanol as a feedstock, known as 'alcohol-to-jet' or 'ATJ'. ATJ produced by LanzaTech was used to fuel the first ever transatlantic flight powered by ATJ sustainable aviation fuel, from Orlando to London in 2018, and the first ever transpacific flight powered by sustainable aviation fuel, from Seattle to Tokyo in 2019.
20. LanzaJet opened the world's first ATJ production facility on 24 January 2024 and is expected to begin producing sustainable aviation fuels in Q2 2024.⁸ The facility, which is located in Soperton, Georgia, U.S.A., will produce 37.85 million litres (10 million gallons) of SAF and renewable diesel (as a coproduct) per year from low carbon, sustainable, and certified ethanol. The Soperton facility will primarily use crop-based ethanol as feedstock due to the lack of current availability of other forms of low carbon ethanol feedstock. In addition, LanzaJet and its partners are constructing two more ATJ facilities in the United Kingdom and further exploring plans for facilities in the EU, but have not announced any EU projects to date. Due to feedstock restrictions under the ReFuelEU Aviation Regulation, EU facilities are likely to be significantly smaller and less cost effective than facilities planned in other parts of the world, including in the U.S., Australia, and India, despite LanzaJet's strong interest in opening facilities in the EU.

⁸ See <https://www.lanzajet.com/news-insights/lanzajet-celebrates-grand-opening-of-freedom-pines-fuels-plant-the-worlds-first-ethanol-to-sustainable-aviation-fuel-production-facility> (website accessed on 30/04/2024).

21. LanzaJet is a full (producer) member of the RFA and an associate member of Growth Energy.

III. THE MAIN PROCEEDINGS AND THE PARTIES

22. In the following section, the Interveners will summarise the facts of the Main Proceedings and describe the parties to such proceedings.

1. Introduction

23. In Case T-45/24, *ePURE and Pannonia Bio v Parliament and Council*, the Applicants seek the annulment of the Contested Provisions in so far as they exclude crop-based biofuels from the definition and/or minimum shares of sustainable aviation fuels in the ReFuelEU Aviation Regulation and impose a minimum share for synthetic aviation fuels. The Interveners support in full the form of order sought by the Applicants.

2. The Subject Matter of the Main Proceedings

24. In the following section, the Interveners will firstly describe the background to the ReFuelEU Aviation Regulation and its objectives, and secondly explain the subject matter of the Main Proceedings.

2.1 The ReFuelEU Aviation Regulation and its Objectives

2.1.1 Background: The Treatment of Crop-Based Biofuels under the RED

25. It has been a long-standing goal of the EU Institutions to increase the share of renewable energy that is consumed in all sectors of the economy, in order to reduce GHG emissions and become a climate-neutral continent. EU legislation to promote the use of renewable energy has evolved significantly in the last 20 years; however, such legislation has consistently promoted the use of crop-based biofuels as being central to achieving the EU's goals. The RED, which has been amended and recast on several occasions since it was first introduced in 2003, is the legal framework for the development of renewable energy in all sectors of the EU economy.

26. The EU adopted the first RED on 8 May 2003 (Directive 2003/30/EC, “RED 2003”).⁹ This required Member States to implement national measures in order to replace 5.75% of all transport fuels (petrol and diesel) with biofuels by 2010, and to reach an intermediate target of a 2% replacement by 31 December 2005. RED 2003 did not impose restrictions on the use of crop-based biofuels to meet these targets.
27. RED 2003 was repealed in 2009 by Directive 2009/28/EC (“RED 2009”), which set a target of 20% for the overall share of energy from renewable sources in gross final consumption in the EU, and required each Member State to ensure that at least 10% of the final consumption of energy in transport came from renewable sources (Article 3, paragraph 4).¹⁰ RED 2009 also introduced a set of sustainability criteria for the biofuels that could be used for the purpose of complying with the national targets. Notably, RED 2009 applied to “*all forms of transport*” (Article 3, paragraph 4) – therefore, it applied in the aviation sector – and it did not exclude or limit the use of crop-based biofuels for the purpose of reaching the national targets, subject to such biofuels satisfying the aforementioned sustainability criteria.
28. Directive EU 2015/1513 (“RED 2015”) sought to address the perceived impact of indirect land use change (“iLUC”) resulting from the production of certain biofuels.¹¹ iLUC refers to the extension of agricultural land into areas with high carbon stock (such as forests, wetland and peatlands) that conceptually can be caused when the cultivation of crops for biofuels displaces the production of crops for food and feed purposes. Despite a lack of evidence that a majority of crop-based biofuels give rise to a material risk of iLUC, RED 2015 introduced the principle that no more than 7% of the final consumption of energy in the transport sector in the Member States should be from food

⁹ Directive (EC) 2003/30 of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport, Document 32003L0030, OJ L 123, 17.5.2003, p. 42.

¹⁰ Directive (EC) 2009/28 of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives (EC) 2001/77 and (EC) 2003/30, Document 32009L0028, OJ L 140, 5.6.2009, p. 16.

¹¹ Directive (EU) 2015/1513 of the European Parliament and of the Council of 9 September 2015 amending Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Directive 2009/28/EC on the promotion of the use of energy from renewable sources, Document 32015L1513, OJ L 239, 15.9.2015, p. 1.

and feed crop-based biofuels, “*without restricting the overall use of such biofuels*” (recital 17).

29. Subsequently, Directive EU 2018/2001 (“RED 2018”) required Member States to impose an obligation on fuel suppliers in all transport sectors (thereby including aviation) to ensure a mandatory 14% share of renewable energy within final energy consumption.¹² As had already been the case since RED 2009, biofuels, including crop-based biofuels, were considered eligible sources of renewable energy for the purposes of the 14% target. RED 2018 also reduced the scope of the 7% cap on food and feed crop-based biofuels that had been introduced in RED 2015, by specifying that such cap should only apply to final energy consumption in road and rail transport, not the transport sector as a whole (Article 26, paragraph 1). In other words, under RED 2018, there was no limit on the use of crop-based biofuels in other transport sectors, including aviation.
30. The evolution of the RED up to 2018 demonstrates two points. Firstly, the EU has consistently encouraged the use of all forms of renewable energy, including crop-based biofuels, in the transport sector including in aviation. Secondly, following the adoption of RED 2018, the EU did not impose any limits on the use of crop-based biofuels in the aviation sector.

2.1.2 The European Green Deal and the ReFuelEU Aviation Regulation

31. While the RED (in its successive iterations) set targets for the use of renewable energy, including biofuels, in the transport sector as a whole, it did not set any specific targets for the use of renewable energy in the aviation sector. It is this regulatory gap that the ReFuelEU Aviation Regulation set out to close.
32. In December 2019, the Commission presented The European Green Deal, an extensive roadmap for European growth based on sustainability and the transition to become a

¹² Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast), Document 32018L2001, OJ L 328, 21.12.2018, p. 82.

resource-efficient and competitive economy.¹³ The core pillars of the European Green Deal included two decarbonisation targets for the EU: to reduce GHG emissions by at least 55% compared to 1990 levels by 2030, and to become climate neutral by 2050. Subsequently, in July 2021, the EU adopted the European Climate Law, which made the decarbonisation targets in The European Green Deal legally binding.¹⁴

33. Alongside the European Climate Law, the Commission presented the “Fit for 55” package, which was a set of proposals to revise and update EU legislation and put in place new initiatives with the aim of ensuring that EU policies were in line with the climate goals established in that law. The proposals in the Fit for 55 package covered a range of different areas, including the transport sector in general and aviation specifically.
34. It was against this background that the Commission issued a proposal for the ReFuelEU Aviation Regulation as part of the Fit for 55 package. The Regulation, which was subsequently adopted in October 2023, aimed to decarbonise the aviation sector by increasing both demand for and supply of sustainable aviation fuels (“SAF”), while ensuring a level playing field across the EU air transport market.¹⁵ The Regulation was developed alongside a similar regulation on the use of renewable and low-carbon fuels in maritime transport (the FuelEU Maritime Regulation).¹⁶
35. As set out in its recitals, the central goal of the ReFuelEU Aviation Regulation is to *“prepare for the future and make the necessary adjustments ensuring a well-functioning air transport sector that contributes fully to achieving the Union’s climate goals”*.¹⁷ The Regulation recognised that achieving this goal *“necessitates a strong ramp-up of*

¹³ See https://ec.europa.eu/commission/presscorner/detail/en/ip_19_6691 (website accessed on 30/04/2024).

¹⁴ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (“European Climate Law”), Document 32021R1119, OJ L 243, 9.7.2021, p. 1.

¹⁵ See <https://www.consilium.europa.eu/en/press/press-releases/2023/04/25/council-and-parliament-agree-to-decarbonise-the-aviation-sector/> (website accessed on 30/04/2024).

¹⁶ Regulation (EU) 2023/1805 of the European Parliament and of the Council of 13 September 2023 on the use of renewable and low-carbon fuels in maritime transport, and amending Directive 2009/16/EC, Document 32023R1805, OJ L 234, 22.9.2023, p. 48.

¹⁷ Recital 2.

the production, supply and uptake of sustainable aviation fuels".¹⁸ At the same time, however, the Regulation acknowledged that there are structural barriers to realising this ramp-up: in particular, although SAF "*are technologically ready to play an important role in reducing emissions from air transport already in the very short term*"¹⁹, "*the availability of feedstock and the production capacity of SAF are limited*".²⁰ Hence, the Regulation stated that the potential for SAF to be a solution for the decarbonisation of air transport was "*untapped and need[ed] support*."²¹

36. The Regulation aimed to provide such support by intervening in the EU aviation fuel market to stimulate demand for SAF, by imposing an obligation on aviation fuel suppliers to use sustainable fuel. The key provision in this regard is Article 4, paragraph 1 of the Regulation, which obliges aviation fuel suppliers to ensure, from January 2025 onwards, that all aviation fuel that they make available to aircraft operators at EU airports (with limited exceptions for very small airports and those located in outermost regions of the EU) contains certain minimum shares of SAF, including minimum shares of synthetic aviation fuels. Such minimum shares are set out in Annex 1 of the Regulation, and increase gradually every five years until 2050.
37. Hence, from 1 January 2025, aviation fuel made available at EU airports must contain a minimum share of 2% of SAF; from 1 January 2030, the minimum share of SAF will increase to 6%; and, from 1 January 2050, the minimum share of SAF will be 70% (of which a minimum share of 35% must be synthetic aviation fuels). As explained below, the substance of the Main Proceedings concerns the types of biofuel that can be taken into account for the purposes of satisfying the minimum share obligations in the Regulation.

2.2 The Subject Matter of the Main Proceedings

38. In the Main Proceedings, the Applicants seek the annulment of the Contested Provisions in so far as they exclude crop-based biofuels from the definition and/or minimum shares

¹⁸ Recital 2.

¹⁹ Recital 9.

²⁰ Recital 10.

²¹ Recital 7.

of SAF in the Regulation and impose a minimum share for synthetic aviation fuels. As explained below, the Contested Provisions thereby have the equivalent effect of imposing a *de facto* ban on the use of crop-based biofuels in the EU aviation sector.

2.2.1 The Contested Provisions

39. As explained above, Article 4, paragraph 1 of the Regulation obliges aviation fuel suppliers to blend (at least) certain prescribed proportions of SAF in the aviation fuel that they make available at EU airports. Annex I of the Regulation sets out such mandatory minimum proportions of SAF, which increase gradually from 2025 to 2050.
40. Article 3, paragraph 8 defines ‘aviation biofuels’ for the purposes of the Regulation and must be read together with Article 3, paragraph 7, which defines ‘sustainable aviation fuels (‘SAF’)', as follows:

- Article 3, paragraph 7:

‘sustainable aviation fuels’(‘SAF’) means aviation fuels that are either:

(a) synthetic aviation fuels;

*(b) **aviation biofuels**; or*

(c) recycled carbon aviation fuels.

- Article 3, paragraph 8:

‘aviation biofuels’ means aviation fuels that are either:

(a) ‘advanced biofuels’ as defined in Article 2, second paragraph, point (34), of Directive (EU) 2018/2001;

(b) ‘biofuels’ as defined in Article 2, second paragraph, point (33), of Directive (EU) 2018/2001, produced from the feedstock listed in Part B of Annex IX to that Directive; or

*(c) **‘biofuels’** as defined in Article 2, second paragraph, point (33), of Directive (EU) 2018/2001, **with the exception of biofuels produced from***

‘food and feed crops’ as defined in Article 2, second paragraph, point (40), of that Directive, and which comply with the sustainability and lifecycle emissions savings criteria laid down in Article 29 of that Directive and are certified in compliance with Article 30 of that Directive.

41. Article 8, paragraph 3(c) thus excludes biofuels produced from ‘food and feed crops’ as defined in RED 2018 from the definition of ‘aviation biofuels’. This, in turn, means that this category of crop-based biofuels is excluded from the definition of ‘SAF’ in the Regulation.
42. Article 4, paragraph 5 of the Regulation specifies the categories of biofuel that shall not be counted for the purposes of calculating the minimum shares of SAF that aviation fuel suppliers must make available from 1 January 2025, as follows:
 - *Article 4, paragraph 5:*

SAF produced from the following feedstocks shall be excluded from the calculation of the minimum shares of SAF set out in Annex I to this Regulation: ‘food and feed crops’ as defined in Article 2, second paragraph, point (40), of Directive (EU) 2018/2001, intermediate crops, palm fatty acid distillate and palm and soy-derived materials, and soap stock and its derivatives.
43. Article 4, paragraph 5 therefore effectively excludes from the categorisation of SAF not only biofuels produced from ‘food and feed crops’ – which are already excluded by definition under Article 3, paragraph 8(c) – but also a second category of crop-based biofuels, namely biofuels produced from intermediate crops, as well as biofuels produced from two other types of feedstocks (palm fatty acid distillate and palm and soy-derived materials, and soap stock and its derivatives).
44. In addition, Article 4, paragraph 4 imposes a cap on the proportion of all aviation fuels supplied for the purpose of complying with Article 4, paragraph 1 of the Regulation that can come from certain other types of aviation biofuels that are not otherwise excluded by Article 4, paragraph 5:

- Article 4, paragraph 4:

For each reporting period, aviation biofuels other than advanced biofuels as defined in Article 2, second paragraph, point (34), of Directive (EU) 2018/2001 and other than biofuels produced from the feedstock listed in Part B of Annex IX to that Directive, supplied across Union airports by each aviation fuel supplier, shall account for a maximum of 3% of aviation fuels supplied for the purposes of complying with the minimum shares referred to in paragraph 1 of this Article and Annex I to this Regulation.

45. Hence, Article 4, paragraph 4 requires that aviation biofuels apart from (i) advanced biofuels (as defined in Article 2 of RED 2018), and (ii) biofuels produced from feedstock listed in Part B of Annex IX to RED 2018 may not comprise more than 3% of the aviation biofuel that aviation fuel suppliers make available for the purposes of complying with the minimum supply obligation in Article 4, paragraph 1 of the Regulation.

2.2.2 The Contested Provisions Give Rise to a De Facto Ban on Crop-Based Biofuels

46. It was the intention of the Defendants, when they adopted the ReFuelEU Aviation Regulation, to intervene in the functioning of the biofuels sector in order to create a new market that does not exist today – namely, a market for sustainable aviation fuels – and which would not exist without their intervention. This is evident from the recitals to the Regulation, which noted the technical potential of sustainable aviation fuels (in recital 9) but observed that their potential was not being exploited, due to “*the important price differential between conventional aviation fuels and SAF*” (in recital 43). Hence, the Defendants concluded that special measures were required to support and promote the uptake of sustainable aviation fuels. It was for precisely this reason that the ReFuelEU Aviation Regulation was adopted as “*a lex specialis applying to air transport*” (recital 16), which was intended to complement RED 2018.
47. Although the successive iterations of the RED set targets for the use of renewable energy (including crop-based biofuels) in the transport sector as a whole, no targets had ever been set for the use of renewable energy in the aviation sector specifically. In the

absence of any such mandatory targets or minimum supply obligations, the uptake of renewable energy in the aviation sector currently is virtually nil, and over 99% of aviation fuels used in the EU are of fossil origin.²²

48. As the recitals to the Regulation make clear, the lack of uptake of biofuels and other sustainable fuels to replace fossil fuels in the aviation sector is not due to their technical deficiency or a lack of availability – to the contrary, “SAF are *technologically ready to play an important role in reducing emissions from air transport [...] in the very short term*” (recital 9). Rather, the barrier to their use is one of cost. Biofuels, including crop-based biofuels, are more expensive than fossil fuels in the EU, have been more expensive ever since they were introduced on the EU market, and the most reliable evidence shows that they will continue to be more expensive for the foreseeable future. Due to this difference in cost, no logical customer – such as an aviation fuel supplier – would purchase more expensive biofuels instead of cheaper fossil fuels unless they were either obliged or incentivised to do so.
49. Against this background, the Defendants adopted the Regulation in order to compel aviation fuel suppliers to purchase sustainable aviation fuel, by imposing the minimum supply obligations in Article 4 and Annex I. In this way, the Defendants sought to stimulate the creation of a new market. At the same time, however, the Defendants restricted the scope of the new market by excluding crop-based biofuels from the definition of SAF and the minimum supply obligations, through the Contested Provisions.
50. Since aviation fuel suppliers will not purchase biofuels unless they are incentivised or obliged to do so, as the Defendants recognised when they adopted the Regulation (indeed, this was the very problem that the Regulation sought to solve), logically they will not purchase biofuels that fall outside the definition of ‘SAF’ under the Regulation and/or do not count towards their minimum supply obligations. In this sense, their choice of biofuels has been proscribed and limited by the Contested Provisions. It follows that the restrictions in the Contested Provisions affect not only aviation fuel

²² See recital 23 of the Regulation; see also Commission Staff Working Document, paragraph 1098, attached as **Annex I.13**.

suppliers but also the counterparties that could supply them with biofuels, including the counterparties that can no longer supply them due to those restrictions, such as producers and suppliers of crop-based biofuels.

51. The effect of the Contested Provisions on producers and suppliers of crop-based biofuels is therefore equivalent to a *de facto* ban on sales to aviation fuel suppliers. Although in principle aviation fuel suppliers can still purchase crop-based biofuels (*i.e.*, the Regulation does not expressly prohibit their use), any such purchases are purely hypothetical and in practice no aviation fuel suppliers will make them. Rather, in light of the Regulation, rational aviation fuel suppliers will only purchase sufficient quantities of SAF (as defined by the Regulation) to discharge their minimum supply obligations under Article 4 and Annex I and, for the remainder, will purchase less expensive fossil fuel to the maximum extent that they can while complying with the Regulation.²³
52. In conclusion, the Contested Provisions give rise to a *de facto* ban on the supply of crop-based biofuels to the aviation sector in the EU. Due to the substantial difference in cost between biofuels and fossil fuels in the EU – which the Regulation expressly acknowledged – aviation fuel suppliers will not purchase biofuels instead of fossil fuels unless they are obliged or incentivised to do so. Since using crop-based biofuels will not help aviation fuel suppliers meet their obligations under the Regulation, they will not purchase those biofuels. As a consequence, the Contested Provisions effectively prevent producers of those biofuels – including ePure’s members, Pannonia, the members of the Trade Associations and LanzaJet – from selling their goods to aviation fuel suppliers in the EU.

²³ It is also relevant to note in this regard that, although the Interveners do not need to demonstrate that they are ‘directly concerned’ by the Contested Provisions within the meaning of the second condition of the fourth paragraph of Article 263 of the TFEU, that condition can be satisfied even when a provision of EU law has not rendered the applicants’ activities impossible. It follows that in order to establish their standing to intervene in the Main Proceedings, the Interveners should not be required to show that it will be impossible for them to make any sales of crop-based biofuels to the aviation sector in the future. Nevertheless, the Interveners reiterate that they consider that the possibility of making any such sales has been rendered unlikely in the extreme by the Contested Provisions. See, for example, T-258/22, BWS - management company of “BMC” holding v Council, judgment of the General Court 06/03/24, paragraph 39, ECLI:EU:T:2024:150; Case T-259/22, Mostovdrev v Council, judgment of the General Court 06/03/24, paragraph 38, ECLI:EU:T:2024:151.

3. The Parties to the Main Proceedings

3.1 The Applicants

53. ePure is a representative organisation comprising 21 members that are producers of renewable ethanol and 23 associate members. The members of ePure, in aggregate, represent approximately 85% of the EU's output of renewable ethanol.
54. Pannonia is a European producer of renewable ethanol and advanced biofuels that is headquartered in Hungary. Pannonia is not a member of ePure.

3.2 The Defendants

55. The Defendants in the Main Proceedings are the European Parliament and the Council, which adopted the ReFuelEU Aviation Regulation on 18 October 2023.

4. The Form of Order Sought by the Applicants in the Main Proceedings

56. ePure and Pannonia seek the annulment of the Contested Provisions in so far as they exclude biofuels produced from food and feed crops and intermediate crops from the definition and/or minimum shares of sustainable aviation fuels and impose a minimum share for synthetic aviation fuels. The Interveners support the whole of the form of order sought by the Applicants in the Main Proceedings.

IV. CIRCUMSTANCES ESTABLISHING THE RIGHT TO INTERVENE

57. The Interveners each have standing to intervene in the Main Proceedings in accordance with Article 40 of the Statute and the case law of the Court. In the following section, we will describe the applicable law with regard to standing before demonstrating the standing of the Interveners, addressing separately the standing of (i) the Trade Associations, and (ii) LanzaJet.

1. The Trade Associations

1.1 Applicable Law

58. Article 40 of the Statute, which applies to the Main Proceedings before the General Court by virtue of Article 53 of the Statute, establishes that “*the bodies, offices and agencies of the Union [and] ... any other person which can establish an interest in*

the result of a case submitted to the Court” may intervene in cases before the Court and the General Court (emphasis added).

59. In relation to organisations such as the RFA, Growth Energy and the U.S. Grains Council, it is the established practice of the Court to permit interventions by “*representative associations whose object is to protect their members in cases raising questions of principle liable to affect those members*”.²⁴ It is the practice of the Court to interpret the conditions for admitting interventions more broadly for associations of undertakings than for economic operators acting individually.²⁵ The Court explained the reasoning for this approach in *Microsoft v Commission*, in the following terms:

*That broad interpretation of the right to intervene is intended to facilitate assessment of the context of cases while avoiding multiple individual interventions which would compromise the effectiveness and proper course of the procedure.*²⁶

60. More specifically, the Court has established that a representative association should be granted leave to intervene in a case under Article 40 of the Statute if four cumulative conditions are satisfied. An association may be granted leave to intervene if:
- (i) It represents a significant number of undertakings active in the sector concerned;
 - (ii) Its objects include the protection of the interests of its members;
 - (iii) The case may raise questions of principle affecting the functioning of the sector concerned; and

²⁴ T-612/17, *Google and Alphabet v Commission (Google Shopping)*, order of the General Court 07/12/18, paragraph 10, ECLI:EU:T:2018:1002; C-151/97 P(I) and C-157/97 P(I), *National Power and PowerGen v Commission*, order of the Court 17/06/97, paragraph 66, ECLI:EU:C:1997:307; T-778/16 and T-892/16, *Apple Sales International and Apple Operations Europe v Commission*, order of the General Court 15/12/17, paragraph 12, ECLI:EU:T:2017:926.

²⁵ T-87/92, *Kruidvat v Commission*, order of the General Court 08/12/93, paragraph 14, ECLI:EU:T:1993:113.

²⁶ T-201/04, *Microsoft Corp. v Commission*, order of the General Court 28/04/05, paragraph 26, ECLI:EU:T:2005:149. See also C-151/97 P(I) and C-157/97 P(I), *National Power and PowerGen v British Coal and Commission*, order of the Court of 17/06/97, paragraph 66, ECLI:EU:C:1997:307.

- (iv) The interests of its members may therefore be affected significantly by the forthcoming judgment.²⁷

1.2 The Standing of the Trade Associations

61. In the following section, we will demonstrate in light of the applicable case law that each of the four conditions necessary to establish standing to intervene is satisfied by all three of the Trade Associations.
62. As a preliminary observation, the Interveners note that the case law of the Court has established that two or more persons who, separately, have exactly the same interest in a case may all intervene and their ability to do so is not impeded by the fact that their interests are the same or overlap.²⁸ Hence, while the Trade Associations share common interests in the outcome of the Main Proceedings, this has no bearing on the respective *locus standi* of each of them to intervene in the case.

1.2.1 The Trade Associations represent a significant number of undertakings active in the sector concerned

63. For the purposes of the first of the four conditions referred to in paragraph 60 above, the ‘sector concerned’ refers to the sector in which the representative association that has sought leave to intervene is active, and which may be affected by questions of principle that are raised in the main proceedings. This need not necessarily be the same economic sector that is directly concerned by the act the annulment of which is sought in the main proceedings.
64. For example, in *Akzo Nobel v Commission*, the parties in the main proceedings were two chemical producers that were the subjects of an investigation by the Commission into suspected anticompetitive conduct, and who sought the annulment of Commission

²⁷ T-253/03, *Akzo Nobel Chemicals and Akcros Chemicals v Commission*, order of the General Court 26/02/07, paragraph 15, ECLI:EU:T:2007:58; T-354/15, *Allergopharma v Commission*, order of the General Court 17/02/16, paragraph 9, ECLI:EU:T:2016:121; T-892/16, *Apple Sales International and Apple Operations Europe v Commission*, order of the General Court 15/12/17, paragraph 12, ECLI:EU:T:2017:926.

²⁸ See, for example, the orders in the *Akzo Nobel* cases: T-253/03, *Akzo Nobel Chemicals and Akcros Chemicals v Commission*, order of the General Court 26/02/07, ECLI:EU:T: 2007:58, and T-125/03, *Akzo Nobel Chemicals and Akcros Chemicals v Commission*, order of the General Court 26/02/07, ECLI:EU:T:2007:57; see also Case C-273/85, *R Silver Seiko v Council*, order of the Court 18/10/85, paragraph 6, ECLI:EU:C:1985:420.

decisions that ordered them to submit to an investigation seeking evidence of anticompetitive practices. In that case, the Court admitted an intervention by the International Bar Association (“IBA”), an association representing the interests of lawyers, “*in the light of the fact that the case raises fundamental issues concerning confidentiality of communications between a lawyer and his client*”.²⁹ Hence, in *Akzo Nobel v Commission*, the ‘sector concerned’ was the legal profession, rather than the chemical sector (which was the sector in relation to which the decisions at issue in the main proceedings had been adopted).

65. For the purposes of this Application to Intervene, the sector concerned is the crop-based biofuel sector, because the Main Proceedings raise questions of principle that will affect the functioning of that sector (as explained in Section IV.2.3, below). The Applicants in the Main Proceedings seek the annulment of the Contested Provisions of the ReFuelEU Aviation Regulation in so far as they exclude crop-based biofuels from the definition and/or minimum shares of sustainable aviation fuels and impose a minimum share for synthetic aviation fuels. The Main Proceedings thus call into question the lawfulness of such treatment of crop-based biofuels, which has the effect of excluding crop-based biofuels from the market for supply to the aviation industry. Just as in the *Akzo Nobel v Commission* cases the sector concerned was the legal profession, not the chemical sector, in the present intervention the sector concerned is the crop-based biofuel sector, not the aviation industry.

66. As explained below, each of the Trade Associations represents a significant number of undertakings active in the crop-based biofuel sector.

RFA

67. The RFA currently has 48 members that are active producers and suppliers of crop-based biofuels, who in aggregate account for over 30% of total American ethanol output. A complete list of the RFA’s members, which identifies the members that produce and supply crop-based biofuel, is attached as **Annex I.11**.

²⁹ T-253/03, *Akzo Nobel Chemicals and Akcros Chemicals v Commission*, order of the General Court 26/02/07, paragraph 18, ECLI:EU:T:2007:58.

68. In addition, the RFA represents over 100 other undertakings that are active in the crop-based biofuel value chain or are otherwise stakeholders in the crop-based biofuel sector. These include suppliers of crops that are used as feedstock for biofuel production (such as the National Corn Growers Association, national Sorghum Checkoff, and state corn grower associations and commissions such as the Iowa Corn Growers Association), biofuel retailers and distributors (such as marketers like Murex Ltd., RPMG LLC, and Eco-Energy LLC, and retailers like Protec Fuel Management, Pearson Fuels, and Propel Fuels Inc.), and industry service and technology providers (such as BASF Enzymes LLC, Fagen Inc., IFF, Novonesis, and Syngenta). LanzaJet is also a member of the RFA, hence the association also represents an active producer of crop-based sustainable aviation fuels.

Growth Energy

69. Growth Energy currently has 97 members that are active producers and suppliers of crop-based biofuels. Together, these members produce in aggregate c. 35 billion litres (c. 9.5 billion gallons) of crop-based biofuel per year. It is the world's largest representative association of biofuel producers, and its members account for more than half of all U.S. ethanol output. A complete list of Growth Energy's members, which identifies the members that produce and supply crop-based biofuel, is attached as **Annex I.12**.
70. Growth Energy also has 119 associate members, which are not biofuel producers but businesses that are active in the crop-based biofuel value chain and other stakeholders in the crop-based biofuel sector. These include suppliers of crops that are used as feedstock for biofuel production, biofuel retailers and distributors, and industry service and technology providers. LanzaJet is also an associate member of Growth Energy, hence the association also represents an active producer of crop-based sustainable aviation fuels.

U.S. Grains Council

71. The U.S. Grains Council's members include the RFA and Growth Energy as well as ethanol producers that are not members of either of the other two trade associations.

As such, the Council's membership represents virtually the totality of U.S. crop-based biofuel production.

72. As well as representing the interests of crop-based biofuel producers, the U.S. Grains Council also represents the interests of U.S. grain producers and agribusinesses more generally. Its wider membership includes producers of barley, corn and sorghum (which can be used as feedstocks for ethanol), among other agricultural commodities, as well as other operators in the agribusiness value chain (such as grain distributors, storage businesses and grain processors).
73. In light of the above, the Trade Associations submit that they each satisfy the first condition necessary to establish their standing to intervene, namely that they represent a significant number of undertakings active in the sector concerned.

1.2.2 The objects of the Trade Associations include the protection of the interests of their members

74. For the purpose of demonstrating that the objects of an association include the protection of its members' interests, in the first instance reference should be made to the constitutional documents of that association such as its articles of incorporation and by-laws. Where the constitutional documents do not expressly state that the protection of the interests of the members is an object, the Court has previously been satisfied that this condition can be met having regard to the broader purposes and activities of the association.
75. An example of the latter concerned CompTIA, an association of undertakings active in the information and communications technology sector that sought leave to intervene in *Microsoft v Commission*. In that case, the Court was satisfied that CompTIA should be admitted to intervene on the basis, firstly, that "*CompTIA is formed 'to promote and encourage the highest standards of professional and business competence and ethics among its members and within the information technology industry as a whole'*", secondly, that its by-laws provided that it "*shall endeavor to [...] establish a programme for conveying the collective views of its members to the information technology industry, governmental agencies and the public*", and thirdly, "*that it has intervened before the American judicial authorities and in the administrative procedure*

before the Commission".³⁰ In light of these facts, the Court admitted CompTIA's application to intervene notwithstanding that none of its by-laws made explicit reference to having as its object the protection of the interests of its members.

76. In the following sections, we will apply these principles to demonstrate that each of the Trade Associations satisfies the second condition necessary to establish their standing to intervene.

RFA

77. As explained in Section II.2, above, the RFA is the oldest and broadest representative association for the ethanol industry in the U.S.A. It is inherently the object of the RFA to protect the interests of the biofuel producers and suppliers and other biofuel industry stakeholders that are its members.
78. The objects of the RFA are set out in its Articles of Incorporation and its By-Laws, which are attached as **Annex I.14** and **Annex I.15**, respectively. The RFA's general purpose (as defined in Article 3 of its Articles of Incorporation) is to promote and assist the development of a viable and competitive domestic renewable fuels industry. Such a purpose requires the RFA to protect the interests of its members that are active in the domestic renewable fuels industry.³¹
79. According to Article III of its By-Laws, in order to achieve its general purpose, the RFA's objects are to carry out a range of activities that include but are not limited to the following:

"Educational activities in the public interest concerning the production, distribution, and use of renewable fuels [...]";

"Collection of information, where appropriate and consistent with laws of the United States, concerning commercial production and marketing of renewable

³⁰ Case T-201/04, Microsoft v Commission, order of the General Court 26/07/04, paragraph 72, ECLI:EU:T:2004:246.

³¹ The Mission Statement adopted by the RFA's Board of Directors is to *"Drive growth in sustainable renewable fuels and bioproducts for a better future"*. See RFA, '2024 Ethanol Industry Outlook', page 32, attached as **Annex I.9**.

fuels [...] and coordination of the dissemination of such information to Association members, government entities, and the public”;

“Definition of the main issues concerning those who are involved in the production and marketing of renewable fuels”;

“Formulation of association opinions and positions relating to federal, state and local government policies and programs affecting the production, distribution, and use of renewable fuels and presentation of such opinions and positions to the Congress and other federal, state and local government entities”; and

“Other activities insofar as not prohibited by law which are appropriate for the enhancement of the above-listed purposes.”

80. As is the case for the general purpose set out in its Articles of Incorporation, the more specific purposes of the RFA that are set out in its By-Laws, as referred to above, are all in the furtherance of protecting its members’ interests.
81. It should be noted, moreover, that the list of purposes and activities that the RFA may pursue that is set out in its By-Laws is non-exclusive. The second paragraph of Article III of the By-Laws specifies that the RFA shall achieve its objectives *“through such activities as”* those listed in paragraph 79 above, which indicates that those activities are not listed exhaustively; moreover, point (5) of Article III provides that the RFA may pursue any *“other activities ... which are appropriate for the enhancement of the above-listed purposes”*.
82. For example, although the By-Laws do not explicitly provide that the RFA may take action before the courts on behalf of its members, it has defended its members’ interests in litigation in the U.S.A. on several occasions. These include, notably, acting in proceedings before the Supreme Court of the United States and proceedings brought by the RFA against the U.S. Environmental Protection Agency that were heard by the U.S.

Court of Appeals for the Tenth Circuit.³² The RFA has attached as **Annex I.16** an illustrative list of recent U.S. and international court proceedings to which it is or was a party. In each case, the RFA's sole object was to protect its members' interests.

83. Equally, the RFA routinely participates in administrative procedures within the U.S. legislature involving federal and state government bodies and agencies. The RFA has attached as **Annex I.17** an illustrative list of recent federal-level lobbying initiatives that it has undertaken in the U.S.A. As with its frequent participation in litigation, the RFA's sole object when participating in such administrative procedures is to protect its members' interests.
84. The RFA's established history of participating in both judicial and administrative procedures in its members' interests, and specifically of litigating on behalf of its members in cases such as the present application, demonstrates that its objects go beyond the mere promotion of the general and collective interests of ethanol producers. The RFA's position, in this regard, is directly analogous to that of CompTIA in *Microsoft v Commission*.

Growth Energy

85. The specific purpose of Growth Energy is stated in its Articles of Incorporation, which are attached as **Annex I.5**. According to the Third Article of the Articles of Incorporation, Growth Energy is organized and operates to "*promote ethanol as a sustainable, clean, and renewable energy source*". Entities eligible for membership are those that (a) produce fuel ethanol in the U.S.A. for sale or distribution (Producer Members), (b) are engaged in a business activity with a sufficient nexus to the fuel ethanol industry (Associate Members), or (c) support the fuel ethanol industry individually (Individual Members). The By-Laws of Growth Energy, which are attached as **Annex I.18**, specify in Section 2.01 that no entity is eligible to become or continue as a member if they act in a manner contrary to the interests of the fuel ethanol industry. Section 2.02(c) provides for termination by the Board in such cases.

³² HollyFrontier Cheyenne Refining, LLC v. Renewable Fuels Association, 141 S. Ct. 2172 (2021); Renewable Fuels Ass'n v. U.S. Envtl. Prot. Agency. United States Court of Appeals for the Tenth Circuit. Jan 24, 2020. 948 F.3d 1206 (10th Cir. 2020).

Similarly, a Director of the Board who has acted contrary to the interests of the fuel ethanol industry is eligible for removal, Section 3.11.

86. Though not expressly stated, the purpose of Growth Energy read in conjunction with the requirement that members must be active in or associated with the fuel ethanol industry establishes that Growth Energy has the object of protecting the interests of its members. The members' interests as producers or associated businesses lies in the representation of their area of business, *i.e.*, the ethanol industry, in the political and legislative landscape. This is reinforced by the fact that directors may be terminated if they act contrary to the interests of the fuel ethanol industry.
87. The Third Article of the Articles of Incorporation provides that Growth Energy may “engage in any lawful activity consistent with [...] the specific purpose” and “do everything that may be necessary, proper, advisable or convenient for the accomplishment of its purpose”. The broadly worded scope allows Growth Energy to take any measure to act in line with its purpose and does not exclude that Growth Energy may take action before the courts on behalf of its members. Accordingly, Growth Energy has in the past been active in defence of the fuel ethanol industry and its members both through litigation and lobbying initiatives. In 2023 alone, Growth Energy was involved in 10 lawsuits, including a suit filed with the U.S. District Court for the District of Columbia³³, as well as various motions to intervene in lawsuits with Federal Courts, such as the U.S. Court for the District of Columbia Circuit and the U.S. Court for the Eleventh Circuit.³⁴ Growth Energy is also known to the European Court of Justice from its joint case with the RFA against the Council (T-276/13).³⁵ Growth Energy has attached as **Annex I.19** a list of recent proceedings as an example of its ongoing litigation efforts on behalf of its members. Furthermore, Growth Energy

³³ Growth Energy v. Michael S. Regan, in his official capacity as Administrator, U.S. Environmental Protection Agency, and Environmental Protection Agency, No. 1:22-cv-00347.

³⁴ Sinclair v. EPA, No. 22-1073, United States Court of Appeals for the D.C. Circuit; Hunt Refining v. EPA, No. 22-11617, United States Court of Appeals for the Eleventh Circuit.

³⁵ Case T-276/13, Growth Energy and Renewable Fuels Association v Council, ECLI:EU:T:2016:340, followed by the appeal Case C-465/16 P, Council v Growth Energy and Renewable Fuels Association, ECLI:EU:C:2019:155, and the renvoi Case T-276/13 RENV, Growth Energy and Renewable Fuels Association v Council, order of the General Court 14/11/19, ECLI:EU:T:2019:811.

frequently engages in representative initiatives at the U.S. federal level and has attached as **Annex I.20** a copy of its LD-2 Disclosure Form, which is a record of its recent lobbying efforts on behalf of its members.

88. Growth Energy places the interest of its members at the forefront of all initiatives, both in judicial as well as administrative proceedings. The present proceeding is another example of how its objects encompass specific actions in the defence of the interests of its members rather than general promotion of the industry. Growth Energy's position is therefore directly comparable to that of CompTIA in *Microsoft v Commission*.

U.S. Grains Council

89. The objects of the U.S. Grains Council are stated in its Articles of Incorporation and its By-Laws, which are attached as **Annex I.6** and **Annex I.21**, respectively. The general purpose of the U.S. Grains Council is stated in Article 4 of its Articles of Incorporation and in the same manner in Article II of its By-Laws, as follows:

To create, develop, foster and promote markets for, and utilization of, feed grains and related, including value-added, products including but not limited to ethanol and/or co-products produced in the United States; to coordinate and direct the efforts of feed grains producers and agricultural business interests into a unified market development program for feed grains; to cooperate with organizations, now existing or hereafter established in the United States or in foreign countries, having similar objectives and which directly or indirectly represent or are associated with those engaged in the production, use or distribution of feed grains or related interests; to cooperate with departments or agencies of local, state, federal and foreign governments charged with responsibilities relating to feed grains or having a direct or indirect interest therein; and, in general, to engage in all activities permitted by law to accomplish the purposes and attain the objectives described above.

90. As described in the above purpose statement, the U.S. Grains Council was established to coordinate and direct agricultural business interests, which include ethanol production, which it does on behalf of its members. Specifically, the Council may

pursue cooperations with organisations as well as governmental departments or agencies, and it regularly engages with governments around the world on ethanol related topics. Recent engagements include working with the Japanese government to update the GHG calculation for U.S. ethanol, and discussions with the Brazilian government about the country's ethanol tariff rate quota. The U.S. Grains Council is also registered in the EU Transparency Register.

91. The above purpose statement additionally specifies that the U.S. Grains Council may in general engage in all activities permitted by law to attain its purposes and objective. This suggests that the activities listed in the aforementioned statement are not exhaustive, but that the Council may take any lawful action on behalf of its members within the scope of its purpose. Accordingly, the U.S. Grains Council has in the past acted on behalf of its members in various proceedings. This includes participating in a case before the Peruvian National Institute for the Defense of Free Competition and the Protection of Intellectual Property (INDECOPI) Tribunal, in which the U.S. Grains Council, together with Growth Energy and the RFA, won an appeal on a countervailing duty case brought against U.S. ethanol in Peru. The U.S. Grains Council has attached as **Annex I.22** an illustrative list of recent international court proceedings to which it is or was a party. In each case, the Council's sole object was the protection of its members' interests.
92. By frequently engaging with governments and actively participating in proceedings, the U.S. Grain Council strives to protect the interests of its members, which is clearly among its objects, as per the Articles of Incorporation and its By-Laws.

Conclusion

93. In light of the Court's case law and practice, and based on the evidence provided above, the RFA, Growth Energy and the U.S. Grains Council submit that they each satisfy the second condition of demonstrating their standing to intervene, namely that their respective objects include the protection of their members' interests.

1.2.3 The Main Proceedings may raise questions of principle affecting the functioning of the sector concerned

94. The applicable case law shows that the third condition of demonstrating standing to intervene should be based on an objective assessment in light of the facts of the case at hand. For example, in *Microsoft v Commission*, the General Court found that the decision in the main proceedings would “*raise[-] fundamental questions that affect the entire information technology sector*” and, more specifically, that “*the position which the President [...] may take on the questions of principle raised by the present case is liable to have a bearing on the conditions under which undertakings in the information technology sector operate.*”³⁶ Similarly, in *Akzo Nobel v Commission*, the General Court found that the third condition was satisfied as the main proceedings would “*raise[-] fundamental issues concerning confidentiality of communications between a lawyer and his client*”.³⁷
95. The third condition is satisfied in the present case because the Main Proceedings raise fundamental questions regarding the functioning of the entire EU biofuels sector, including in particular the crop-based biofuels sector. More specifically, the Main Proceedings raise issues concerning the treatment of crop-based biofuels under the Regulation, which in turn affects the conditions under which undertakings in the crop-based biofuels sector operate. In particular, the Main Proceedings call into question the compatibility with EU law of what amounts to a *de facto* ban on the supply of crop-based biofuels to the aviation sector in the EU, for the reasons explained in Section III.2.2, above.
96. The position taken by the General Court in the Main Proceedings will therefore have a direct and significant bearing on the functioning of the sector concerned. Should the

³⁶ T-201/04 R, *Microsoft v Commission*, order of the General Court 26/07/04, paragraphs 65 and 57, ECLI:EU:T:2004:246. The questions of principle that the Court considered were raised in the main proceedings included, *inter alia*, “*the question as to the circumstances in which a software producer in a dominant position may be required to provide third parties with information covered by intellectual property rights in order to allow interoperability of the products of those third parties with the products of that producer [and] the question as to the circumstances in which it may be contrary to Article 82 EC for a producer of software or computer hardware in a dominant position to incorporate new products or new functionalities within an existing product*” (paragraph 47).

³⁷ T-253/03, *Akzo Nobel Chemicals and Akcros Chemicals v Commission*, order of the General Court 26/02/07, paragraph 18, ECLI:EU:T:2007:58.

judgment grant the form of order sought and annul the Contested Provisions, the *de facto* ban on the supply of crop-based biofuels to the EU aviation sector and the use of crop-based biofuels by aviation fuel suppliers will be lifted. Should the judgment uphold the Contested Provisions, the restrictions on the use of crop-based biofuels in the aviation sector will remain in place. The Trade Associations respectfully submit that the Main Proceedings therefore raise questions of principle that affect the functioning of the crop-based biofuels sector (and the biofuels sector more generally) in the most fundamental way. For these reasons, the Trade Associations submit that they satisfy the third condition necessary to establish their standing to intervene.

1.2.4 *The interests of the members of the Trade Associations may be affected significantly by the forthcoming judgment*

97. It is the practice of the Court to interpret broadly the fourth condition, which requires that the interests of the representative association's members are liable to be affected significantly by the judgment in the main proceedings. For example, in *Microsoft v Commission*, the Court admitted an application to intervene by the trade association the Computer & Communications Industry Association ("CCIA") by simply concluding (with regard to the fourth condition) that "*as the members of CCIA are active within the sector concerned, their interests are liable to be affected by the position taken by the judge dealing with [the main proceedings]*."³⁸ The Court did not consider it necessary to examine whether the interests of the members of CCIA would be affected directly or indirectly, and the Court specifically did not examine whether the legal position of such members would be changed by the outcome of the case, when it admitted CCIA's application to intervene.
98. In light of this case law, the Trade Associations respectfully submit that it is sufficient for them to show (as they have) that their members are active in the crop-based biofuel sector (including in the EU, by way of exports) to satisfy the fourth condition necessary to establish their standing to intervene. This is especially the case in light of the fundamental nature of the questions about the functioning of this sector that the Main

³⁸ T-201/04 R, *Microsoft Corp. v Commission*, order of the General Court 26/07/04, paragraph 48, ECLI:EU:T:2004:246.

Proceedings raise (see Section IV.2.3, above). Nevertheless, for completeness, the Trade Associations wish to emphasise that their members' interests in the judgment in the Main Proceedings are direct and existing, and not merely hypothetical. Clear evidence shows that if the General Court grants the form of order sought in the Main Proceedings, and annuls the Contested Provisions, this will lead directly to demand for crop-based biofuels in the EU aviation sector, which the members of the Trade Associations would compete to satisfy.

99. The fact that there would be demand for crop-based biofuels in the EU aviation sector in the absence of the Contested Provisions is self-evident: it would not be necessary to adopt the Contested Provisions, and thereby exclude crop-based biofuels from the newly-created SAF market, unless there was a high likelihood that they would be used in the absence of such restrictions. Furthermore, the recitals to the ReFuelEU Aviation Regulation make explicit reference to the expectation that aviation fuel suppliers would turn to crop-based biofuels to satisfy their minimum use obligations under Article 4 and Annex I unless they were prevented from doing so.
100. For example, recital 23 explains that the Contested Provisions were considered necessary to avoid “*the creation of a potentially large demand for food and feed crops-based biofuels*”, which it was believed would result unless the use of such biofuels was prevented, and cited to “*a potentially large expansion of production determined by a significant increase in demand*”.³⁹ The recitals go on to refer to the risk that “*a shift of crop-based biofuels from the road to the aviation sector*” could result if crop-based biofuels were eligible to be treated as SAF under the Regulation.⁴⁰ It is therefore apparent that the Defendants themselves expected, when they adopted the Regulation, that there would be substantial demand for crop-based biofuels but for the Contested Provisions.

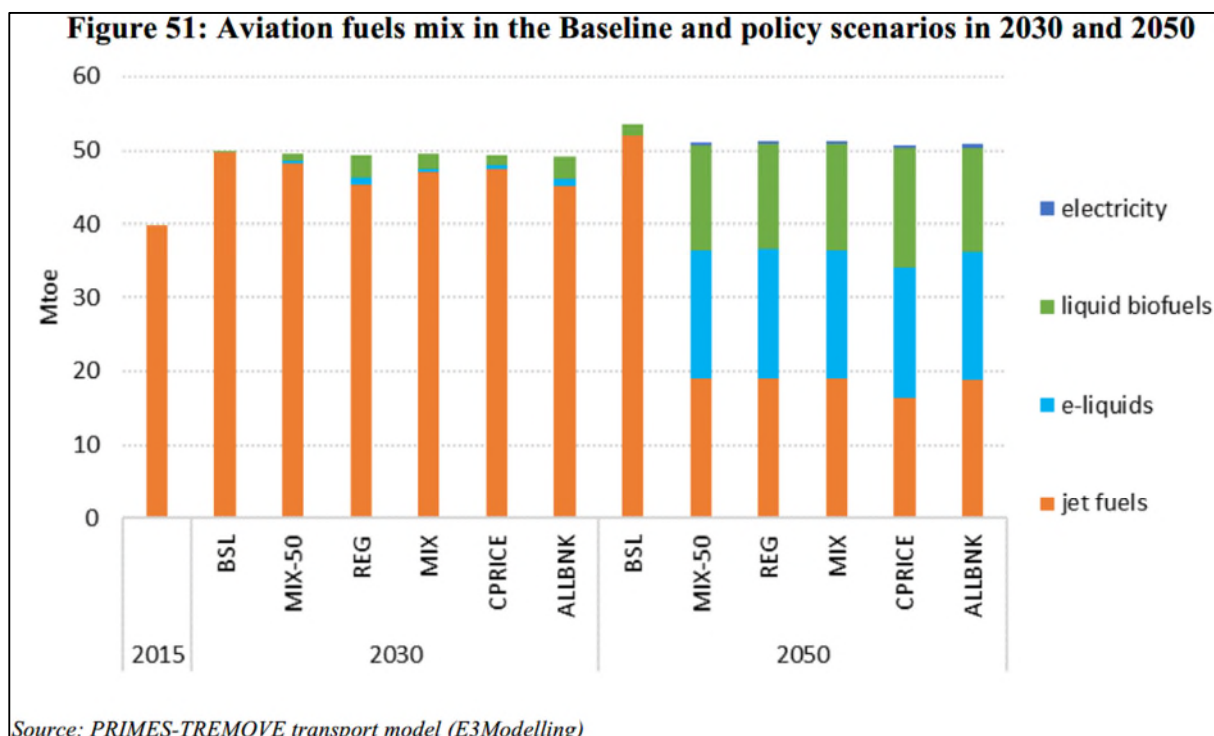
³⁹ Recital 23.

⁴⁰ Recital 23. The Interveners note, for completeness, that the Defendants' alleged concerns regarding a shift in demand for crop-based biofuels from road transport to aviation were entirely baseless for several reasons, including the rapid electrification of the road transport sector and the EU's commitment to largely phase out internal combustion engine vehicles by 2035.

101. Furthermore, it is possible to quantify the demand for crop-based biofuel that would be generated if the Contested Provisions were to be annulled. A European Commission Staff Working Document accompanying the Commission Communication of 9 December 2020 entitled ‘*Sustainable and Smart Mobility Strategy – putting European transport on track for the future*’ (“the Commission Staff Working Document”) (attached as **Annex I.13**) reported that total fuel consumption in the aviation sector in the EU in 2015 was approximately 40 million tonnes of oil equivalent (“Mtoe”), virtually all of which was fossil fuel (with liquid biofuels having a less than 0.1% share of total energy use).⁴¹ The Commission Staff Working Document then modelled the consumption and mix of different fuels in the sector that would arise in 2030 and 2050 under a range of different scenarios in which the EU incentivised the use of non-fossil fuels, as well as a baseline scenario (“BSL”) in which no action was taken. The results are shown in Figure 1, below (which reproduces Figure 51 of the Commission Staff Working Document).

⁴¹ See Commission Staff Working Document, paragraph 1098 and Figure 51, attached as **Annex I.13**.

Figure 1: Aviation fuels mix in the Baseline and policy scenarios in 2030 and 2050



102. The scenario in the Commission Staff Working Document that most accurately represents the approach that has ultimately been adopted in the Regulation was referred to in the study as ALLBNK; this scenario examined the mix of fuels needed to achieve carbon neutrality by 2050 and assumed the presence of “*carbon pricing [and] renewable and low carbon fuels mandate (including ReFuelEU aviation and FuelEU maritime initiatives).*” In other words, the ALLBNK scenario, in respect of the aviation sector, forecast the effects of the EU adopting the Regulation. The ALLBNK scenario also assumed that the GHG emissions reduction target would “*cover[s] both intra-EU and extra-EU aviation and maritime emissions*”, which is how the ReFuel EU Aviation Regulation and the FuelEU Maritime Regulation, as adopted, will operate.⁴²
103. According to the Commission’s forecasts, as shown in Figure 1 above, demand for liquid biofuels will be approximately 3-4 Mtoe of liquid biofuel (c. 6.2-8.2 billion litres) by 2030 under the ALLBNK scenario. By 2050, liquid biofuel demand is forecast to

⁴² Paragraph 1072 of the Commission Staff Working Document (**Annex I.13**).

be approximately 14 Mtoe (c. 28.8 billion litres), under the same scenario. Demand for liquid biofuels is expected to be at similar levels in both 2030 and 2050 under all of the scenarios that the Commission modelled in the Staff Working Document, with the exception of the baseline (*i.e.*, the scenario in which there is no EU intervention to promote the use of energy from renewable sources).

104. The Commission Staff Working Document therefore shows the scale of the demand for crop-based biofuels in the EU aviation sector that would exist in the absence of the Contested Provisions. A significant proportion of such demand could be satisfied by American ethanol suppliers, among them the members of the Trade Associations, who already sell substantial amounts of ethanol to the EU market, as explained in Section II, above.
105. The Trade Associations estimate that roughly 90% of the U.S. ethanol that is exported to the EU currently is used in the road transport sector. As anticipated by the Regulation (recital 28), in the absence of the Contested Provisions, demand for crop-based biofuel may shift from the road transport sector to the aviation sector. It follows that at least some of the fuel that the members of the Trade Associations currently supply to the road transport sector in the EU would shift to meet demand from the aviation sector in the absence of the Contested Provisions. Alternatively, even in the absence of such a shift from road transport to aviation, it is reasonable to assume that U.S. ethanol would be used to satisfy demand from the aviation sector to a similar extent as it is currently being used to satisfy demand from road transport.
106. It is therefore clear that the outcome of the Main Proceedings may affect significantly the interests of the members of the Trade Associations.⁴³ The judgment in the Main Proceedings will either confirm that the crop-based biofuels that they produce and supply are effectively excluded from the EU aviation market; or it will allow for the creation of actual, immediate and quantifiable demand for such biofuels in that market. The members of the Trade Associations would compete to satisfy such demand, in the

⁴³ At minimum, such effects cannot be excluded. This is sufficient to satisfy the fourth condition needed to establish the RFA's standing to intervene, since the relevant case law requires only that the outcome of the forthcoming judgment 'may' – *i.e.*, is liable to – affect the interests of the members in question, not that it 'must' affect their interests.

same way that they compete to satisfy a proportion of demand from the EU road transport sector today. In conclusion, therefore, the Trade Associations submit that they satisfy the fourth condition necessary to establish their standing to intervene, namely that the interests of their members may be affected significantly by the judgment in the Main Proceedings.

2. LanzaJet

2.1 *Applicable Law*

107. As explained above, Article 40 of the Statute, which applies to the Main Proceedings before the General Court by virtue of Article 53 of the Statute, provides that any person that can establish an interest in the result of a case submitted to the Court may intervene in that case. In relation to individual legal persons, such as LanzaJet, such an interest is defined in light of the precise subject-matter of the dispute and is to be understood as meaning a direct, existing interest in the ruling on the form of order sought and not in relation to any specific pleas in law or arguments put forward.⁴⁴
108. In that regard, it is necessary in particular to verify that the applicant for leave to intervene is directly affected by the contested act and that its interest in the result of the case is certain.⁴⁵ In principle, such an interest is sufficiently direct for this purpose if the outcome is such as to change the applicant's legal position.⁴⁶ However, the relevant case law has established that this should not be regarded narrowly as meaning that the effect must amount to an infringement of a legal right. To the contrary, it is the practice of the Court to admit interventions by parties whose economic position has been affected by the measure the annulment of which is sought in the main proceedings.⁴⁷

⁴⁴ See T-609/19, *Canon Inc. v European Commission*, order of the General Court 07/05/22, paragraph 10, ECLI:EU:T:2020:203; and the case law cited therein.

⁴⁵ See C-220/21 P(I), *ratiopharm GmbH and Others v Commission*, order of the Court 24/06/21, paragraph 19, ECLI:EU:C:2021:521; and the case law cited therein.

⁴⁶ See T-541/18, *Changmao Biochemical Engineering Co. Ltd v Commission*, order of the General Court 08/05/19, paragraph 20, ECLI:EU:T:2019:317.

⁴⁷ See, for example, 16 and 17/62 *Confédération nationale des producteurs de fruits et légumes and others v Council*, order of the Court 24/10/62, ECLI:EU:C:1962:35; 197-200, 243, 245 and 247/80 *Ludwigshafener Walzmühle v Council and Commission*, order of the Court 08/04/81, ECLI:EU:C:1981:90; 43 and 63/82 *Vereniging ter Bevordering van het Vlaamse Boekwezen (VBVB) and Vereniging ter Bevordering van de*

109. In this context, moreover, it is relevant to note that the General Court has recognized with regard to assessing the requirement of ‘direct concern’ for the purposes of Article 263 TFEU that consideration must be paid to the factual effects of a contested act upon an applicant’s situation, as well as its legal effects. The Interveners aver that the same considerations should be taken into account when assessing the ‘direct interest’ of an applicant to intervene under Article 40 of the Statute.
110. For example, in *Gazprom Neft v Council*, the General Court stated the following:

*[W]hile it is true that, according to the case law, the condition that an EU act must be of direct concern to a natural or legal person means that that act must affect directly the legal situation of the individual, in case law, actions for annulment brought by individuals against EU acts have been admitted repeatedly where the effects of those acts on the respective applicants are not legal, in the strict sense, but merely factual, for example because they are directly affected in their capacity as market participants in competition with other market participants.*⁴⁸ (Emphasis added.)

111. Similarly, in *BWS v Council* and *Mostovdrev v Council*, the General Court clarified that, for the purposes of determining ‘direct concern’, it is necessary to consider both the effects of a contested act on the applicant’s legal situation and its factual effects on the applicant, to the extent that those effects are not merely indirect.⁴⁹ The General Court accepted in those cases that the restrictive measures imposed on EU operators to import, purchase and transport certain products originating in Belarus directly concerned Belarussian producers with exporting activities in the EU market. In

Belangen des Boekhandels (VBBB) v Commission, order of the Court 31/03/82, ECLI:EU:C:1982:119; T-65/98 R Van den Bergh Foods Ltd. v Commission, order of the General Court 07/07/98, ECLI:EU:T:1998:155; T-201/04 R, Microsoft Corp. v Commission, order of the General Court 26/07/04, paragraph 48, ECLI:EU:T:2004:246; C-385/07 P Der Grüne Punkt - Duales System Deutschland v Commission, order of the Court 21/02/08, ECLI:EU:C:2008:114.

⁴⁸ T-735/14 and T-799/14, *Gazprom Neft PAO v Council*, judgment of the General Court 13/09/2018, paragraph 97, ECLI:EU:T:2018:548.

⁴⁹ T-258/22, *BWS - management company of “BMC” holding v Council*, judgment of the General Court 06/03/24, paragraph 35, ECLI:EU:T:2024:150; T-259/22, *Mostovdrev v Council*, judgment of the General Court 06/03/24, paragraph 34, ECLI:EU:T:2024:151. See also, T-782/22, *Cogebi and Cogebi v Council*, judgment of the General Court 13/12/22, paragraphs 56-59, EU:T:2024:249.

dismissing the arguments put forward by the Council, the General Court found that the fact that the prohibition did not apply to the Belarussian exporters but rather to their EU counterparts did not affect the assessment of ‘direct concern’. This was because the purpose of the prohibition was to restrict access to the EU market for certain products originating in Belarus such that it directly affected entities (like the Belarussian exporters at issue) whose economic activity was limited due to the prohibition. Moreover, in response to the Council and the Commission’s argument that the applicants’ ability to continue their activities in Belarus was not affected, the General Court clarified that, for the condition of ‘direct concern’ to be met, it is not necessary that the applicants’ activities have been rendered impossible.⁵⁰

112. The Interveners submit that the factual effects of a contested measure should be taken into account, in the same way, when determining whether a prospective intervenor has an interest in the result of a case within the meaning of Article 40 of the Statute. More specifically, when assessing whether an applicant to intervene is directly affected by a contested act, such assessment should have regard to the factual effects of the act on the applicant, for example because the act directly affects the applicant in their capacity as a market participant.

2.2 *The Standing of LanzaJet*

113. In the following section, we will demonstrate in light of the applicable case law that LanzaJet has a direct, existing interest in the ruling on the form of order sought in the Main Proceedings.
114. As described in Section II.3 above, LanzaJet is the only active producer of sustainable aviation fuel derived from ethanol in the world today. Its facility in the U.S.A. has the capacity to produce 37.85 million litres (10 million gallons) of sustainable aviation fuel per annum, and it has projects under development in the UK and EU. The fuel that LanzaJet produces (and will produce in the UK and EU) satisfies all applicable criteria to be recognised as a sustainable aviation fuel according to the standards set by the

⁵⁰ Case T-258/22, BWS - management company of “BMC” holding v Council, judgment of the General Court 06/03/24, paragraph 38, ECLI:EU:T:2024:150; Case T-259/22, Mostovdrev v Council, judgment of the General Court 06/03/24, paragraph 37, ECLI:EU:T:2024:151.

U.S.A., as well as internationally by the International Civil Aviation Organisation (“ICAO”), and it satisfies the sustainability and GHG emissions reductions criteria laid down by RED 2018. As such, LanzaJet is the only business globally that produces crop-based biofuel for the aviation sector that would have been capable of being supplied and used in the EU, but for the adoption of the ReFuelEU Aviation Regulation.

115. LanzaJet therefore has a direct and existing interest in the form of order sought, since the Contested Provisions, which the Applicants in the Main Proceedings seek to have annulled, effectively prevent the supply of LanzaJet’s crop-based biofuel to the aviation sector in the EU. For the reasons explained in Section III above, the restrictions on the use by aviation fuel suppliers of crop-based biofuels that the Contested Provisions introduce will have the effect of excluding such biofuels from the EU market. As a direct consequence of the Contested Provisions, therefore, LanzaJet will be prevented from supplying a significant proportion of its output to customers in the EU.
116. The Contested Provisions thereby remove LanzaJet’s existing right to supply crop-based biofuels in the EU, which had been established by RED 2018. The Contested Provisions also directly affect LanzaJet’s ability to continue its economic activities in the EU, specifically by imposing restrictions on the use of its primary product.
117. As such, LanzaJet has a direct and existing interest in the result of the Main Proceedings. Should the judgment in the main proceedings grant the form of order sought and annul the Contested Provisions, thereby rescinding the restrictions on the use of crop-based biofuels in the aviation sector, LanzaJet’s right to market and supply its product in the EU will be restored and the limitations on its economic activities will be removed. LanzaJet therefore satisfies the requirement of establishing a direct interest in the ruling on the specific acts the annulment of which is sought.
118. In conclusion, in light of the above, the Intervenors submit that LanzaJet has standing to intervene in the Main Proceedings for the purposes of Article 40 of the Statute.

3. Summary of Claims

119. For the reasons set out in this Application to Intervene, the Interveners aver that they have standing to intervene in the sense of Article 40 of the Statute and respectfully request leave from the Court to intervene in the Main Proceedings.

V. FORM OF ORDER SOUGHT

120. On these grounds, the Interveners respectfully request the Court to:

- Grant them leave to intervene in the Main Proceedings in support of the form of order sought by the Applicants; and
- Order the Defendants to bear the legal costs and expenses incurred by the Interveners associated with this intervention.

Brussels, 2 May 2024

**SCHEDULE OF ANNEXES TO THE APPLICATION TO INTERVENE IN CASE
T-1165/23, EPURE AND PANNONIA BIO V PARLIAMENT AND COUNCIL**

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