ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)
23 November 1999 *

In Case T-173/98,

Unión de Pequeños Agricultores, an association incorporated under Spanish law, established in Madrid, represented by Javier Ledesma Bartret and José Mª Jiménez Laiglesia y de Oñate, both of the Madrid Bar, with an address for service in Luxembourg care of Concepción Llasser Moyano, 22 Rue Wenkelhiel, Dalheim,

applicant,

v

Council of the European Union, represented by Ignacio Díez Parra and Antonio Tanca, Legal Advisers, acting as Agents, with an address for service in Luxembourg at the office of Alessandro Morbilli, Manager of the Legal Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

* Language of the case: Spanish.

APPLICATION for the partial annulment of Council Regulation (EC) No 1638/98 of 20 July 1998, amending Regulation No 136/66/EEC on the establishment of a common organisation of the market in oils and fats (OJ 1998 L 210, p. 32),

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

composed of: K. Lenaerts, President, J. Azizi and M. Jaeger, Judges,

Registrar: H. Jung,

makes the following

Order

Legal background

1 On 22 September 1966 the Council adopted Regulation No 136/66/EEC on the establishment of a common organisation of the market in oils and fats (OJ, English Special Edition 1965-1966, p. 221, hereinafter 'the basic regulation'). In particular, the basic regulation set up a common organisation of the markets in olive oil, structured around a system of guaranteed prices and production aid.

2 Several subsequent amendments were made to the mechanisms introduced by the basic regulation. The common organisation of the olive oil markets, as amended, laid down schemes in respect of intervention prices, production aid, consumption aid and storage, as well as imports and exports.

3 Article 92 of the Act of Accession of the Kingdom of Spain and the Portuguese Republic to the European Communities, signed on 12 June 1985, contained transitional arrangements for the application of the basic regulation to operators established in Spain (OJ 1985 L 302, p. 9).

4 On 17 February 1997 the Commission submitted a Note to the Council and to the European Parliament on the olive and olive oil sector (including the economic, cultural, regional, social and environmental aspects), the current common organisation of the markets, the need for reform and the alternatives envisaged [COM (97) 0057-C4-0096/97]. In its Note, the Commission explains that reform is needed owing to a predictable surplus of produce, the impossibility of absorbing that surplus into the Community market, the reduction in exports imposed by undertakings given in connection with the World Trade Organisation and the difficulty of monitoring the aid scheme and preventing fraud.

5 On 19 March 1998 the Commission submitted a Proposal for a Council Regulation (EC) amending the basic regulation (OJ 1998 C 136, p. 20), in accordance with the reform options suggested in its Note of 17 February 1997.

6 On 20 July 1998 the Council adopted Regulation (EC) No 1638/98 amending the basic regulation (OJ 1998 L 210, p. 32, hereinafter 'the contested regulation'). The contested regulation reforms, in particular, the common organisation

of the olive oil markets. For that purpose, the previous intervention scheme was abolished and replaced by a system of aid for private storage contracts; consumption aid and the specific allocation of aid to small producers were both discontinued; the stabiliser mechanism for production aid based on a maximum guaranteed quantity for the Community as a whole was amended by being apportioned among the producer Member States in the form of national guaranteed quantities; finally, olive groves planted after 1 May 1998 are excluded, subject to certain exceptions, from any future aid scheme. The contested regulation also provides that the Commission is to present, in the course of the year 2000, a proposal for a regulation to implement a complete reform of the common organisation of the markets in the sector of oils and fats.

Facts and Proceedings

7 The applicant is a trade association which represents and acts in the interests of small Spanish agricultural businesses. It has legal personality under Spanish law.

8 The applicant brought this action by application lodged at the Court Registry on 20 October 1998.

9 By separate document lodged at the Court Registry on 23 December 1998, the Council raised an objection of inadmissibility under Article 114(1) of the Rules of Procedure of the Court. The applicant submitted its observations on the objection of inadmissibility on 22 February 1999.

10 By application lodged at the Court Registry on 4 June 1999, the Commission applied for leave to intervene in support of the form of order sought by the Council.

11 By applications lodged at the Court Registry on 17, 21 and 22 June 1999, the Diputación Provincial de Jaén, the Junta de Comunidades de Castilla-La Mancha and the Consejo de Gobierno de la Comunidad Autónoma de Andalucía applied for leave to intervene in support of the form of order sought by the applicant.

Forms of order sought

12 The applicant claims that the Court should:

— declare the action admissible;

— annul the contested regulation, with the exception of the aid scheme for table olives provided for in Article 5(4) of the basic regulation as amended by the contested regulation;

— order the Council to pay the costs.

13 In its objection of inadmissibility, the Council claims that the Court should:

— dismiss the action as manifestly inadmissible;

— order the applicant to pay the costs.

14 In its observations on the objection of inadmissibility, the applicant contends that the Court should:

— dismiss the objection of inadmissibility raised by the Council;

— order the Council to pay the costs;

— in the alternative, reserve the decision on the objection of inadmissibility for the final judgment.

Inadmissibility

Arguments of the parties

15 The Council submits that the action is inadmissible, first, because of the nature of the contested measure and, second, because the applicant is not individually concerned.

16 The Council points out, first, that the fourth paragraph of Article 173 of the EC Treaty (now, after amendment, the fourth paragraph of Article 230 EC) does not give individuals the opportunity to bring an action for the annulment of a regulation. In this instance, the contested measure, owing to its content, has the characteristics of a regulation within the meaning of Article 189 of the EC Treaty (now Article 249 EC). It is, therefore, a legislative measure of general application which applies in a generalised and abstract manner to objectively determined situations.

17 The Council claims, second, that the applicant is not individually concerned. It states that the applicant is an association whose objective is to protect the general interests of its members, which does not constitute sufficient grounds for the admissibility of the action (order of the Court of Justice in Case 117/86 *UFADE* v *Council and Commission* [1986] ECR 3255 and judgment of the Court of First Instance in Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and Others* v *Commission* [1995] ECR II-1971). Nor may the applicant use the position it claims to have as a negotiator to show that it has a legal interest in bringing proceedings in this case. Finally, the applicant cannot maintain that it has substituted itself for its members, who themselves have a right of action, since they are not individually concerned by the contested regulation either. In any event, that regulation does not affect the applicant by reason of certain attributes which are peculiar to it or by reason of circumstances in which it is differentiated from all other persons, since all Community traders carrying out the same activities as its members are affected in exactly the same way (orders of the Court

of Justice in Case 34/88 *Cevap and Others* v *Council* [1988] ECR 6265 and in Case 160/88 *Fédération Européenne de la Santé Animale and Others* v *Council* [1988] ECR 6399; judgment of the Court of Justice in Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477, paragraph 10). Nor may the applicant rely on the judgment of the Court of Justice in Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853), since the contested regulation has not adversely affected any specific rights of either the applicant or its members.

18 The applicant disputes the Council's argument and submits that its action is admissible. It notes, at the outset, that the Council does not deny that the applicant is directly concerned by the contested regulation.

19 As regards whether it is individually concerned, the applicant claims that the contested regulation is not a legislative act and that the applicant is, in any event, individually concerned by the measures it lays down.

20 First, the applicant contends that the contested regulation is not a legislative act and refers to three of its specific features. First, it claims that the regulation is not a measure of general application, since it restricts the number of plantings which may be eligible for aid and backdates to 1 May 1998 the number of olive growers entitled to production aid. Next, it contends that, even though the contested regulation does define its field of application in a generalised and abstract manner, it does not apply to objectively determined situations, since the Council recognises that it adopted the measure without adequate reliable information. Finally, the applicant argues that the contested regulation itself exhausts its effects, inasmuch as it merely amends the existing system, without establishing the bases of the new system or creating a link with it.

21 Second, the applicant puts forward four arguments to show that, even if it were necessary to accept that the contested regulation is a legislative act, it still concerns the applicant individually within the meaning of the fourth paragraph of

Article 173 of the Treaty and of the case-law (*Codorniu* v *Council*, cited above, paragraph 19; order of the Court of Justice in Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraph 43; judgments of the Court of First Instance in Case T-482/93 *Weber* v *Commission* [1996] ECR II-609, paragraph 56, and in Case T-298/94 *Roquette Frères* v *Council* [1996] ECR II-1531; order of the Court of First Instance in Case T-207/97 *Berthu* v *Council* [1998] ECR II-509).

22 First, the applicant states that the contested regulation, in so far as it causes a reduction in the applicant's membership, thereby diminishing its status as representative and its funding, affects its negotiating position (judgment of the Court of First Instance in Case T-380/94 *AIUFFASS and AKT* v *Commission* [1996] ECR II-2169). It states that it actively participates in the procedure to adopt rules relating to the activities of its members. In this connection it refers to the document attached as Annex 31 to the application, which sets out all its interventions with Community and national institutions between 1996 and 1998. The applicant explains that this is not the exercise of a procedural right but of a far more fundamental right. It therefore has an individual interest, not merely a general interest, in the annulment of the contested regulation. The applicant claims to have the capacity of interested party, which must be determined according to the specific facts of the case, irrespective of the nature of the contested measure.

23 Second, the applicant states that its members are individually affected by the contested regulation. The traditional olive growers whom it represents are in danger of disappearing as a consequence of the adoption of this measure. Thus, two of them are compelled to cease trading. However, the contested regulation has not put all the olive growers in the same financial difficulties. The applicant's members are protected by Article 39 of the EC Treaty (now Article 33 EC) et seq., which the Council should have borne in mind when it adopted the contested regulation (see the judgments in *Sofrimport* v *Commission* and *Codorniu* v *Council*, cited above).

24 Third, the applicant invokes the existence of a matter of Community public interest in order to establish the admissibility of its action, relying on the

judgments of the Court of Justice in Joined Cases 106/63 and 107/63 *Toepfer and Getreide-Import* v *Commission* [1965] ECR 405, in Case 62/70 *Bock* v *Commission* [1971] ECR 897, and in Case 11/82 *Piraiki-Patraiki* v *Commission* [1985] ECR 207, according to which an applicant to whom the contested measure is not addressed is nevertheless deemed to be individually concerned by it to the extent that it contains rules having retroactive effect, as in the present case, and if, in the course of its adoption, the institution concerned acted incorrectly. The applicant contends that, in the present case, the procedure followed prior to the adoption of the contested regulation is 'marked by errors' and by a certain misuse of powers, since the rules laid down in the contested regulation do not correspond to the stated objectives. The applicant therefore asks the Court to determine, for reasons relating to the Community public interest, whether the Council did indeed adopt a legislative act without any factual basis, as appears from the contested measure.

25 Fourth, the applicant claims that, by declaring its action inadmissible, the Court would deny it any means of defence and infringe its fundamental right, and that of its members, to effective judicial protection. The applicant explains that, under the Spanish legal system, that right has the status of a fundamental principle. In this regard it states, in particular, that, since neither the Spanish State nor the autonomous communities of which it is composed have adopted measures to implement the contested regulation, it has not the slightest opportunity of bringing before the national courts proceedings in which a reference might be made under Article 177 of the EC Treaty (now Article 234 EC) for a preliminary ruling on the validity of the contested regulation.

26 The applicant then states that, in its case-law, the Court of Justice has held that the right to effective judicial protection is one of the fundamental rights recognised under the Community legal system, which ensures that it is respected (judgments of the Court of Justice in Case 11/70 *Internationale Handelsgellschaft* [1970] ECR 1125, paragraph 4; in Case 4/73 *Nold* v *Commission* [1974] ECR 491, paragraph 13; in Case 294/83 *Les Verts* v *Parliament* [1986] ECR 1339, paragraph 23; in Case 222/84 *Johnston* [1986] ECR 1651; in Case 5/88 *Wachauf* [1989] ECR 2609; in Case C-213/89 *Factortame and Others* [1990] ECR I-2433; in Case C-104/91 *Aguirre Borrell and Others* [1992]

ECR I-3003; in Case C-97/91 *Oleificio Borelli* v *Commission* [1992] ECR I-6313, and in Case C-312/93 *Peterbroeck* [1995] ECR I-4599). The applicant contends that it would be incompatible with the right to effective judicial protection to declare this action inadmissible when, as in this instance, it is not a matter of imposing restrictions or obligations on the Member States, but of reviewing the Council's exercise of its discretionary power. The applicant also quotes point 20 of a report by the Court of Justice on certain aspects of the Treaty on European Union.

27 Finally, the applicant claims that, in order to qualify for the right to effective judicial protection under Community law, individuals are not required to show that they are completely unable to have access to a court other than the Community court, but only that such access would not be effective. It is for the Court of First Instance to establish whether it may be inferred from the contested measure that the individual has a genuine and effective opportunity to challenge its legality before a national court, by means of a reference for a preliminary ruling (see, for example, the judgment of the Court of Justice in Case C-209/94 P *Buralux and Others* v *Council* [1996] ECR I-615).

28 In this connection, the applicant points out that the Kingdom of Spain formally refused to initiate the legal proceedings it is entitled to bring under Community law against the contested regulation when asked to do so by the autonomous community of Andalusia.

29 It also states, in that regard, that the Member States do not need to adopt any measures to implement the withdrawals envisaged by the contested regulation, such as those of the intervention scheme, the consumption aid scheme, aid to small producers, the maximum guaranteed quantity for the Community and aid for new plantings from 1 May 1998. Furthermore, since Article 39 et seq. of the Treaty, on which the applicant relies, do not have direct effect, the Community

court is the only court which can protect its rights (see the judgment of the Court of Justice in Case C-321/95 P *Greenpeace Council and Others* v *Commission* [1998] ECR I-1651, paragraph 33).

30 In any event, since the contested regulation has a period of validity of three years, it would be pointless to bring an action before a Spanish court, given the time it takes for the Court of Justice to give judgment on a question referred for a preliminary ruling.

31 The applicant claims, in the alternative, that the decision on the objection of inadmissibility should be reserved for the final judgment on the grounds that the Council adopted the contested regulation without using any reliable information.

Findings of the Court

32 Under Article 111 of the Rules of Procedure of the Court of First Instance, as amended with effect from 1 June 1997 (OJ 1997 L 103, p. 6), when an action is manifestly inadmissible or manifestly unfounded in law, the Court of First Instance may, without taking further steps in the proceedings, give judgment by reasoned order.

33 In the present case, the Court considers that it has sufficient information from the documents in the file and decides, in accordance with the aforementioned Article 111, to give judgment without taking further steps in the proceedings.

34 According to settled case-law (see orders of the Court of First Instance in Case T-122/96 *Federolio* v *Commission* [1997] ECR II-1559, paragraphs 50 and 51,

and of 29 April 1999 in Case T-120/98 *Alce* v *Commission* [1999] ECR II-1395, paragraph 17) that the fourth paragraph of Article 173 of the Treaty allows individuals to challenge any decision which, although in the form of a regulation, is of direct and individual concern to them. The objective of that provision is in particular to prevent the Community institutions from being able, merely by choosing the form of a regulation, to preclude an individual from bringing an action against a decision which concerns him directly and individually, and thus to make it clear that the choice of form may not alter the nature of a measure (see the judgment of the Court of Justice in Joined Cases 789/79 and 790/79 *Calpak and Società Emiliana Lavorazione Frutta* v *Commission* [1980] ECR 1949, paragraph 7, and the order of the Court of First Instance in Case T-476/93 *FRSEA and FNSEA* v *Council* [1993] ECR II-1187, paragraph 19). It is also settled case-law that the test for distinguishing between a regulation and a decision is whether or not the measure in question is of general application (see the judgment of the Court of Justice in Case 307/81 *Alusuisse* v *Council and Commission* [1982] ECR 3463, paragraph 8).

35 It is therefore necessary to determine the nature of the contested measure in the present case.

36 Although the applicant denies that the contested regulation is legislative in nature, it nevertheless accepts that the measure aims to amend the mechanisms of the common organisation of the markets in the oils and fats sector established by the basic regulation, as amended, and also defines its field of application in a generalised and abstract manner. The provisions of the contested regulation thus have legal consequences for traders operating in those markets. They are, therefore, a priori, measures of general application within the meaning of Article 189 of the Treaty.

37 The three arguments put forward by the applicant to show that the contested regulation is not a measure of general application cannot affect the validity of that analysis.

38 In the first place, it cannot be accepted that measures which have the effect of amending a scheme of common organisation of markets by limiting the scope of

the aid offered to operators by the Community are not, as a matter of principle, of general application. All it is necessary to know is whether the provisions contained in those measures apply in a general and abstract manner to objectively determined factual or legal situations.

39 More specifically, the fact that the contested regulation may have the effect, in particular, of limiting the number of operators entitled to certain aids by imposing the condition that the oil must be produced from plantings which are in existence prior to the date on which it is adopted or comes into force, cannot automatically deprive the regulation of its general application, since it is not disputed that the measure in question applies to all the operators affected who are in the same objectively determined factual or legal situation. It should be pointed out that the applicant has not alleged that the measure did not apply in this way.

40 Second, the applicant has entirely failed to demonstrate that the provisions of the contested regulation do not apply to objectively determined situations. Its argument that the Council adopted the contested regulation on the basis of unreliable information is irrelevant in that respect. The provisions of a measure are deemed to apply to objectively determined situations if they are applied by virtue of an objective legal or factual situation defined by the measure in relation to its purpose (order in *Federolio* v *Commission*, cited above, paragraphs 55 and 56). In the present case, the provisions of the contested regulation apply on the basis of an objective situation — namely participation in the markets in the oils and fats sector defined in relation to the aim of the contested regulation, that is, to amend the common organisation of the markets.

41 The alleged unreliability of the information on the basis of which the Council adopted the contested regulation, even if proved, cannot affect that conclusion.

42 Moreover, the applicant does not claim that the consequence of the alleged unreliability of the information is that the contested regulation in reality only affects the position of its members. It is also clear from the application that the applicant bases this argument on the first recital of the contested regulation, which states: 'whereas in February 1997 the Commission submitted a communication to the European Parliament and the Council on the olive and olive oil sector concluding that the current common organisation of the market in oils and fats needed reform; whereas that communication and the options for reform set out therein have been discussed within the Community institutions; whereas opinions concur on the need for reform; whereas, however, with a view to determining the best approach, more reliable information must be obtained, in particular on the number of olive trees in the Community, the areas planted and yields; whereas, given the time required to gather and analyse such data, the Commission has undertaken to submit a proposal for reform in the course of 2000 for application from the 2001/02 marketing year'. Taken in context, therefore, this passage does not have the scope attributed to it by the applicant, since it shows that the Council intends to effect a thorough reform of the common organisation of the markets in the oils and fats sector only after taking steps to gather all the information needed for that purpose. Consequently, the argument put forward by the applicant is irrelevant to an assessment of the admissibility of its action for annulment.

43 Finally, even if the contested regulation were to have the temporal effects ascribed to it by the applicant, it cannot be inferred from that specific circumstance that its provisions do not apply by virtue of an objective legal or factual situation defined by the measure in relation to its purpose.

44 It must, therefore, be held that the contested regulation is, by its nature and its scope, legislative in character and does not constitute a decision within the meaning of Article 189 of the Treaty.

45 However, in certain circumstances, a legislative measure which applies to the operators concerned in general may also be of individual concern to some of

them. In such a situation, a Community measure may be in the nature of a legislative provision and also, in respect of some of the operators concerned, of a decision (judgments of the Court of Justice in Case C-358/89 *Extramet Industrie* v *Council* [1992] ECR I-2501, paragraph 13, and in *Codorniu* v *Council*, cited above, paragraph 19, and of the Court of First Instance in Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraph 50).

46 To establish this, however, natural or legal persons must be able to show that they are affected by the measure in question by reason of certain attributes which are peculiar to them or by reason of factual circumstances in which they are differentiated from all other persons (orders in *Federolio* v *Commission*, cited above, paragraph 59, and *Alce* v *Commission*, cited above, paragraph 19).

47 Furthermore, as the Court of First Instance points out in its order in *Federolio* v *Commission*, cited above (paragraph 61), actions brought by associations may, in this context, be held admissible in at least three kinds of circumstances:

— when a legal provision expressly grants a series of procedural powers to trade associations;

— when the association represents the interests of undertakings which would, themselves, be entitled to bring proceedings;

— when the association is distinguished individually because its own interests as an association are affected, in particular because its negotiating position has been affected by the measure whose annulment is being sought.

48 In this case, the applicant cannot rely on any of these three situations in order to establish the admissibility of its action.

49 First, it should be pointed out that the applicant has no rights of a procedural nature under the common organisation of the markets in the oils and fats sector (see the order of the Court of First Instance in Case T-38/98 *ANB and Others* v *Council* [1998] ECR II-4191, paragraph 27), which would moreover be affected by the provisions of the contested regulation. It acknowledges as much in its observations on the objection of inadmissibility. Furthermore, the Court of First Instance has already held that an association cannot rely on the specific tasks and duties which national law recognises them as having in order to justify varying the system of legal remedies set up by Article 173 of the Treaty and intended to give the Community judicature jurisdiction to review the legality of the acts of the institutions, in order that the admissibility of an action for annulment should not depend on a unilateral decision taken by national authorities in the interests of the Member State concerned rather than in the Community public interest (see the order in *Federolio* v *Commission*, cited above, paragraphs 63 to 65).

50 Second, the applicant has not established that its members are affected by the contested regulation by reason of certain attributes which are peculiar to them or by reason of factual circumstances in which they are differentiated from all other persons. In that regard it need merely be pointed out that the fact that the regulation may, at the time it was adopted, have affected those of the applicant's members then operating in the olive oil markets and, in some circumstances, caused them to cease trading, cannot differentiate them from all the other operators in the Community, since they are in an objectively determined situation comparable to that of any other trader who may enter those markets now or in the future (order in *Federolio* v *Commission*, cited above, paragraph 67). The contested regulation concerns the applicant's members only on the basis of their objective capacity as operators trading in those markets, in the same way as all the other operators who trade in them.

51 The fact that the measure at issue may have different material consequences for the various persons to whom it applies is not in itself inconsistent with its legislative nature if that situation is objectively determined, as in the present case

(see the order of the Court of First Instance in Case T-100/94 *Michailidis and Others* v *Commission* [1998] ECR II-3117, paragraph 61).

52 As regards the special protection which, according to the applicant, is afforded to its members under Article 39 et seq. of the Treaty, it must be pointed out that those provisions do not provide any such protection. Furthermore, the applicant has failed to specify in what respect those articles provide protection and has merely referred to Article 39(2) of the Treaty in its application.

53 Nor, thirdly, can the applicant validly claim, in support of the admissibility of its action, that the contested regulation affects some of its specific interests.

54 According to settled case-law, an association formed to promote the group interests of a category of persons cannot be regarded as individually concerned, within the meaning of the fourth paragraph of Article 173 of the Treaty, by a measure affecting the general interests of that category and, therefore, is not entitled to bring an action for annulment if its members cannot do so individually (judgments of the Court of Justice in Joined Cases 19/62, 20/62, 21/62 and 22/62 *Fédération Nationale de la Boucherie en Gros et du Commerce en Gros des Viandes and Others* v *Council* [1962] ECR 491, and in Case 72/74 *Union Syndicale and Others* v *Council* [1975] ECR 401, paragraph 17; order of the Court of Justice in Case 60/79 *Fédération Nationale des Producteurs de Vins de Table et Vins de Pays* v *Commission* [1979] ECR 2429; judgment of the Court of Justice in Case 282/85 *DEFI* v *Commission* [1986] ECR 2469, paragraph 16; order in *UFADE* v *Council and Commission*, cited above, paragraph 12, and judgment in *AITEC and Others* v *Commission*, paragraphs 58 to 62). Nevertheless, an action brought by an association whose members are not directly and individually concerned by the measure at issue may be declared admissible if it is defending its own interests, as distinct from those of its members, for example, if its negotiating position has been affected by the measure (judgments of the Court

of Justice in Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219, paragraphs 21 to 24, and in Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125, paragraphs 28 to 30).

55 In this case, it should be pointed out that the tasks described by the applicant are entrusted to it by its members, who unquestionably have the power to determine its management and duties and also, therefore, to specify the interests it must defend. The applicant further claims that the contested regulation affects its position as a negotiator in that, following the adoption of the measure, it will not represent as many olive growers as in the past. In these circumstances, the interests which the applicant considers peculiar to itself are indistinguishable from those of its members.

56 It must also be observed that the contested regulation does not affect the specific interests of the applicant as a body responsible for protecting the interests of traditional olive growers. The activities of the applicant, which is not an undertaking operating in the olive oil market, cannot be subject to amendment under the regulation. Nor has the applicant shown how its position as a body responsible for protecting the interests of traditional olive growers differs from that of other bodies having the same responsibilities in Spain or in other Member States and differentiates it for the purposes of the fourth paragraph of Article 173 of the Treaty.

57 Nor, in the present case, does the judgment in *AIUFFASS and AKT* v *Commission*, cited above, assist the applicant in establishing the admissibility of its action. In that case, which related to State aid, the Court of First Instance referred to the capacity of the two applicants as interested persons for the purposes of Article 93(2) of the EC Treaty (now Article 88(2) EC) and their

participation in the administrative procedure leading to the adoption of the contested measure. Those two factors are lacking in the present case.

58 The applicant is therefore not differentiated by reason of any of the tests established by case-law for the admissibility of an action for annulment brought by an association.

59 The applicant puts forward two further arguments to prove that it is, none the less, individually concerned by the provisions of the contested regulation, namely that the review of the legality of the contested regulation which it seeks in its action is a matter of Community public interest, and that there is a risk that it will not receive effective judicial protection.

60 The plea alleging possible misuse of powers relates in reality to the substance of the case. To consider that plea at the same time as the admissibility of the action would render the admissibility of an action for annulment brought against a measure of general application dependent solely on the nature of the grounds invoked in relation to the substance of the case in order to challenge the legality of the measure; this would amount to derogating from the conditions for admissibility laid down in the fourth paragraph of Article 173 of the Treaty, as interpreted by the case-law.

61 The argument that no effective legal protection is afforded consists of the complaint that there are no legal remedies under national law which make it possible, if necessary, to review the legality of the contested regulation by means of a reference for a preliminary ruling under Article 177 of the Treaty.

62 It must be pointed out, in this connection, that the principle of equality for all persons subject to Community law in respect of the conditions for access to the

Community judicature by means of the action for annulment requires that those conditions do not depend on the particular circumstances of the judicial system of each Member State. In this regard it should also be observed that, in accordance with the principle of sincere cooperation laid down in Article 5 of the EC Treaty (now Article 10 EC), the Member States are required to implement the complete system of legal remedies and procedures established by the EC Treaty to permit the Court of Justice to review the legality of measures adopted by the Community institutions (see, on this point, the judgment in *Lès Verts* v *Parliament*, cited above, paragraph 23).

63 However, these factors do not provide the Court of First Instance with a reason for departing from the system of remedies established by the fourth paragraph of Article 173 of the Treaty, as interpreted by case-law, and exceeding the limits imposed on its powers by that provision.

64 Moreover, the applicant cannot validly base any argument on the possible length of proceedings under Article 177 of the Treaty. That circumstance cannot justify a change in the system of remedies and procedures established by Articles 173, 177 and 178 of the EC Treaty (now Article 235 EC) which is designed to give the Court of Justice the power to review the legality of acts of the institutions. In no case can such an argument enable an action for annulment brought by a natural or legal person which does not satisfy the conditions laid down by the fourth paragraph of Article 173 of the Treaty to be declared admissible (order of the Court of Justice in Case C-87/95 P *CNPAAP* v *Council* [1996] ECR I-2003, paragraph 38).

65 It follows from all these considerations that the applicant cannot be regarded as individually concerned by the contested regulation. Since the applicant does not satisfy one of the conditions for admissibility laid down by the fourth paragraph

of Article 173 of the Treaty, it is not necessary to consider whether it is directly concerned by the contested regulation.

66 It follows from the above that this action must be dismissed as manifestly inadmissible.

Applications to intervene

67 Since this action must be declared manifestly inadmissible, there is no need to adjudicate on either the applications to intervene in support of the form of order sought by the applicant submitted by the Diputación Provincial de Jaén, the Junta de Comunidades de Castilla-La Mancha and the Consejo de Gobierno de la Comunidad Autónoma de Andalucía, or on the application by the Commission to intervene in support of the form of order sought by the Council.

Costs

68 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay the costs, as applied for by the Council.

69 In view of the fact that it is not necessary to adjudicate on the applications to intervene, the Diputación Provincial de Jaén, the Junta de Comunidades de Castilla-La Mancha, the Consejo de Gobierno de la Comunidad Autónoma de Andalucía and the Commission will bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby orders:

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

2. **The applicant shall bear its own costs and pay those incurred by the Council.**

3. **The Diputación Provincial de Jaén, the Junta de Comunidades de Castilla-La Mancha, the Consejo de Gobierno de la Comunidad Autónoma de Andalucía and the Commission shall bear their own costs.**

Luxembourg, 23 November 1999.

H. Jung — Registrar

K. Lenaerts — President