ORDER OF THE COURT (Fifth Chamber)
10 May 2001 *

In Case C-345/00 P,

Fédération nationale d'agriculture biologique des régions de France (FNAB), established in Paris (France),

Syndicat européen des transformateurs et distributeurs de produits de l'agriculture biologique (Setrab), established in Paris,

Est Distribution Biogam SARL, established in Château-Salins (France),

represented by D. Leermakers, avocat, and C. Hatton, Solicitor, with an address for service in Luxembourg,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Third Chamber) of 11 July 2000 in Case T-268/99 *Fédération nationale d'agriculture biologique des régions de France and Others* v *Council* [2000] ECR II-2893, seeking to have that order set aside,

* Language of the case: French.

the other party to the proceedings being:

Council of the European Union, represented by F. Anton and J. Monteiro, acting as Agents, with an address for service in Luxembourg,

THE COURT (Fifth Chamber),

composed of: A. La Pergola, President of the Chamber, M. Wathelet, D.A.O. Edward (Rapporteur), S. von Bahr and C.W.A. Timmermans, Judges,

Advocate General: C. Stix-Hackl,
Registrar: R. Grass,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By application lodged at the Registry of the Court on 19 September 2000, Fédération nationale d'agriculture biologique des régions de France ('FNAB'), Syndicat européen des transformateurs et Distributeurs de produits de l'agriculture biologique ('Setrab') and Est Distribution Biogam SARL ('Biogam') brought an appeal under Article 49 of the EC Statute of the Court of Justice against the order of the Court of First Instance of 11 July 2000 in Case T-268/99 *Fédération nationale d'agriculture biologique des régions de France and Others* v *Council* [2000] ECR II-2893 (hereinafter 'the contested order') by which the Court of First Instance dismissed as inadmissible their action for the partial annulment of Council Regulation (EEC) No 1804/1999 of 19 July 1999 supplementing Regulation (EEC) No 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs to include livestock production (OJ 1999 L 222, p. 1).

Legislative background

2 Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs (OJ 1991 L 198, p. 1) prohibits indications referring to organic production methods in the labelling and advertising of agricultural products and

foodstuffs not produced in accordance with the rules on production laid down in that regulation.

3 Indications appearing in labelling, advertising material or commercial documents and regarded by consumers as references to organic methods of production are reserved by Regulation No 2092/91 to products produced in accordance with that regulation.

4 In the original version, Regulation No 2092/91 applied only to plants and plant products. Its scope was then extended by Regulation No 1804/1999. Regulation No 2092/91, as amended, now applies to products of plant and animal origin.

5 Article 2 of Regulation No 2092/91, as amended, provides:

'For the purposes of this Regulation a product shall be regarded as bearing indications referring to organic production methods where, in the labelling, advertising material or commercial documents, such a product or its ingredients is described by the indications in use in each Member State suggesting to the purchaser that the product or its ingredients have been obtained in accordance with the rules of production laid down in Article 6 and in particular the following terms or their usual derivatives (such as bio, eco, etc.) or diminutives, alone or combined, unless such terms are not applied to agricultural products in foodstuffs or feedingstuffs or clearly have no connection with the method of production:

...

— in French: biologique,

...'

6 As is clear from recital 27 in the preamble to Regulation No 1804/1999, the Council considered it necessary to provide a transitional period 'in order to permit trade-mark holders to adapt their production to the requirements of organic farming'.

7 That is why Article 1(7) of Regulation No 1804/1999 (hereinafter 'the contested provision') provides:

'the following paragraph shall be inserted in Article 5 [of Regulation 2092/91]:

"3a. By way of derogation from paragraphs 1 to 3, trademarks which bear an indication referred to in Article 2, may continue to be used until 1 July 2006 in the labelling and advertising of products which do not comply with this Regulation provided that:

— registration of the trademark was applied for before 22 July 1991 — and in Finland, Austria, and Sweden before 1 January 1995 — and is in conformity with the First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trademarks, and

— the trademark is already reproduced with a clear, prominent, and easily readable indication that the products are not produced according to the organic production method as prescribed in this regulation."'.

Procedure before the Court of First Instance

8 By application lodged at the Registry of the Court of First Instance on 15 November 1999, the appellants brought an action under the fourth paragraph of Article 230 EC in which, in essence, they sought annulment of the derogation provided for by the contested provision.

9 In support of their action, they maintained that the contested provision gives consumers the impression that products described as 'bio', although not produced by organic farming, are substitutable for genuine organic products. The contested provision thus makes it possible to lure customers away from organic products.

10 By a separate document lodged at the Registry of the Court of First Instance on 21 January 2000, the Council objected, under Article 114(1) of the Rules of Procedure of the Court of First Instance, that the action was inadmissible. The applicants submitted their observations on the objection of inadmissibility on 3 April 2000.

11 In the contested order, the Court of First Instance upheld the objection of inadmissibility and dismissed the action as inadmissible.

The contested order

12 First, after pointing out in paragraph 32 of the contested order that, according to settled case-law, the fourth paragraph of Article 230 EC allows individuals to challenge any decision which, although in the form of a regulation, is of direct and individual concern to them, and that the test for distinguishing between a regulation and a decision is whether or not the measure in question is of general application, the Court of First Instance found, in paragraph 34 of the contested order, that Regulation No 1804/1999 contained rules of general application applying to all the economic operators concerned, relating in particular to products of animal origin produced using organic methods of production.

13 The Court of First Instance concluded, in paragraph 35 of the contested order, that, being of general application, the regulation was in the nature of legislation and did not constitute a decision within the meaning of Article 249 EC.

14 As regards the applicants' argument that the contested provision constituted an individual decision because only one undertaking benefited from the derogation contained in it, the Court of First Instance pointed out, in paragraph 37 of the contested order, that the contested provision contains a temporary derogation from the principle that only products obtained in accordance with the rules laid down by Regulation No 2092/91, as amended, may bear indications referring to an organic production method. In view of the scope and conditions for the implementation of that derogation, the Court of First Instance found, in paragraph 38 of the contested order, that it applied to objectively determined

situations and involved legal consequences for a category of trade-mark holders viewed generally and in the abstract. It concluded that the temporary derogation at issue should be regarded as forming an integral part of the group of provisions within which it is found and is of the same general nature as those provisions.

15 As regards the applicants' argument that only Danone benefited from the derogation contained in the contested provision, the Court of First Instance pointed out, in paragraph 39 of the contested order, that the legislative nature of a measure is not called in question by the fact that it is possible to identify the persons to whom it applies, as long as it is established that such application takes effect by virtue of an objective legal or factual situation defined by that measure by reference to its purpose. It also rejected that argument as factually incorrect.

16 The Court of First Instance then considered whether, despite the general scope of the provision at issue, it could nevertheless be regarded as of direct and individual concern to the applicants. It held, in paragraph 45 of the contested order, that the applicants had not demonstrated that Biogram and the members of FNAB and Setrab were adversely affected by the contested provision by reason of certain characteristics peculiar to them or a factual situation distinguishing them from all other persons.

17 Noting that Danone had already sold yoghurt under the trade mark 'Bio' before the adoption of Regulation No 1804/1999, with the result that the contested provision merely maintained that existing position until 1 July 2006 at the latest, and that the provision stated that 'the trademark [must always be] reproduced with a clear, prominent, and easily readable indication that the products are not produced according to the organic production method as prescribed in [Regulation No 2092/91]', the Court of First Instance refuted, in paragraphs 47 and 48 of the contested order, the applicants' argument that the contested provision weakened their competitive position or that of their members.

18 The Court of First Instance added, in paragraph 49 of the contested order, that, even if the contested provision had had a considerable impact on the competitive position of the applicants or of their members, that fact was not such as to distinguish them from all other operators in the organic products market since the contested provision was of concern to Biogram and the members of FNAB and Setrab only by reason of their objective status as economic operators in that market, in the same way as all other Community operators in that market.

19 Finally, in paragraphs 53 to 56 of the contested order, the Court of First Instance rejected the applicants' argument that FNAB was individually concerned because its position as a negotiator had been affected by the contested provision. The Court of First Instance found, in paragraph 55, that Regulation No 1804/1999 had been negotiated and adopted by the Council on a proposal from the Commission and after consultation of the European Parliament and of the Economic and Social Committee. Even though the FNAB sent reports to the Community and French authorities as part of the process leading to the adoption of that regulation, only the abovementioned Community authorities may, according to the Court of First Instance, be regarded as having participated in that process.

The appeal

20 In their appeal, the appellants claim that the Court of Justice should:

— set aside the contested order;

— declare that the appellants are entitled to seek partial annulment of Regulation No 1804/1999;

— accept their earlier submissions;

— order the Council to pay the costs both at first instance and on appeal.

21 In support of their appeal, the appellants claim, first, that the Court of First Instance should, of its own motion, have held that the Council infringed an essential procedural requirement and, second, that the contested provision is a decision of individual concern to them within the meaning of the case-law of the Court of Justice.

22 First, the appellants submit that infringement of the essential procedural requirements applicable to the adoption of Regulation No 1804/1999 is sufficient to render the contested provision void. They assert that the Council adopted that provision without consulting the Parliament afresh, thereby rendering that regulation invalid.

23 Whilst accepting that it is clear from its case-law that the Court of Justice examines the question of admissibility before considering whether an essential procedural requirement may have been infringed, the appellants submit that the Council's encroachment upon the democratic functioning of the institutions, at a time when current Community policy attaches primary importance to development of the concept of European citizenship and democratisation of the institutions, is so serious that such encroachment should be remedied as a first step. Consequently, the Court of First Instance should, regardless of the admissibility or otherwise of their application, have raised of its own motion the Council's infringement of an essential procedural requirement, as the Court of Cassation (France) would have done in criminal proceedings involving fundamental rights.

24 Second, the applicants submit that the Court of First Instance disregarded the fact that the contested provision was in the nature of a decision within the meaning of Article 249 EC. In their view, the conditions under which the contested provision was adopted show that the Council sought to protect the individual interests of a specific economic operator, namely Danone. The appellants also contend that the Court of First Instance infringed Article 230 EC by holding that the contested provision was not of individual concern to them.

25 The Council submits that the Court should dismiss the appeal as manifestly inadmissible or, in the alternative, as manifestly unfounded within the meaning of Article 119 of the Rules of Procedure and order the appellants to pay the costs. In its view, apart from the plea concerning the Court of First Instance's refusal to consider of its own motion whether an essential procedural requirement had been infringed, the appellants are merely repeating the pleas and arguments advanced before the Court of First Instance.

26 By documents lodged at the Registry of the Court of Justice on 22 December 2000 on behalf of CLESA SA and Danone SA, companies governed by Spanish law, and on 28 December 2000 on behalf of Compagnie Gervais Danone SA, a company governed by French law, those companies sought leave to intervene in support of the Council.

Findings of the Court

27 Under Article 119 of its Rules of Procedure, where the appeal is clearly inadmissible or clearly unfounded, the Court may at any time by reasoned order dismiss the appeal in whole or in part.

Admissibility

28 Under Article 225 EC and the first paragraph of Article 51 of the EC Statute of the Court of Justice an appeal is limited to points of law and must be based on the grounds of lack of competence of the Court of First Instance, breach of procedure before it which adversely affects the interests of the appellant, or infringement of Community law by the Court of First Instance (see, in particular, Case C-284/98 P *Parliament* v *Bieber* [2000] ECR I-1527, paragraph 30).

29 Article 112(1)(c) of the Rules of Procedure of the Court of Justice makes it clear that the appeal must contain the pleas in law and arguments relied on.

30 It follows that an appeal must clearly indicate the contested points of the order of which the annulment is sought and the legal arguments on which that claim is specifically based. That requirement is not satisfied by an appeal which, without even setting out arguments specifically intended to identify the alleged error in law by which the contested order is vitiated, confines itself to reproducing the pleas and arguments already put to the Court of First Instance. Such an appeal is in reality an application for mere reconsideration of the application submitted to the Court of First Instance, which falls outside the jurisdiction of the Court of Justice (see, in particular, Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraphs 34 and 35).

31 An appeal can, however, be based on arguments which have already been presented at first instance in order to show that, by dismissing the pleas in law and arguments presented to it by the appellant, the Court of First Instance

infringed Community law (Case C-82/98 P *Kögler* v *Court of Justice* [2000] ECR I-3855, paragraph 23), so that the points of law examined at first instance may be considered again in an appeal provided that the appellant contests the way in which the Court of First Instance interpreted or applied Community law (Case C-210/98 P *Salzgitter* v *Commission* [2000] ECR I-5843, paragraph 43).

32 In this case, it is clear from the application to the Court of Justice that this appeal does not simply comprise a word-for-word rehearsal of the pleas and arguments contained in the application at first instance and that the appellants have indicated precisely what are the contested points of the order they seek to have annulled and the arguments on the basis of which they consider the Court of First Instance's legal assessment to be incorrect.

33 In those circumstances, the objection of inadmissibility raised by the Council must be rejected and the substance of the appeal must be considered.

Substance

34 Under the fourth paragraph of Article 230 EC, any natural or legal person may institute proceedings against a decision which, although in the form of a regulation, is of direct and individual concern to that person.

The plea alleging that the Court of First Instance failed in its duty to raise of its own motion the issue of infringement of essential procedural requirements

35 The appellants submit that they are entitled to seek the annulment of a measure which undermines a fundamental right inherent in the principle of democracy, regardless of whether the contested provision is of direct and individual concern to them.

36 The Council argues that, if every citizen of the 15 Member States were entitled, unconditionally, to apply to the Community judicature for the annulment of a measure of a legislative nature, the Court of First Instance and the Court of Justice would be inundated by applications and would no longer be able to perform their task of ensuring that the law is observed.

37 The appellants reply that they do not contend that no conditions apply concerning the admissibility of such applications. What makes the application admissible is the exceptional seriousness of the Council's infringement and its particularly severe consequences for respect for the fundamental rights of individuals.

38 First, there is nothing in the Treaty or in the case-law of the Court to support that argument.

39 An allegation that an application brought by a natural or legal person against a decision not addressed to that person is inadmissible because the decision is not of

direct and individual concern to that person, as provided in the fourth paragraph of Article 230 EC, is a point of admissibility involving public policy considerations which the Community judicature may examine at any time, even of its own motion (see Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125, paragraph 23).

40 The seriousness of the alleged infringement by the institution concerned or the extent of its adverse impact on the observance of fundamental rights could not, in any event, give rise to non-application of the rules for admissibility expressly laid down by the Treaty.

41 Next, although, as noted by the appellants, the Court of Justice stated emphatically, in its judgment in Case 9/56 *Meroni* v *High Authority* [1957 and 1958] ECR 133, at 152), that the balance of powers that characterises the institutional structure of the Community constitutes a fundamental guarantee granted by the Treaty in particular to the undertakings and associations of undertakings to which it applies, that statement cannot be interpreted as providing a remedy for any natural or legal person who considers that an act of a Community institution has been adopted in breach of the principle of institutional balance, regardless of whether the act in question is of direct and individual concern to that person.

42 Finally, the appellants cannot rely on Case C-70/88 *Parliament* v *Council* [1990] ECR I-2041 to show that their application should be declared inadmissible regardless of whether Regulation No 1804/1999 is of direct and individual concern to them. That judgment is based on the need to ensure continuing institutional balance and judicial supervision of observance of the Parliament's prerogatives. It is therefore not relevant to the admissibility of an action brought by a natural or legal person.

43 The plea alleging that the Court of First Instance failed in its duty to raise of its own motion the issue of infringement of essential procedural requirements is therefore manifestly unfounded.

The plea alleging that the Court of First Instance wrongly considered that the contested provision did not constitute a decision within the meaning of Article 249 EC

44 By this plea, the appellants submit that the Court of First Instance did not properly appraise the nature of the contested provision. They maintain that that provision is not legislative but is an individual decision intended to favour the interests of Danone.

45 It need merely be observed that the Court of First Instance correctly applied the settled case-law of the Court of Justice to the effect that the test for distinguishing between a legislative measure and a decision is whether or not the measure in question has general application (see, in particular, the order of 23 November 1995 in Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraph 28) and that the general application of a measure and, therefore, its legislative nature are not called in question by the fact that the number and even the identity of the persons to whom a measure applies at a particular time can be determined more or less precisely, so long as it is established that such application takes effect by virtue of an objective legal or factual situation defined by that measure by reference to its purpose (see, in particular, the order of 26 October 2000 in Case C-447/98 P *Molkerei Großbraunshain and Bene Nahrungsmittel* v *Commission* [2000] ECR I-9097, paragraph 64).

46 The Court of First Instance did not therefore err in law in finding that the contested provision is of the same regulatory nature as the other provisions of Regulation No 1804/1999.

47 The plea alleging that the Court of First Instance wrongly considered that the contested provision did not constitute a decision within the meaning of Article 249 EC must therefore also be rejected as manifestly unfounded.

The plea alleging that the Court of First Instance wrongly failed to find that the contested provision was of direct and individual concern to the appellants

48 By this plea, the appellants maintain that the Court of First Instance failed to find that the contested provision was of individual concern to them.

49 It need merely be pointed out that the Court of First Instance correctly applied the settled case-law of the Court to the effect that natural or legal persons may claim that a contested provision is of individual concern to them only if it affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons (see, in particular, Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, at 107, Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 20, and the order in *Molkerei Großbraunshain and Bene Nahrungsmittel* v *Commission*, cited above, paragraph 65).

50 In the present case, the contested provision concerns Biogram and the members of FNAB and of Setrab only by reason of their objective status as economic operators in the organic products market, in the same way as all other Community operators in that market.

51 The Court of First Instance did not therefore err in law by finding that that regulation was not of individual concern to the appellants.

52 The plea alleging that the Court of First Instance wrongly failed to find that the contested provision was of direct and individual concern to the appellants must therefore also be rejected as manifestly unfounded.

53 It follows from all the foregoing that the appeal must be dismissed as manifestly unfounded pursuant to Article 119 of the Rules of Procedure. It is not necessary to rule on the applications for leave to intervene submitted by CLESA SA, Danone SA and Compagnie Gervais Danone SA.

Costs

54 Under Article 69(2) of the Rules of Procedure, which applies to appeals by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council has asked for costs and the appellants have been unsuccessful, they must be ordered to pay the costs.

55 Under Article 69(6) of the Rules of Procedure, which applies to appeals by virtue of Article 118, where a case does not proceed to judgment, the costs are to be in the discretion of the Court. In the circumstances of the present case, CLESA SA, Danone SA and Compagnie Gervais Danone SA, which applied for leave to intervene, must bear their own costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby orders:

1. **The appeal is dismissed.**

2. **It is unnecessary to give a decision on the applications for leave to intervene.**

3. **Fédération nationale d'agriculture biologique des régions de France (FNAB), Syndicat européen des transformateurs et distributeurs de produits de l'agriculture biologique (Setrab) and Est Distribution Biogam SARL are to pay the costs.**

4. **CLESA SA, Danone SA and Compagnie Gervais Danone SA are to bear their own costs.**

Luxembourg, 10 May 2001.

R. Grass — A. La Pergola

Registrar — President of the Fifth Chamber