

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
15 February 2000 *

In Case T-1/00 R,

Gustav Hölzl, of Damme (Germany),

Günter Wiegert, of Velen (Germany),

Firma Molkerei Wagenfeld Karl Niemann GmbH & Co. KG, whose registered
office is in Wagenfeld (Germany),

Josef Brüninghoff, of Bocholt (Germany)

and

Lüdger Nienhaus, of Borken-Gemen (Germany),

represented by U. Schrömbges and L. Harings, Rechtsanwälte, Hamburg, with
an address for service in Luxembourg at the Chambers of Arendt and Medernach,
8-10 Rue Mathias Hardt,

applicants,

* Language of the case: German.

Commission of the European Communities, represented by M. Niejahr and G. Braun, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, a representative of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION, firstly, for an order suspending the operation of Commission Regulation (EC) No 2799/1999 of 17 December 1999 laying down details of rules for applying Regulation (EC) No 1255/1999 as regards the grant of aid for skimmed milk and skimmed-milk powder intended for animal feed and the sale of such skimmed-milk powder (OJ 1999 L 340, p. 3) and, secondly, for Commission Regulation (EEC) No 1105/68 of 27 July 1968 on detailed rules for granting aid for skimmed milk for use as feed (OJ, English Special Edition 1968 (II), p. 379), as last amended by Commission Regulation (EC) No 1802/95 of 25 July 1995 amending the Regulations that fixed, prior to 1 February 1995, certain prices and amounts in the market in milk and milk products of which the value in ecus was adapted as a result of the abolition of the correction factor for agricultural conversion (OJ 1995 L 174, p. 27), to remain in force until the Court of First Instance has ruled on the substance of the case,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES

makes the following

Order

Relevant provisions, facts and proceedings

1 Under Article 10(2) of Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organisation of the market in milk and milk products (OJ, English Special Edition 1968 (I), p. 176), the Council adopted Regulation (EEC) No 986/68 of 15 July 1968 laying down general rules for granting aid for skimmed milk and skimmed-milk powder for use as feed (OJ, English Special Edition 1968 (I), p. 260), as last amended by Commission Regulation (EC) No 1802/95 of 25 July 1995 amending the Regulations that fixed, prior to 1 February 1995, certain prices and amounts in the market in milk and milk products of which the value in ecus was adapted as a result of the abolition of the correction factor for agricultural conversion (OJ 1995 L 174, p. 27).

2 Article 2 of Regulation No 986/68 provided that such aid was granted for skimmed milk which has been used as feed or in the manufacture of compound feedingstuffs and skimmed-milk powder which has been denatured or used in the manufacture of compound feedingstuffs. The regulation also contained provisions governing the procedure for the payment of aid.

- 3 The Commission adopted several regulations in order to implement those general rules, including Regulation No 1105/68 of 27 July 1968 on detailed rules for granting aid for skimmed milk for use as feed (OJ, English Special Edition 1968 (II), p. 379), as last amended by Regulation No 1802/95.
- 4 Lastly, the amount of aid granted for skimmed milk and skimmed-milk powder was laid down by Commission Regulation (EEC) No 1634/85 of 17 June 1985 fixing the amount of the aid for skimmed milk and skimmed-milk powder for use as feed (OJ 1985 L 158, p. 7), as subsequently amended.
- 5 On 17 May 1999 the Council adopted Regulation No 1255/1999 on the common organisation of the market in milk and milk products (OJ 1999 L 160, p. 48), applying from 1 January 2000. Article 46 of Regulation No 1255/1999 repealed Regulation No 804/68 and Regulation No 986/68 among others.
- 6 Article 11(1) of Regulation No 1255/99 provides:

‘1. Aid shall be granted for skimmed milk and skimmed-milk powder intended for use as feedingstuffs, if these products reach certain standards.

For the purposes of this Article, buttermilk and buttermilk powder shall be regarded as skimmed milk and skimmed-milk powder.’

- 7 On 17 December 1999 the Commission adopted Regulation No 2799/1999 laying down detailed rules for applying Regulation No 1255/1999 as regards the

grant of aid for skimmed milk and skimmed-milk powder intended for animal feed and the sale of such skimmed-milk powder (OJ 1999 L 340, p. 3, 'the contested regulation').

8 The contested regulation, which entered into force on 1 January 2000, provides that aid may be granted for skimmed milk and skimmed-milk powder where such products are used in the manufacture of compound feedingstuffs or skimmed-milk powder which has been denatured (Article 8), subject to the conditions laid down in that article.

9 According to Article 36 of the contested regulation, Regulations Nos 1105/68 and 1634/85, among others, are repealed.

10 The repeal of Regulations Nos 986/68, 1105/68 and 1634/85 had the effect of abolishing aid to skimmed milk for use as animal feed from 1 January 2000.

11 Messrs Hölzl, Brüninghoff and Nienhaus rear calves which are fed on skimmed milk.

12 Mr Wiegert operates a dairy which has for several years been supplying to calf rearers skimmed milk which is covered by aid for skimmed milk.

13 Molkerei Wagenfeld Karl Niemann GmbH & Co. KG owns a dairy which produces speciality butters based on sour cream, a by-product of which is sour buttermilk.

- 14 By application lodged at the Registry of the Court of First Instance on 5 January 2000, the applicants brought an action for the annulment of the contested regulation.
- 15 By a separate document lodged on the same day the applicants instituted the present proceedings, seeking, firstly, that application of the contested regulation should be suspended and, secondly, that Regulation No 1105/68, as amended, should remain in force until the Court of First Instance has ruled on the substance of the case.
- 16 On 14 January 2000 the Commission lodged its observations on the application for interim measures.
- 17 By separate document lodged at the Registry of the Court of First Instance on 20 January 2000 the Commission raised an objection of inadmissibility in the main proceedings.
- 18 In the light of the documents in the case, the President of the Court considers that he has all the information needed in order to rule on the present application for interim measures and that it is not necessary to hear oral arguments from the parties beforehand.

Law

- 19 Under Article 242 EC in conjunction with Article 243 EC and of Article 4 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1), as

amended by Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 (OJ 1993 L 144, p. 21), the Court of First Instance may, if it considers that circumstances so require, order that application of a contested act be suspended or prescribe any other necessary interim measures.

- 20 The first subparagraph of Article 104(1) of the Rules of Procedure of the Court of First Instance states that an application to suspend the operation of any measure is to be admissible only if the applicant is challenging that measure in proceedings before the Court of First Instance. That rule is not a mere formality but is based on the premiss that the main action to which the application for interim measures relates can in fact be considered by the Court of First Instance.
- 21 It is settled case-law that in principle the issue of the admissibility of the main action should not be examined in relation to an application for interim measures so as not to prejudice the substance of the case. Nevertheless, where, as in this case, it is contended that the main action to which the application for interim measures relates is manifestly inadmissible, it may prove necessary to establish whether there are any grounds for concluding *prima facie* that the main action is admissible (see, in particular, the orders of the President of the Court of Justice in Case 376/87 R *Distrivet v Council* [1988] ECR 209, paragraph 21, and in Case 160/88 R *Fédération européenne de la santé animale and Others v Council* [1988] ECR 4121, paragraph 22; and the orders of the President of the Court of First Instance in Case T-6/95 R *Cantine dei colli Berici v Commission* [1995] ECR II-647, paragraph 26; in Case T-219/95 R *Danielsson and Others v Commission* [1995] ECR II-3051, paragraph 58, and in Case T-13/99 R *Pfizer Animal Health v Council* [1999] ECR II-1961, paragraph 121).
- 22 In this case the President of the Court considers that it is necessary to ascertain whether the action for annulment is manifestly admissible.
- 23 The fourth paragraph of Article 230 EC provides that the admissibility of proceedings brought by a natural or legal person for annulment of a regulation is subject to the condition that the provisions of the regulation at issue in the

proceedings constitute in reality a decision of direct and individual concern to the applicant. It is settled case-law that the criterion for distinguishing between a regulation and a decision must be sought in the general application or otherwise of the act in question (see the orders of the Court of Justice in Case C-10/95 P *Asocarne v Council* [1995] ECR I-4149, paragraph 28, and in Case C-87/95 P *CNPAAP v Council* [1996] ECR I-2003, paragraph 33; and the order of the Court of First Instance in Case T-114/96 *Biscuiterie Confiserie LOR and Confiserie du Tech v Commission* [1999] ECR II-913, paragraph 26). A measure is of general application if it applies to objectively determined situations and produces its legal effects with respect to categories of persons envisaged in the abstract (see, for example, the order of the Court of First Instance in Case T-482/93 *Weber v Commission* [1996] ECR II-609, paragraph 55, and the order of the Court of First Instance in Case T-39/98 *Sadam Zuccherifici and Others v Council* [1998] ECR II-4207, paragraph 17).

- 24 In this case, the contested regulation lays down detailed rules for applying Regulation No 1255/1999 on the common organisation of the market in milk and milk products. The 11th recital in the preamble to the contested regulation reads:

‘the arrangements laid down in Commission Regulation (EEC) No 1105/68, as last amended by Regulation... No 1802/95, have proved difficult to implement and checks on beneficiaries are problematic. Moreover, the quantities of skimmed milk benefiting from this measure have fallen sharply in recent years, so that the scheme now has only a marginal impact on the balance on the market in milk products. In addition, the market in skimmed milk will continue to be supported by the aid granted when skimmed milk is incorporated into compound feedingstuffs. The aid measure provided for in Regulation... No 1105/68 should therefore be abolished and the said Regulation repealed’.

- 25 The repeal of Regulation No 1105/68, expressly provided for in Article 36 of the contested regulation, means that the aid measure provided for in the contested regulation in respect of skimmed milk for animal feed is abolished, irrespective of whether undertakings were actual or potential recipients of it. As a result, the

contested regulation, in so far as it repeals Regulation No 1105/68, applies to objectively determined situations and produces its legal effects with respect to categories of persons envisaged in the abstract, namely all Community dairies and stock breeders that had been in direct or indirect receipt of the aid measure provided for in Regulation No 1105/68 or fulfilled the conditions for receiving it. Those rules are therefore of general application within the meaning of the second paragraph of Article 249 EC.

26 However, it is conceivable that a provision that is, by virtue of its nature and scope, a legislative nature may be of individual concern to a natural or legal person where that provision affects that person by reason of certain attributes which are peculiar to it, or by reason of circumstances in which it is differentiated from all other persons and hence the provision is of individual concern to that person in the same way as to the person to whom a decision is addressed (see, for example, the judgments of the Court of Justice in Case C-358/89 *Extramet Industrie v Council* [1991] ECR I-2501, paragraph 13, and in Case C-309/89 *Codorniu v Council* [1994] ECR I-1853, paragraph 19; the order in *Biscuiterie Confiserie LOR and Confiserie du TECH v Commission*, cited above, paragraph 30, and the judgment of the Court of First Instance in Case T-158/95 *Eridania and Others v Council* [1999] ECR II-2219, paragraph 56).

27 In the light of that case-law it is necessary to ascertain whether in this case there are factors which make it possible to consider that the contested regulation is of concern to the applicants by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated in respect of that regulation from all other persons.

28 First, it should be pointed out that the possibility of determining more or less precisely the number or even the identity of the persons to whom a measure applies at a particular time is not sufficient to call in question the general application of that measure and hence its legislative nature and by no means implies that it must be regarded as being of individual concern to such persons, as

long as it is established that such application takes effect by virtue of an objective legal or factual situation defined by the measure in question in relation to its purpose (see, for example, the order of the Court of Justice in Case C-131/92 *Arnaud and Others v Council* [1993] ECR I-2573, paragraph 13, and the order of the Court of First Instance in Case T-100/94 *Michailidis and Others v Commission* [1998] ECR II-3115, paragraph 58). In this regard, suffice it to say that in this case the contested regulation does not relate specifically to the applicants.

- 29 Second, the applicants plead the impact of the entry into force of the contested regulation on their economic situation. Messrs Hölzl, Brüninghoff and Nienhaus claim essentially that the contested regulation will result in their animals no longer being fed skimmed milk and that it will not be possible to feed them on skimmed-milk powder for both practical and financial reasons specific to each of those applicants. Mr Wiegert claims that his deliveries of milk to calf fatteners will cease as a result of the entry into force of the contested regulation. Lastly, Molkerei Wagenfeld Karl Niemann GmbH & Co. KG claims that the abolition of the aid for skimmed milk and buttermilk intended for liquid feed will jeopardise its economic situation, in particular, in that it will no longer be able to sell to the foodstuffs industry sour buttermilk in liquid form derived from the process of manufacturing butter from sour cream.
- 30 In this connection, it must be observed that, even if the regulation is of a nature such as to affect the applicants' economic situation by reason of its consequences, that circumstance is not sufficient to differentiate them from all other persons. The contested regulation is of concern to them by reason only of their objective position as economic operators who have received aid for skimmed milk intended for animal feed, either because they operate as a dairy or as calf-rearers, in the same way as other traders in a similar position within the European Community (see, for example, the order of the Court of First Instance in Joined Cases T-14/97 and T-15/97 *Sofivo and Others v Council* [1998] ECR II-2601, paragraph 37).
- 31 In addition, as regards the particularly serious economic impact of the contested regulation on the applicants' activities, it should be pointed out that the fact that

a legislative measure may have differing specific effects on the different persons to whom it applies is not such as to distinguish them from all other traders concerned, since the measure is applied on the basis of an objectively determined situation (see, for example, the order of the Court of Justice in Case C-409/96 P *Sveriges Betodlares and Henrikson v Commission* [1997] ECR I-7531, paragraph 37, and order in *Sadam Zuccherifici and Others v Council*, cited above, paragraph 22).

32 Lastly, it should be pointed out that the Community authorities were under no obligation at the time when the contested regulation was adopted to take the applicants' specific situation into account. There was no rule of law of a higher order requiring the Commission to take their situation specifically into consideration as opposed to that of any other person concerned by that measure (see, for example, judgments of the Court of Justice in Case 11/82 *Piraiiki-Patraiki and Others v Commission* [1985] ECR 207, paragraphs 16 to 32, and in Case C-152/88 *Sofrimport v Commission* [1990] ECR I-2477, paragraphs 11 to 13; judgments of the Court of First Instance in Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others v Commission* [1995] ECR II-2305, paragraphs 67 to 78, and T-135/96 *UEAPME v Council* [1998] ECR II-2335, paragraph 90).

33 It follows that it is not possible in this case for the President of the Court of First Instance to consider *prima facie* that the contested regulation is of individual concern to the applicants and that it is open to them to seek the annulment of that regulation under the fourth paragraph of Article 230 EC. Since they do not appear to meet any of the conditions of admissibility laid down in the fourth paragraph of Article 230 EC, it is not necessary to examine whether the contested regulation is of direct concern to them.

34 In the light of the foregoing, the main action for the annulment of the contested regulation appears *prima facie* to be manifestly inadmissible.

35 The present application for interim measures must therefore be dismissed as inadmissible.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. The application for interim measures is dismissed.

2. The costs are reserved.

Luxembourg, 15 February 2000.

H. Jung

Registrar

B. Vesterdorf

President