ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)
13 December 2005 *

In Case T-397/02,

Arla Foods AMBA, established in Viby (Denmark),

Løgismose A/S, established in Broby (Denmark),

Nordex Food A/S, established in Dronninglund (Denmark),

Sinai Landmejeri, established in Broby,

Andelsmejeriet Sædager, established in Hobro (Denmark),

Søvind Mejeri, established in Horsens (Denmark),

Steensgaard Herregårdsmejeri, established in Millinge (Denmark),

Mejeriet Grambogård I/S, established in Tommerup (Denmark),

Kirkeby Cheese Export, established in Svendborg (Denmark),

represented by G. Lett, lawyer,

applicants,

* Language of the case: Danish.

supported by

United Kingdom of Great Britain and Northern Ireland, represented by P. Ormond, acting as Agent, with an address for service in Luxembourg,

v

Commission of the European Communities, represented by H. Støvlbæk, J. Iglesias Buhigues and A.-M. Rouchaud-Joët, acting as Agents, with an address for service in Luxembourg,

defendant,

supported by

Hellenic Republic, represented by V. Kontolaimos, I. Chalkias and M. Tassopoulou, acting as Agents, with an address for service in Luxembourg,

and by

Syndesmos Ellinikon Viomichanion Galaktokomikon Proïonton (SEV-GAP), established in Athens (Greece), represented by N. Korogiannakis, lawyer,

interveners,

APPLICATION for annulment of Commission Regulation (EC) No 1829/2002 of 14 October 2002 amending the Annex to Regulation (EC) No 1107/96 with regard to the name 'Feta' (OJ 2002 L 277, p. 10),

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

composed of M. Jaeger, President, J. Azizi and E. Cremona, Judges,

Registrar: E. Coulon,

makes the following

Order

Legal background

1 Article 1 of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1; 'the Basic Regulation') lays down rules on the Community protection of designations of origin and geographical indications of certain agricultural products and certain foodstuffs.

2 According to Article 2(2)(a) of the Basic Regulation, a 'designation of origin' is 'the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:

— originating in that region, specific place or country,

and

— the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area'.

3 Article 2(3) of the Basic Regulation provides:

'Certain traditional geographical or non-geographical names designating an agricultural product or a foodstuff originating in a region or a specific place, which fulfil the conditions referred to in the second indent of paragraph 2(a), shall also be considered as designations of origin.'

4 Under Article 3 of the Basic Regulation, names that have become generic may not be registered. For the purposes of that regulation, a 'name that has become generic' means the name of an agricultural product or a foodstuff which, although it relates to the place or the region where that product or foodstuff was originally produced or marketed, has become the common name of an agricultural product or a foodstuff.

5 To establish whether or not a name has become generic, account is to be taken of all factors, in particular:

— the existing situation in the Member State in which the name originates and in areas of consumption,

— the existing situation in other Member States,

— the relevant national or Community laws.

6 For that purpose, the registration of the name of an agricultural product or foodstuff as a protected designation of origin must fulfil the conditions laid down by the Basic Regulation and, in particular, must comply with a specification set out in Article 4(2) thereof. Registration confers Community protection on the name in question.

7 Articles 5 to 7 of the Basic Regulation lay down a procedure for the registration of a name, the so-called 'normal procedure', which enables a group, defined as an association of producers and/or processors working with the same agricultural product or foodstuff, or, subject to certain conditions, a natural or legal person, to apply for registration to the Member State in which the geographical area in question is situated. The Member State must check that the application is justified and forward it to the Commission. If the latter considers that the name fulfils the conditions for protection, it must publish in the *Official Journal of the European Communities* the particulars set out in Article 6(2) of the Basic Regulation.

8 Article 7 of the Basic Regulation provides:

'1. Within six months of the date of publication in the *Official Journal of the European Communities* referred to in Article 6(2), any Member State may object to the registration.

2. The competent authorities of the Member State shall ensure that all persons who can demonstrate a legitimate economic interest are authorised to consult the application. In addition, and in accordance with the economic situation in the Member States, the Member States may provide access to other parties with a legitimate interest.

3. Any legitimately concerned natural or legal person may object to the proposed registration by sending a duly substantiated statement to the competent authority of the Member State in which he resides or is established. The competent authority

shall take the necessary measures to consider these comments or objection within the deadlines laid down.

...'

9 If no Member State informs the Commission of an objection to the proposed registration, the name is to be entered in a register kept by the Commission entitled 'Register of protected designations of origin and protected geographical indications'.

10 If, in the event of an admissible objection, the Member States concerned fail to agree among themselves in accordance with Article 7(5) of the Basic Regulation, the Commission is to take a decision in accordance with the procedure laid down in Article 15 thereof (the regulatory committee procedure). Article 7(5)(b) of the Basic Regulation provides that, in taking a decision, the Commission is to have regard to 'traditional fair practice and ... the actual likelihood of confusion'.

11 Article 17 of the Basic Regulation sets up a registration procedure, referred to as the 'simplified procedure', which differs from the normal procedure. In the simplified procedure, the Member States inform the Commission which of their legally protected names or names established by usage they wish to register pursuant to the Basic Regulation. The procedure referred to in Article 15 of the Basic Regulation applies mutatis mutandis. The second sentence of Article 17(2) states that the opposition procedure provided for in Article 7 is not applicable in the context of the simplified procedure.

Facts giving rise to the dispute

12 By letter of 21 January 1994, the Greek Government requested the Commission to register the name 'Feta' as a protected designation of origin pursuant to Article 17 of the Basic Regulation.

13 On 19 January 1996 the Commission submitted to the regulatory committee set up by Article 15 of the Basic Regulation a draft regulation containing a list of names that might be registrable as protected geographical indications or designations of origin, in accordance with Article 17 of the Basic Regulation. The list included the word 'Feta'. As the regulatory committee did not deliver an opinion on that proposal within the prescribed time-limit, the Commission submitted it to the Council in accordance with the fourth paragraph of Article 15 of the Basic Regulation on 6 March 1996. The Council did not give a decision within the three-month time-limit provided for in the fifth paragraph of Article 15.

14 Consequently, pursuant to the fifth paragraph of Article 15 of the Basic Regulation, the Commission adopted on 12 June 1996 Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of [the Basic] Regulation (OJ 1996 L 148, p. 1). Pursuant to Article 1 of Regulation No 1107/96, the name 'Feta', which appears in Part A of the Annex to that regulation, under the heading 'Cheeses' and under the country name 'Greece', was registered as a protected designation of origin.

15 By judgment of 16 March 1999 in Joined Cases C-289/96, C-293/96 and C-299/96 *Denmark and Others* v *Commission* [1999] ECR I-1541, the Court of Justice

annulled Regulation No 1107/96 to the extent to which it registered 'Feta' as a protected designation of origin. In its judgment, the Court observed that, when the Commission examined the question whether 'Feta' was a generic name, it did not take due account of all the factors which the third subparagraph of Article 3(1) of the Basic Regulation required it to take into consideration.

16 Following that judgment, on 25 May 1999 the Commission adopted Regulation (EC) No 1070/1999 amending the Annex to Regulation No 1107/96 (OJ 1999 L 130, p. 18) and removing the name 'Feta' from the register of protected designations of origin and protected geographical indications and from the Annex to Regulation No 1107/96.

17 After reconsidering the Greek Government's request for registration at a later stage, the Commission submitted a draft regulation to the regulatory committee, pursuant to the second paragraph of Article 15 of the Basic Regulation, proposing registration of the name 'Feta', on the basis of Article 17 of that regulation, as a protected designation of origin, in the register of protected designations of origin and protected geographical indications. As the committee did not express an opinion on that proposal within the prescribed period, the Commission submitted it to the Council in accordance with the fourth paragraph of Article 15 of the Basic Regulation.

18 As the Council did not give a decision on the draft within the period laid down in the fifth paragraph of Article 15 of the Basic Regulation, on 14 October 2002 the Commission adopted Regulation (EC) No 1829/2002 amending the Annex to Regulation (EC) No 1107/96 with regard to the name 'Feta' (OJ 2002 L 277, p. 10; the 'contested regulation'). Under that regulation, the name 'Feta' was once again registered as a protected designation and was added to the Annex to Regulation No 1107/96, in Part A, under the headings 'Cheeses' and 'Greece'.

Procedure

19 The applicants brought the present action by application received by the Registry of the Court of First Instance on 19 December 2002.

20 By letter of 5 February 2003, the Commission asked that the proceedings be stayed until judgment was given in Cases C-465/02 and C-466/02.

21 By letter of 26 February 2003, the applicants gave notice that they objected to the request for a stay of proceedings.

22 By decision of 19 March 2003, the Court rejected the request for a stay of proceedings.

23 By a separate document lodged at the Registry of the Court on 5 June 2003, the Commission raised a plea of inadmissibility under Article 114 of the Rules of Procedure of the Court of First Instance.

24 On 20 August 2003 the applicants lodged their written observations on that plea.

25 By separate documents lodged at the Registry of the Court on 16 April and 9 May 2003 respectively, the Hellenic Republic and Syndesmos Ellinikon Viomichanion Galaktokomikon Proïonton (SEV-GAP) (Association of Greek Dairy Product Industries) sought leave to intervene in support of the form of order sought by the Commission.

26 By separate document lodged at the Registry of the Court on 2 May 2003, the United Kingdom of Great Britain and Northern Ireland sought leave to intervene in support of the form of order sought by the applicants.

27 By order of 8 September 2003, the Hellenic Republic and the United Kingdom of Great Britain and Northern Ireland were granted leave to intervene.

28 On 21 October 2003 the Hellenic Republic lodged a statement in intervention in support of the form of order sought by the Commission.

29 By order of 23 March 2004, SEV-GAP was granted leave to intervene.

30 On 10 May 2004 SEV-GAP lodged a statement in intervention in support of the form of order sought by the Commission.

31 The United Kingdom of Great Britain and Northern Ireland did not lodge a statement in intervention within the prescribed time-limit.

Forms of order sought by the parties

32 In their application, the applicants claim that the Court of First Instance should:

— annul the contested regulation;

— order the Commission to pay the costs.

33 In its plea of inadmissibility, the Commission contends that the Court should:

— dismiss the application as inadmissible;

— order the applicants to pay the costs.

34 In their observations on the plea of inadmissibility, the applicants claim that the Court should dismiss it.

35 In their statements in intervention, the Hellenic Republic and SEV-GAP claim that the Court should:

— dismiss the application as inadmissible;

— order the applicants to pay the costs.

Law

36 In the present action, the applicants seek the annulment of the contested regulation.

37 The Commission, with the Hellenic Republic and SEV-GAP intervening in support, submits that the application is inadmissible on the ground that the applicants have no standing to bring proceedings under the fourth paragraph of Article 230 EC. The Hellenic Republic also submits that the action was brought out of time.

38 Under Article 114(1) of the Rules of Procedure, the Court may, if so requested by a party, give a decision on inadmissibility without considering the substance of the case. Under Article 114(3), the remainder of the proceedings is to be oral unless the Court decides otherwise. In the present case, the Court considers that the documents before it provide sufficient information to enable it to rule upon the Commission's plea without opening the oral procedure.

Plea of inadmissibility, raised by the Hellenic Republic, on the ground that the action is out of time

39 The Hellenic Republic submits that the action is inadmissible on the ground that it was brought out of time. The contested regulation was published on 15 October 2002 and, as the action was not commenced until 19 December 2002, the two-month period laid down by the fifth paragraph of Article 230 EC was not observed.

40 It must be observed that this plea of inadmissibility is manifestly unfounded. Under Article 102(1) of the Rules of Procedure, the time allowed for commencing proceedings begins to run only from the end of the 14th day after publication of the measure in question. To this must be added the 10-day extension on account of distance provided for in Article 102(2) of those rules. Therefore, the present action was brought within the prescribed time-limit.

Plea of inadmissibility on the ground that the applicants have no standing to bring proceedings

Arguments of the parties

41 The Commission, the Hellenic Republic and SEV-GAP submit that the action relates to a regulation of general application within the meaning of the second paragraph of Article 249 EC and that the contested regulation is not of individual concern to the applicants.

42 The applicants consider that the action is admissible. They maintain that the fact that the contested regulation takes the form of a regulation of general application does not rule out the possibility that it is of direct and individual concern to them. On this point they put forward five arguments.

43 First, the applicants submit that they are individually concerned in so far as they possess a special right to use the name 'Feta' or 'dansk Feta'. They consider that the contested regulation infringes, first, their historical right to use the name 'Feta' and, second, their right as Danish producers to use the legally protected name 'dansk Feta' in so far as that regulation confers on Greek producers the exclusive right to use the name 'Feta'. They claim that they produce Feta cheese under the name

'dansk Feta' in accordance with the Danish legislation, which reserves for Danish producers of Feta the right to use that name. They add that the name 'dansk Feta' is in the nature of a 'quality label' indicating that a product meets certain criteria laid down by law concerning the origin, composition, method of production or quality of the product.

44 In support of their argument, they refer to the judgment of the Court of Justice in Case C-309/89 *Codorníu* v *Council* [1994] ECR I-1853, and to the orders of the Court of First Instance in Case T-114/96 *Biscuiterie-confiserie LOR and Confiserie du Tech* v *Commission* [1999] ECR II-913 and in Case T-215/00 *La Conqueste* v *Commission* [2001] ECR II-181).

45 In that connection, they claim that, by virtue of that case-law, they have a similar specific right established at national level because, in Denmark, they have enjoyed a protected right to use the name 'dansk Feta', which conferred protection similar to that given by Regulation No 2081/92. That right, used systematically, is, according to the applicants, specific to Danish producers, who would be damaged by registration of the name 'Feta' as it would prevent them from using a name widely accepted by consumers.

46 Second, the applicants submit that their situation is distinguished from others in that they account for the highest production of Feta cheese in the European Union. Arla Foods AMBA is the biggest individual producer of Feta cheese in the Community, producing 15 609 tonnes in 2001. Furthermore, in the period 1988-95 the applicants' total production accounted for an average of 39% of the total Feta production in the European Union and 13% in 2001.

47 Third, the applicants submit that their situation is distinguished from others because of the consequences, from the competition viewpoint, of the registration of the name 'Feta' for the benefit of Greek producers only. On this point, the applicants assert that, as a result of registering 'Feta' as a Greek designation of origin, their market position will be affected, particularly because Greek producers, who alone have the right to use the name, are the applicants' biggest competitors in the European market.

48 Fourth, the applicants consider that, where the Commission has an obligation to take account of the consequences, for certain individuals, of a measure which it proposes to adopt, those individuals can be distinguished. In the present case, the applicants maintain that that is the situation in which the Commission finds itself, particularly in relation to Article 3 of the Basic Regulation, from which it is clear that the Commission must, for the purpose of an objection to the registration of a designation of origin, take into account existing products that are legally marketed in other Member States. In support of their argument, the applicants refer to the judgment in Case T-177/01 *Jégo Quéré* v *Commission* [2002] ECR II-2365.

49 Fifth, the applicants claim that they are individually concerned by virtue of the principle of effective judicial protection. They assert that they were unable to obtain a preliminary ruling in answer to a question submitted to the Court of Justice in Case C-317/95 *Canadane Cheese Trading and Kouri* [1997] ECR I-4681 because the question was withdrawn by the national court. The applicants add that they cannot bring an action before the national courts during the transitional period because the marketing of cheese under the name 'dansk Feta' would not have legal consequences for them until the transitional period ends. Finally, they submit that the concept of individual interest must be applied in the same way to Greek and Danish producers. If the Greek application for registration of the name 'Feta' had been rejected, the Greek producers would have been entitled to contest that decision and consequently the same must apply to the applicants in relation to what was a negative decision for them.

Findings of the Court

50 The fourth paragraph of Article 230 EC provides that any natural or legal person may institute proceedings against decisions which, although in the form of a regulation, are of direct and individual concern to that person.

51 According to settled case-law, the criterion for distinguishing between a regulation and a decision must be sought in the general application or otherwise of the measure in question (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). 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 Case T-482/93 *Weber* v *Commission* [1996] ECR II-609, paragraph 55, and the cases there cited).

52 In the present case, the contested regulation gives the name 'Feta' the protection for designations of origin provided for by the Basic Regulation. That protection consists in reserving the use of the designation 'Feta' to the original producers in the defined geographical area whose products comply with the geographical and quality requirements laid down in the specification for the production of Feta. The contested regulation recognises that all undertakings whose products satisfy the prescribed geographical and qualitative requirements have the right to market them under the abovementioned designation and withholds that right from all producers whose products do not fulfil those conditions, which are identical for all undertakings. The contested regulation applies in the same way to all manufacturers — both present and future — of Feta who are legally authorised to employ that designation as it does to all those who will be prohibited from using it after the end of the transitional period. It is not aimed solely at producers in the Member States but also produces legal effect vis-à-vis an unknown number of producers in non-member countries wishing to import Feta into the Community, either now or in the future (order in Case T-370/02 *Alpenhain-Camembert-Werk and Others* v *Commission* [2004] ECR II-2097, paragraph 54).

53 Therefore, the contested regulation is a measure of general application within the meaning of the second paragraph of Article 249 EC. It applies to objectively determined situations and produces its legal effects vis-à-vis categories of persons envisaged in the abstract (order in *Alpenhain-Camembert-Werk and Others* v *Commission*, cited at paragraph 52 above, paragraph 55). Moreover, that general application derives from the object of the measures in question, which is to protect, *erga omnes* and throughout the European Community, duly registered geographical indications and designations of origin.

54 However, the possibility cannot be ruled out that a provision which, by reason of its nature and scope, is of general application may be of individual concern to a natural or legal person. That is the case where the measure at issue affects such persons by reason of certain attributes peculiar to them or by reason of a factual situation which differentiates them from all other persons and thereby distinguishes them individually in the same way as an addressee (Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, at 107; *Codorníu* v *Council*, cited at paragraph 44 above, paragraphs 19 and 20; and order in *Alpenhain-Camembert-Werk and Others* v *Commission*, cited at paragraph 52 above, paragraph 56).

55 In the present case, no argument adduced by the applicants discloses the slightest attribute peculiar to them or a factual situation which differentiates and thereby distinguishes them from all other producers and economic operators concerned. On the contrary, the contested regulation is of concern to the applicants only in their capacity as economic operators producing or marketing cheese which does not conform to the conditions for use of the protected designation of origin 'Feta'. They are therefore affected in the same way as all other undertakings whose products are likewise not in conformity with the requirements of the Community provisions in question.

56 First, with regard to the argument that the applicants are individually concerned in so far as they possess a special right to use the name 'Feta' or 'dansk Feta', it is not disputed that the supposed name 'dansk Feta' is not a designation of origin or

geographical indication protected under the Basic Regulation. In contrast to the situation with respect to trade marks, where a system for protection regulated at national level coexists with the Community system, those designations of origin and geographical indications can be protected in a Member State only if they are registered at Community level in accordance with the Basic Regulation. It must also be noted that the applicants have not alleged that the Kingdom of Denmark informed the Commission, pursuant to Article 17 of the Basic Regulation, that 'dansk Feta' is a legally protected name in Denmark. It follows that the Danish legislation cannot confer on the applicants a specific right similar to the trade mark right owned by the applicant in the case of *Codorníu* v *Council,* cited at paragraph 44 above.

57 It must also be observed that the applicants have not shown that their use of the name 'Feta' or 'dansk Feta' derives from a similar specific right, which was acquired by them at national or Community level before the contested regulation was adopted and which is infringed by that regulation, within the meaning of the judgment in *Codorníu* v *Council* and the order in *La Conqueste* v *Commission,* both cited at paragraph 44 above.

58 The fact that the applicants have for a long time marketed their products under the name 'Feta' or 'dansk Feta' does not confer on them a specific right within the meaning of the case-law cited above. The applicants' situation is not thereby distinguished from that of the other producers who have also marketed their products as 'Feta' or 'dansk Feta' and are no longer authorised to use that name, which is henceforth protected by its registration as a designation of origin (see, to that effect, order in *Alpenhain-Camembert-Werk and Others* v *Commission,* cited at paragraph 52 above, paragraph 66).

59 The existence of the Danish legislation concerning the name 'dansk Feta' cannot detract from this conclusion.

60 First, that legislation is not such as to distinguish the applicants' situation since it applies to all operators producing cheeses which conform to the criteria laid down by the Danish legislation.

61 Second, it confers no specific right on the applicants. It is clear from the documents before the Court and from the judgment in *Denmark and Others* v *Commission*, cited at paragraph 15 above, paragraph 63, which states that 'according to the Danish Government ... since 1963, rules have existed in that State which require Feta produced there to be clearly labelled as "Danish Feta"', that the Danish legislation upon which the applicants rely merely requires the origin of the cheese in question to be shown.

62 Therefore, that legislation is not a measure conferring a specific right upon the applicants but, on the contrary, imposes on them an obligation to show the word 'dansk' on their product in order to be authorised to produce and market Feta cheese in Denmark.

63 Consequently, the applicants cannot avail themselves of the Danish legislation to claim that they are in a specific situation of such a kind that they should be granted the right to bring an action against the contested regulation, unlike all other producers of Feta in the Community, particularly in France and Germany, who were free to produce and market Feta cheese without being required to add a word specifying the geographical origin of their product.

64 The applicants also submit that the Danish legislation must be deemed to introduce a quality label.

65 In that connection, it must be observed, first, that, as appears from the documents before the Court, the Danish legislation was not enacted to protect or to draw attention to any particular qualities which Danish Feta is said to possess, but answers the need to give consumers honest and correct information by avoiding the risk of confusion with Greek Feta. The Danish legislation also provides for the addition of the adjective 'Danish' in relation to a number of other cheeses produced in Denmark which have their historical origins in other Member States or non-member countries (Grana, Munster, Gouda, etc.).

66 Next, it must be pointed out that the applicants have produced no evidence to show that the legislation in question can be regarded as introducing a quality label, nor have they been able to establish that a quality label would be compatible with Articles 28 EC and 30 EC. It is clear from the case-law that entitlement to a designation of quality can — without prejudice to the rules applicable to designations of origin and indications of origin — depend only upon the intrinsic objective characteristics determining the quality of the product, as compared with a similar product of inferior quality, and not on the geographical locality where a particular production stage took place and that designations of quality must be linked not to a national locality where the process of manufacturing the products in question takes place, but only to the existence of the intrinsic objective characteristics which give the products the quality required by law (see, to that effect, Case 13/78 *Eggers* [1978] ECR 1935, paragraphs 24 and 25; Case C-325/00 *Commission* v *Germany* [2002] ECR I-9977; and Case C-6/02 *Commission* v *France* [2003] ECR I-2389).

67 In any case, even if it were assumed that the Danish legislation might be regarded as introducing a quality label, that would not be sufficient to distinguish the applicants from all producers of Feta who fulfil the obligations laid down by the legislation.

68 In addition, the absence of a specific right in favour of the applicants is confirmed by the fact that their situation is expressly governed in an abstract and general manner by Article 13(2) of the Basic Regulation, which provides for a transitional period

allowing all producers without distinction, subject to certain conditions, a sufficiently long period of adjustment to obviate any loss (see, to that effect, order in *Alpenhain-Camembert-Werk and Others* v *Commission*, cited at paragraph 52 above, paragraph 66). Therefore, the fact that the applicants are affected by the transitional rules is not sufficient to distinguish them.

69 Second, with regard to the assertion that the applicants' situation is distinguished in so far as they produce a large proportion of the Feta cheese made in the European Union, suffice it to observe that the fact that an undertaking holds a large share of the relevant market is not sufficient in itself to distinguish that undertaking from all other economic operators concerned by the contested regulation (see orders in Case T-114/99 *CSR Pampryl* v *Commission* [1999] ECR II-3331, paragraph 46, and *Alpenhain-Camembert-Werk and Others* v *Commission*, cited at paragraph 52 above, paragraph 58).

70 Third, regarding the argument that, for the purpose of distinguishing the applicants' situation, account should be taken of the consequences, from the competition viewpoint, of registering the name 'Feta' for the benefit of Greek producers, it must be observed that, in any case, the fact that a measure of general application may have specific effects which differ according to the various persons to whom it applies is not such as to differentiate them in relation to all the other operators concerned where, as in this case, that measure is applied on the basis of an objectively determined situation (Case T-138/98 *ACAV and Others* v *Council* [2000] ECR II-341, paragraph 66, and order in *La Conqueste* v *Commission*, cited at paragraph 44 above, paragraph 37).

71 Furthermore, the Court of Justice has expressly confirmed that the fact that, at the time when a regulation for the registration of a designation of origin is adopted, an applicant is in a situation such that it must adapt its production structure in order to comply with the conditions laid down by the regulation is not sufficient for the

applicant to be individually concerned in the same way as an addressee of the measure would be (see order in *La Conqueste* v *Commission,* cited at paragraph 44 above, paragraph 35).

72 Fourth, with regard to the applicants' argument that the Commission had an obligation to take account of the applicants' situation when the regulation was adopted, it cannot be concluded, from a mere finding that the Commission is required to inquire into the negative effects which the measure in question might have on certain undertakings, that they are individually concerned within the meaning of the fourth paragraph of Article 230 EC (see, to that effect, Case C-142/00 P *Commission* v *Nederlandse Antillen* [2003] ECR I-3483, paragraph 75).

73 With regard, fifth and last, to the applicants' argument concerning the requirement of effective judicial protection, it must be observed that a direct action for annulment could not be brought before the Community Court even if it could be shown, following an examination by that Court of the national procedural rules, that those rules do not allow an individual to bring proceedings to contest the validity of the Community measure at issue (see order of the Court of Justice in Case C-258/02 P *Bactria* v *Commission* [2003] ECR I-15105, paragraph 58).

74 Furthermore, the Court of Justice has clearly established, with regard to the condition of individual interest required by the fourth paragraph of Article 230 EC that although that condition must be interpreted in the light of the principle of effective judicial protection by taking account of the various circumstances that may distinguish an applicant individually, such an interpretation cannot have the effect of setting aside the condition in question, expressly laid down in the Treaty, without going beyond the jurisdiction conferred by the Treaty on the Community Courts. It follows that, if that condition is not fulfilled, no natural or legal person can in any event bring an action challenging a regulation (Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677, paragraphs, 36, 37 and 39, and Case C-263/02 P *Commission* v *Jégo Quéré* [2004] ECR I-3425, paragraph 33).

75 It follows from all the foregoing considerations that the Danish producers of Feta cheese cannot be regarded as individually concerned by the contested regulation within the meaning of the fourth paragraph of Article 230 EC.

76 Consequently, since the contested regulation is a measure of general application and the applicants are not affected by reason of certain circumstances peculiar to them or by reason of a factual situation which differentiates them from all other persons and thereby distinguishes them individually, the action is inadmissible.

Costs

77 Under Article 87(2) of the Rules of Procedure, 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 applicants have been unsuccessful and the Commission has applied for costs, they must be ordered to bear their own costs and to pay those of the Commission.

78 Under the first paragraph of Article 87(4) of the Rules of Procedure, Member States which intervene in the proceedings are to bear their own costs. In the present case, the Hellenic Republic and the United Kingdom of Great Britain and Northern Ireland must be ordered to bear their own costs.

79 Under the third paragraph of Article 87(4) of the Rules of Procedure, interveners other than Member States and institutions may be ordered to bear their own costs. In the present case, SEV-GAP must be ordered to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby orders:

1. **The action is dismissed as inadmissible.**

2. **The applicants shall bear their own costs and shall pay those of the Commission.**

3. **The Hellenic Republic, the United Kingdom of Great Britain and Northern Ireland and Syndesmos Ellinikon Viomichanion Galaktokomikon Proïonton (SEV-GAP) shall bear their own costs.**

Luxembourg, 13 December 2005.

E. Coulon — M. Jaeger

Registrar — President