

ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
21 January 2004 *

In Case T-245/03 R,

Fédération nationale des syndicats d'exploitants agricoles (FNSEA), established in Paris (France),

Fédération nationale bovine (FNB), established in Paris,

Fédération nationale des producteurs de lait (FNLP), established in Paris,

Jeunes agriculteurs (JA), established in Paris,

represented by B. Néouze and V. Ledoux, lawyers, with an address for service in Luxembourg,

applicants,

* Language of the case: French.

supported by

French Republic, represented by G. de Bergues and F. Million, acting as Agents, with an address for service in Luxembourg,

intervener,

v

Commission of the European Communities, represented by P. Oliver and A. Bouquet, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for dispensation, in whole or in part, from the obligation to provide a bank guarantee in order to avoid enforcement of the fines imposed by Commission Decision 2003/600/EC of 2 April 2003 relating to a proceeding pursuant to Article 81 of the EC Treaty (Case COMP/C.38.279/F3 — French beef) (OJ 2003 L 209, p. 12),

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

makes the following

Order

Facts and procedure

- 1 By Decision 2003/600/EC of 2 April 2003 relating to a proceeding pursuant to Article 81 of the EC Treaty (Case COMP/C.38.279/F3 — French beef) (OJ 2003 L 209, p. 12, hereinafter the ‘Decision’) the Commission found that the applicants, the Fédération Nationale des Syndicats d’Exploitants Agricoles (FNSEA), the Fédération Nationale Bovine (FNB), the Fédération Nationale des Producteurs de Lait (FNPL) and the Jeunes Agriculteurs (JA), had infringed Article 81(1) EC by participating, with two French associations of cattle slaughterers, the Fédération Nationale de l’Industrie et des Commerces en Gros des Viandes (FNICGV) and the Fédération Nationale de la Coopération Bétail et Viande (FNCBV), in an agreement aimed at suspending beef imports into France and setting a minimum purchase price for certain categories of beef (Article 1 of the Decision).

- 2 It is apparent from the Decision that on 24 October 2001, during a crisis caused by bovine spongiform encephalopathy (BSE), termed a ‘mad cow crisis’, the applicants, representing farmers on the one hand and the two slaughterers’

associations on the other, reached an agreement under which they set minimum prices and undertook to suspend or at least to limit beef imports into France. At the end of November and the beginning of December 2001 the same federations allegedly concluded a verbal agreement with a similar purpose.

- 3 In the Decision the Commission considers that the conclusion of these two agreements (hereinafter the 'disputed agreements') constitutes a serious infringement of Article 81 EC. It imposes a fine of EUR 12 million on the FNSEA, a fine of EUR 1.44 million on the FNB, a fine of EUR 600 000 on the JA and a fine of EUR 1.44 million on the FNPL (Article 3 of the Decision).

- 4 Article 4 of the Decision lays down that the fine is payable within three months of the date of notification of the decision. The letter of notice, dated 9 April 2003, stated that if the applicants brought an action before the Court of First Instance, the Commission would take no recovery measure, provided that the claim bore interest from the date of expiry of the payment period and that an acceptable bank guarantee were provided by that date at the latest.

- 5 By application lodged at the Registry of the Court of First Instance on 20 June 2003, the applicants instituted proceedings under the fourth paragraph of Article 230 EC for the annulment of the Decision and, in the alternative, for the cancellation or reduction of the fines imposed on them.

- 6 By a separate document lodged at the Registry of the Court of First Instance on 11 July 2003, the applicants sought interim measures to secure, in the case of the JA, dispensation from the obligation to provide the bank guarantee imposed as a

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condition for avoiding the immediate recovery of the amount of the fine imposed by the Decision, in that of the FNSEA, limitation of that obligation to an amount of EUR 1 700 000 and, in that of the FNB, limitation of the said obligation to an amount of EUR 670 000. No application for interim measures was made by the FNPL.

- 7 The Commission submitted its written observations on the application for interim measures on 1 August 2003.
- 8 By application lodged at the Registry on 7 October 2003, the French Republic applied to intervene in support of the form of order sought by the applicants. By order of 14 October 2003 the President of the Court of First Instance granted the French Republic leave to intervene and requested it to present its observations at the hearing.
- 9 The hearing before the President of the Court of First Instance was held on 17 October 2003.
- 10 At the hearing the President of the Court of First Instance authorised the applicants to produce certain additional documents. These documents were communicated on 30 October 2003.
- 11 At the hearing the parties undertook to examine the possibility of an agreed staggering of payment of the fines and to inform the President of the Court of First Instance of the outcome of their discussions. The parties notified the outcome of these discussions and certain related documents on 7 November 2003.

Law

- 12 By virtue of the combined provisions of Articles 242 EC and 243 EC on the one hand and Article 225(1) EC on the other, the Court of First Instance may, if it considers that circumstances so require, order that application of the contested act be suspended or prescribe any other necessary interim measures.
- 13 Under Article 104(2) of the Rules of Procedure of the Court of First Instance, an application for interim measures must state the circumstances giving rise to urgency and the pleas of fact and law establishing a *prima facie* case for the interim measures applied for. Those conditions are cumulative, so that an application for interim measures must be dismissed if any one of them is absent (order of the President of the Court of Justice in Case C-268/96 P(R) *SCK and FNK v Commission* [1996] ECR I-4971, paragraph 30). Where appropriate, the judge hearing such an application must also weigh up the interests involved (order of the President of the Court of Justice in Case C-445/00 R *Austria v Council* [2001] ECR I-1461, paragraph 73).
- 14 Before examining whether those conditions are met in the present case, it has to be noted that the applicants have made no plea with regard to the FNPL. In those circumstances, the examination by the judge hearing the application for interim measures in the present proceedings will relate exclusively to the situation of the FNSEA, the FNB and the JA.

The existence of a prima facie case

Arguments of the parties

- 15 In order to demonstrate that the condition for the existence of a *prima facie* case is met, the applicants submit a number of pleas which, in their opinion, should lead to annulment of the decision.

- 16 First, the applicants claim that they are not associations of undertakings or associations of associations of undertakings. Secondly, they contend that the Commission committed a manifest error of appraisal by ascribing to them an agreement relating to imports, the secret continuation of the price agreement after 30 November 2001 and local actions subsequent to 30 November 2001. Thirdly, in their opinion the agreement in question did not have a restrictive effect on competition. Fourthly, they maintain that the exemption provided for under Article 2 of Council Regulation No 26 of 4 April 1962 applying certain rules of competition to production of and trade in agricultural products (OJ, English Special Edition 1959-1962 (II), p. 129) provides that Article 81 EC does not apply to agreements necessary for attainment of the objectives set out in Article 33 EC.
- 17 In the alternative, the applicants maintain that the fines imposed by the Decision should be reduced.
- 18 They claim in this regard first that the Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty (OJ 1998 C 9, p. 3) are unlawful in that the method of determining the basic amount contained therein infringes both the principle of proportionality and the provisions of Article 15 of Council Regulation No 17 of 6 February 1962, First Regulation implementing Articles [81] and [82] of the Treaty (OJ, English Special Edition 1959-1962 (I), p. 87).
- 19 Secondly, they maintain that the Commission infringed the principle of proportionality and committed a manifest error of appraisal as regards the seriousness and duration of the infringement. The applicants allege in particular that the Commission itself noted the very specific circumstances of the case by reason both of the parties concerned — which are all non-profit associations operating in the farm sector — and of the nature of the product involved. They point out that in the Decision the Commission stated that it was ‘the first to penalise an agreement concluded entirely between federations and which relates to a basic agricultural product and involves two links in the production chain’. Similarly, they maintain that the Commission described the crisis as an

‘exceptional occurrence’ and a ‘specific context, which went beyond a straightforward collapse in prices or the presence of a well-known disease’ (recitals 181 and 184 of the Decision).

20 Thirdly, the applicants contend that the Commission infringed Article 15(2) of Council Regulation No 17 in that the amount of the fines exceeds the permitted ceiling. They assert that in the case of an association of undertakings which has no turnover the ceiling on the fine provided for by Article 15 of Regulation No 17 is EUR 1 million. On the assumption that the annual subscriptions received by the applicants can be characterised as ‘turnover’, the fines imposed greatly exceeded 10 % of the amount of such subscriptions, as they represented 200 % of the subscription income of the FNSEA, 240 % of that of the FNB and more than 200 % of that of the JA.

21 With regard to the turnover of their members, the applicants observe that it is permissible to take account of the turnover of the members of an association of undertakings only if, by virtue of its internal rules, the association is able to bind its members (judgment in Case C-298/98 P *Finnboard v Commission* [2000] ECR I-10157). They assert that in the present case, however, none of the applicants is able to bind its members. They maintain that no legal provision nor clause in their respective articles of association authorises them to enter into commitments on behalf of their members. *A fortiori*, they maintain that they are unable to bind their members’ members, that is to say the farmers belonging to local unions (hereinafter ‘affiliated farmers’).

22 Fourthly, the applicants maintain that the Commission infringed the *non bis in idem* rule. In their view, the Commission has not demonstrated that, when calculating the fine of each of the applicants, it took account of the fact that some of the affiliated farmers may, in certain circumstances, be members of the FNSEA, the FNB, the FNPL and the JA simultaneously.

- 23 Lastly, with regard to the procedure followed by the Commission, the applicants claim that the Commission infringed the rights of the defence in that in its statement of objections it did not indicate that it would calculate the amount of the fines on the basis of the turnover of their members. In addition, they allege that the Commission infringed Article 253 EC by reason of the lack of a statement of reasons regarding compliance with the ceiling set by Regulation No 17, whereas an extremely precise statement of reasons was required in the present case.
- 24 The Commission considers that none of the pleas submitted by the applicants meets the condition for the existence of a *prima facie* case.
- 25 The Commission considers first that the pleas summarised in paragraph 16 above are couched in too general terms, so that it is unable to formulate a response. It maintains that as they do not meet the criteria set out in the order of the President of the Court of First Instance in Case T-306/01 R *Aden and Others v Council and Commission* [2002] (ECR II-2387, paragraph 52), they should be dismissed as inadmissible. In the alternative, the Commission refutes the arguments as unfounded.
- 26 It then contends that the pleas seeking amendment of the Decision as regards the amount of the fines should be dismissed as unfounded in law.
- 27 First, according to the Commission, the argument that the guidelines are unlawful runs counter to established case-law that recognised their legality (judgment in Case T-9/99 *HFB and Others v Commission* [2002] ECR II-1487, paragraph 431 et seq.).

- 28 Secondly, as regards the alleged infringement of the principle of proportionality and the manifest error of appraisal as regards the duration and seriousness of the infringement, the Commission maintains that the applicants adduced no evidence that invalidates the findings set out in the Decision. Moreover, the Commission claims that it took due account of the crisis, first by adopting Community measures at that time to stabilise prices, in particular by introducing special exceptional regulations in addition to the use of traditional intervention mechanisms. Furthermore, the fine imposed on each of the parties was reduced by 60 % to take account of the exceptional situation. In any event, according to the Commission, the existence of a crisis in the market cannot justify a serious infringement of the competition rules (judgment in Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P *Limburgse Vinyl Maatschappij and Others v Commission* [2002] ECR I-8375, paragraph 487).
- 29 Thirdly, the Commission considers that the argument based on the *non bis in idem* rule is inadequately explained and must therefore be ruled inadmissible (order in *Aden and Others v Council and Commission*, cited above, paragraph 52). In any event, the Commission asserts that it took account of the links between the applicants and each of the applicants was fined for its own participation in the restrictive agreement.
- 30 Fourthly, as regards the ceiling on fines, the Commission points out that the applicants do not indicate the cumulative turnover of their members and do not demonstrate that the fines exceed the ceiling of 10 % of that amount. Furthermore, given that the turnover of the cattle production sector is EUR 4.4 billion and that the great majority of producers in this sector are indirectly affiliated to the applicants, in the Commission's opinion the fine cannot have exceeded 10 % of the cumulative turnover of the members. Indeed, according to the Commission, if it is considered that the FNSEA ultimately has almost 600 000 members and the JA nearly 50 000, the fine imposed would represent respectively around EUR 20 and EUR 12 per member. In the view of the Commission, it would be difficult to imagine that such amounts approach the maximum threshold of 10 % of their annual turnover.

- 31 As to the possibility for the applicants to bind their members, in its written observations the Commission draws attention to Article 8 of the articles of association of the FNSEA, which provides that that federation 'directs all actions in the form permitted or dictated by circumstances'. According to the Commission, similar provisions are to be found in the articles of association of the FNB (Article 7) and the JA (Article 6). At the hearing the Commission also cited Article 7 of the articles of association of the FNSEA, which provides for the expulsion of a member for non-compliance with the articles of association or internal rules or for non-pecuniary or material damage, in particular where the member's activities conflict with the policy of the FNSEA. According to the Commission, similar provisions are contained in the articles of association of the members of the FNSEA, which in the final instance would permit the local unions to expel an affiliated farmer if he harmed the trade union organisation, for example by refusing to participate in union actions. For that reason, in the view of the Commission, the applicants are able to bind all their members and the affiliated farmers. Finally, the Commission asks why the applicants would have concluded the agreements if they had been unable to bind their members.
- 32 Lastly, the Commission points out that, in a statement of objections, it is under no obligation to explain the basis of calculation which it intends to use to ascertain the ceiling (judgment in Case T-31/99 *ABB Asea Brown Boveri v Commission* [2002] ECR II-1881, paragraphs 78, 79, 85 and 86). As to the statement of reasons regarding the ceiling, it states that it duly sought information on the turnover of the members of the FNSEA but that the latter failed to reply. Moreover, the fine imposed represents far less than 10 % of the turnover of the applicants' members.

Assessment by the President of the Court of First Instance

- 33 It must be acknowledged that at least some of the pleas relied upon by the applicants appear *prima facie* to be relevant and in any case not entirely without

substance. That is true, first, of the plea that the Commission set a fine that exceeded the ceiling of 10 % of the applicants' turnover and, secondly, of the plea that the Decision lacks a statement of reasons with regard to the said ceiling.

- 34 As to the first of these two pleas, it must be noted that, when dealing with infringements by an association of undertakings, the maximum amount of 10 % of turnover laid down in Article 15(2) of Regulation No 17 must be calculated, where appropriate, by reference to the turnover achieved by all the member undertakings of the association, at least where, by virtue of its internal rules, the association is able to bind its members (judgments in Joined Cases T-39/92 and T-40/92 *CB and Europay v Commission* [1994] ECR II-49, paragraph 136, Case T-29/92 *SPO and Others v Commission* [1995] ECR II-289, paragraph 385, Joined Cases T-213/95 and T-18/96 *SCK and FNK v Commission* [1997] ECR II-1739, paragraph 252, and Case T-338/94 *Finnboard v Commission* [1998] ECR II-1617, paragraph 270, confirmed upon appeal by the judgment in Case C-298/98 P *Finnboard v Commission*, cited above, paragraph 66).
- 35 In substance, the Commission claims that, under their articles of association, the applicants were able to bind all their members and the affiliated farmers and that consequently it was justified to take their turnover into account for the purpose of calculating the fines.
- 36 At the hearing the applicants denied that their articles of association and those of their members allow them to expel a member who refuses to participate in a union action. In addition, they observed that, although the agreement of 24 October 2001 was concluded in the interests of their members, its sole purpose was to give them a psychological and political boost. Lastly, they observed that several local agreements were concluded, which in their view demonstrated that the agreement they had concluded was not restrictive.

- 37 Pursuant to Article 8 of the articles of association of the FNSEA, the object of that federation is essentially to 'represent and defend ... the interests of the farming profession in the intellectual, technical, social, economic and legislative fields, to the exclusion of any commercial operations'. The function of the FNSEA is, in particular, 'to represent and defend farming interests at all times, especially in relation to the public authorities and within interprofessional bodies, to prepare, decide and direct all actions in the form permitted or dictated by circumstances' (Article 8(5)). The FNSEA also has a function 'to represent and defend the interests of employers of farm workers, especially in relation to the public authorities and employees' trade union organisations', and for that purpose it is 'authorised to negotiate and conclude any accord or collective labour agreement and to participate in the management of any tariff structure created by such accords or agreements' (Article 8(6)). In addition, pursuant to Article 7 of the articles of association, membership of the FNSEA is lost, in particular, 'as a result of expulsion for non-compliance with the articles of association or internal rules or for non-pecuniary or material damage to the [FNSEA], particularly where the member's activity would be contrary to the general policy of the [FNSEA]'.
- 38 As regards the articles of association of the FNB, under Article 7 the object of that federation is 'to organise, represent and defend the common interests of all producers of cattle'. Article 4 of the articles of association provides that members can be expelled 'for non-compliance with the articles of association or internal rules or for material or non-pecuniary damage to the [FNB]'.
- 39 Lastly, Article 6 of the articles of association of the JA states that the object of that federation is essentially 'to organise, coordinate and harmonise all professional activities, to present and defend the interests of the departmental centres of which [it] is composed'. Article 5 of its articles of association provides that membership is forfeited primarily 'as a result of expulsion for non-compliance with the articles of association or internal rules or for non-pecuniary or material damage [to the JA], especially if the member's activity is contrary to the general policy [of the JA]'.

- 40 With the exception of Article 8(6) of the articles of association of the FNSEA, which deals with the specific question of the negotiation and conclusion of collective agreements, no provision in the applicants' articles of association appears prima facie to permit them to take decisions that bind their members. Although the articles of association of the FNSEA permit the latter to 'prepare, decide and direct all actions', prima facie they do not appear to authorise that federation to bind its members, contrary to the contentions of the Commission.
- 41 In particular, the applicants' articles of association do not prima facie contain provisions permitting them to bind their members that are comparable to those identified in the judgments in *CB and Europay v Commission*, *SCK and FNK v Commission* and *Finnboard v Commission*, cited above.
- 42 In this regard, in the judgments in *CB and Europay v Commission*, cited above, paragraph 138, and *Finnboard v Commission*, cited above, paragraphs 275 and 280, the Court of First Instance stated that, by virtue of their articles of association, the members of the associations in question were jointly and severally liable in respect of the commitments made by the associations towards third parties.
- 43 In the case which gave rise to the judgment in *SCK and FNK v Commission*, cited above, the articles of association of the association in question expressly provided that the latter could adopt decisions binding its members and expel members that did not comply with those decisions.
- 44 It must also be stated that in the order of the President of the Court of First Instance in Case T-5/00 R *Nederlandse Federatieve Vereniging voor de Groot-handel op Elektrotechnisch Gebied v Commission* [2000] (ECR II-4121, paragraph 56), it was found that, under the terms of the articles of association, the members were bound to abide strictly by the provisions of the articles of association, the internal rules and the decisions of the board of directors and meetings.

- 45 In view of these decisions, the argument put forward by the Commission at the hearing that it is sufficient that, by virtue of their articles of association, the applicants can expel members that do not comply with their 'general policy' appears to go beyond the case-law.
- 46 In addition, in the present case the taking into account of the turnover of affiliated farmers in calculating the ceiling on fines presupposes that the decisions taken by the applicants bind not only their direct members but also their indirect members. In this regard, the Commission has not, at first sight, provided explanations or, *a fortiori*, documents to support that claim.
- 47 It is clear from the foregoing that this plea is not without substance. Furthermore, the judge hearing the application for interim measures considers that the conditions for allowing the turnover of the members of an association of undertakings to be taken into account when applying the 10 % ceiling provided for in Article 15(2) of Regulation No 17 warrant detailed examination and assessment solely by the court adjudicating on the substance.
- 48 As to the second plea based on the failure to state reasons regarding the ceiling on fines, according to settled case-law the statement of reasons required by Article 253 EC must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Community Court to exercise its power of review (judgment in Case C-367/95 P *Commission v Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63). The extent of the obligation to state reasons imposed by Article 253 EC depends on the nature of the measure at issue and the context in which it was adopted (judgments in Cases C-350/88 *Delacre and Others v Commission* [1990] ECR I-395, paragraphs 15 and 16, and *Commission v Sytraval and Brink's France*, cited above, paragraph 63).

49 As regards a decision imposing fines on several undertakings for an infringement of Community competition rules, as in the present case, the scope of the duty to state reasons must be determined *inter alia* in the light of the fact that the gravity of the infringement depends on numerous factors, such as the particular circumstances of the case, its context and the dissuasive effect of fines, although no binding or exhaustive list of the criteria to be applied has been drawn up (order of the Court of Justice in Case C-137/95 P *SPO and Others v Commission* [1996] ECR I-1611, paragraph 54).

50 Recitals 162 to 186 of the Decision relate to the application of Article 15(2) of Regulation No 17. In recital 170 of the Decision, the Commission considers that the amount of the annual membership fees collected by each of the applicants is an objective criterion reflecting the relative size of the different farmers' federations and their degree of responsibility in the infringement. In view of this, the Commission set the basic amount of the fine on the FNSEA at EUR 20 million and those on the JA and the FNB at respectively one twentieth and one tenth of that amount.

51 On the other hand, no recital in the Decision deals with an examination of any exceeding of the 10 % ceiling or, *a fortiori*, with an appraisal of the possibility of taking the turnover of the affiliated farmers into account. Prima facie, the decision therefore does not enable the persons concerned and the Community Court to ascertain the reasons why the Commission considered it appropriate to take account of that turnover.

52 As the extent of the obligation to state reasons depends on the nature of the measure in question and on the context in which it was adopted (see paragraph 48 above), the Commission must explain its reasoning when it adopts a decision which goes appreciably further than its previous decisions (see to that effect the judgments in Case 73/74 *Fabricants de papiers peints and Others v Commission* [1975] ECR 1491, paragraph 31, and in *SCK and FNK v Commission*, cited

above, paragraph 226). It is all the more necessary when, as appears to be the case in the present proceedings (see paragraph 45 above), it goes beyond the case-law.

- 53 In the present proceedings, the Commission merely stated that before adopting the Decision it duly sought information from the applicants on their members' turnover, but that no information in this regard was forthcoming.
- 54 It must be observed with regard to this argument first that the Commission does not appear really to contest the applicants' argument that the Decision contains no statement of reasons about the ceiling on fines and secondly that, although the Commission did not have detailed knowledge of the turnover of the applicants' members, this circumstance does not prima facie exonerate it from stating in the body of the Decision the reasons why it considered it appropriate to take account of the turnover of those members.
- 55 The foregoing considerations are sufficient to conclude that at least some of the pleas put forward by the applicants are relevant prima facie and in any event not entirely without merit. In these conditions, in the present proceedings it must be recognised that a prima facie case exists.

Urgency

Arguments of the parties

- 56 The applicants consider that the condition as regards urgency is met in the present case.

57 They state, first of all, that the risk of serious and irreparable harm must be assessed having regard to the situation of each of them, and not to that of their members.

58 In their view, as they are unable to bind their members, their objective interests cannot merge with those of the affiliated farmers. In those circumstances, they contend that the size and economic power of beef producers should not be taken into account in assessing the harm they stand to suffer. Moreover, the applicants assert that they have no information on the turnover of meat producers.

59 As regards more particularly the FNSEA, the applicants observe first that the FNSEA is a federation governed by the provisions of the French Labour Code (Article 1 of its articles of association) and that its members are the departmental federations of farmers' unions (FDSEAs) or the departmental unions of farmers' unions (UDSEAs), the JA associations and the specialised national associations for particular products, such as the FNB and the FNPL (Article 5 of its articles of association). In addition, they point out that its object is essentially to 'represent and defend the interests of the farming profession in the intellectual, technical, social, economic and legislative fields, to the exclusion of any commercial operations' and that for that purpose 'it organises, coordinates and harmonises all interests' (Article 8 of its articles of association). Hence, according to the applicants, the FNSEA's main activity generates no income. On the contrary, given its function in the French farm sector and especially in relation to the public authorities, they assert that the FNSEA has extremely high operating costs owing to the size of its structure and the complexity of its organisation.

60 They then point out that the fine of EUR 12 million imposed on the FNSEA corresponds to precisely the amount of its ordinary receipts for the 2001 financial year. Those receipts consist of subscriptions of EUR 5.95 million, grants of EUR 3.28 million and other income of EUR 2.81 million.

- 61 As regards the liquidity of the FNSEA, the applicants observe that although the items on the assets side of its balance sheet at 31 December 2002 (financial fixed assets, investments and cash) total around EUR 14 million, realisable and available assets amount to EUR 3 million.
- 62 The applicants also refer to letters from three French banks, all of which refused to provide a bank guarantee. One of these banks allegedly offered to establish a guarantee for EUR 1.7 million for the FNSEA subject to a lien on its free assets.
- 63 With regard to the FNB, the applicants state first of all that the FNB is a federation governed by the French Labour Code (Article 1 of its articles of association) and that its members are FDSEAs or UDSEAs represented by their specialised sections (Article 2 of its articles of association). The object of the FNB is 'to organise, represent and defend the common interests of all producers of cattle and other closely related species who desire it, in application of the articles of association of the FNSEA' (Article 7 of its articles of association). According to the applicants, the main activity of the FNB is therefore not such as to generate income.
- 64 The applicants maintain that its income stems mainly from the subscriptions of the cattle sections of the departmental federations and breeders' associations. Its total receipts in 2001 amounted to EUR 816 935. They assert that the amount of the fine imposed on the FNB by the Commission, EUR 1 440 000, therefore corresponds to more than 176 % of its receipts for 2001. According to the applicants, this amount is exorbitant in view of its status as an association and its financial resources. At 31 December 2002 it allegedly had free assets of EUR 1.091 million. As a consequence, in their opinion, the FNB could not mobilise more than EUR 750 000.

- 65 The applicants state that three French banks refused to provide the FNB with a bank guarantee for the amount of the fine. One of the banks allegedly stated that it was prepared to provide a bank guarantee for EUR 670 000 subject to a lien on the FNB's free assets.
- 66 As regards the JA, the applicants point out first of all that the JA is also a federation governed by the French Labour Code (Article 1 of its articles of association) and that its members are the departmental young farmers' centres, whose own members must already be members of the FDSEA or the UDSEA for their *département* (Article 3 of its articles of association). The object of the JA is 'to organise, coordinate and harmonise all professional activities, to present and defend the interests of the departmental unions of which it is composed' and its primary function is therefore 'to represent young farmers in relation to professional organisations, the public authorities and public opinion and to defend the interests of young farmers wherever possible' (Article 6 of its articles of association). According to the applicants, the main activity of the JA therefore does not permit it to generate income.
- 67 The applicants assert that the amount of the fine imposed on the JA represents more than 200 % of the amount of its subscriptions and also more than 200 % of the amount of its own funds and reserves.
- 68 According to the applicants, the callable debts of the JA are considerable, amounting to EUR 1.51 million in 2001 and EUR 2.9 million at the end of 2002. In addition, the JA made losses in recent years, with a deficit of EUR 64 775 in 2001 and one of EUR 42 175 in 2002.
- 69 The applicants maintain that the assets of the JA do not permit it to provide a bank guarantee of any amount. Each of the banks approached in this regard refused to provide a bank guarantee, primarily on account of the lack of own funds, the losses and the scale of its callable debts.

- 70 The Commission considers that the applicants have not proved satisfactorily that the condition as to urgency is met in the present case.
- 71 It observes first that as the applicants are able to bind their members their interests coincide with those of their ultimate members, namely farmers. Hence, according to the Commission, the applicants concluded the disputed agreements on behalf of and in the interests of their members.
- 72 In those circumstances, according to the Commission, the serious and irreparable harm which they allege has to be assessed having regard to the financial capacity of the applicants' members. In the opinion of the Commission, there is no doubt that, with the assistance of the latter, the applicants could provide the requisite bank guarantee, for example by levying an exceptional subscription. It points out in this regard that the fine imposed on the FNSEA equates to approximately EUR 20 for each of the 600 000 members that it represents and that the fine imposed on the JA represents around EUR 12 for each of its 50 000 members. At the hearing the Commission observed that the FNSEA has 68 direct members, including the FNPL, which was able to provide the bank guarantee. According to the Commission, it is therefore clear that, even if it stopped at that level, the FNSEA could rely on the financial support of its members. Its board of directors could meet, set a subscription for the following year and in this way oblige its 68 members to pay the subscription. The Commission states that it does not know the precise financial situation of the FNSEA's members because the FNSEA did not send it the information requested in that regard.
- 73 The Commission adds that if the applicants' members decided not to provide the bank guarantee and if recovery of the fine by order of the court led to the demise of some federations, that consequence would be ascribable not to the obligation imposed by the Commission but to the decision of those members. In those circumstances, there would be no direct and necessary causal link between their demise and the Commission's action (order of the President of the Court of First Instance in Case T-18/96 R *SCK and FNK v Commission* [1996] ECR II-407,

paragraphs 36 to 38, confirmed upon appeal by order of the President of the Court of Justice in Case C-268/96 P(R) *SCK and FNK v Commission* [1996] ECR I-4971, cited above, and order in *Nederlandse Federatieve Vereniging voor de Groothandel op Elektrotechnisch Gebied v Commission*, cited above, paragraphs 52, 54, 58 and 59, confirmed upon appeal by order of the President of the Court of Justice in Case C-7/01 P(R) *FEG v Commission* [2001] ECR I-2559, paragraphs 42 to 44 and 46). In addition, the reasoning which leads to the resources of the group of undertakings to which an undertaking belongs being taken into account is, in the opinion of the Commission, equally applicable to an association of undertakings (order of the President of the Court in Case C-335/99 P(R) *HFB and Others v Commission* [1999] ECR I-8705, paragraphs 62 and 63).

- 74 The Commission also observes that if the applicants were to be the subject of court proceedings for restructuring or liquidation the objective of such proceedings would be to safeguard the federations in question, and it is probable that the member undertakings would lend the necessary support to their restructuring. In any case, according to the Commission, there would be no interest in keeping a federation alive if its members did not wish it to survive.
- 75 In the view of the Commission, as the applicants failed to show that it was impossible for them to obtain the requisite bank guarantees with the support of their members, the condition as to urgency is not met.
- 76 In the alternative, the Commission analyses the financial situation of each of the applicants and concludes that they have sufficient resources to provide the necessary bank guarantees. It adds that the accounting documents lodged by the FNB and the JA do not have absolute evidential value as they are not certified, and that the letters from banks, which the applicants adduce to demonstrate that it is impossible to provide the requisite guarantees, are not relevant as they do not show that the applicants were prepared to commit all their available own funds in order to obtain a bank guarantee.

Assessment by the President of the Court of First Instance

- It is settled case-law that an application for an exemption from the obligation to provide a bank guarantee as a condition for the fine not being recovered immediately will only be granted in exceptional circumstances (orders of the President of the Court of Justice of 6 May 1982 in Case 107/82 R *AEG v Commission* [1982] ECR 1549, paragraph 6, and in *FEG v Commission*, cited above, paragraph 44). The possibility of requiring the provision of a financial guarantee is expressly provided for with regard to applications for interim relief by the Rules of Procedure of the Court of Justice and of the Court of First Instance and is a general and reasonable way for the Commission to act (order of the President of the Court of First Instance in Case T-79/03 R *IRO v Commission* [2003] ECR II-3027, paragraph 25).
- 78 The existence of such exceptional circumstances may, in principle, be regarded as established where the party seeking exemption from providing the requisite bank guarantee adduces evidence that it is objectively impossible for it to provide such guarantee (order in *IRO v Commission*, cited above, paragraph 26).
- 79 In the present case, the applicants state that, given the financial situation of the FNSEA, the FNB and the JA, the provision of the entire amount of the bank guarantee, together with the related expenses, would be bound to lead to their dissolution. In support of this assertion, they point to their respective statements of assets at 31 December 2002 (see paragraphs 61, 62, 64 and 68 above). In addition, they produce a series of letters from three — in the case of the JA, four — French banks refusing to provide them with a bank guarantee for the amount of the fines, particularly in view of their insufficient assets. In the case of the FNSEA and the FNB, one of the banks approached proposed to provide a guarantee for less than the amount requested.

80 At the hearing the applicants replied to a series of questions about their assets and explained the various items in their balance sheets. Following the hearing, they undertook to examine the possibility of an agreed staggering of the payment of the disputed fines and to make a proposal to the Commission in this regard.

81 On 7 November 2003 the applicants and the Commission communicated the outcome of their discussions. The FNSEA offered to provide a bank guarantee for EUR 1.7 million immediately and to pay EUR 1.5 million on 31 December 2003 and EUR 1.5 million on 15 May 2004. The FNB offered to provide an immediate bank guarantee for EUR 670 000 and to pay EUR 200 000 on 31 December 2003. The JA offered to pay EUR 15 000 on 31 December 2003 and EUR 85 000 on 15 July 2004.

82 The Commission rejected the applicants' offers. In its opinion, there is no doubt that, with the assistance of their direct and indirect members, the applicants are able to pay the fine or finance the provision of the requisite bank guarantees. It observes in particular that the applicants do not explain why, following the holding of a general meeting, it would not be possible for them to take the necessary measures to obtain the additional bank guarantees or to pay the fine. In addition, the Commission asserts that the applicants have not proved that their assets are such that it would be objectively impossible for them to provide the said guarantees.

83 In the light of the explanations provided by the applicants and the content of their offers, the President of the Court of First Instance considers that their explanations, to the effect that their own resources are not sufficient to allow them to release funds over and above those proposed in the context of the present proceedings, are substantiated.

- 84 However, it must be recalled that, according to settled case-law, the damage to an association of undertakings must be assessed having regard to the financial situation of its members, where the objective interests of the association are not independent of those of the member undertakings (orders in Cases C-268/98 P(R) *SCK and FNK v Commission*, cited above, paragraphs 35 to 38, and *HFB and Others v Commission*, cited above, paragraph 63).
- 85 It is therefore necessary to examine whether, in the present case, the financial situation of the applicants must be assessed by taking account of that of their members.
- 86 In their written submissions, the applicants observed that since under their articles of association they cannot hold their members liable it cannot be considered that their interests merge with those of their members.
- 87 Although it is true that in the present case the internal rules of the FNSEA, the FNB and the JA do not prima facie allow these federations to hold their members liable within the meaning of the applicable case-law (see paragraphs 40 and 46 above), this circumstance does not automatically lead to the conclusion that the applicants' actions during the beef crisis in 2001 did not serve the objective interests of their members. Indeed, it is clear from the case-law cited above (see in particular the order in Case C-268/98 P(R) *SCK and FNK v Commission*, cited above, paragraph 37) that in order to determine the extent to which the objective interests of an association are independent of those of its members, the existence of internal rules enabling the association to hold its members liable may be taken into account. However, the objective interests of the association may merge with those of its members as a result of other circumstances, regardless of the existence or absence of such rules.

- 88 In their application for interim measures, the applicants put forward no argument to show that their actions did not serve the objective interests of their members and, in particular, those of the members involved in cattle production.
- 89 In reply to a question put by the President of the Court of First Instance at the hearing, the applicants drew attention to the fact, stated in recital 10 of the Decision, that in France there are approximately 240 000 farmers with more than five adult cattle each. Hence, they observe, assuming that 50 % are union members, 120 000 of the 650 000 members of the FNSEA are cattle producers, that is to say fewer than 20 % of the total. For that reason, they contend, it is obvious that the majority of the members of the FNSEA would have no interest in helping the latter pay the fine or provide the bank guarantee.
- 90 However, the President of the Court of First Instance considers that these statements, which are simply suppositions and in any case concern only the FNSEA and not the FNB or the JA, are not sufficient to conclude that the actions of the FNSEA in reaching the disputed agreements served an interest independent of that of its members.
- 91 As regards the FNSEA, under Article 8 of its articles of association the object of that federation is ‘essentially to represent and defend the interests of the farming profession in the intellectual, technical, social, economic and legislative fields’ and that one of its functions is ‘to represent and defend farming interests at all times, especially in relation to the public authorities and within interprofessional bodies, to prepare, decide and direct all actions in the form permitted or dictated by circumstances’.
- 92 It follows that the function and actions of the FNSEA are based on a principle of solidarity, by virtue of which that federation defends the interests of its members

as a whole. When a federation such as the FNSEA draws a large number of members from different branches of agriculture, its actions cannot, at any one moment, focus on — or directly affect — all its members. Nevertheless, its members have a common interest, based on the principle of solidarity, in the FNSEA taking actions designed to assist its most vulnerable members, especially when a particular market is in crisis.

- ⁹³ Hence, even if the actions of the FNSEA during the mad cow crisis were taken to assist only a certain section of its membership, that is to say affiliated cattle producers, its actions none the less reflected the objective interests of all its members.
- ⁹⁴ It is therefore of no importance whether, in a concrete case, the producers affected by the actions of the FNSEA constitute a small proportion of its entire membership or not.
- ⁹⁵ Moreover, the FNSEA would not have been able to sign the disputed agreements without the necessary support of a majority of the members of its board of directors. The majority of the members of the board of directors considered that the conclusion of an agreement to protect the interests of cattle producers was sufficiently important for the FNSEA to commit itself, instead of leaving it to the associations specialising in cattle production to act.
- ⁹⁶ The object of the JA, for its part, is 'to organise, coordinate and harmonise all professional activities, to present and defend the interests of the departmental unions of which it is composed' and its primary function is therefore 'to represent young farmers in relation to professional organisations, the public authorities and public opinion and to defend the interests of young farmers wherever possible' (Article 6 of its articles of association).

97 As to the FNB, under Article 7 of its articles of association its object is ‘to organise, represent and defend the common interests of all producers of cattle and other closely related species who desire it, in application of the articles of association of the FNSEA’.

98 It can be deduced from the foregoing that the objectives of the JA and the FNB are much the same as those of the FNSEA and that their interest in reaching the disputed agreements was not *prima facie* independent of that of their members. This conclusion is especially clear in the case of the FNB, which groups together the farmers most affected by the said agreements, that is to say cattle producers.

99 Hence, nothing in the file and no argument put forward by the applicants gives grounds for doubting that the applicants’ actions served the interests of their members. The applicants’ objective interests can therefore not be considered independent of those of their members.

100 Moreover, that conclusion is reinforced by the explanations from the applicants. At the hearing they stated that it would be inconceivable for a union federation to claim to have acted against the interests of its members.

101 It follows that, in accordance with the case-law cited in paragraph 84 above, the risk of serious and irreparable harm that would result from the provision of bank guarantees has to be assessed having regard to the size and economic power of the undertakings belonging to the applicant federations.

102 Although, as the applicants argued at the hearing, it is possible that the majority of their members would refuse to vote in favour of providing the financial assistance necessary to the applicants' survival — a hypothesis that has not been demonstrated, however — this issue is of no importance to an assessment of their economic power (see to that effect the order in *FEG v Commission*, cited above, paragraph 46). Moreover, nothing in the file gives grounds for thinking that it would be inconceivable for a majority of the members to vote for an increase in the subscriptions of the members most affected by the disputed agreements, that is to say cattle producers.

103 It must also be noted that the applicants neither alleged nor, *a fortiori*, demonstrated that all affiliated farmers or only farmers engaging in cattle production did not have the financial capacity to provide the necessary financial support to pay the fine or provide the full amount of the bank guarantee.

104 However, at the hearing the applicants commented that, in order to increase annual subscriptions, it would be necessary to call a general meeting, which would take time. For example, an ordinary general meeting of the FNSEA was not due to be held until April 2004. In addition, a series of general meetings would have to be held at different levels. Given the applicants' structure, in order to make the affiliated farmers pay a subscription the applicants' members and their members would have to levy an exceptional subscription on their members.

105 It is apparent from the applicants' explanations that they recognise the possibility of an exceptional increase in the subscriptions of affiliated farmers as a means of paying the fine or providing the bank guarantee.

106 Although the applicants did not claim that their direct members lacked the financial capacity to pay the fine or provide the necessary bank guarantee, the file nevertheless contains enough serious information for the President of the Court of First Instance to consider that this is not a real possibility. Despite the fact that the FNPL, which is a member of the FNSEA, has provided the requisite bank guarantee, thereby proving that it has some financial power, the amount to be paid by each of the direct members of the applicant federations is not inconsiderable.

107 In these circumstances it is necessary to examine whether — and, if so, in what circumstances — the applicants can increase the subscriptions of affiliated farmers in the relatively near future.

108 Under the applicants' articles of association, any increase in members' subscriptions must be approved by their respective general meetings (Article 44 of the articles of association of the FNSEA, Article 9 of the articles of association of the JA and Article 20 of the articles of association of the FNB). In addition, there appears to be nothing to prevent the applicants from calling an extraordinary general meeting for this purpose, rather than waiting for an ordinary general meeting. Indeed, whereas Article 44 of the articles of association of the FNSEA provides that 'the amount of the subscriptions paid by the federations and groupings shall be proposed each year by the board of directors and submitted for ratification by the general meeting', under Article 14 'the general meeting shall meet whenever the interest of the [FNSEA] so requires'. That is confirmed by Article 17, under which an extraordinary general meeting may be called when the interests of the FNSEA so require.

109 Similar provisions are contained in Article 9 of the articles of association of the FNB and Article 8 of the articles of association of the JA.

- 110 Under the articles of association of the FNSEA (Article 14), any general meeting must be called by simple letter at least one month in advance. The articles of association of the JA (Article 8) provide that an extraordinary general meeting may be called by simple letter at least 15 days in advance, while the articles of association of the FNB (Article 20) state that no period of notice need be given to call an extraordinary general meeting in an emergency.
- 111 As to the possibility of increasing the subscriptions of affiliated farmers, the applicants observed at the hearing that this would entail four steps. First, the applicants would have to increase the subscriptions of their member federations, which would then have to call a general meeting and levy an exceptional subscription on their members, that is to say the departmental federations. In the third phase, the latter would have to levy the said subscriptions on their own members, that is to say the unions, which, in the fourth stage, would have to levy the subscriptions on the affiliated farmers.
- 112 The President of the Court of First Instance considers that the applicants' explanations about their structure and the constraints on increasing farmers' subscriptions are substantiated by the documents in the file. The only remaining doubt relates to the number of stages necessary to be able to increase farmers' subscriptions. According to the information in the file, it appears that in most cases three stages are sufficient, that is to say first the applicants' general meetings, secondly the general meetings of their members — the FDSEAs and UDSEAs — and thirdly the general meetings of the local farmers' unions.
- 113 It follows from the foregoing that the applicants have proved satisfactorily that exceptional circumstances exist in that they are at risk of serious and irreparable

harm if the obligation to provide the full bank guarantee is not suspended for a period of five months from the date of notification of this order.

The balance of interests

Arguments of the parties

- 114 The applicants observe that the Commission runs no risk if the present application for interim relief is granted. They contend that, given the fundamental function devolved to the FNSEA in the French farm sector since its creation in 1946, its role in relation to the public authorities and the powers it enjoys, that federation will continue to operate strictly in the same manner during the appeal proceedings. According to the applicants, the JA and the FNB will also continue to perform their activities in the same manner.
- 115 The Commission points out first that the applicants' assertions as to their continued activity are at odds with their arguments as to the allegedly irreparable nature of any enforcement. Furthermore, given that their continued activity depends on their own intentions, in the Commission's opinion there is a risk that they will place themselves in liquidation in order to reconstitute in the form of a new association with the same membership.
- 116 In addition, according to the Commission, there is a risk that the applicants' assets will diminish over time, so that the part of the fine that can be recovered will become ever smaller.

- 117 More generally, the Commission points out that if, because their own financial resources were modest, associations of undertakings could be exempted from providing a bank guarantee without the financial resources of their members being taken into account, undertakings contemplating anti-competitive behaviour would always have an interest in forming an association of undertakings to conclude agreements contrary to competition law.
- 118 Lastly, in the opinion of the Commission the need to safeguard the effectiveness of Community competition rules and their deterrent effect is all the more important in the present case in that the applicants were involved in a very serious infringement of Community competition rules (order of the President of the Court of First Instance of 28 June 2000 in Case T-191/98 R II *Cho Yang Shipping v Commission* [2000] ECR II-2551, paragraph 54).

Assessment by the President of the Court of First Instance

- 119 It is necessary to weigh the applicants' interest in avoiding — in the event that they are unable to arrange a bank guarantee — immediate payment of the fine against the Community's financial interest in being able to recover that sum and, more generally, against the public interest in preserving the effectiveness of Community competition rules and the deterrent effect of fines imposed by the Commission (see to that effect the order of the President of the Court of Justice in Case 56/89 R *Publishers Association v Commission* [1989] ECR 1693, paragraph 35, and the orders of the President of the Court of First Instance in Joined Cases T-24/92 R and T-28/92 R *Langnese-Iglo and Schöller Lebensmittel v Commission* [1992] ECR II-1839, paragraph 28, in Case T-88/94 R *Société Commerciale des potasses et de l'azote and Entreprise minière et chimique v Commission* [1994] ECR II-401, paragraph 32, and in *Cho Yang Shipping v Commission*, cited above, paragraph 53).

- 120 As regards the financial interests of the Community, it must be observed first that, as noted above, the applicants' assets are not sufficient for them to pay the entire amount of the fine or to provide the bank guarantee required. Moreover, as the Commission acknowledged in its written observations, there is no legal obligation for the applicants' members to pay the fine. It is therefore highly likely that if the Commission enforced collection of the fines on the applicants it would not obtain the full amount of the fine imposed. Furthermore, it is common ground that in the event of the applicants' bankruptcy the Commission would be unable to serve its unpaid claims on any new union federations that might be formed in the sector. In these circumstances, it appears that the financial interests of the Commission are best served by granting the applicants the time they need to seek voluntary financial assistance from their direct and indirect members.
- 121 Furthermore, the financial interests of the Commission are also protected by the commitments of the FNSEA and the FNB to provide bank guarantees covering a not inconsiderable part of the fine (see paragraph 81 above).
- 122 Finally, with regard to the risk of the applicants' being liquidated and immediately reconstituted, the applicants stated that this risk was not real, given their function and their role in relation to the French public authorities. However, this assertion by the applicants, which moreover appears difficult to reconcile with the argument that they would suffer irreparable harm if the present application for interim relief were dismissed, is not substantiated in any way. In these circumstances, until the bank guarantees that will be required have been provided, the applicants must be obliged to communicate to the Commission monthly, first, the main parameters relating to changes in their economic and financial situation, which the Commission shall define upon notification of this order, and secondly, prior to its adoption, any decision liable substantially to affect their economic situation or intended to change their legal status.

- 123 As regards the public interest in preserving the effectiveness of Community competition rules and the deterrent effect of fines imposed by the Commission, the Commission has not demonstrated how the granting of a partial suspension for a limited period would jeopardise that interest in the present case.
- 124 In addition to the foregoing observations is the fact that the situation of the applicants is not comparable to that of any other association of undertakings, given their special and highly specific function and in particular the role entrusted to them by the French public authorities in the negotiation of collective agreements (see paragraph 37 above). There is therefore serious reason to believe that the dissolution of the applicants in the event of enforcement of the decision could seriously affect the organisation of trade union affairs in the farm sector in France and that, contrary to the claims of the Commission, the reconstitution of the applicants after their dissolution would not redress the resulting damage.
- 125 In the light of the foregoing, the FNSEA should be granted the suspension sought, on condition first that within a period of three weeks from notification of this order it pays EUR 1.5 million to the Commission and provides a bank guarantee of EUR 1.7 million or, alternatively, provides a bank guarantee of EUR 3.2 million, and secondly that within a period of five months from notification of this order it pays the Commission the balance of the fine still due, together with interest, or provides a bank guarantee of that amount.
- 126 The FNB should be granted the suspension sought, on condition first that within a period of three weeks from notification of this order it pays EUR 200 000 to the Commission and provides a bank guarantee of EUR 670 000 or, alternatively,

provides a bank guarantee of EUR 870 000, and secondly that within a period of five months from notification of this order it pays the Commission the balance of the fine still due, together with interest, or provides a bank guarantee of that amount.

127 The JA should be granted the suspension sought, on condition first that within a period of three weeks from notification of this order it pays EUR 15 000 to the Commission or, alternatively, provides a bank guarantee of that amount, and secondly that within a period of five months from notification of this order it pays the Commission the balance of the fine still due, together with interest, or provides a bank guarantee of that amount.

128 The suspension mentioned in paragraphs 126 and 127 of this order shall cease to have effect if the applicants do not communicate to the Commission, within a period of six weeks from notification of this order, the annual accounts of the FNB and the JA for the 2001 and 2002 financial years, audited and certified by an audit firm of international repute.

129 It should be pointed out, furthermore, that, under Article 108 of the Rules of Procedure, the judge hearing an application for interim measures may at any time vary or cancel an interim order on account of a change in circumstances (order of the President of the Court of First Instance in Case T-198/01 R *Technische Glaswerke Ilmenau v Commission* [2002] ECR II-2153, paragraph 123, confirmed upon appeal by order of the President of the Court of Justice in Case C-232/02 P(R) *Commission v Technische Glaswerke Ilmenau* [2002] ECR I-8977). It follows from that case-law that, by a ‘change in circumstances’,

what are especially envisaged are factual circumstances capable of altering the assessment made in each particular case of the criterion of urgency. Furthermore, according to the Court of Justice, that possibility reflects the fundamentally precarious nature in Community law of measures granted in interim relief proceedings (order of the Court of Justice in Case C-440/01 P(R) *Commission v Artegodan* [2002] ECR I-1489).

- 130 If appropriate, it will therefore be for the Commission to petition the Court of First Instance if, in particular, the information mentioned in paragraphs 122 and 128 of this order reveal a change in circumstances likely to alter the present decision.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. The obligation on the Fédération Nationale des Syndicats d'Exploitants Agricoles to provide the Commission with a bank guarantee in order to avoid

immediate enforcement of the fine imposed on it by Article 3 of Commission Decision 2003/600/EC of 2 April 2003 relating to a proceeding pursuant to Article 81 of the EC Treaty (Case COMP/C.38.279/F3 — French beef) is suspended on the following conditions:

- (a) within a period of three weeks from notification of this order, the Fédération Nationale des Syndicats d'Exploitants Agricoles shall pay the Commission the sum of EUR 1.5 million and provide a bank guarantee of EUR 1.7 million or, alternatively, the Fédération Nationale des Syndicats d'Exploitants Agricoles shall provide a bank guarantee of EUR 3.2 million,

 - (b) within a period of five months from notification of this order the Fédération Nationale des Syndicats d'Exploitants Agricoles shall pay the Commission the balance of the fine still due, together with interest, or provide a bank guarantee of that amount;
2. The obligation on the Fédération Nationale Bovine to provide the Commission with a bank guarantee in order to avoid immediate enforcement of the fine imposed on it by Article 3 of Decision 2003/600 is suspended on the following conditions:
- (a) within a period of three weeks from notification of this order, the Fédération Nationale Bovine shall pay the Commission the sum of EUR 200 000 and provide a bank guarantee of EUR 670 000 or, alternatively, the Fédération Nationale Bovine shall provide a bank guarantee of EUR 870 000,

- (b) within a period of five months from notification of this order, the Fédération Nationale Bovine shall pay the Commission the balance of the fine still due, together with interest, or provide a bank guarantee of that amount;

- 3. The obligation on the Jeunes Agriculteurs to provide the Commission with a bank guarantee in order to avoid immediate enforcement of the fine imposed on it by Article 3 of Decision 2003/600 is suspended on the following conditions:
 - (a) within a period of three weeks from notification of this order, the Jeunes Agriculteurs shall pay the Commission the sum of EUR 15 000 or, alternatively, provide a bank guarantee of that amount,

 - (b) within a period of five months from notification of this order, the Jeunes Agriculteurs shall pay the Commission the balance of the fine still due, together with interest, or provide a bank guarantee of that amount;

- 4. The suspension granted in paragraphs 2 and 3 of the operative part of this order shall cease to have effect if the applicants do not communicate to the Commission, within a period of six weeks from notification of this order, the annual accounts of the Fédération Nationale Bovine and the Jeunes Agriculteurs for the 2001 and 2002 financial years, audited and certified by an audit firm of international repute.

5. Until bank guarantees including interest are established, the applicants shall communicate to the Commission:

(a) monthly, the main parameters relating to changes in their economic and financial situation, which the Commission shall define upon notification of this order,

(b) prior to its adoption, any decision liable substantially to affect their economic situation or intended to change their legal status;

6. The costs are reserved.

Luxembourg, 21 January 2004.

H. Jung

Registrar

B. Vesterdorf

President