ORDER OF THE COURT OF FIRST INSTANCE (Second Chamber)

28 November 2005 *

In Case T-94/04,

European Environmental Bureau (EEB), established in Brussels (Belgium),

Pesticides Action Network Europe, established in London (United Kingdom),

International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), established in Geneva (Switzerland),

European Federation of Trade Unions in the Food, Agricultural and Tourism sectors and allied branches (EFFAT), established in Brussels,

Stichting Natuur en Milieu, established in Utrecht (Netherlands),

Svenska Naturskyddföreningen, established in Stockholm (Sweden),

represented by P. van den Biesen, G. Vandersanden and B. Arentz, lawyers,

applicants,

* Language of the case: English.

Commission of the European Communities, represented by B. Doherty, acting as Agent, with an address for service in Luxembourg,

defendant,

supported by

Syngenta Ltd, established in Guildford (United Kingdom), represented by C. Simpson, Solicitor, and D. Abrahams, Barrister,

intervener,

ACTION for annulment of Commission Directive 2003/112/EC of 1 December 2003 amending Council Directive 91/414/EEC to include paraquat as an active substance (OJ 2003 L 321, p. 32),

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

composed of J. Pirrung, President, A.W.H. Meij and I. Pelikánová, Judges,

Registrar: E. Coulon,

makes the following

Order

Legal framework

Directive 91/414/EEC

1 Article 4 of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1) lays down the conditions and general procedure applicable to the granting, review and withdrawal of authorisations of plant protection products. Article 4(1)(a) of that directive provides that only products the active substances of which are listed in Annex I thereto may be authorised.

2 The conditions required for the purposes of including active substances in Annex I are laid down in Article 5 of Directive 91/414. Inclusion is possible only if, in the light of current scientific and technical knowledge, it may be expected that plant protection products containing the active substance in question will fulfil certain conditions relating to lack of harmful effects for human and animal health and for the environment.

3 Article 8(2) of the directive provides that, by way of derogation from Article 4, the Member States may, for a provisional period, authorise the placing on the market in their territory of plant protection products containing active substances not listed in Annex I that were already on the market two years after the date of notification of the directive, that is, 26 July 1993.

4 The active substances contained in the products covered by the derogation provided for by Article 8(2) of the directive are examined gradually as part of a programme of work by the Commission.

Regulation No 3600/92

5 Article 5 of Commission Regulation (EEC) No 3600/92 of 11 December 1992 laying down the detailed rules for the implementation of the first stage of the programme of work referred to in Article 8(2) of Directive 91/414 (OJ 1992 L 366, p. 10) provides that the Commission is to draw up the list of active substances to be assessed and designate a rapporteur Member State for the assessment of each active substance.

6 It follows from Articles 6 and 7 of Regulation No 3600/92 that the Member State designated as rapporteur must assess the active substance in question and send the Commission a report of its assessment of the dossier, including a recommendation to include the active substance in Annex I to Directive 91/414 or to take other measures, such as the removal of the substance from the market.

7 The Commission then refers the dossier and the report for examination to the Standing Committee on the Food Chain and Animal Health established by Article 58 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1).

8 Article 7(3A) of Regulation No 3600/92, added by Commission Regulation (EC) No 1199/97 of 27 June 1997 amending Regulation No 3600/92 (OJ 1997 L 170, p. 19), provides that the Commission is to present to the Committee a draft text which may take several forms. If the proposal is to include the active substance in Annex I to the Directive, it will be a draft directive. If the text envisages negative measures against the active substance, including the withdrawal of the authorisations of plant protection products containing that substance, the Commission may propose a draft decision addressed to the Member States.

Background to the case

9 There are six applicants. The first is the European Environmental Bureau (EEB), an association under Belgian law, the formal goal of which, according to its statutes, is inter alia to promote the protection and the conservation of the environment within the context of the countries of the European Union. The EEB participates in various consultative bodies of the Commission, in particular the Standing Group on Plant Health and the Advisory Committee on Agriculture and the Environment. It is also a member of the European Habitats Forum and, in that capacity, has the status of stakeholder and observer in connection with Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206 p. 7).

10 The second applicant, Pesticides Action Network Europe, is a company under the law of England and Wales, the goal of which is to promote sustainable alternatives to pesticides. It took part in the Stakeholders' Conference on the Development of a Thematic Strategy on the Sustainable Use of Pesticides, organised by the Commission on 4 November 2002.

11 The third applicant, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), is an international federation of national unions representing workers employed in various fields, including the agricultural and plantation sectors. According to its statutes, the IUF's goals include defending the general and specific interests of the workers of all countries employed in the sectors within its competence. The IUF belongs to the European Trade Union Confederation, recognised by the European Union as the only representative cross-sectoral trade union organisation at European level.

12 The European Federation of Trade Unions in the Food, Agricultural and Tourism sectors and allied branches (EFFAT) is an association under Belgian law and is one of the regional branches of the IUF. The EFFAT participates in various consultative bodies of the Commission, including the Standing Group on Plant Health and the Advisory Committee on Agriculture and the Environment.

13 The fifth applicant, Stichting Natuur en Milieu ('Natuur en Milieu'), is a foundation under Netherlands law whose goals, according to its statutes, include 'giving a voice to things which are voiceless' and ensuring vital nature and a healthy environment for current and future generations. The foundation is a member of the EEB.

14 The sixth applicant, Svenska Naturskyddföreningen ('Naturskyddföreningen'), is an association under Swedish law whose goals, according to its statutes, include mobilising public opinion and influencing decision-making in matters of nature conservation and environmental protection and working towards protection and care of areas of natural interest. Naturskyddföreningen also owns a farm, Osaby, in southeastern Sweden, the agricultural activities of which are guaranteed to be completely organic. According to the applicants, the location of Osaby and the very exclusive biotopes that are preserved there make it a perfectly suitable habitat for amphibians such as the *Triturius cristatus* and *Rana arvalis,* which are protected under Directive 92/43.

15 In July 1993, a number of undertakings, including Syngenta Ltd, notified the Commission of their wish to have paraquat included in Annex I to Directive 91/414.

16 Point 83 of Annex I to Regulation No 3600/92 refers to paraquat as one of the substances coming under the first phase of the Commission's programme of work referred to in Article 8(2) of Directive 91/414.

17 Commission Regulation (EC) No 933/94 of 27 April 1994 laying down the active substances of plant protection products and designating the rapporteur Member States for the implementation of Regulation No 3600/92 (OJ 1994 L 107, p. 8) designated the United Kingdom of Great Britain and Northern Ireland as the rapporteur Member State for paraquat.

18 On 31 October 1996 the United Kingdom of Great Britain and Northern Ireland submitted the relevant assessment reports and recommendations to the Commission pursuant to Article 7(1)(c) of Regulation No 3600/92. That assessment report was reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health.

19 On 12 June 2003, the EEB, Pesticides Action Network Europe and Naturskyddföreningen called on the European Ministers for the Environment and the Commission not to include paraquat in Annex I to Directive 91/414. Moreover, on 25 September 2003, the EFFAT made the same request to the members of the European institutions.

The contested act

20 On 1 December 2003, the Commission adopted Directive 2003/112/EC amending Directive 91/414 to include paraquat as an active substance (OJ 2003 L 321 p. 32) ('the contested act').

21 Article 1 of, and the annex to, the contested act add paraquat to Annex I to Directive 91/414. The annex to the contested act also provides that paraquat may be used only as a herbicide and that certain techniques for spreading products containing paraquat are forbidden.

22 Article 2 of the contested act provides inter alia that Member States were to adopt and publish by 30 April 2005 at the latest the laws, regulations and administrative provisions necessary to comply with the contested act. They were to inform the Commission thereof immediately and apply those provisions from 1 May 2005.

23 Article 3 of the contested act requires the Member States inter alia to review the authorisation for each plant protection product containing paraquat in order to ensure that the conditions relating to that active substance, set out in Annex I to Directive 91/414, are complied with.

24 The first paragraph of Article 4 of the contested act provides that Member States are to ensure that the authorisation holders report at the latest on 31 March 2008 on the effects of risk-mitigation measures to be applied through a stewardship programme and on the implementation of advances in paraquat formulations. That position also states that Member States are to submit this information without delay to the Commission. The second paragraph of Article 4 of the contested act states that the Commission is to submit to the Standing Committee on the Food Chain and Animal Health a report on the application of the contested act, indicating whether the requirements for Annex I inclusion continue to be satisfied, and may propose any amendment, including if necessary the withdrawal from that annex, that it deems necessary.

25 Article 5 of the contested act sets 1 November 2004 as the date of entry into force of that measure.

26 Lastly, Article 6 states that the contested act is addressed to the Member States.

Procedure and forms of order sought

27 By application lodged at the Registry of the Court of First Instance on 27 February 2004, the applicants brought the present action.

28 By separate document lodged at the Registry of the Court of First Instance on 18 May 2004, the defendant raised an objection of inadmissibility pursuant to Article 114 of the Rules of Procedure of the Court of First Instance. The applicants lodged their observations on that objection on 30 July 2004.

29 By document lodged at the Registry of the Court of First Instance on 9 June 2004, Syngenta Ltd applied for leave to intervene in the present proceedings in support of the defendant. By order of 14 October 2004, the President of the Second Chamber of the Court of First Instance allowed that intervention. The intervener did not lodge its statement in intervention within the prescribed time-limit.

30 The applicants claim that the Court should:

— annul the contested act;

— order the Commission to pay the costs.

31 The defendant contends that the Court should:

— dismiss the action as inadmissible;

— order the applicants to pay the costs.

Law

32 Under Article 114(1) of the Rules of Procedure, if a party so requests, the Court of First Instance may rule on inadmissibility without hearing argument on the substance of the case. In accordance with Article 114(3), the remainder of the proceedings is to be oral, unless the Court decides otherwise. The Court finds in this case that it has sufficient information from the documents in the file and that it is not necessary to open the oral procedure.

The plea of inadmissibility relating to the nature of the contested act

33 The Commission submits that in the fourth paragraph of Article 230 EC there is no mention of the possibility for a natural or legal person to challenge a directive. Accordingly, in asking the Court to annul the contested act, the applicants are asking the Community judicature to disregard the precise wording of the fourth paragraph of Article 230 EC. The action against the contested act is, in any event, inadmissible because directives are legislative in nature.

34 The Court finds that, contrary to the Commission's submission, although the fourth paragraph of Article 230 EC makes no express provision regarding the admissibility of actions brought by private persons for the annulment of a directive, that fact in itself is not sufficient for such actions to be declared inadmissible (see order in Case T-321/02 *Vannieuwenhuyze-Morin* v *Parliament and Council* [2003] ECR II-1997, paragraph 21 and case-law cited). The Community institutions cannot exclude, merely by the choice of the form of the act in question, the judicial protection afforded to individuals under that provision of the Treaty (see order in Case T-84/01 *Association contre l'heure d'été* v *Parliament and Council* [2002] ECR II-99, paragraph 23 and case-law cited).

35 Likewise, the Commission is incorrect in maintaining that the legislative nature of the contested act precludes its being challenged through an action for annulment brought by individuals. It follows from the case-law that, in certain circumstances, even a legislative act applying to the generality of traders concerned may be of direct and individual concern to some of them (Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501, paragraph 13; Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 19; Case C-451/98 *Antillean Rice Mills* v *Council* [2001] ECR I-8949, paragraph 46; Case T-43/98 *Emesa Sugar* v *Council* [2001] ECR II-3519, paragraph 47).

36 In those circumstances, it is appropriate to reject the plea of inadmissibility relating to the nature of the contested act.

The plea of inadmissibility relating to the applicants' lack of standing

Arguments of the parties

37 The Commission denies that the applicants are directly and individually concerned by the contested act. As to whether the applicants are individually concerned by the contested act, it maintains that natural or legal persons cannot be individually concerned by a legislative act unless they are affected by it by reason of certain attributes peculiar to them, or by reason of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as the addressee of an act would be (see Case C-263/02 P *Commission* v *Jégo-Quéré* [2004] ECR I-3425, paragraph 45 and case-law cited). That is not the situation in the present case.

38 The applicants maintain that they are directly and individually concerned by the contested act.

39 As to the requirement of being individually affected, they claim, first, that they are particularly affected by the contested act because the activities of each of them consist in defending the higher interests which are at stake in this case, namely environmental protection and public health. Thus, the EEB, Natuur en Milieu and Naturskyddföreningen are active in environmental protection and conservation of nature, including wildlife, in the context of Directive 92/43. The IUF and EFFAT are

active in the protection of the interests of workers, particularly agricultural workers, including their health. The contested act affects those interests specifically because it represents a 'setback' in the protection of those interests, contrary to Community law. They add that the contested act has an even greater impact on Naturskyddföreningen, whose property rights are at stake in this case.

40 Second, they claim that the EEB and EFFAT have special advisory status in their respective spheres of expertise with the Commission and other European institutions, that Natuur en Milieu, Naturskyddföreningen and the IUF have identical status with other national and supranational authorities and that, in keeping with their goals as stated in their statutes, some of the applicants specifically requested the Commission not to include paraquat in Annex I to Directive 91/414.

41 Third, they claim essentially that, under Netherlands law, Natuur en Milieu is regarded as being directly and individually concerned by breaches of legal rules protecting environmental and wildlife interests and that Naturskyddföreningen enjoys the same status under Swedish law.

42 Fourth, the applicants claim that their action must be held to be admissible in the light of the principle of effective judicial protection, the principle of equality of arms and the Proposal for a Regulation of the European Parliament and of the Council on the application of the provisions of the Århus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to EC institutions and bodies (COM/2003/0622 Final) ('the Århus Regulation Proposal').

43 First, regarding the need to afford them effective judicial protection, the applicants submit that annulment of the contested act would prevent triggering a myriad of complex, lengthy and costly authorisation procedures in various Member States. They state that if they had to apply to the national courts, they would have to monitor possible submissions of applications for authorisation in all Member States, study the legal systems of the States where marketing authorisations have been applied for and bring proceedings before the competent national courts. Furthermore, given the principle of mutual recognition provided for in Article 10 of Directive 91/414, applicants wishing to object to the placing on the market of products containing paraquat would have to intervene in all national procedures. Lastly, they maintain that, contrary to the Commission's assertion, it is not merely a question of convenience because it is in practice impossible for a national court to adjudicate on the validity of the contested act. It follows that, from the point of view of the effectiveness of legal remedies available to the applicants, they are, pursuant to Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ('the ECHR'), which are applicable to the Court of First Instance pursuant to Article 6(2) EU, entitled to bring the present action before the Court of First Instance.

44 Turning, next, to the principle of equality of arms, the applicants claim, first, that an action challenging the contested act brought by a producer of paraquat, such as Syngenta, would be declared admissible under the fourth paragraph of Article 230 EC, as evidenced by the order in Joined Cases T-112/00 and T-122/00 *Iberotam and Others* v *Commission* [2001] ECR II-97, paragraph 79. The principle of equality of arms, enshrined in Articles 6, 13 and 14 of the ECHR, requires that parties which are affected in opposite ways by an act adopted by the Commission have equal opportunities in respect of legal remedies. They add that the Court of Justice's judgment in Joined Cases 10/68 and 18/68 *Eridania and Others* v *Commission* [1969] ECR 459, in which it was held that the fact that an individual is in competition with the addressees of the contested act is not sufficient to confer standing on that individual, is irrelevant to the present case, because that judgment concerned competitive relationships which are entirely absent from this case.

45 Lastly, the applicants maintain that their action is admissible in the light of the statement of reasons in the Århus Regulation Proposal. In that statement of reasons, the Commission considers that it is not necessary to amend Article 230 EC to provide standing to European environmental protection organisations which meet certain objective criteria contained in that proposal. The applicants, moreover, meet those criteria, which, following the Commission's reasoning, is sufficient to confer on them standing to challenge the contested act.

Findings of the Court

46 Under the fourth paragraph of Article 230 EC '[a]ny natural or legal person may ... institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former'.

47 In the present case, it follows from Article 6 of the contested act that it is addressed solely to the Member States. It is therefore for the applicants to demonstrate inter alia that they are individually concerned by that act, of which they are not the addressees.

48 It follows from the case-law that applicants who, as in the present case, are not the addressees of an act may not claim that they are individually concerned by it unless it affects them by reason of certain attributes peculiar to them, or by reason of a factual situation which differentiates them from all other persons and distinguishes

them individually in the same way as the addressee of the act would be (see Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677, paragraph 36 and case-law cited).

49 It is, accordingly, necessary to consider whether, in the present case, the applicants are concerned by the contested act by reason of certain attributes peculiar to them or there is a factual situation which differentiates them from all other persons in relation to the contested act.

50 In order to establish that they are individually concerned by the contested act, the applicants claim, first, that they are especially affected by that act due to the serious adverse effects it has on protection of the environment and workers' health, in the form of a setback in the protection of those interests. In addition, Naturskyddföreningen is also specially affected because of the adverse effects the contested act has on its property rights.

51 The Court notes, first, that the applicants do not specify how the contested act entails a setback for protection of the environment and workers' health; nor do they provide any concrete evidence to support the allegation of serious adverse effects on Naturskyddföreningen's property rights.

52 Next, the Court observes that, in the present case, the contested act essentially amends Annex I to Directive 91/414 by referring in it to the active substance

paraquat and by laying down the conditions for its use as an active substance (Article 1); requires Member States, on the one hand, to review the authorisation for each plant protection product containing paraquat and, on the other, to re-evaluate authorised plant protection products containing paraquat (Article 3); requires Member States to ensure that the authorisation holders report at the latest on 31 March 2008 on the effects of risk-mitigation measures to be applied through a stewardship programme and on the implementation of advances in paraquat formulations (first paragraph of Article 4); and requires the Commission to submit to the Standing Committee on the Food Chain and Animal Health a report on the application of the contested act, indicating whether the requirements for inclusion in Annex I to Directive 91/414 continue to be satisfied and to propose any amendment, including if necessary the withdrawal from that annex, that it deems necessary (second paragraph of Article 4).

53 Irrespective of the issue of which of those provisions, in the applicants' view, has or have serious adverse effects on the interests they defend in the form of a setback in the protection of those interests and a serious infringement of the property rights of one of them, it is clear that those provisions affect them in their objective capacity as entities active in the protection of the environment or workers' health, or even as holders of property rights, in the same manner as any other person in the same situation.

54 It is apparent from the case-law that that capacity is not by itself sufficient to establish that the applicants are individually concerned by the contested act (see, to that effect, Case C-321/95 P *Greenpeace and Others* v *Commission* [1998] ECR I-1651, paragraph 28, and order in Case T-154/02 *Villiger Söhne* v *Council* [2003] ECR II-1921, paragraph 47 and case-law cited).

55 It follows from the foregoing that the alleged serious adverse effects the contested act has on the applicants' interests and property rights do not establish that they are individually concerned by the contested act.

56 Second, the applicants claim that the EEB and EFFAT have special advisory status with the European institutions, that Natuur en Milieu, Naturskyddföreningen and the IUF have similar status with national or supranational authorities and that, in accordance with the stated goal in their statutes, some of the applicants specifically requested the Commission not to include paraquat in Annex I to Directive 91/414.

57 It should be borne in mind, first, that the fact that a person participates, in one way or another, in the process leading to the adoption of a Community act does not distinguish him individually in relation to the act in question unless the relevant Community legislation has laid down specific procedural guarantees for such a person (see order in Case T-339/00 *Bactria* v *Commission* [2002] ECR II-2287, paragraph 51 and the case-law cited). In the present case, the Community legislation applicable to the adoption of the contested act does not provide for any procedural guarantee for the applicants, or even for any form of participation by the Community advisory bodies, be they national or supranational, to which the applicants allegedly belong. Accordingly, neither the fact that the applicants asked the Community authorities not to include paraquat in Annex I to Directive 91/414 nor their alleged participation in advisory bodies leads to the conclusion that they are individually concerned by the contested act.

58 Third, as to the argument that Netherlands and Swedish law consider applicants to be directly and individually concerned by acts which adversely affect the interests

which they defend, the Court notes that the standing conferred on those applicants in some of the legal systems of the Member States is irrelevant for the purposes of determining whether they have standing to bring an action for annulment of a Community act pursuant to the fourth paragraph of Article 230 EC (see, to that effect, the order in Case T-585/93 *Greenpeace and Others* v *Commission* [1995] ECR II-2205, paragraph 51).

59 It follows from the foregoing that Community law, as it now stands, does not provide for a right to bring a class action before the Community courts, as envisaged by the applicants in the present case.

60 Fourth, the applicants maintain that effective judicial protection, as enshrined in Articles 6 and 13 of the ECHR, which is applicable to the Community institutions pursuant to Article 6(2) EU, means that the present action must be declared admissible because, first, proceedings brought before national courts would be lengthy, complex and costly and, second, those courts are not able to rule on the questions raised in the present proceedings.

61 The Court of Justice has held that the right to effective judicial protection is one of the general principles of law stemming from the constitutional traditions common to the Member States and that that right has also been enshrined in Articles 6 and 13 of the ECHR (*Unión de Pequeños Agricultores* v *Council*, paragraph 48 above, paragraphs 38 and 39).

62 In the same judgment, the Court of Justice stated that by Article 230 EC and Article 241 EC, on the one hand, and by Article 234 EC, on the other, the EC Treaty has established a complete system of legal remedies and procedures designed to ensure judicial review of the legality of acts of the institutions, and has entrusted such review to the Community courts. Under that system, where natural or legal persons cannot, by reason of the conditions for admissibility laid down in the fourth paragraph of Article 230 EC, directly challenge Community measures of general application, they are able, depending on the case, either indirectly to plead the invalidity of such acts before the Community courts under Article 241 EC or to do so before the national courts and ask them, since they have no jurisdiction themselves to declare those measures invalid, to make a reference to the Court of Justice for a preliminary ruling on validity (*Unión de Pequeños Agricultores* v *Council*, paragraph 48 above, paragraph 40).

63 Lastly, it is apparent from the case-law that the admissibility of an action for annulment before the Community courts does not depend on whether there is a remedy before a national court enabling the validity of the act being challenged to be examined (see, to that effect, *Unión de Pequeños Agricultores* v *Council*, paragraph 48 above, paragraph 46).

64 It follows that, according to the approach taken in the case-law of the Court of Justice, the argument relating to effective judicial protection put forward by the applicants is not in itself sufficient to justify the admissibility of their action.

65 Fifthly, the applicants maintain that their action must be declared admissible by virtue of the principle of equality of arms. Suffice it to note that it is apparent from the case-law that the mere fact that an applicant is affected by an act in a manner opposite to that in which a person entitled to bring an action for annulment of that

act is affected is not sufficient to confer standing on that applicant (see, to that effect, *Eridania and Others* v *Commission*, paragraph 44 above, paragraph 7, and Case C-106/98 P *Comité d'entreprise de la société française de production and Others* v *Commission* [2000] ECR I-3649, paragraph 41). In those circumstances, even if the intervener did have standing to bring an action for annulment of the contested act, as the applicants maintain, that fact alone would not establish that the applicants meet the requirement of being individually concerned by the contested act or exempt them from having to prove that they meet that requirement.

66 Sixthly and lastly, the applicants claim that they have standing because, first, the Commission, in the statement of reasons of the Århus Regulation Proposal, states that European environmental protection organisations which meet certain objective criteria have standing for the purposes of the fourth paragraph of Article 230 EC and, second, in the present case the applicants meet those objective criteria.

. . . . . .

67 The Court notes, first, that the principles governing the hierarchy of norms (see, inter alia, Case C-240/90 *Germany* v *Commission* [1992] ECR I-5383, paragraph 42) preclude secondary legislation from conferring standing on individuals who do not meet the requirements of the fourth paragraph of Article 230 EC. A fortiori the same holds true for the statement of reasons of a proposal for secondary legislation.

68 Accordingly, the statement of reasons relied on by the applicants does not release them from having to show that they are individually concerned by the contested act. Moreover, even if the applicants were acknowledged as qualified entities for the

purposes of the Århus Regulation Proposal, it is clear that they have not put forward any reason why that status would lead to the conclusion that they are individually concerned by the contested act.

69 In the light of all the foregoing, the Court finds that the applicants are not individually concerned by the contested act. Accordingly, the action must be declared inadmissible without its being necessary to consider whether the applicants are directly concerned by that act.

Costs

70 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, they must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

71 Under the third subparagraph of Article 87(4) of the Rules of Procedure, the Court of First Instance may order an intervener to bear its own costs. In the present case, the party which intervened in support of the Commission must be ordered to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby orders:

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

2. **The applicants shall pay, in addition to their own costs, those of the Commission.**

3. **The intervener shall bear its own costs.**

Luxembourg, 28 November 2005.

E. Coulon — Registrar

J. Pirrung — President