

ORDER OF THE COURT OF FIRST INSTANCE (First Chamber)

22 June 2006 *

In Case T-137/04,

Kurt Martin Mayer, residing in Eisentratten (Austria),

Tilly Forstbetriebe GmbH, established in Treibach (Austria),

Anton Volpini de Maestri, residing in Spittal/Drau (Austria),

Johannes Volpini de Maestri, residing in Seeboden (Austria),

represented by M. Schaffgotsch, lawyer,

applicants,

v

Commission of the European Communities, represented by M. van Beek and B. Schima, acting as Agents,

defendant,

* Language of the case: German.

supported by

Republic of Finland, represented by T. Pynnä and A. Guimaraes-Purokoski, acting as Agents,

intervener,

ACTION for annulment of Commission Decision 2004/69/EC of 22 December 2003 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Alpine biogeographical region (OJ 2004 L 14, p. 21),

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

composed of R. García-Valdecasas, President, I. Labucka and V. Trstenjak, Judges,

Registrar: E. Coulon,

II - 1828

makes the following

Order

Legal and factual background

- 1 On 21 May 1992, the Council adopted Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7; 'the habitats directive').

- 2 The aim of the habitats directive is, according to Article 2(1) thereof, to contribute towards ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora in the territory of the Member States to which the EC Treaty applies.

- 3 Article 2(2) of the habitats directive provides that the measures taken for its implementation are to be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.

- 4 According to the sixth recital in the preamble to the habitats directive, it is necessary, in order to ensure the restoration or maintenance of natural habitats and species of Community interest at a favourable conservation status, to designate special areas of conservation in order to create a coherent European ecological network in accordance with a specified timetable.

- 5 By virtue of Article 3(1) of the habitats directive, such network, under the title 'Natura 2000', is to include special areas of conservation as well as special protection areas classified by the Member States pursuant to Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1).
- 6 Under Article 1(l) of the habitats directive, 'special area of conservation' means 'a site of Community importance designated by the Member States through a statutory, administrative and/or contractual act where the necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and/or the populations of the species for which the site is designated'.
- 7 Article 4 of the habitats directive lays down a three-stage procedure for the designation of special areas of conservation. Under Article 4(1), each Member State is to propose a list of sites indicating which natural habitat types in Annex I and which species in Annex II that are native to its territory the sites host. Within three years of the notification of the habitats directive, that list is to be transmitted to the Commission, together with information on each site.
- 8 Under Article 4(2) of the habitats directive, the Commission is to establish, from those lists and on the basis of the criteria set out in Annex III to the directive and in agreement with each Member State, a draft list of sites of Community importance. The list of sites of Community importance is to be adopted by the Commission in accordance with the procedure laid down in Article 21 of the habitats directive. In accordance with Article 4(3), that list is to be established within six years of the notification of the habitats directive.

- 9 Article 4(4) of the habitats directive provides that, once a site of Community importance has been adopted in accordance with the procedure laid down in Article 4(2), the Member State concerned is to designate that site as a special area of conservation as soon as possible and within six years at most, establishing priorities in the light of the importance of the sites for the maintenance or restoration, at a favourable conservation status, of a natural habitat type in Annex I or a species in Annex II and for the coherence of Natura 2000, and in the light of the threats of degradation or destruction to which those sites are exposed.
- 10 Article 4(5) of the habitats directive states that, as soon as a site is placed on the list of sites of Community importance established by the Commission, it is to be subject to Article 6(2) to (4) of the habitats directive.
- 11 Under the terms of Article 6 of the habitats directive:

‘1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well

as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.'

¹² Commission Decision 2004/69/EC of 22 December 2003 adopting, pursuant to the habitats directive, the list of sites of Community importance for the Alpine biogeographical region (OJ 2004 L 14, p. 21; 'the contested decision') was adopted on the basis of the third subparagraph of Article 4(2) of that directive. Among the sites of Community importance included in the list are the following sites:

— AT 2102000 Nockberge (Kernzone), Kärnten;

— AT 2119000 Gut Walterskirchen.

¹³ The applicants are farmers and foresters who carry on, on their properties, in addition to the activities connected with their exploitation, secondary activities. Under the contested decision, those properties are included among the sites of Community importance for the Alpine biogeographical region.

¹⁴ The second applicant is the owner of land, which corresponds, in its entirety, to the site of Community importance with reference AT 2119000. The other applicants are owners of lands situated in the site of Community importance with reference AT 2102000.

Procedure

- 15 The applicants brought this action by application lodged at the Registry of the Court of First Instance on 13 April 2004.
- 16 By document lodged at the Registry of the Court of First Instance on 30 June 2004, the Commission raised an objection of inadmissibility under Article 114(1) of the Rules of Procedure of the Court of First Instance. The applicants lodged their observations on that objection on 2 September 2004.
- 17 By document lodged at the Court Registry on 7 July 2004, the Republic of Finland sought leave to intervene in these proceedings in support of the Commission. By order of 20 September 2004, the President of the First Chamber of the Court of First Instance granted leave to intervene. The intervener lodged a statement, confined to admissibility. The applicants lodged their observations on 30 December 2004.

Forms of order sought by the parties

- 18 In its objection of inadmissibility, the Commission contends that the Court should:

- dismiss the action as inadmissible;

- order the applicants to pay the costs.

19 In its statement in intervention, the intervener submits that the Court should dismiss the action as inadmissible.

20 In their observations on the objection of inadmissibility, the applicants contend that the Court should:

— primarily:

— reject the objection of inadmissibility;

— annul the contested decision;

— in the alternative:

— annul the contested decision as regards the sites listed in Annex I and situated in Austria; or

— annul the listing of the sites in Annex I to the contested decision under references AT 2102000 Nockberge (Kernzone), Kärnten and AT 2119000 Gut Walterskirchen; or

- annul the listing in Annex I to the contested decision of sites recognised as being sites of Community importance for habitats and species with a degree of representativity and global assessment corresponding to categories B, C and D, or, in the further alternative, to categories C and D, or, in the further alternative, to category D, of the standard data form completed by the Member States, either as regards all the sites listed in the contested decision, or as regards all the Austrian sites, or as regards the sites listed with references AT 2102000 Nockberge (Kernzone), Kärnten and AT 2119000 Gut Walterskirchen;

- in addition, order the Commission to pay the costs.

Law

- 21 Under Article 114 of the Rules of Procedure, if a party applies to the Court of First Instance for a decision on admissibility without going into the substance of the case, the remainder of the proceedings on the objection of inadmissibility is to be oral, unless the Court decides otherwise. In the present case, the Court considers itself to be sufficiently informed by the documents in the Court file and decides that there is no need to open the oral proceedings.

Arguments of the parties

- 22 The Commission submits, primarily, that the applicants have no legal interest in bringing proceedings.

- 23 It maintains that the contested decision is merely a provisional measure within the meaning of the judgment of the Court of Justice in Case 60/81 *IBM v Commission* [1981] ECR 2639, paragraph 10. The contested decision is not an actionable measure, since the establishment of the list of sites of Community importance did not conclude the procedure leading to the establishment of the Natura 2000 network.
- 24 The Commission observes that the contested decision has no direct effect on the applicants' legal position. It submits that possible legal effects will befall the applicants only if and when the national authorities adopt measures applying the habitats directive and the contested decision.
- 25 The Commission submits, accordingly, that the contested decision has had no effect whatsoever on the legal rights of the applicants. Therefore, they are not entitled — lacking a legal interest in bringing proceedings — to institute an action for annulment against that decision under the fourth paragraph of Article 230 EC.
- 26 The Commission submits, in the alternative, that the applicants are not directly and individually concerned.
- 27 In this case, the contested measure was adopted by the Commission in the form of a decision addressed to the Member States. However, the nature of a measure is not to

be sought in its external form, but in its actual regulatory content. The contested decision supplements the regulatory framework of which the Natura 2000 network is part, since it specifies which are the sites that must be designated by the Member States as special areas of conservation (Article 4(4) of the habitats directive), with the result that they are also bound to impose the necessary conservation measures for the sites in question (Article 6(1) of the habitats directive).

28 The contested decision thus forms part of a group of legislative acts of general application. The Commission accepts, nevertheless, that that does not, according to settled case-law, prevent the decision from being of direct and individual concern to some economic operators.

29 So far as concerns the applicants being directly affected, the Commission submits that the fact of being able to identify which sites are of Community importance and come, on that ground, within the scope of Article 6(2) to (4) of the habitats directive has no adverse effect on the applicants' legal position. In accordance with the legal scheme of directives the obligations arising from that article cannot be imposed on individuals and can give rise only to measures adopted by the Member States to transpose the habitats directive.

30 The Commission submits that Article 6(2) of the habitats directive leaves the Member States discretion as to the point at which disturbance of the balance of nature can be significant and as to the determination of the appropriate steps to avoid deterioration and disturbance. The Commission makes clear that, until a Member State exercises its discretion, it is impossible to ascertain whether the applicants' legal position is affected. It concludes therefore that the contested decision does not directly affect the applicants.

31 According to the Commission, the same remarks hold good for the application of Article 6(3) and (4) of the habitats directive: it is only in the context of an actual plan or project that the requirement for an examination of its compatibility with the conservation objectives could have legal effects. As an authorisation procedure is involved, in which various elements must be weighed and taken into consideration, the national authorities necessarily have a discretion. Moreover, the requirements of Article 6(3) and (4) of the habitats directive, so long as they are taking shape, concern the author of the plan or project and not the owner of the land. The applicants, however, all rely on their status as landowners. Article 6(3) and (4) of the habitats directive does not therefore give rise to legal effects which directly affect the applicants' situation.

32 As regards being individually concerned, the Commission submits that the contested decision defines neither the rights nor the obligations of owners of the lands but simply establishes a list of the sites to which other provisions will apply subsequently, which do not affect the property in the land. The aim of those provisions is to protect the sites against deterioration in their conservation status, whatever the conduct which causes such deterioration.

33 The Commission submits that, as the contested decision imposes no obligations on landowners, the applicants cannot argue that it affects their specific rights, or that it has caused them exceptional damage, such as to differentiate them from all other economic operators. Even if it is accepted that the contested decision may impose obligations on the applicants, that results from objectively determined circumstances, namely the geographical situation of the sites referred to in the annex.

34 Nor, according to the Commission, are the applicants differentiated on account of the fact that the Commission is obliged, by virtue of specific provisions, to take account of the effects on the applicants' situation of the measure which it envisages adopting. It submits that only scientific criteria relating to the protection of nature apply to the procedure which led to the adoption of the contested decision. Moreover, no provision of Community law required the Commission, in order to adopt the contested decision, to follow a procedure during which the applicants would have been able to assert any rights, such as the right to be heard.

35 The Commission concludes, in the light of all the foregoing, that the action must be dismissed as inadmissible.

36 The intervener supports the Commission's arguments and claims, also, that the present action is inadmissible.

37 As regards direct concern to the applicants, the intervener adds that the contested decision clearly leaves the Member States free to adopt or not to adopt certain measures: the contested decision's effects depend on the use which the national authorities will make of their discretionary power.

38 As regards individual concern to the applicants, the intervener submits that the contested decision neither prevents them from exercising their exclusive rights nor deprives them of any. The contested decision does not regulate the applicants' rights

and obligations, but only establishes the geographically demarcated list. The possible disadvantages relied upon in the action are only indirect effects of the contested decision.

- 39 The intervener submits that it must also be held that the contested decision does not concern the applicants as owners of exclusive rights. Even assuming that it does affect them, that could be only in their capacity as landowners, in the same way as all the owners of the lands listed in its annex.
- 40 The intervener also points out that, according to the Court's case-law, the possibility of determining more or less precisely the number or even the identity of the persons to whom a measure applies by no means implies that it must be regarded as being of individual concern to them as long as it is established that such application takes effect by virtue of an objective legal or factual situation defined by the measure in question (see the order of the Court of First Instance in Case T-213/02 *SNF v Commission* [2004] ECR II-3047, paragraph 59, and the case-law cited therein).
- 41 The intervener submits that, even if the contested decision enables, in some cases, the owners of the lands included in the sites listed in the annex to that decision to be identified, the fact remains that the contested decision is to apply by virtue of an objective circumstance defined by it, namely the natural value of the sites.
- 42 The applicants argue, first of all, that the contested decision is a legislative act of the Commission, which, however, also gives rise to consequences for individuals, in so far as the measure is addressed not only to the Member States, but also to the applicants.

- 43 The applicants submit that the fact that the habitats directive was not transposed within the prescribed period cannot be raised against them. They point out that, according to the Court's case-law, a citizen may rely directly on a directive against a Member State to which it is addressed or against its administrative subdivisions if that directive is worded sufficiently specifically to enable the citizen to derive rights directly from it, and if the Member State concerned has not transposed it within the prescribed period. A delay in the transposition of a directive by a Member State cannot however lead to the Union citizen being able to evade that directive's objectives or make them miscarry.
- 44 As regards the Commission's argument that a site enjoys, from its notification by the Member State concerned, the protection under Article 6(2) to (4) of the habitats directive, the applicants submit that, had that been the legislature's intention, the provision in Article 4(5) of the habitats directive would have been superfluous and it would have been provided that notification entails the application of the regime of protection.
- 45 They submit, next, that they are directly and individually concerned by the contested decision.
- 46 As regards direct concern, the applicants allege that since the contested decision leaves the Member States no discretion in the implementation of the legislative provisions of the habitats directive with regard to the applicants, the criterion according to which they are directly concerned by the contested decision is met. They submit that the contested decision, although formally addressed to the Member States, adopts for the special areas of conservation listed therein, pursuant to the habitats directive, not only the direct and definitive list of the sites adopted, but also the direct and definitive expression of the conservation objectives. The Member States are only authorised to take the steps, actual or regulatory, in compliance with the principle of preventing deterioration and with the obligation to

carry out an appropriate assessment of the implications of the applicants' farming and forestry activities. Those steps entail, however, legal and economic disadvantages of vast scope for the applicants.

- 47 The applicants submit that the Commission's analysis of Article 6(2) to (4) of the habitats directive is unconvincing. First, the Commission passes over an essential element, namely that it does not reply to the complaint alleging the absence of an express statement of the reasons for which the sites mentioned are genuinely of Community importance and, second, its analysis relating to the obligations of the national authorities and their discretion covers only incidental questions.
- 48 The applicants point out, in that regard, that the Member States have no discretion as regards the prevention of deterioration and disturbance of sites of Community importance adopted within the framework of the implementing provisions of the habitats directive. Nor do the objectives defined by the contested decision leave the Member States any room for manoeuvre, with the result that the applicants are directly concerned by that decision and by the lack of information, in this case, as to the expediency of protecting certain species and habitats.
- 49 The applicants take issue with the intervener's observations. The Member States must assess plans and projects affecting classified sites in the light of Article 6(3) of the habitats directive and of the objectives of protection laid down by the contested decision. Thus, the obligation to carry out an assessment and the criteria for that assessment arise from the determination of the objective of protection laid down by the contested decision and a Member State cannot avoid those obligations by some power of assessment of its own. The same applies to the prevention of deterioration provided for in Article 6(2) of the habitats directive.

50 As regards individual concern, the applicants claim, in essence, that they are individually concerned by the contested decision by reason of their status as owners of lands to which it refers. The fact that a certain number of other landowners are concerned does not affect that state of affairs. Owners are differentiated from the class of other economic operators concerned, for example non-owners with plans or projects for the lands concerned, because they are already concerned by the contested decision, in fact, and not only potentially, in the future. In addition, they are not only threatened by considerable economic disadvantages, but also by actual legal disadvantages. The fact that they cannot dispose of their land, since their rights are affected by the regime of protection which has entered into force, is particularly decisive. That is not the case of the other economic operators, who could carry out their plans or their projects on other more appropriate land not blighted by a restrictive protection regime.

51 The applicants dispute the Commission's arguments regarding individual concern. They point out that they are not relying merely on the bare right of ownership of real property, but refer to their status as exploiters of the land. The contested decision also restricts the applicants' rights of enjoyment, because they cannot make use of them to the same extent as previously.

52 The applicants are not of the view that the obligations imposed on them by the contested decision are the consequence of objectively determined circumstances, as the Commission argues. They submit that their lands are not subject by chance to an existing legal rule because of their geographical situation, but that a legal rule has been adopted which is to be applied to existing lands. Therefore, they are differentiated not only from the class of persons not concerned, but also from the class of persons concerned, since the application of those provisions is based on arbitrary criteria.

- 53 The applicants note, in reply to the intervener's observations, that it is not just a matter of some position on the market being affected, but of a serious restriction on fundamental rights. That restriction arises from the contested decision which is very definite, and extremely detailed. They submit that they are, effectively, addressees of a wrongful decision, by which the Commission laid down certain objectives of protection for land.
- 54 The applicants submit that, by reason of the arbitrary nature of the contested decision, they are differentiated from all the other landowners concerned by it, taking as a reference group all the landowners to whose lands the protection objectives laid down in the contested decision are to be applied.
- 55 They add that that limitation on the rights of ownership of land was decided upon without those concerned having the right to a judicial hearing, without the interests involved being balanced, and without compensation or even the right to obtain compensation, which are reasons for which it is justified, in this case, to adopt a restrictive interpretation of the requirements for admissibility.

Findings of the Court

- 56 The fourth paragraph of Article 230 EC provides that '[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 decision addressed to another person, is of direct and individual concern to the former'.

57 Since it is common ground that the contested decision is not addressed to the applicants, it is appropriate to examine whether that decision is of direct or individual concern to them.

58 As regards direct concern to the applicants, it must be recalled that that condition of direct adverse effect on a person requires in this case that the contested decision must directly affect their legal situation and leave no discretion to the addressees entrusted with the task of implementing it, such implementation being purely automatic and resulting from Community rules without the application of other intermediate rules (see Case C-386/96 P *Dreyfus v Commission* [1998] ECR I-2309, paragraph 43, and the case-law cited therein, and Joined Cases T-172/98 and T-175/98 to T-177/98 *Salamander and Others v Parliament and Council* [2000] ECR II-2487, paragraph 52).

59 This means that, where a Community measure is addressed to a Member State by an institution, if the action to be taken by the Member State to implement that measure is automatic or is, in one way or another, a foregone conclusion, it is of direct concern to any person affected by that action. If, on the other hand, the measure leaves the Member State free to act or not to act, or does not require it to act in a certain way, it is the Member State's action or inaction which is of direct concern to the person affected, and not the measure itself. In other words, the measure in question must not depend for its effect on the exercise of a discretionary power by a third party, unless it is obvious that any such power is bound to be exercised in a particular way (see, to that effect, the order of the Court of First Instance in Case T-223/01 *Japan Tobacco and JT International v Parliament and Council* [2002] ECR II-3259, paragraph 46).

- 60 The Court considers that it cannot be held that the contested decision — which designates, as sites of Community importance, areas of Austria in which the applicants own land — produces, by itself, effects on the applicants' legal situation. The contested decision contains no provision as regards the system of protection of sites of Community importance, such as conservation measures or authorisation procedures. Thus, it affects neither the rights or obligations of the landowners nor the exercise of those rights. Contrary to the applicants' argument, the inclusion of those sites in the list of sites of Community importance imposes no obligation whatsoever on economic operators or private persons.
- 61 Article 4(4) of the habitats directive states that once a site of Community importance has been adopted by the Commission, the Member State concerned is to designate that site as a 'special area of conservation' within six years at most. In that regard, Article 6(1) of the habitats directive states that the Member States are to establish the necessary conservation measures for special areas of conservation, the aim being to meet the ecological requirements of the natural habitat types and species present on the sites.
- 62 Article 4(5) of the habitats directive states also that, as soon as a site is placed on the list of sites of Community importance, it is to be subject to the provisions of Article 6(2) to (4).
- 63 Thus, Article 6(2) of the habitats directive provides that the Member States are to take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of that directive.

64 Likewise, Article 6(3) of the habitats directive provides that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon is to undergo an appropriate assessment of its implications for the site on the basis of the site's conservation objectives. In the light of the conclusions of the assessment of those implications for the site, the competent national authorities are to agree to the plan or project only after ascertaining that it would not adversely affect the integrity of the site concerned. In that regard, Article 6(4) of the habitats directive provides that, if such a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, the Member State is to take all compensatory measures necessary to ensure the overall coherence of the Natura 2000 network.

65 On perusal of those obligations, which bind the Member States concerned once sites of Community importance have been designated by the contested decision, it must be held that none of those obligations applies directly to the applicants. All those obligations necessitate a measure on the part of the Member State concerned, in order to specify how it intends to implement the obligation in question, whether it relates to necessary conservation measures (Article 6(1) of the habitats directive), steps appropriate to avoid deterioration of the site (Article 6(2) of the habitats directive), or the agreement to be given by the competent national authorities to a project likely to have a significant effect on it (Article 6(3) and (4) of the habitats directive).

66 It follows therefore from the habitats directive, on the basis of which the contested decision was adopted, that it is binding on the Member State as to the result to be achieved, whilst the choice of the conservation measures to be undertaken and the authorisation procedures to be followed is left to the competent national authorities. That conclusion cannot be undermined by the fact that the discretion thus conferred on the Member States must be exercised in accordance with the aims of the habitats directive.

- 67 It follows from all the foregoing that the applicants are not directly concerned by the contested decision, within the meaning of the fourth paragraph of Article 230 EC and, therefore, that the action must be dismissed as inadmissible, without the necessity of broaching the question whether the applicants are individually concerned by the contested decision.
- 68 However, whilst they cannot apply for the annulment of the contested decision, the applicants may still challenge the measures adopted in implementation of Article 6 of the habitats directive which affect them and, in that context, they retain the possibility of relying on its illegality before the national courts, adjudicating in accordance with Article 234 EC (Case C-70/97 P *Kruidvat v Commission* [1998] ECR I-7183, paragraphs 48 and 49, and the order of the Court of First Instance in Case T-45/00 *Conseil national des professions de l'automobile and Others v Commission* [2000] ECR II-2927, paragraph 26).

Costs

- 69 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, and the Commission has applied for costs, the applicants must be ordered to pay the Commission's costs.
- 70 Under the first subparagraph of Article 87(4) of the Rules of Procedure, Member States which intervene must bear their own costs. In the present case, the Republic of Finland must therefore be ordered to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby orders:

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

- 2. The applicants shall bear their own costs and pay those incurred by the Commission.**

- 3. The Republic of Finland shall bear its own costs.**

Luxembourg, 22 June 2006.

E. Coulon

Registrar

R. García-Valdecasas

President