ORDER OF THE COURT OF FIRST INSTANCE (Second Chamber)
28 November 2005 *

In Joined Cases T-236/04 and T-241/04,

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

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

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

applicants,

supported by

French Republic, represented by J.-L. Florent and G. de Bergues, acting as Agents, with an address for service in Luxembourg,

v

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

defendant,

* Language of the case: English.

supported by

Syngenta Crop Protection AG, established in Basle (Switzerland), represented by D. Abrahams, Barrister, and C. Simpson, Solicitor,

intervener,

ACTION, in Case T-236/04, for annulment in part of Commission Decision 2004/248/EC of 10 March 2004 concerning the non-inclusion of atrazine in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing this active substance (OJ 2004 L 78, p. 53) and, in Case T-241/04, for annulment in part of Commission Decision 2004/247/EC of 10 March 2004 concerning the non-inclusion of simazine in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing this active substance (OJ 2004 L 78, p. 50),

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 by the Member States. Article 4(1)(a) of that directive provides that only plant protection 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 to the Directive 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 Directive 91/414 provides that, by way of derogation from Article 4 thereof, 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 Directive 91/414 are examined gradually as part of a programme of work by the Commission.

Regulation No 3600/92/EEC

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 Standing Committee on the Food Chain and Animal Health a draft text which may take several forms. If the proposal is to include the active substance in Annex I to Directive 91/414, 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.

Directive 2004/35/EC

9 According to the 25th recital in the preamble to Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ 2004 L 143, p. 56):

'Persons adversely affected or likely to be adversely affected by environmental damage should be entitled to ask the competent authority to take action. Environmental protection is, however, a diffuse interest on behalf of which individuals will not always act or will not be in a position to act. Non-governmental

organisations promoting environmental protection should therefore also be given the opportunity to properly contribute to the effective implementation of this directive.'

10 According to the 26th recital in the preamble to Directive 2004/35, '[t]he relevant natural or legal persons concerned should have access to procedures for the review of the competent authority's decisions, acts or failure to act'.

11 Article 11(1) of Directive 2004/35 states that 'Member States shall designate the competent authority(ies) responsible for fulfilling the duties provided for in this directive'.

12 Article 12(1) of Directive 2004/35 provides:

'Natural or legal persons:

(a) affected or likely to be affected by environmental damage or

(b) having a sufficient interest in environmental decision-making relating to the damage or, alternatively,

(c) alleging the impairment of a right, where administrative procedural law of a Member State requires this as a precondition,

shall be entitled to submit to the competent authority any observations relating to instances of environmental damage or an imminent threat of such damage of which they are aware and shall be entitled to request the competent authority to take action under this directive.

What constitutes a "sufficient interest" and "impairment of a right" shall be determined by the Member States.

To this end, the interest of any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed sufficient for the purpose of subparagraph (b). Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (c).'

Background to the case

13 In each of these cases, there are two 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).

14 The second 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.

15 In 1996, a number of undertakings notified the Commission of their wish to have atrazine and simazine included in Annex I to Directive 91/414.

16 Atrazine and simazine are included in points 61 and 62 respectively of Annex I to Regulation No 3600/92, which sets out the list of 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 atrazine and simazine.

18 The United Kingdom of Great Britain and Northern Ireland submitted its assessment reports to the Commission pursuant to Article 7(1)(c) of Regulation No 3600/92. Those reports, which were submitted on 11 November 1996 for atrazine and 20 December 1996 for simazine, were reviewed by the Member States and the Commission within the Standing Committee on the Food Chain and Animal Health.

The contested decisions

19 On 10 March 2004, the Commission adopted Decision 2004/248/EC concerning the non-inclusion of atrazine in Annex I to Directive 91/414 and the withdrawal of authorisations for plant protection products containing this active substance (OJ 2004 L 78, p. 53) ('the atrazine decision').

20 On the same date, it also adopted Decision 2004/247/EC concerning the non-inclusion of simazine in Annex I to Directive 91/414 and the withdrawal of authorisations for plant protection products containing this active substance (OJ 2004 L 78, p. 50) ('the simazine decision').

21 Article 1 of the atrazine and simazine decisions states that neither of those two active substances is to be included in Annex I to Directive 91/414.

22 Article 2(1) and (2) of the atrazine and simazine decisions state that Member States are to ensure that authorisations for plant protection products containing atrazine or simazine are withdrawn by 10 September 2004 and that, from 16 March 2004, no authorisations for plant protection products containing atrazine or simazine are granted or renewed under the derogation provided for in Article 8(2) of Directive 91/414.

23 According to Article 2(3) of the atrazine and simazine decisions, Member States are to ensure that, in relation to the uses listed in column B of the Annex to those

decisions, a Member State specified in column A of that annex may maintain in force authorisations for plant protection products containing atrazine or simazine until 30 June 2007 provided that it:

(a) ensures that such plant protection products remaining on the market are labelled in order to match the restricted use conditions;

(b) imposes all appropriate risk mitigation measures to reduce any possible risks in order to ensure the protection of human and animal health and the environment;

(c) ensures that alternative products or methods for such uses are being seriously sought, in particular, by means of action plans.

24 Under that provision, the Member State concerned is to inform the Commission on 31 December 2004, at the latest, on the application of that paragraph and in particular on the actions taken pursuant to points (a) to (c) and must provide on a yearly basis estimates of the amounts of atrazine or simazine used for essential uses pursuant to that article.

25 The Annex to the atrazine decision and the Annex to the simazine decision specify the Member States and uses referred to in Article 2(3) of each of those decisions.

26 Article 3(b) of the atrazine and simazine decisions provides that any period of grace granted by Member States in accordance with the provisions of Article 4(6) of Directive 91/414 is to be as short as possible and, for the uses for which the authorisation is to be withdrawn by 30 June 2007, is to expire not later than 31 December 2007.

27 It follows from Article 4 of the atrazine and simazine decisions that they are addressed to the Member States.

Procedure

28 By applications lodged at the Registry of the Court of First Instance on 9 June 2004, the applicants brought the present actions.

29 By separate documents lodged at the Registry of the Court of First Instance on 1 October 2004, the defendant raised an objection of inadmissibility pursuant to Article 114 of the Rules of Procedure of the Court of First Instance in each of the two cases. The applicants lodged their observations on those objections on 24 December 2004.

30 By documents lodged at the Registry of the Court of First Instance on 7 October 2004, Syngenta Crop Protection AG ('Syngenta') applied for leave to intervene in the present proceedings in support of the Commission. By orders of 13 December 2004, the President of the Second Chamber of the Court of First Instance allowed that intervention. By letters of 7 January 2005, Syngenta indicated in both cases that it would not lodge a statement in intervention in support of the form of order sought by the Commission if the Commission sought dismissal of the action as inadmissible, but that it reserved the right to lodge a statement if proceedings were to continue as to the merits.

31 By documents lodged at the Registry of the Court of First Instance on 11 October 2004, the French Republic applied for leave to intervene in the present cases in support of the applicants. By orders of 13 December 2004, the President of the Second Chamber of the Court of First Instance allowed that intervention. By letter of 25 January 2005, the French Republic stated that, following the objections of inadmissibility raised by the Commission, it would not lodge statements in intervention relating to the admissibility of the two actions, but that it reserved the right to lodge statements if the Court of First Instance were to decide to reserve a decision on the objections of inadmissibility for the final judgment in the cases.

Forms of order sought

In Case T-236/04

32 The applicants claim that the Court should:

— annul Article 2(3) and Article 3(b) of the atrazine decision;

— order the Commission to pay the costs.

33 The Commission contends that the Court should:

— dismiss the action as inadmissible;

— order the applicants to pay the costs.

In Case T-241/04

34 The applicants claim that the Court should:

— annul Article 2(3) and Article 3(b) of the simazine decision;

— order the Commission to pay the costs.

35 The Commission contends that the Court should:

— dismiss the action as inadmissible;

— order the applicants to pay the costs.

Law

36 On account of the connection between the present cases and having heard the parties, the Court finds it appropriate to join the cases for the purposes of the remainder of the proceedings, pursuant to Article 50 of the Rules of Procedure.

37 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 both in Case T-236/04 and in Case T-241/04 that it has sufficient information from the documents in the file and that it is not necessary to open the oral procedure.

Arguments of the parties

38 The Commission contends that the applicants are not directly and individually concerned, either by the atrazine decision or by the simazine decision, of which they are not the addressees.

39 As to whether the applicants are individually concerned, the Commission contends that, according to the case-law, 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 the 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 because the atrazine and simazine decisions do not affect the applicants in any specific way.

40 The applicants maintain that they are directly and individually concerned by the atrazine and simazine decisions.

41 As to the requirement of being individually affected, they claim, first, that they are particularly affected by the atrazine and simazine decisions. They are decisions within the meaning of Article 249 EC and entail, in breach of Community law, a setback in terms of the protection of the interests they defend.

42 Second, they claim that it follows from the 25th and 26th recitals in the preamble to, and Article 12(1) of, Directive 2004/35 that they meet the conditions laid down in the fourth paragraph of Article 230 EC. They maintain that it follows from Article 12 (1) of Directive 2004/35 that the interest of any non-governmental organisation promoting environmental protection and meeting any requirements under national law is to be deemed sufficient to confer entitlement on that organisation, first, to submit to the competent authority any observations relating to the occurrence or threat of environmental damage and, second, to request the competent authority to take action under that directive.

43 The Commission, moreover, acknowledges that atrazine and simazine are likely to cause environmental damage, which is why it decided not to include those substances in Annex I to Directive 91/414. In those circumstances, Article 12 of Directive 2004/35, the scope of which is not limited to the situations referred to in that directive, covers the actions taken by the applicants in the present cases. Accordingly, the applicants must be deemed to meet the conditions laid down in the fourth paragraph of Article 230 EC.

44 Third, the applicants claim essentially that the approach adopted in Directive 2004/35 is consistent with prevailing legal practice in a number of Member States, including the Netherlands, according to which associations may bring civil proceedings before the national courts because they are directly and individually

concerned in the light of their statutes, their specific situation and their actual activities, including effective protection of the interests in question. More specifically, in the Netherlands legal system, Natuur en Milieu is considered to be directly and individually concerned by breaches of legal rules protecting environmental and wildlife interests.

45 Fourth, they claim essentially that they are individually concerned because they pursue their activities in the field of environmental protection and conservation of nature, including wildlife, in the context of Directive 92/43 and that, in that capacity, the EEB has a special consultative status with the Commission and other European institutions. Natuur en Milieu, moreover, has a similar status with the Netherlands authorities.

46 Fifth, the applicants maintain that the admissibility of their action is required by the need to afford them effective judicial protection. They claim that annulment of the atrazine and simazine decisions 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 identify authorisations for atrazine and simazine 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. They add that 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 atrazine and simazine decisions. It follows that, from the point of view of the effectiveness of the 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.

47 Sixth, the applicants maintain that their action must be held to be admissible by virtue of the principle of equality of arms. They claim, first, that 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. Next, they state essentially that an action against the atrazine and simazine decisions brought by a producer of those active substances, such as Syngenta, should be declared admissible under the fourth paragraph of Article 230 EC. That is 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, in which the Court held essentially that the possibility cannot be excluded that producers of an active substance may bring an action before the Court pursuant to the fourth paragraph of Article 230 EC against a decision of the Commission rejecting an application to have an active substance included in Annex I to Directive 91/414.

48 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.

49 Lastly, the applicants maintain that their action is admissible in the light of the statement of reasons in 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'). 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 decisions.

Findings of the Court

50 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'.

51 In the present case, it follows from Article 4 of the atrazine and simazine decisions that those decisions are addressed solely to the Member States. It is therefore for the applicants to demonstrate inter alia that they are individually concerned by those decisions.

52 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).

53 It is, accordingly, necessary to consider whether, in the present case, the applicants are concerned by the atrazine and simazine decisions by reason of certain attributes peculiar to them or there is a factual situation which differentiates them from all other persons in relation to those decisions.

54 In order to establish that they are individually concerned by the atrazine and simazine decisions, the applicants claim, first, that they are especially affected by those decisions due to the setback they entail in terms of environmental protection.

55 The Court notes, first, that the applicants do not put forward any specific evidence to explain how the atrazine and simazine decisions entail a setback in terms of environmental protection. They merely state that the adoption of the atrazine and simazine decisions in breach of Community law clearly has adverse effects in that regard.

56 Even if it were accepted, as the applicants maintain, at least implicitly, that the alleged setback flows from the fact that the contested provisions of the atrazine and simazine decisions have the effect of allowing certain Member States to maintain temporarily in force, for certain uses, the authorisations for plant protection products containing atrazine or simazine — active substances which, according to the applicants, harm the environment — it is clear that those provisions affect the applicants in their objective capacity as entities whose purpose is to protect the environment, in the same manner as any other person in the same situation. As is apparent from the case-law, that capacity is not by itself sufficient to establish that the applicants are individually concerned by the atrazine and simazine decisions (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).

57 Second, the applicants claim essentially that it follows from Article 12(1) of Directive 2004/35 that, as non-governmental organisations promoting environmental protection and meeting the requirements under national law, they are entitled to submit observations to the competent authority and to request that authority to take action under that directive. It follows that they have standing to bring an action for annulment of the atrazine and simazine decisions for the purposes of the fourth paragraph of Article 230 EC.

58 It should be borne in mind 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).

59 Article 11(1) of Directive 2004/35 states that the competent authority referred to in Article 12 of that directive is to be an authority designated by each of the Member States. Accordingly, even if it were accepted that the applicants can claim to be entitled to submit observations and to request the taking of action, as provided for in Article 12 of Directive 2004/35, it is clear that those procedural rights may be relied upon only as against a 'competent authority' which, according to the very wording of Article 11 of Directive 2004/35, is not a Community institution. Moreover, contrary to the applicants' assertions, there is nothing in the wording or scheme of that directive to indicate that it also covers the present actions.

60 It follows that the procedural rights relied on by the applicants may not be usefully relied on as against the Commission in the context of the procedure for adopting the atrazine and simazine decisions and that they are therefore not relevant in determining whether or not the applicants are individually concerned by those decisions.

61 Third, as to the argument that the law of certain Member States accepts that environmental protection associations are directly and individually concerned by acts which adversely affect the interests which they defend and the argument that this is the case for Natuur en Milieu under Netherlands law, 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).

62 Fourth, regarding the special consultative status that the EEB and Natuur en Milieu have with the Commission or other European or national institutions, inter alia under Directive 92/43, the Court notes that the Community legislation applicable to the adoption of the atrazine and simazine decisions does not provide for any procedural guarantee for the applicants, or even for any form of participation by the Community advisory bodies established within the framework of Directive 92/43, be they national or supranational, to which the applicants claim to belong. Therefore, in accordance with the case-law referred to in paragraph 56 above, the alleged advisory status relied on by the applicants does not support the finding that they are individually concerned by the atrazine and simazine decisions.

63 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.

64 Fifth, 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 actions 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.

65 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 52 above, paragraphs 38 and 39).

66 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 52 above, paragraph 40).

67 Lastly, it is apparent from the case-law of the Court of Justice 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 52 above, paragraph 46)

68 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.

69 Sixth, regarding the argument that the applicants' actions must be declared admissible by virtue of the principle of equality of arms, the Court notes 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 48 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-3659, paragraph 41). In those circumstances, even if Syngenta did have standing to bring an action for annulment of the atrazine and simazine decisions, as the applicants maintain, that fact alone would not establish that the applicants meet the requirement of being individually concerned by those decisions or exempt them from having to prove that they meet that requirement.

70 Seventhly and lastly, the applicants claim that they have standing to bring an action for annulment of the atrazine and simazine decisions because 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. In the present case the applicants meet those objective criteria.

71 The Court notes 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.

72 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 atrazine and

simazine decisions. 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 those decisions.

73 In the light of all the foregoing, the Court finds that the applicants are not individually concerned by the atrazine and simazine decisions. Accordingly, the action must be declared inadmissible without its being necessary to consider whether the applicants are directly concerned by those decisions.

Costs

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

75 Under the first subparagraph of Article 87(4) of the Rules of Procedure, Member States which have intervened in the proceedings are to bear their own costs. Accordingly, the French Republic must be ordered to bear its own costs. 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, Syngenta, which intervened in support of the form of order sought by the Commission, must be ordered to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby orders:

1. **Cases T-236/04 and T-241/04 are joined;**

2. **The actions in Cases T-236/04 and T-241/04 are dismissed as inadmissible;**

3. **The applicants shall pay, in addition to their own costs, those of the Commission in Cases T-236/04 and T-241/04;**

4. **The interveners shall bear their own costs.**

Luxembourg, 28 November 2005.

E. Coulon — Registrar

J. Pirrung — President