legislative nature, is not addressed to a restricted number of persons, defined or identifiable, but applies to objectively determined situations. It involves immediate legal consequences in all Member States for categories of persons viewed in a general and abstract manner.

4. The determination of the legal nature of a measure emanating from the Council or the Commission does not depend only on its official designation, but should first take into account its object and content.

5. When a measure, which as a whole constitutes a regulation, includes provisions which are capable of being of direct and individual concern to certain natural or legal persons, such provisions do not have the character of a regulation and may therefore be impugned by those concerned.

6. An association which represents a category of natural or legal persons is not concerned individually by a measure affecting the general interests of the persons in that category.

In Joined Cases 16 and 17/62

16/62

1. CONFÉDÉRATION NATIONALE DES PRODUCTEURS DE FRUITS ET LÉGUMES, an association déclarée with its head office in Paris, represented by its board in office,

2. FÉDÉRATION NATIONALE DES PRODUCTEURS DE FRUITS, an association déclarée with its head office in Paris, represented by its board in office,

3. FÉDÉRATION NATIONALE DES PRODUCTEURS DE LÉGUMES, an association déclarée with its head office in Paris, represented by its board in office,

17/62

FÉDÉRATION NATIONALE DES PRODUCTEURS DE RAISINS DE TABLE, represented by its board in office,

all with an address for service in Luxembourg at the Chambers of Georges Margue, 20 rue Philippe-II, assisted by Pierre de Font-Réaulx, Advocate of the Paris Cour d'Appel,

applicants,

supported by

ASSEMBLÉE PERMANENTE DES PRÉSIDENTS DE CHAMBRES D'AGRICULTURE, a public organization with its head office in Paris, represented by its President in office, with an address for service in Luxembourg at the Chambers of

Georges Margue, 20 rue Philippe-II, assisted by Pierre de Font-Réaulx, Advocate of the Paris Cour d'Appel,

intervener,

v

COUNCIL OF THE EUROPEAN ECONOMIC COMMUNITY, represented by its Legal Adviser, Jacques Mégret, acting as Agent,

defendant,

Application for annulment of Regulation No 23 of the Council of the European Economic Community, and in particular the provisions of Article 9 thereof,

THE COURT

composed of: A. M. Donner, President, L. Delvaux and R. Rossi (Presidents of Chambers), O. Riese (Rapporteur), Ch. L. Hammes, A. Trabucchi and R. Lecourt, Judges,

Advocate-General: M. Lagrange
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

1. The Council of the EEC published in the Official Journal of the European Communities of 20 April 1962, pp. 965 et seq., a Regulation 'on the progressive establishment of a common organization of the market in fruit and vegetables'. This Regulation, based mainly on Articles 42 and 43 of the EEC Treaty, provides as follows:

— *In Article 1:*

'With a view to ensuring a progressive development of the common market and the common agricultural policy, a common organization of the market in fruit and vegetables shall be progressively established'.

— *In Article 9, which is particularly at issue in this case:*

'1. Quantitative restrictions on imports and measures having equivalent effect shall be abolished in trade between Member States in products

graded under the provisions of the present Regulation in accordance with the timetable set out in paragraph 2.

2. The measures referred to in paragraph 1 shall be abolished:
(a) not later than 30 June 1962 for products of the "Extra" Class;
(b) not later than 31 December 1963 for products of Class I;
(c) not later than 31 December 1965 for products of Class II.
Member States shall dispense with recourse to the provisions of Article 44 of the Treaty in respect of the same quality classes on the same dates.'

2. On 19 June 1962 the applicants lodged at the Court Registry applications for annulment of the said Regulation. These applications were supported by 'supplementary statements' lodged on 2 July 1962.

3. On 1 September 1962 the defendant raised in both cases a preliminary objection of inadmissibility under Article 91 of the Rules of Procedure of the Court.

4. On 31 August 1962 the Assemblée permanente des présidents de chambres d'agriculture made, in both cases, an application to intervene in support of the conclusions of the applicants. The Court allowed the said Assemblée to intervene by Order dated 24 October 1962.

5. The Court joined the actions for the purposes of procedure and judgment by Order dated 6 November 1962.

6. On 20 November 1962 there was a hearing of the Court restricted to the preliminary objection of inadmissibility.

II — Conclusions of the parties

In their applications and supplementary statements the applicants claim that the Court should:

'annul Regulation No 23 of the Council of the European Economic Community, and in particular the provisions of Article 9 thereof'.

The defendant by its statement in support of the preliminary objection of inadmissibility contends that the Court should:

'without considering the substance of the case, declare the applications in question to be inadmissible, with all legal consequences arising therefrom, particularly in respect of the payment of fees, expenses and any other costs'.

The applicants in their 'replies' claim that the Court should:

'. . . . . .

join the preliminary objection of inadmissibility raised by the Council of the European Economic Community to the substance of the applications;

in any case rule that the present applications are admissible;

annul Regulation No 23 of the Council of the European Economic Community, in particular Article 9;

order the Council of the European Economic Community to pay all the costs'.

The intervener in its statement filed on 12 November 1962 claims that the preliminary objections of inadmissibility should be dismissed.

III — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

1. The applicants in the main action contend that the contested Regulation, and in particular Article 9 thereof, is vitiated by the four flaws enumerated in Article 173 of the EEC Treaty and that it is likely to occasion the most serious loss to French fruit and vegetable producers (the applicant in Case 17/62 adds 'and particularly to the producers of table grapes').

(a) The natural economic and social conditions affecting the products in question are very different, Italy on the one hand being a country situated wholly within the Mediterranean climatic zone whilst, on the other hand, of the remainder of the Community, and particularly France, only a part enjoys

such a climate. Consequently the greater part of French production reaches maturity 'with a certain time-lag'. It should be added that 'Italian cost prices are lower than French prices, especially because of the importance of the element of labour in the products in question, and the well-known difference between actual Italian wages and actual French wages', and that the availability of labour also varies from one country to the other.

These conditions necessarily have repercussions on prices and will continue to do so as long as the harmonization measures which are provided for in the Treaty in general and by Articles 1 et seq. of the Regulation in dispute have not been put into effect. In consequence, the immediate abolition on 30 June 1962 of quantitative restrictions on imports for products of the 'Extra' Class 'will lead to a situation of entirely unequal competition'.

But the harm referred to does not affect only the producers of 'extra' quality. In fact the price of this quality is a ceiling below which the prices of the other qualities extend downwards.

(b) In the disputed measure, the Council decided that Member States should dispense with recourse to the provisions of Article 44 of the Treaty, which have an essential importance within the general structure of the Treaty. The applicants refer particularly to the first paragraph of this Article which provides for protective measures in cases where the abolition of customs duties and quantitative restrictions between Member States 'may result in prices likely to jeopardize the attainment of the objectives set out in Article 39'. The products in question are in this precise danger.

The Council is not competent 'to set aside a fundamental provision of the Treaty and to announce in the name of the Member States that they dispense with recourse to its provisions'. Under the terms of Article 145, the Council's only power of decision is 'to ensure that the objectives set out in this Treaty are attained . . . . . in accordance with the provisions of this Treaty'. Here on the other hand it is a matter of an amendment of the Treaty, which could only occur through the well-known procedures, including in particular ratification by the Parliaments of all the Member States.

2. *The defendant in the main action* takes issue only on the question of admissibility. According to the Council, it follows from the second paragraph of Article 173 of the EEC Treaty that the applications are inadmissible since the measure impugned:

(a) is a genuine regulation and not a disguised decision;

(b) is not of 'individual' concern to the applicants or their members;

(c) is not of 'direct' concern to them;

(d) in any case does not affect the position of the applicants as organizations, but at most only that of the members of those organizations.

On points (a) and (b)

Under the terms of Article 173, a private individual can contest a Regulation of the Council only when there is a question of a decision having been taken in the form of a regulation; it is necessary furthermore for this decision to be of individual concern to the applicant. In fact the authors of the Treaty clearly wished to prevent any action by those other than the Member States and the Institutions against measures of general application. This also follows from a comparison between the above-mentioned Article and Article 33 of the ECSC Treaty, which, under certain conditions, permits actions by private individuals against general decisions.

It is not sufficient, therefore, that the applicant's 'own interests' are affected, but it is necessary that he 'should be affected by the measure in question not as a member of an abstractly defined category, but as a specific individual. The measure must really be of an indivi-

dual and not of a general character'.
As to the distinction between general and individual measures, the defendant refers to the case law of the Court relating to the ECSC Treaty, and on this point considers that 'the Treaties of Rome have introduced no innovation'.
In this case it is a matter of a genuine Regulation and, accordingly, of a measure of general application. In fact the measure 'establishes clearly a legislative principle, the conditions of application of which it defines in an abstract manner: whoever the importers or exporters, present or future, may be, and whatsoever the country of origin or of destination, etc., all quantitative restrictions shall be abolished .... Within the same framework defined by these abstract conditions, the application of minimum prices is dispensed with'. Although the Regulation in dispute makes provision for phasing over a period of time according to the quality of the products, this differentiation does not, in the light of the case law of the Court, affect the general nature of the said Regulation.
The Regulation in question cannot be regarded as a bundle of individual decisions addressed to all the private individuals in the Member States carrying on their activities in the sector in question; such an interpretation would, in fact, completely ignore the fact that the Regulation applies equally to persons who might establish themselves subsequently in the sector in question.

On point (c)

The above-mentioned Article 173 further requires that a measure impugned by a private person shall affect him directly. 'This condition is fulfilled by a person in whose favour or against whose interest the disputed measure creates, modifies or abolishes rights or obligations, when, in brief, the effect of the measure on the person in question is direct and not mediate. This condition is not fulfilled where that measure takes effect only after the intervention of a legal act of a third party made on the basis of the measure in question.' If the case law of the Court concerning Article 33 of the ECSC Treaty has been more liberal in this respect, the explanation for this is precisely that the words 'concerning them' appearing in this provision are more widely drafted than the corresponding expressions in Article 173.
The application of these considerations to the present case shows that the applicants are not directly concerned by the disputed Regulation. This finding would be equally valid if the abandonment of the application of minimum prices contained in Article 9 of this Regulation included in actual fact the elements of a decision addressed to the Member States. In fact 'the producers are affected adversely by the abandonment by the Member States of the application of legislation on minimum prices only through the measures which the Member States take in implementation' of this abandonment.
All the same, even accepting that the above interpretation as regards the direct nature of the relationship between the measure and the applicant is not accepted, the producers in question would not be more directly concerned by the Regulation in dispute. 'In fact the Treaty does not give them the right, as against their own States, to avail themselves of the option given by the Treaty to the States to apply minimum prices. It is for the States to decide in every case whether they consider it expedient to introduce or to retain such legislation.'

On point (d)

Lastly, the defendant expresses doubts as to the possibility of the applicant associations' bringing the applications whatever the nature of the disputed measure. It could be considered that these associations are only affected indirectly 'by the intermediary of, and through (their) members'. The EEC Treaty does

not contain provisions analogous to those of the ECSC Treaty which expressly envisage a right of action by associations of undertakings.

The defendant emphasizes however that it raises this head of inadmissibility only as an alternative point and that its preliminary objection bears 'expressly' only upon the submissions as to the nature of the impugned measure.

3. *The applicants* reply first of all that, given the gravity of the basic issue, it is advisable to join the point of law to the substance of the case. In fact for the very assessment of the admissibility of the action it is not possible to pass over in silence the issues of fact and of law which are set out therein.

The applicants, after all, are opposed to the arguments on which the preliminary objection of inadmissibility is based. They admit that the measure in dispute is not a decision addressed to the applicants, or a decision addressed to a third party; on the contrary, they believe that it is a matter of a 'decision, which, although in the form of a regulation, is of direct and individual concern to the applicants' within the meaning of Article 173.

In relying on the case law of the Court, which has always taken care to give the widest possible interpretation of the provisions of the ECSC Treaty which govern access to the Court and by stating that the EEC Treaty 'does not appear as a step backward in comparison with this legal progress', the applicants contend that Article 173 above-mentioned makes no distinction between general decisions and individual decisions. Consequently 'any natural or legal person may . . . institute proceedings against decisions other than individual decisions, even if these are described as regulations. It is sufficient that they are of direct and individual concern to the applicant . . .'.

Those conditions are fulfilled in the present case. As Article 173 takes into account the right of action of 'any natural or legal person', it is not possible to exclude this right for associations. On the other hand, an association is concerned directly and individually 'when the decision in dispute directly damages the professional interests which the association or group is authorized to represent. It therefore causes damage to this legal person, which in the light of its nature and purpose is an individual as far as the decision is concerned". In the present case, all the French producers of fruit and vegetables are directly and individually injured.

The argument that the measure in dispute adversely affects the producers only through steps to be taken in implementation by the Member States is rejected by the applicants. In fact it is not to the States that private individuals who suffer injury can turn in order to criticize the decisions of the Council; the national court, and at all events the French court, seised of such an action, can only rule that it does not have jurisdiction and refer the plaintiff to the Court of Justice. 'Moreover, it is not possible to envisage matters of which the national court could be seised, for the measures taken by the Member States would constitute merely the pure application of Article 9 of Regulation No 23'.

4. The intervener states that it 'associates itself fully' with the arguments of the applicants in the main action.

Grounds of judgment

I — As to admissibility

1. Under the terms of the second paragraph of Article 173 of the EEC

Treaty, any natural or legal person may institute proceedings against an act of the Commission or the Council only if that act constitutes either a decision addressed to that person or 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. It follows that such a person is not entitled to make an application for annulment of regulations adopted by the Council or the Commission.

The Court admits that the system thus established by the Treaties of Rome lays down more restrictive conditions than does the ECSC Treaty for the admissibility of applications for annulment by private individuals. However, it would not be appropriate for the Court to pronounce on the merits of this system which appears clearly from the text under examination.

The Court is unable in particular to adopt the interpretation suggested by one of the applicants during the oral procedure, according to which the term 'decision', as used in the second paragraph of Article 173, could also cover regulations. Such a wide interpretation conflicts with the fact that Article 189 makes a clear distinction between the concept of a 'decision' and that of a 'regulation'. It is inconceivable that the term 'decision' would be used in Article 173 in a different sense from the technical sense as defined in Article 189. It follows from the foregoing considerations that the present applications should be dismissed as inadmissible if the measure in dispute constitutes a regulation.

In examining this question, the Court cannot restrict itself to considering the official title of the measure, but must first take into account its object and content.

2. Under the terms of Article 189 of the EEC Treaty, a regulation shall have general application and shall be directly applicable in all Member States, whereas a decision shall be binding only upon those to whom it is addressed. The criterion for the distinction must be sought in the general 'application' or otherwise of the measure in question.

The essential characteristics of a decision arise from the limitation of the persons to whom it is addressed, whereas a regulation, being essentially of a legislative nature, is applicable not to a limited number of persons, defined or identifiable, but to categories of persons viewed abstractly and in their entirety. Consequently, in order to determine in doubtful cases whether one is concerned with a decision or a regulation, it is necessary to ascertain whether the measure in question is of individual concern to specific individuals.

In these circumstances, if a measure entitled by its author a regulation contains provisions which are capable of being not only of direct but also of individual concern to certain natural or legal persons, it must be admitted, without prejudice to the question whether that measure considered in its entirety can be correctly called a regulation, that in any case those provisions do not have the character of a regulation and may therefore be impugned by those persons under the terms of the second paragraph of Article 173.

3. In this case the measure in dispute was entitled by its author a 'regulation'. However, the applicants maintain that the disputed provision is in fact 'a decision in the form of a regulation'. It is possible without doubt for a decision also to have a very wide field of application. However, a measure which is applicable to objectively determined situations and which involves immediate legal consequences in all Member States for categories of persons viewed in a general and abstract manner cannot be considered as constituting a decision, unless it can be proved that it is of individual concern to certain persons within the meaning of the second paragraph of Article 173.

In this particular case, the disputed provision involves immediate legal consequences in all Member States for categories of persons viewed in a general and abstract manner. In fact, Article 9 of the measure in dispute—the provision particularly at issue in the present dispute—abolishes, for certain products and subject to certain time limits, quantitative restrictions on imports and measures having equivalent effect. It involves in addition the requirement that Member States shall dispense with recourse to the provisions of Article 44 of the Treaty, in particular with regard to the right temporarily to suspend or reduce imports. Consequently, the said Article eliminates the restrictions on the freedom of traders to export or import within the Community.

It remains to be considered whether the disputed provision is of individual concern to the applicants.

Although this provision, by obliging Member States to put an end to or to dispense with various measures capable of favouring agricultural producers, affects in so doing their interests and the interests of the members of the applicant associations, it must be stated nevertheless that those members are concerned by the said provision in the same way as all other agricultural producers of the Community.

Moreover, one cannot accept the principle that an association, in its capacity as the representative of a category of businessmen, could be individually concerned by a measure affecting the general interests of that category.

Such a principle would result in the grouping, under the heading of a single legal person, of the interests properly attributed to the members of a category, who have been affected as individuals by genuine regulations, and would derogate from the system of the Treaty which allows applications for annulment by private individuals only of decisions which have been addressed to them, or of acts which affect them in a similar manner.

In these circumstances, it cannot be admitted that the provision in dispute is of individual concern to the applicants. It follows that the defendant was correct in designating the provision in question as a regulation.

The preliminary objection of inadmissibility is therefore well founded and the applications must be declared inadmissible, without its being necessary to examine the question whether associations are entitled to act each time their members are enabled to do so.

II — Costs

Under the terms of Article 69 (2) of the Rules of Procedure of the Court, the unsuccessful party shall be ordered to pay the costs. In the present case the applicants and the intervener, having failed in their action, must bear the costs of the proceedings.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 173 and 189 of the Treaty establishing the European Economic Community;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Articles 69 (2) and 91 (4);

THE COURT

hereby

1. Dismisses the applications as being inadmissible;

2. Orders the applicants to bear their own costs and those

incurred by the defendant as a result of their applications;

3. Orders the intervener to bear its own costs and those incurred by the defendant as a result of its intervention.

Donner Delvaux Rossi
Riese Hammes Trabucchi Lecourt

Delivered in open court in Luxembourg on 14 December 1962.

For the President
A. Van Houtte L. Delvaux
Registrar President

OPINION OF MR ADVOCATE-GENERAL LAGRANGE DELIVERED ON 20 NOVEMBER 1962[1]

Mr President,
Members of the Court,

It has seemed appropriate to consider together Joined Cases 16 and 17/62 on the one hand, and Joined Cases 19 to 22/62 on the other, which were heard at the same time by the Court, because they raise the same point of principle — now put to the Court for the first time. The question concerns the interpretation to be given to the provisions of the second paragraph of Article 173 of the EEC Treaty, dealing with the conditions governing the admissibility of applications for annulment of Community regulations brought by a natural or legal person, other than a Member State, the Council or the Commission.

In all these cases, the applications have been made by associations which are legal persons in private law, namely:

1. Associations of producers of fruit and vegetables and dessert grapes, which are contesting Regulation No 23 of the Council, on the progressive establishment of a common organization of the market in fruit and vegetables; and
2. Associations of wholesalers of meat and agricultural products, which are challenging Regulation No 26 of the Council, applying certain rules of competition to production of and trade in agricultural products.

In both cases, the applications seek only a partial annulment. It is sought to annul, first, Article 9 of Regulation No 23 — and the submissions in the applications affect only the last subparagraph of this Article which concerns the dispensing by Member States with recourse to the provisions of Article 44 of the Treaty. This Article permits the imposition of minimum prices during the transitional period. Second, as far as Regulation No 26 is concerned, only the annulment of the last sentence of Article 2 (1) is at issue: this provision is regarded by the applicants as establishing a system which discriminates in favour of the producers of agricultural products and against the interests of those traders who are not also producers.

By an Order dated 24 October 1962, the Court allowed the intervention of the Assemblée permanente des présidents de chambres d'agriculture in support of

1 — Translated from the French.