ORDER OF THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)
18 February 1998 *

In Case T-189/97,

Comité d'Entreprise de la Société Française de Production, an employees' representative body, whose registered office is in Bry-sur-Marne (France),

Syndicat National de Radiodiffusion et de Télévision CGT (SNRT-CGT), a trade union, whose registered office is in Paris,

Syndicat Unifié de Radio et de Télévision CFDT (SURT-CFDT), a trade union, whose registered office is in Paris,

Syndicat National Force Ouvrière de Radiodiffusion et de Télévision, a trade union, whose registered office is in Paris,

Syndicat National de l'Encadrement Audiovisuel CFE-CGC (SNEA-CFE-CGC), a trade union, whose registered office is in Paris,

all bodies governed by Book IV of the French Code du Travail (Labour Code),

* Language of the case: French.

represented by Hélène Masse-Dessen, lawyer with right of audience before the French Conseil d'État and Cour de Cassation, with an address for service in Luxembourg at the Chambers of Guy Thomas, 77 Boulevard de la Grande-Duchesse Charlotte,

applicants,

v

Commission of the European Communities, represented by Gérard Rozet, Legal Adviser, and Dimitris Triantafyllou, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of Commission Decision 97/238/EC of 2 October 1996 concerning aid granted by the French State to the audiovisual production company Société Française de Production (OJ 1997 L 95, p. 19),

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

composed of: A. Kalogeropoulos, President, C. P. Briët, C. W. Bellamy, A. Potocki and J. Pirrung, Judges,

Registrar: H. Jung,

makes the following

Order

Facts and procedure

1 Société Française de Production (hereinafter 'SFP') is a company controlled by the French State, whose principal activity is the production and broadcasting of television programmes.

2 By decisions of 27 February 1991 and 25 March 1992 the Commission authorised two payments of aid made by the French authorities to SFP between 1986 and 1991 and amounting to a total of FF 1 260 million.

3 The State subsequently carried out further aid operations under which it granted SFP FF 460 million in 1993 and FF 400 million in 1994. Several competitors claimed to suffer from the low prices charged by SFP as a result of the aid and lodged a complaint with the Commission on 7 April 1994.

4 By decision of 16 November 1994, the Commission initiated proceedings under Article 93(2) of the EC Treaty in respect of the last two payments of aid made in 1993 and 1994 and, in Communication 95/C 80/04 (OJ 1995 C 80, p. 7), invited the French Government and interested parties to submit their comments. In addition it requested the French Government to supply a restructuring plan and to undertake that no further public financing would be provided to SFP without prior authorisation. The French authorities submitted their comments by letter dated 16 January 1995.

5 By decision of 15 May 1996, which gave rise to Communication 96/C 171/03 (OJ 1996 C 171, p. 3), the Commission extended the proceedings to include further public aid of FF 250 million, which the French authorities had announced on 19 February 1996.

6 No comments from other Member States or other interested parties were received by the Commission following the initiation of proceedings.

7 On 2 October 1996 the Commission adopted Decision 97/238/EC concerning aid granted by the French State to the audiovisual production company Société Française de Production (OJ 1997 L 95, p. 19, hereinafter 'the decision' or 'the contested decision'). In that decision, it stated that the aid in question, resulting from the successive payments made between 1993 and 1996 and amounting to a total of FF 1 110 million, was illegal since it was granted in breach of the prior notification procedure laid down in Article 93(3) of the Treaty. It considered that aid to be incompatible with the common market, since it did not qualify for one of the derogations provided for by Article 92(3)(c) and (d) of the Treaty. It consequently ordered the French Government to recover the aid, together with interest for the period from the date on which it was granted to the date of repayment.

8 By application lodged at the Registry of the Court of First Instance on 24 June 1997, the works council of SFP, Syndicat National de Radiodiffusion et de Télévision CGT, Syndicat Unifié de Radio et de Télévision CFDT, Syndicat National Force Ouvrière de Radiodiffusion et de Télévision and Syndicat National de l'Encadrement Audiovisuel CFE-CGC brought the present proceedings.

9 By a separate document, registered at the Registry of the Court of First Instance on 30 July 1997, the Commission raised an objection of inadmissibility pursuant to Article 114(1) of the Rules of Procedure. The applicants submitted their observations regarding that plea on 25 September 1997.

Forms of order sought by the parties

10 In their application, the applicants claim that the Court should:

— annul the contested decision;

— order the Commission to pay the costs and, pursuant to Articles 87(3) and 91 of the Rules of Procedure, order it to pay to each of the applicants the sum of ECU 20 000.

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

— dismiss the application as inadmissible;

— order the applicants to pay the costs.

The admissibility of the application

Arguments of the parties

12 The Commission submits that, with regard to a decision addressed to the French Republic, the applicants are not entitled to bring proceedings, in so far as they do not fulfil the two conditions laid down in the fourth paragraph of Article 173 of the Treaty.

13 First, they are not individually concerned by the contested decision, which concerns proceedings under the provisions relating to State aid which, like the other provisions in the chapter relating to the competition rules, are intended to safeguard effective competition in the common market. It follows that it is primarily undertakings, as economic operators, which are affected by those rules and the decisions adopted pursuant to them.

14 It is true that the representatives of the employees of undertakings in receipt of aid, in the same way as the representatives of the employees of competing undertakings, might be regarded as being 'parties concerned' within the meaning of Article 93(2) of the Treaty. The Court has recognised a broad category of persons as having the right to submit comments in the course of the administrative procedure under that provision (Case 323/82 *Intermills* v *Commission* [1984] ECR 3809, paragraph 16). That decision is justified both by the general wording of the provision, which does not define the concept of person concerned, and by the purpose for which the procedure is initiated, which is to enable the Commission to collect as much information as possible. In support of that argument, the Commission points out that although a decision on State aid relates primarily to competition, it must, none the less, always take into account the fundamental objectives referred to in Article 2 of the Treaty, including the strengthening of economic and social cohesion within the Community and carry out economic and social assessments (Case 730/79 *Philip Morris* v *Commission* [1980] ECR 2671, paragraph 25), so that that the representatives of the employees of the undertakings concerned may provide views and information of interest to it.

15 It may not, however, automatically be inferred from the fact that councils and associations representing the employees of undertakings concerned may be regarded as parties concerned within the meaning of Article 93(2) of the Treaty that they have a legal interest in bringing proceedings for the purposes of Article 173 of the Treaty. It is true that, in respect of concentrations of undertakings, the fact that Council Regulation (EEC) No 4064/89 of 21 December 1989 on the control of concentrations between undertakings (OJ 1989 L 395, p. 1, hereinafter

'Regulation No 4064/89') contains an express provision granting procedural rights to the recognised representatives of the employees of the undertakings concerned led the Court of First Instance to hold that the latter are individually concerned by a Commission decision (Case T-96/92 *CCE de la Société Générale des Grandes Sources and Others* v *Commission* [1995] ECR II-1213 and Case T-12/93 *CCE de Vittel and Others* v *Commission* [1995] ECR II-1247). There are, however, no such provisions in respect of State aid. Furthermore, the structure of the system for monitoring State aid is characterised by the fact that, in their dealings with the Commission, undertakings themselves are involved only at a level below that of the Member States and decisions adopted pursuant to Articles 92 and 93 of the Treaty are formally addressed only to the latter. Since undertakings or associations of undertakings are considered by the case-law to be individually concerned by such decisions, for the purposes of Article 173 of the Treaty, only under strict conditions (Case 169/84 *Cofaz and Others* v *Commission* [1986] ECR 391; Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219 and Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and Others* v *Commission* [1995] ECR II-1971), there is *a fortiori* good reason for not accepting that third parties such as the applicants, which are not concerned from a competitive point of view and are therefore at one remove from undertakings, are distinguished individually.

16 According to the Commission, to hold otherwise would result in the recognition of an *actio popularis*, not intended by the authors of the Treaty, and a proliferation in the number of actions. The representatives of the employees of the undertaking in receipt of the aid are interested third parties, for the purposes of Article 93(2) of the Treaty, only in so far as they are included in the indeterminate number of persons called upon to provide information to the Commission during the administrative procedure, in the same way as other interested parties such as the creditors, customers and suppliers of the undertaking in receipt of aid, or the representatives of the employees of competing undertakings. Recognition of a separate right of action for the representatives of the employees would not in any way improve the effectiveness of judicial review in matters of State aid since, in the present case, proceedings could have been brought against the contested decision by both the French Republic and SFP. The possibility of parallel proceedings being brought by third parties such as the applicants, however, would introduce further legal uncertainty as to the validity of the Commission's decisions since it would result in an extension of the time-limit for bringing proceedings; the period would then start to run, not on the date of notification, but on the date on which they became aware of the decision.

17 Finally, implementation of its decisions concerning State aid would be considerably undermined if bodies representing employees were to be recognised as having an interest in bringing proceedings. The Commission submits, in that respect, that grant of aid by the State is usually preceded by compromises between the various interests within the undertaking concerned, in particular in the case of restructuring. In future, it would therefore suffice for a union to challenge a Commission decision in order for the whole of the proposed plan to be suspended or even cancelled. That risk is even more apparent in a case such as this, where the employees are represented by several trade union organisations. The Commission concludes that only the undertaking as a whole, comprising human resources and capital, should be regarded as being individually concerned, in contrast to its constituent parts or their representatives.

18 Secondly, the Commission claims that the applicants are not directly concerned by the contested measure. It submits that the decision has only an indirect effect on the rights and interests of the employees represented by the applicants. In its view, even though repayment of aid found to be incompatible with the common market prevents the undertaking from obtaining funding which it had hoped to receive or had been promised, none the less that might have repercussions on the level or conditions of employment only if measures which are independent of the Commission's decision itself are first adopted by the undertaking or by the employers and employees. In the present case, the contested decision merely states that there is no restructuring plan at all, but does not order the adoption of specific restructuring measures.

19 Furthermore, the loss of jobs or the reduction of wages is not an essential condition for the authorisation of restructuring aid, as is demonstrated by the fact that they are not expressly referred to in the Commission's Communication 94/C 368/05 concerning Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ 1994 C 368, p. 12). Conversely, jobs could also be lost or wages reduced in the context of rationalisation of the management of an undertaking, independently of any State aid and any Commission decision relating thereto, so that the possible annulment of the decision would, for that reason, not guarantee the security of working conditions in the undertaking concerned. As regards

the applicants' argument based on the alleged effect of the decision on the application, in the undertaking, of the public-sector collective wage agreement, the Commission points out that that suggestion was made by the French authorities and potential purchasers and not by it. It would, in any event, have been impossible for it to require application of the aforementioned collective agreement to be terminated since, according to Article L.132-8 of the French Code du Travail, any collective agreement continues to apply until the entry into force of a new agreement.

20 Next the Commission submits that the restructuring or even insolvency of the undertaking resulting from recovery of the aid does not affect the applicants' own rights. Referring to the judgment in *CCE de Vittel and Others* v *Commission*, it submits, first, that the works council has not demonstrated an interest in the preservation of its functions where, by reason of a change in the structure of the undertaking concerned, the conditions under which the applicable rules provide for it to be set up are no longer met and, second, that the various trade unions have no interest of their own in the indefinite continuation of the undertaking on the sole ground that restructuring would entail structural and financial consequences for them.

21 It adds that the only interest of their own which the applicants could have relied upon related, at the very most, to their participation in the administrative procedure *qua* parties concerned within the meaning of Article 93(2) of the Treaty, in so far as third parties to whom procedural rights are granted must have a remedy available for the protection of their legitimate interests (Case 26/76 *Metro* v *Commission* [1977] ECR 1875). In the present case, however, the applicants are not directly concerned, since the purpose of their action is not to protect their procedural rights and they did not participate in the administrative procedure.

22 The applicants note that, according to the Commission, they have the right, *qua* recognised representatives of the employees, to be heard during the procedure referred to in Article 93(2) of the Treaty notwithstanding the absence of any statutory provision.

23 They claim that the plea of inadmissibility raised is unfounded.

24 They maintain, first, that they are individually concerned by the decision. They rely on the judgments in *CCE de la Société Générale des Grandes Sources and Others* v *Commission* and *CCE de Vittel and Others* v *Commission* and submit that they are the recognised representatives of the employees of SFP, which gives them standing to bring proceedings against the contested decision.

25 They consider that the argument that they play only a secondary role in the structure of the system for monitoring State aid is not relevant in so far as that fact has not prevented the case-law from recognising the right of other third parties, such as competing undertakings and their trade associations to bring proceedings. It would also be wrong to limit the exercise of the remedies to third parties who are affected only at a competitive level. Action by the Commission in the field of State aid requires reconciliation of the competition rules with political choices, as is demonstrated by the case concerning *Fonds National de l'Emploi Français* (Case C-241/94 *France* v *Commission* [1996] ECR I-4551). Review of the legality of its decisions must thus be carried out in the light of all the objectives of the Treaty, with particular protection for the social objectives. The applicants conclude that, contrary to the Commission's assertion, the collective interests of the employees they represent must be distinguished from the interests of third parties such as the creditors of the undertaking in question. They also conclude that, if a remedy was available only to competing undertakings, the Commission's decisions would escape any review of legality on that basis.

26 The Commission's argument based on the risk of a proliferation of actions is also unfounded, in so far as such a risk could be avoided if there was sufficient consultation between the various interests during the preliminary procedure and if that procedure was given the necessary publicity. In any event, practical considerations cannot provide justification for the Community judicature not to rule on whether the applicants' rights were actually respected.

27 Second, the applicants claim that the decision is of direct concern to them, in so far as it adversely affects the rights of the employees they represent. The contested decision unavoidably leads to job cuts and the loss of collective benefits for employees of SFP. In the absence of the funding intended to supplement the undertaking's capital, the possibility of redundancies or reductions in social benefits cannot be regarded as being purely theoretical and employers and employees have no margin for negotiation. That is all the more true as the decision directly threatens the social benefits enjoyed by employees of SFP, since one of the grounds on which the aid was held to be incompatible with the common market was that '[t]he restructuring measures referred to by the French Government ... are not sufficient [in so far as] the public-sector collective wage agreement should no longer be applied since at present SFP does not have a competitive wage-cost structure'. Contrary to the Commission's assertion, it in no way follows from Article L. 132-8 of the French Code du Travail that, if notice were given to terminate the collective agreement, it would none the less continue to apply until the entry into force of a new agreement since, by virtue of that article, the employees' rights would then be maintained for only one year.

28 The applicants do not dispute that a State aid decision is not the only decision which may give rise to restructuring measures. They concede that such a decision may have no effect on employment. In the present case, however, the contested decision has a direct effect on the situation of the employees since, on the one hand, it makes authorisation of the aid conditional upon the adoption of a restructuring plan involving, *inter alia*, a review of the structure of posts and wages and, on the other, repayment of the aid at issue could result in the closure of the undertaking. The Commission's analogy in respect of concentrations is irrelevant, in so far as there is no statutory provision guaranteeing employees that their employment will continue indefinitely or will be transferred.

29 Finally, as regards the argument that they cannot claim a specific interest in the preservation of their functions, the applicants contend that they are not claiming that they themselves have the right to continue indefinitely, but are relying only on the rights of the employees they represent. They point out, however, that according to the case-law they are in any event entitled to bring proceedings to defend their procedural rights in so far as those rights have not been respected.

Findings of the Court

30 Under Article 114 of the Rules of Procedure, if a party applies to the Court of First Instance for a decision on admissibility not going to the substance of the case, the remainder of the proceedings is to be oral, unless the Court of First Instance otherwise decides. In the present case the Court of First Instance considers that it has sufficient information from the documents before it and there is no need to open the oral procedure.

31 A Commission decision closing a procedure initiated under Article 93(2) of the Treaty and concluding an examination of the possible compatibility of aid with the common market is always addressed to the Member State concerned.

32 The fourth paragraph of Article 173 of the Treaty provides that a natural or legal person may bring an action for annulment of a decision addressed to another person only if that decision is of direct and individual concern to the former.

33 The admissibility of the application in the present case therefore depends on whether the contested decision, addressed to the French Government and closing the procedure initiated under Article 93(2) of the Treaty, is of direct and individual concern to the applicants.

34 According to settled case-law, persons other than those to whom a decision is addressed may claim to be individually concerned within the meaning of the fourth paragraph of Article 173 of the Treaty only if the contested decision affects them by reason of certain attributes peculiar to them or by reason of circumstances in which they are differentiated from all other persons, and by virtue of these factors distinguishes them individually just as in the case of the person addressed (see Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, 107; *Cofaz and Others* v *Commission*, cited above, paragraph 22, and Case T-398/94 *Kahn Scheepvaart* v *Commission* [1996] ECR II-477, paragraph 37).

35 In the present case the applicants maintain that they are acting as the recognised representatives of the employees. They rely on the judgments in *CCE de la Société Générale des Grandes Sources and Others* v *Commission* and *CCE de Vittel and Others* v *Commission*, cited above, in which the Court of First Instance held that the recognised representatives of the employees of the undertakings concerned by a concentration should, in principle, be regarded as individually concerned by the Commission's decision adopted pursuant to Regulation No 4064/89 and declaring that concentration to be compatible with the common market.

36 In those two judgments, however (see paragraphs 30 and 31 and paragraphs 40 and 41 respectively), the Court of First Instance considered the recognised representatives of the employees of the undertakings concerned to be individually concerned by the concentration because they are expressly mentioned in Regulation No 4064/89 among the third parties showing a sufficient interest to be heard by the Commission during the administrative procedure, which differentiates them from all other third parties.

37 However, the Council has not yet exercised its power under Article 94 of the Treaty to adopt regulations for the application of Articles 92 and 93 (see, in particular, the judgments in Case 84/82 *Germany* v *Commission* [1984] ECR 1451, paragraph 10, and Case T-277/94 *AITEC* v *Commission* [1996] ECR II-351, paragraph 70). Thus, in contrast to Community control of concentrations there are, as regards State aid, no legislative provisions comparable to those contained in Regulation No 4064/89 which expressly grant procedural prerogatives to the recognised representatives of the employees. It follows that the applicants cannot properly rely on the fact that they are the recognised representatives of the employees to claim that they are individually concerned by the contested decision.

38 Nor does the argument that action by the Commission in respect of State aid is intended to reconcile the competition rules with considerations of a political nature, so that the review of legality must also be carried out in the light of the social objectives of the Treaty, demonstrate that the applicants are individually concerned by the contested decision.

39 It should be recalled that Articles 92 and 93 are intended to prevent intervention by a Member State from resulting in distortion of competition in the common market.

40 None the less, in order to determine whether or not an aid within the meaning of Article 92(1) of the Treaty is compatible with the common market, the Commission may, where appropriate, also take into account considerations of a social nature. Under Article 92(3) of the Treaty, the possible application of which was considered in the contested decision, the Commission enjoys a wide discretion, and the exercise of that discretion involves assessments of an economic and social nature which must be made within a Community context (Case C-301/87 *France* v *Commission* (the '*Boussac*' case) [1990] ECR I-307, paragraph 49, and Case C-355/95 P *TWD* v *Commission* [1997] ECR I-2549, paragraph 26).

41 Having regard to the purpose of the procedure laid down in Article 93(2) of the Treaty, which is to enable the Commission, having given the parties concerned notice to submit their comments, to be fully informed of all the facts of the case and to obtain all the requisite opinions in order to determine whether or not the aid under examination is compatible with the common market (*Germany* v *Commission*, cited above, paragraph 13; Case C-225/91 *Matra* v *Commission* [1993] ECR I-3203, paragraph 16), it is therefore not excluded, as the Commission concedes, that bodies representing the employees of the undertaking in receipt of aid might, *qua* parties concerned within the meaning of Article 93(2) of the Treaty, submit comments to the Commission on considerations of a social nature which could be taken into account by the latter if appropriate.

42 The mere fact that there is a possibility that the applicants might be regarded as being parties concerned within the meaning of Article 93(2) of the Treaty does not, however, suffice to distinguish them individually in a similar way to the Member State to which the decision was addressed. The parties concerned, within the meaning of that provision, are not only the undertaking or undertakings receiving aid, but also the persons, undertakings or trade associations whose interests might

be affected by the grant of the aid, in particular competing undertakings and trade associations (*Intermills* v *Commission*, cited above, paragraph 16, and *Matra* v *Commission*, cited above, paragraph 18). In other words, there is an indeterminate group of persons to whom notice must be given (*Intermills* v *Commission*, cited above, paragraph 16; see also the Opinion of Advocate General Verloren van Themaat in that case, page 3834, 3837) so that the mere fact of being a party concerned cannot suffice to distinguish the applicants individually from any other third party which is potentially concerned for the purposes of Article 93(2) of the Treaty.

43 Furthermore, after publication of the notices concerning the initiation of the procedure under Article 93(2) of the Treaty (see paragraphs 3 and 4 above) the applicants did not intervene at any stage in the procedure to submit their comments to the Commission, *qua* parties concerned, on possible considerations of a social nature.

44 Moreover, even supposing that the applicants had submitted comments during the administrative procedure, that fact alone could also not suffice to distinguish them individually just as in the case of the addressee of the decision. In the case of undertakings in competition with the recipient of the aid which have played an active role in the procedure initiated pursuant to Article 93(2) of the Treaty, it is also necessary for them to demonstrate that their position on the market is significantly affected by the aid to which the contested decision relates, in order to be regarded as being individually concerned, (see *Cofaz and Others* v *Commission*, cited above, paragraph 25, and Case T-149/95 *Ducros* v *Commission* [1997] ECR II-2031, paragraph 34). Similarly, trade associations which have participated actively in that procedure and group together the undertakings in the sector concerned are individually concerned by a decision to close the procedure initiated under Article 93(2) of the Treaty only if their position as negotiator is affected by that decision (judgments in *Van der Kooy and Others* v *Commission*, cited above, paragraphs 21 to 24, and Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125, paragraphs 28 to 30).

45 It follows from the foregoing that, in the absence of any significant effect on a competitive position and any actual infringement of the entitlement which they might have, in their capacity as parties concerned within the meaning of Article 93(2) of the Treaty, to submit their comments during the procedure before the Commission, in which they did not, however, take part, the applicants cannot claim any prejudice such as to demonstrate that their legal position is significantly affected by the contested decision. They cannot therefore be regarded as being individually concerned for the purposes of the fourth paragraph of Article 173 of the Treaty.

46 Furthermore, the applicants are not directly concerned by the contested decision.

47 They maintain, in the present case, that the decision directly affects, not their own rights but the interests of the employees of SFP, in so far as it would unavoidably lead to the loss of jobs or social benefits. In that respect, it should, however, be pointed out that a decision declaring aid to be incompatible with the common market and ordering its recovery cannot, in itself, result in the alleged effects on the level and conditions of employment in the undertaking in receipt of the aid at issue. Such consequences will be produced only if measures which are independent of the Commission's decision are adopted by the undertaking itself or by the employers and employees. Bearing in mind their margin for negotiation as regards the nature and scale of measures which may be adopted in the context of a possible restructuring of the undertaking, the possibility of such measures not actually being adopted does not appear to be entirely theoretical (Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207).

48 As regards more specifically the public-sector collective wage agreement, the application of which the applicants claim is directly threatened by the contested decision, it is apparent from Article L. 132-8 of the French Code du Travail that, even if notice were given to terminate the agreement — which would, in any event, be done by one of the signatories — employees of the undertaking concerned would retain the individual benefits that they acquired pursuant to the agreement,

if the latter was not replaced by a new agreement within the time-limits laid down by the law. It follows that it is no way inevitable that the social benefits enjoyed by employees of SFP will in fact cease to be applied and that cannot, therefore, be a direct result of the contested decision. Furthermore, the mere fact that a measure may exercise an influence on the applicants' substantive position cannot suffice to allow them to be regarded as directly concerned (Joined Cases 10/68 and 18/68 *Eridania and Others* v *Commission* [1969] ECR 459, paragraph 7).

49 Furthermore, as the applicants accept, at least implicitly, the annulment of the Commission's decision in so far as it declares the aid granted to SFP to be incompatible with the common market and requires it to be recovered by the French Government would not constitute a safeguard against the loss of jobs and reductions in social benefits, which demonstrates the independent nature of the measures which could be adopted by the undertaking or the employers and employees to that effect and therefore the absence of any direct causal link between the alleged harm to the employees' interests and the contested decision (see judgments in *CCE de la Société Générale des Grandes Sources and Others* v *Commission*, cited above, paragraph 42, and *CCE de Vittel and Others* v *Commission*, cited above, paragraph 55).

50 The analysis according to which the possible authorisation of the payment of the aid at issue to SFP would, in any event, have only an indirect effect on the employees' position is confirmed by the case-law of the Court, according to which a trade union has only an indirect and remote interest in the payment of compensation to undertakings, even if the payments in question could have a favourable impact on the economic well-being of those undertakings and consequently on the number of persons employed by them (order in Joined Cases 197/80 to 200/80, 243/80, 245/80 and 247/80 *Ludwigshafener Walzmühle Erling and Others* v *Council and Commission* [1981] ECR 1041, paragraphs 8 and 9, and *CCE de Vittel and Others* v *Commission*, cited above, paragraph 52).

51 Finally, the resolution of disputes concerning possible prejudice to employees' interests, such as that alleged in the present case, does not fall within the scope of the review of the legality of Commission decisions adopted pursuant to Articles 92 and 93 of the Treaty, but is covered by provisions of national law relating to the review, by the national courts, of the measures which may be adopted by the undertakings or employers and employees concerned, from which the prejudice directly arises.

52 It follows from the foregoing that the contested decision does not in itself entail direct consequences for the interests of the employees of SFP, so that the applicants also cannot be regarded as being directly concerned for the purposes of the fourth paragraph of Article 173 of the Treaty.

53 The argument that it is necessary to establish whether the Commission respected their procedural rights is, in the present case, irrelevant. The Commission initiated the administrative procedure laid down in Article 93(2) of the Treaty, thus giving the parties concerned notice to submit their comments. The applicants did not intervene before the Commission at any stage during that procedure and do not raise any plea, in their application, based on a possible disregard of their supposed rights.

54 Since the applicants are not directly and individually concerned by the contested decision, their application must be dismissed as inadmissible.

Costs

55 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleading. Since the applicants have been unsuccessful, they must, having regard to the form of order sought by the Commission, be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)

hereby orders:

1. The application is dismissed as inadmissible.

2. The applicants are ordered to pay the costs.

Luxembourg, 18 February 1998.

H. Jung — Registrar

A. Kalogeropoulos — President