ORDER OF THE GENERAL COURT (Seventh Chamber, Extended Composition)

6 September 2011 *

In Case T-18/10,

Inuit Tapiriit Kanatami, established in Ottawa (Canada),

Nattivak Hunters and Trappers Association, established in Qikiqtarjuaq (Canada),

Pangnirtung Hunters' and Trappers' Association, established in Pangnirtung (Canada),

Jaypootie Moesesie, residing in Qikiqtarjuaq,

Allen Kooneeliusie, residing in Qikiqtarjuaq,

Toomasie Newkingnak, residing in Qikiqtarjuaq,

* Language of the case: English.

David Kuptana, residing in Ulukhaktok (Canada),

Karliin Aariak, residing in Iqaluit (Canada),

Efstathios Andreas Agathos, residing in Athens (Greece),

Canadian Seal Marketing Group, established in Quebec (Canada),

Ta Ma Su Seal Products, Inc., established in Cap-aux-Meules (Canada),

Fur Institute of Canada, established in Ottawa,

NuTan Furs, Inc., established in Catalina (Canada),

GC Rieber Skinn AS, established in Bergen (Norway),

Inuit Circumpolar Conference Greenland (ICC), established in Nuuk, Greenland (Denmark),

Johannes Egede, residing in Nuuk,

Kalaallit Nunaanni Aalisartut Piniartullu Kattuffiat (KNAPK), established in Nuuk,

represented initially by J. Bouckaert, M. van der Woude and H. Viaene, and subsequently by J. Bouckaert and H. Viaene, lawyers,

applicants,

v

European Parliament, represented by I. Anagnostopoulou and L. Visaggio, acting as Agents,

and

Council of the European Union, represented by M. Moore and K. Michoel, acting as Agents,

defendants,

supported by

Kingdom of the Netherlands, represented by C. Wissels, Y. de Vries, J. Langer and M. Noort, acting as Agents,

and by

European Commission, represented initially by É. White, P. Oliver and J.-B. Laignelot, and subsequently by É. White, P. Oliver and K. Mifsud-Bonnici, acting as Agents,

interveners,

APPLICATION for annulment of Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products (OJ 2009 L 286, p. 36),

THE GENERAL COURT (Seventh Chamber, Extended Composition),

composed of A. Dittrich, President, F. Dehousse, I. Wiszniewska-Białecka, M. Prek (Rapporteur) and A. Popescu, Judges,

Registrar: E. Coulon,

makes the following

Order

Facts, procedure and forms of order sought

1 On 16 September 2009, the European Parliament and the Council of the European Union adopted Regulation (EC) No 1007/2009 on trade in seal products (OJ 2009 L 286, p. 36) ('the contested regulation'), the purpose of which, according to Article 1 thereof, is to establish harmonised rules concerning the placing on the market of seal products.

2 By application lodged at the Court Registry on 11 January 2010, the applicants, Inuit Tapiriit Kanatami, Nativak Hunters and Trappers Association, Pangnirtung Hunters' and Trappers' Association, Mr Jaypootie Moesesie, Mr Allen Kooneeliusie, Mr Toomasie Newkingnak, Mr David Kuptana, Ms Karliin Aariak, Mr Efstathios Andreas Agathos, Canadian Seal Marketing Group, Ta Ma Su Seal Products, Inc., Fur Institute of Canada, NuTan Furs, Inc., GC Rieber Skinn AS, Inuit Circumpolar Conference Greenland (ICC), Mr Johannes Egede and Kalaallit Nunaanni Aalisartut Piniartullu Kattuffiat (KNAPK), brought the present action seeking the annulment of the contested regulation.

3 By separate document lodged at the Court Registry on 11 February 2010, the applicants made an application for interim measures, in which they claimed that the President of the Court should order suspension of the operation of the contested regulation.

4 The Parliament and the Council submitted their observations on that application for interim measures within the prescribed period.

5 By order of 30 April 2010 in Case T-18/10 R *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, not published in the ECR, the President of the General Court dismissed the application for interim measures.

6 By separate documents lodged at the Court Registry on 20 and 21 May 2010 respectively, the Parliament and the Council raised objections of inadmissibility under Article 114(1) of the Rules of Procedure of the General Court.

7 By documents lodged at the Court Registry on 31 and 21 May 2010 respectively, the Kingdom of the Netherlands and the European Commission sought leave to intervene in the present case in support of the form of order sought by the Parliament and the Council. The applicants and the Parliament submitted their observations on those applications within the prescribed period. The Council did not submit any observations.

8 By separate document lodged at the Court Registry on 8 June 2010, the Council made an application for the removal from the case-file of Annex A-7 to the application, consisting of the opinion of the Council's Legal Service of 18 February 2009 on the Proposal for a Regulation of the European Parliament and of the Council concerning trade in seal products (COM(2008) 469 final of 23 July 2008), and for the removal of the part of the opinion in question quoted in paragraph 46 of the application.

9 By document lodged at the Court Registry on 2 July 2010, the Parliament submitted observations on the application for removal from the case-file made by the Council.

10 By order of 6 July 2010, the President of the Fifth Chamber of the General Court granted the Kingdom of the Netherlands and the Commission leave to intervene.

11 On 13 July 2010, the applicants lodged their observations on the pleas of inadmissibility raised by the Parliament and the Council.

12 On 19 and 20 August 2010, the Kingdom of the Netherlands and the Commission lodged their statements in intervention restricted to the pleas of inadmissibility.

13 By application lodged at the Court Registry on 28 July 2010, all but one of the applicants made a second application for interim measures based on Articles 278 TFEU and 279 TFEU and Article 109 of the Rules of Procedure in which they claimed that the President of the General Court should order suspension of the operation of the contested regulation until the Court has given judgment in the action for annulment brought against that regulation.

14 By order of 19 August 2010 in Case T-18/10 R II *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, not published in the ECR, the President of the General Court suspended the operation of the conditions restricting, under Article 3(1) of the contested regulation, the placing on the market of seal products in so far as concerns the applicants until the order bringing those proceedings for interim measures to an end had been adopted.

15 The Parliament, the Council and the Commission submitted their observation on the second application for interim measures on 7 September 2010. The Kingdom of the Netherlands did not submit any observations.

16 On 5 October 2010, the applicants made an application pursuant to Article 129 of the Rules of Procedure for the interpretation of the order of the President of the General Court of 19 August 2010 in *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, paragraph 14 above.

17 On 14, 18 and 13 October 2010 respectively, the Parliament, Council and Commission submitted their observations on that application.

18 By order of the President of the General Court of 19 October 2010 in Case T-18/10 RII-INTP *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, not published in the ECR, the application for interpretation was dismissed as inadmissible.

19 By order of 25 October 2010 in Case T-18/10 R II *Inuit Tapiriit Kanatami and Others* v *Parliament and Council*, not published in the ECR, currently under appeal, the President of the General Court dismissed the second application for interim measures.

20 By separate document lodged at the Court Registry on 6 and 14 October 2010 respectively, the Council and Commission made an application for the present case to be referred to the Grand Chamber. In the alternative and as regards the substance, the Commission requested that the case be referred to a Chamber of five judges.

21 On 26 October 2010, the General Court decided, as a result of those applications and having regard to the wording of the second subparagraph of Article 51(1) of the Rules of Procedure, to refer the case to the Seventh Chamber, Extended Composition.

22 On 19 October 2010, the applicants and the Parliament submitted their respective observations on the statements in intervention restricted to the pleas of inadmissibility, which had been lodged by the Kingdom of the Netherlands and the Commission.

23 By letter of 8 February 2011, the General Court requested that the parties reply to a question relating to whether the applicants are directly concerned by the contested regulation. The applicants, the Parliament, the Council and the Commission replied to that question within the period prescribed. The Kingdom of the Netherlands did not lodge a reply to the General Court's question.

24 In the application the applicants claim that the Court should:

— declare the application admissible;

— annul the contested regulation;

— order the Parliament and the Council to pay the costs.

25 The Parliament contends that the Court should:

— dismiss the application as inadmissible;

— in the alternative, should the Court refuse the objection of inadmissibility or reserve its decision in that regard, give to it and the Council a time-limit to submit a defence, pursuant to Article 114(4) of the Rules of Procedure;

— order the applicants to pay the costs.

26 The Kingdom of the Netherlands and the Council contend that the Court should:

— dismiss the application as inadmissible;

— order the applicants to pay the costs.

27 The Commission contends that the Court should:

— dismiss the application as manifestly inadmissible;

— order the applicants to pay the costs.

28 In its observations on the objections of inadmissibility, the applicants claim that the Court should:

— reserve its decision on the objections of inadmissibility for the final judgment;

— in the alternative, declare the application admissible;

— in any event, order the Parliament and the Council to pay the costs;

— order the Kingdom of the Netherlands and the Commission to bear their own costs.

Law

29 Under Article 114(1) and (4) of the Rules of Procedure, if a party so requests, the General Court may decide on an objection of inadmissibility without going to the substance of the case.

30 Furthermore, under Article 113 of the Rules of Procedure, the General Court may at any time, of its own motion, after hearing the parties, decide whether there exists any absolute bar to proceeding with an action. That decision is to be given in accordance with Article 114(3) and (4) of those rules.

31 Under Article 114(3) of the Rules of Procedure the remainder of the proceedings are to be oral unless the General Court otherwise decides. In the present case, the General Court finds that it has sufficient information from the documents in the case-file and that there is no need to open the oral procedure.

The applicability of the fourth paragraph of Article 263 TFEU

32 It must be pointed out that the contested regulation was adopted on the basis of the EC Treaty (Article 95 EC), whereas the application was made after the entry into force of the FEU Treaty.

33 The parties submit that the admissibility of the present application must be examined in the light of the fourth paragraph of Article 263 TFEU.

34 In that regard, it must be borne in mind that, as regards the question of the temporal application of the rules determining the conditions of admissibility of an action for annulment brought by an individual before the European Union judicature, it is settled case-law, first, that in accordance with the maxim *tempus regit actum* the question of the admissibility of an application must be resolved on the basis of the rules in force at the date on which it was submitted and, second, that the conditions of admissibility of an action are judged at the time of bringing the action, that is, the lodging of the application (see the orders of the General Court of 7 September 2010 in Case T-532/08 *Norilsk Nickel Harjavalta and Umicore* v *Commission*, [2010] ECR II-3959, paragraph 70, and in Case T-539/08 *Etimine and Etiproducts* v *Commission* [2010] ECR II-4017, paragraph 76 and the case-law cited).

35 In the present case, at the time when the action was brought, the conditions of admissibility of that action were governed by Article 263 TFEU. Consequently, having regard to the case-law referred to in the preceding paragraph, the question of the admissibility of the present action must be resolved on the basis of that article.

Admissibility of the present action

36 The Parliament and the Council, supported by the Kingdom of the Netherlands and the Commission, raise three pleas of inadmissibility, alleging, respectively, that the contested regulation is not a regulatory act, that it entails implementing measures and that it does not individually concern the applicants.

37 The applicants dispute the submissions of the Parliament and of the Council, which the Kingdom of the Netherlands and the Commission support.

The meaning of 'regulatory act' for the purposes of the fourth paragraph of Article 263 TFEU

38 The fourth paragraph of Article 263 TFEU provides that '[a]ny natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures'.

39 It must be pointed out that, although that provision introduces a change from the EC Treaty so far as concerns access to the Courts of the European Union, namely that now a natural or legal person may institute proceedings against a regulatory act which is of direct concern to them and does not entail implementing measures, the meaning of 'regulatory act' is not defined by the FEU Treaty.

40 Consequently, in order to be able to rule on the admissibility of the present action, the Court must carry out a literal, historical and teleological interpretation of that provision.

41 In the first place and as a reminder, the fourth paragraph of Article 230 EC allowed natural and legal persons to institute proceedings against decisions as acts of individual application and against acts of general application such as a regulation which is of direct concern to those persons and 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 a decision (see, to that effect, Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, 107, and Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677, paragraph 36).

42 The fourth paragraph of Article 263 TFEU, even though it omits the word 'decision' reproduces those two possibilities and adds a third. It permits the institution of proceedings against individual acts, against acts of general application which are of direct and individual concern to a natural or legal person and against a regulatory act which is of direct concern to them and does not entail implementing measures. It is apparent from the ordinary meaning of the word 'regulatory' that the acts covered by that third possibility are also of general application.

43 Against that background, it is clear that that possibility does not relate to all acts of general application, but to a more restricted category, namely regulatory acts.

44 The first paragraph of Article 263 TFEU sets out a number of categories of acts of the European Union which may be subject to a review of legality, namely, first, legislative acts and, secondly, other binding acts intended to produce legal effects vis-à-vis third parties, which may be individual acts or acts of general application.

45 It must be concluded that the fourth paragraph of Article 263 TFEU, read in conjunction with its first paragraph, permits a natural or legal person to institute proceedings against an act addressed to that person and also (i) against a legislative or regulatory act of general application which is of direct and individual concern to them and (ii) against certain acts of general application, namely regulatory acts which are of direct concern to them and do not entail implementing measures.

46 Furthermore, such an interpretation of the word 'regulatory', and of the equivalent word in the different language versions of the FEU Treaty, as opposed to the word 'legislative', is also apparent from a number of other provisions of the FEU Treaty, in particular Article 114 TFEU, concerning the approximation of the 'provisions laid down by law, regulation or administrative action in Member States'.

47 In that regard, it is necessary to reject the applicants' argument that the distinction between legislative and regulatory acts, as proposed by the Parliament and the Council and upheld in paragraphs 42 to 45 above, consists of adding the qualifier 'legislative' to the word 'act' with reference to the first two possibilities covered by the fourth paragraph of Article 263 TFEU. As is apparent from the conclusion drawn in paragraph 45 above, the word 'act' with reference to those first two possibilities covers not only an act addressed to the natural or legal person, but also any act, legislative or regulatory, which is of direct and individual concern to them. In particular, legislative acts and regulatory acts entailing implementing measures are covered by that latter possibility.

48 Furthermore, it must be stated that, contrary to the applicants' claim, it is apparent from the wording of the final part of the fourth paragraph of Article 263 TFEU that the objective of the Member States was not to limit the scope of that provision solely to delegated acts within the meaning of Article 290 TFEU, but more generally, to regulatory acts.

49 In the second place, the interpretation of the fourth paragraph of Article 263 TFEU upheld in paragraphs 42 to 45 above is borne out by the history of the process which led to the adoption of that provision, which had initially been proposed as the fourth paragraph of Article III-365 of the draft Treaty establishing a Constitution for Europe. It is apparent, inter alia from the cover note of the Praesidium of the Convention (Secretariat of the European Convention, CONV 734/03) of 12 May 2003, that, in spite of the proposal for an amendment to the fourth paragraph of Article 230 EC mentioning 'an act of general application', the Praesidium adopted another option, that mentioning 'a regulatory act'. As is apparent from the cover note referred to above, that wording enabled 'a distinction to be made between legislative acts and regulatory acts, maintaining a restrictive approach in relation to actions by individuals against legislative acts (for which the "of direct and individual concern" condition remains applicable)'.

50 In the third place, on account of the choice of such wording in the fourth paragraph of Article 263 TFEU, it must be observed that the purpose of that provision is to allow a natural or legal person to institute proceedings against an act of general application which is not a legislative act, which is of direct concern to them and does not entail implementing measures, thereby avoiding the situation in which such a person would have to infringe the law to have access to the court (see cover note of the Praesidium of the Convention, referred to above). As is apparent from the analysis in the preceding paragraphs, the wording of the fourth paragraph of Article 263 TFEU does not allow proceedings to be instituted against all acts which satisfy the criteria of direct concern and which are not implementing measures or against all acts of general application which satisfy those criteria, but only against a specific category of acts of general application, namely regulatory acts. Consequently, the conditions of admissibility of an action for annulment of a legislative act are still more restrictive than in the case of proceedings instituted against a regulatory act.

51 That finding cannot be called into question by the applicants' argument relating to the right to effective judicial protection, inter alia having regard to Article 47 of the Charter of Fundamental Rights of the European Union (OJ 2007 C 303, p. 1).

According to settled case-law, the Courts of the European Union may not, without exceeding their jurisdiction, interpret the conditions under which an individual may institute proceedings against a regulation in a way which has the effect of setting aside those conditions, expressly laid down in the Treaty, even in the light of the principle of effective judicial protection (see, to that effect, Case C-263/02 P *Commission* v *Jégo-Quéré* [2004] ECR I-3425, paragraph 36, and order of 9 January 2007 in Case T-127/05 *Lootus Teine Osaühing* v *Council*, not published in the ECR, paragraph 50).

52 Likewise, it is necessary to reject the applicants' argument that the obligation for a 'broad' interpretation of the fourth paragraph of Article 263 TFEU is also apparent from two international Conventions adopted within the context of the United Nations, namely the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, signed in Aarhus on 25 June 1998, and the Convention on Biological Diversity, signed in Rio de Janeiro on 5 June 1992.

53 First, although the applicants claim that the fourth paragraph of Article 263 TFEU should be interpreted in accordance with those conventions, they do not state how, in actual fact, the different conditions of admissibility for the purposes of the fourth paragraph of Article 263 TFEU should be interpreted in the light of the international rules to which they refer, their arguments being very general and having no bearing on those conditions of admissibility.

54 Secondly, the case-law relied on by the applicants in support of those arguments (Case C-341/95 *Bettati* [1998] ECR I-4355, paragraph 20, and Case C-286/02 *Bellio F.lli* [2004] ECR I-3465, paragraph 33) concern the obligation of the Courts of the European Union, when ruling on a question relating to the validity of a provision of secondary European Union legislation, to examine its validity in a manner that is also consistent with international law.

55 In any event, it must be borne in mind that the Treaty 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 Courts of the European Union (see, to that effect, *Unión de Pequeños Agricultores* v *Council*, paragraph 41 above, paragraph 40). The provisions of international conventions may not depart from those rules of primary law of the European Union (see, to that effect, Joined Cases C-402/05 P and C-415/05 P *Kadi and Al Barakaat International Foundation* v *Council and Commission* [2008] ECR I-6351, paragraphs 306 to 308, and Case T-201/04 *Microsoft* v *Commission* [2007] ECR II-3601, paragraph 798).

56 In view of the foregoing, it must be held that the meaning of 'regulatory act' for the purposes of the fourth paragraph of Article 263 TFEU must be understood as covering all acts of general application apart from legislative acts. Consequently, a legislative act may form the subject-matter of an action for annulment brought by a natural or legal person only if it is of direct and individual concern to them.

The categorisation of the contested regulation

57 Having regard to the conclusion as regards the interpretation of the fourth paragraph of Article 263 TFEU in paragraph 56 above, it must be ascertained whether, in the present case, the contested regulation has to be categorised as a legislative act or as a regulatory act.

58 The contested regulation must therefore be categorised within the categories of acts provided for by the FEU Treaty.

59 The contested regulation was adopted on the basis of Article 95 EC according to the co-decision procedure referred to in Article 251 EC.

60 In that regard, it is apparent from Article 289(1) and (3) TFEU that legal acts adopted according to the procedure defined in Article 294 TFEU, referred to as 'the ordinary legislative procedure', constitute legislative acts.

61 As the procedure defined in Article 294 TFEU reproduces, in essence, that defined in Article 251 EC, it must be concluded that, within the categories of legal acts provided for by the FEU Treaty, the contested regulation must be categorised as a legislative act.

62 In that regard, the applicants submit that it is not the way in which an act has been adopted, but its scope, individual or general, that determines its nature. It is on the basis of its scope that a regulation may be categorised as a regulatory act or not. Furthermore, the adjective 'regulatory' should be interpreted as having its common meaning, namely as referring to an act that aims to lay down the applicable rules in general.

63 According to settled case-law the test for distinguishing between a regulation and a decision is whether or not the measure is of general application. A measure is of general application if it applies to objectively determined situations and produces legal effects with respect to categories of persons envisaged generally and in the abstract (see order of the General Court of 30 November 2009 in Case T-313/08 *Veromar di Tudisco Alfio & Salvatore* v *Commission*, not published in the ECR, paragraph 38 and the case-law cited).

64 That case-law related in particular to the second part of the fourth paragraph of Article 230 EC which refers to proceedings against acts which are of direct and individual concern to a natural or legal person. The objective of that provision, as interpreted by the case-law, was in particular to prevent the institutions of the European Union from being in a position, merely by choosing the form of a regulation, to exclude an application by an individual against a decision which concerns him directly and individually; it therefore stipulates that the choice of form cannot change the nature

of a measure (see order in *Veromar di Tudisco Alfio & Salvatore* v *Commission*, paragraph 63 above, paragraph 37 and the case-law cited).

65 However, in the present case, it is not the general application of the contested regulation which is at issue, but the claim that it should be categorised as a regulatory act. Although the test for distinguishing between an act of general application and an individual act is whether the act in question is of general application, its categorisation as a legislative act or a regulatory act according to the FEU Treaty is based on the criterion of the procedure, legislative or not, which led to its adoption.

66 Having regard to the meaning of 'regulatory act' for the purposes of the fourth paragraph of Article 263 TFEU, as interpreted in paragraphs 41 to 56 above, and to the finding that the contested regulation is not a regulatory act within the meaning of that article, it must be held that the present action cannot be declared admissible on the basis of the last part of the fourth paragraph of Article 263 TFEU. In those circumstances, there is no need to ascertain whether the contested regulation entails implementing measures.

67 It is therefore necessary to consider whether the contested regulation is of direct and individual concern to the applicants.

Whether the applicants are directly concerned

68 In their objections of inadmissibility, the Parliament and the Council, supported by the Kingdom of the Netherlands and the Commission, have not raised any plea of inadmissibility alleging that the applicants are not directly concerned, with the exception of a single reference to that effect, which is not elaborated on and is contained in the Parliament's objection of inadmissibility.

69 Since the conditions for the admissibility of an action relate to the question whether there is an absolute bar to proceedings (order of the Court of Justice in Case 108/86 *d.M.* v *Council and ESC* [1987] ECR 3933, paragraph 10; see also Joined Cases T-309/04, T-317/04, T-329/04 and T-336/04 *TV 2/Danmark and Others* v *Commission* [2008] ECR II-2935, paragraph 62 and the case-law cited), it is for the General Court to consider of its own motion whether the requirement of direct concern referred to in the fourth paragraph of Article 263 TFEU is met.

70 The applicants, the Parliament, the Council and the Commission gave their views on that matter in response to a question put to them by the Court on 8 February 2011 (see paragraph 23 above).

71 According to settled case-law, for an individual to be directly concerned by a European Union measure, first, that measure must directly affect the legal situation of that individual and, secondly, there must be no discretion left to the addressees of that measure who are responsible for its implementation, that implementation being purely automatic and resulting from European Union rules alone without the application of other intermediate rules (see order in *Lootus Teine Osaühing* v *Council*, paragraph 51 above, paragraph 39 and the case-law cited).

72 It follows clearly from that case-law that two cumulative conditions must be satisfied in order for a measure to be capable of being regarded as being of direct concern to a natural or legal person (order of the General Court of 21 May 2010 in Case T-441/08 *ICO Services* v *Parliament and Council*, not published in the ECR, paragraph 56).

73 In that regard, the intermediate rules referred to by the case-law mentioned in paragraph 71 above correspond to those which have to be adopted at national level or at European Union level.

74 In the present case, first, it must be borne in mind that Article 3(1) of the contested regulation, which constitutes the central provision of that regulation, provides that '[t]he placing on the market of seal products shall be allowed only where the seal products result from hunts traditionally conducted by Inuit and other indigenous communities and contribute to their subsistence'.

75 Consequently, the contested regulation directly affects only the legal situation of those of the applicants who are active in the placing on the market of the European Union of seal products. That regulation does not in any way prohibit seal hunting, which indeed takes place outside the European Union market, or the use or consumption of seal products which are not marketed. Consequently, it should be observed that, while it cannot be precluded that the general prohibition of placing on the market provided for by the contested regulation may have consequences for the business activities of persons intervening upstream or downstream of that placing on the market, the fact remains that such consequences cannot be regarded as resulting directly from that regulation (see, to that effect, order of the General Court in Case T-40/04 *Bonino and Others* v *Parliament and Council* [2005] ECR II-2685, paragraph 56). Furthermore, as regards the possible economic consequences of that prohibition, it must be borne in mind that, according the case-law, those consequences do not affect the applicants' legal situation, but only their factual situation (see, to that effect, Joined Cases T-172/98 and T-175/98 to T-177/98 *Salamander and Others* v *Parliament and Council* [2000] ECR II-2487, paragraph 62).

76 Secondly, it is apparent from Article 3(4) of the contested regulation, read in conjunction with Article 5(3) thereof, that 'measures for the implementation of [Article 3], designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny' provided for in Article 5a of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ 1999 L 184, p. 23). Likewise, it is apparent from recital 17 in the preamble to the contested regulation that in particular, the Commission should be empowered 'to define the conditions for the placing on the market of seal products which result

from hunts traditionally conducted by Inuit and other indigenous communities and contribute to their subsistence'.

77 It must be pointed out that, although it is possible to take the view that, on the basis of that provision of the contested regulation, it is prohibited to place on the market seal products in respect of which it is established that they do not result from hunts traditionally conducted by Inuit and other indigenous communities and contribute to their subsistence, the conditions for the placing on the market of products which may satisfy those conditions are not defined.

78 The contested regulation does not specify, in particular, what is meant by 'other indigenous communities' referred to in Article 3(1) of that regulation and does not provide any explanation regarding the hunts traditionally conducted to contribute to subsistence or how the Inuit origin or that of other indigenous communities will be established. Consequently, as regards the products which may be subject to the exception, the national authorities are not in a position to apply the contested regulation without the implementing measures established by an implementing regulation, which must, specifically, define the conditions for the placing on the market of those products (recital 17 in the preamble to the contested regulation). Such a provision does not therefore constitute a complete set of rules which are sufficient in themselves, require no implementing provisions and may thus be of direct concern to persons (see, to that effect, Case 294/83 *Les Verts* v *Parliament* [1986] ECR 1339, paragraph 31). It is only on the basis of the measures relating to the implementation of the contested regulation that the situation of the applicants covered by the exception in question may be assessed.

79 Consequently, it must be held that the contested regulation affects only the legal situation of the applicants who are active in the placing on the market of the European Union of seal products and affected by the general prohibition of the placing on the market of those products. By contrast, that that is not the case for the applicants whose business activity is not the placing on the market of those products and/or those who are covered by the exception provided for by the contested regulation

since, in principle, the placing on the market of the European Union of seal products which result from hunts traditionally conducted by Inuit and other indigenous communities and contribute to their subsistence continues to be permitted.

80 More specifically, first, one category of applicants, namely seal hunters and trappers of Inuit origin, and a second category of applicants, grouping together the organisations which represent their interests, cannot be regarded as active in the placing on the market of the European Union of seal products.

81 These two categories include Jaypootie Moesesie, Allen Kooneeliusie, Toomasie Newkingnak, David Kuptana and Johannes Egede, as well as Inuit Tapiriit Kanatami, the Canadian national organisation representing and promoting the interests of Inuit; ICC, the Greenland national organisation representing and promoting the interests of those communities; Pangnirtung Hunters' and Trapper's Association, an organisation which aims to promote and protect the interests of those Inuit in the Pangnirtung area who are involved in hunting and trapping; Nattivak Hunters and Trappers Association, an organisation which promotes and protects the interests of Inuit in the Broughton Island area who are involved in hunting and trapping; and KNAPK, which represents the Greenland Inuit and non-Inuit hunters and fishermen.

82 Secondly, Karliin Aariak is active in the processing of seal products, namely the design and sale of sealskin garments. However, it is apparent from the application and the observations of the applicants on the objections of inadmissibility that she also belongs to the Inuit community. As Ms Aariak does not claim to be active in the placing on the market of products other than those covered by the exception at issue, she cannot be regarded as directly concerned by the contested regulation.

83 Thirdly, Efstathios Andreas Agathos is a doctor who is carrying out clinical trials for the use of seal valves for medical purposes and who, consequently, is not active in the placing on the market of seal products.

84 Fourthly, the same is true of the Fur Institute of Canada, which is a national non-profit umbrella organisation for the fur industry across Canada including government regulatory agencies. Its activities are coordination, scientific research and communication with the media, the general public and governments pertaining to the economic, social, cultural and environmental issues connected with the fur trade. It follows that that institute is not directly concerned by a prohibition of the placing on the market of seal products.

85 By contrast, it is apparent from the case-file that Ta Ma Su Seal Products, NuTan Furs and GC Rieber Skinn as well as the body which groups them together, the Canadian Seal Marketing Group, are active in the processing and/or marketing of seal products from Inuit and non-Inuit hunters and trappers. Consequently, their legal situation must be regarded as being affected by the general prohibition of the placing on the market of seal products provided for by the contested regulation.

86 It follows that, with the exception of Ta Ma Su Seal Products, NuTan Furs, GC Rieber Skinn and the Canadian Seal Marketing Group, the applicants are not directly concerned by the contested regulation.

87 As the conditions for direct and individual concern are cumulative, it remains to be examined whether Ta Ma Su Seal Products, NuTan Furs, GC Rieber Skinn and the Canadian Seal Marketing Group are individually concerned by the contested regulation.

Whether Ta Ma Su Seal Products, NuTan Furs, GC Rieber Skinn and the Canadian Seal Marketing Group are individually concerned

88 As was pointed out in paragraph 41 above, in order for a contested act to be of individual concern to natural or legal persons other than the addressee of a decision, the act must affect those persons 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 a decision.

89 As the Parliament and the Council, supported by the Kingdom of the Netherlands and the Commission, correctly observe, the contested regulation applies to objectively determined situations and produces legal effects in regard to categories of persons envisaged generally and in the abstract. In particular, the general prohibition of the placing on the market of seal products, with the exception of those which result from hunts traditionally conducted by Inuit and other indigenous communities and contribute to their subsistence, is expressed in a general manner and capable of applying equally to any trader who is covered by the contested regulation.

90 As was pointed out in paragraph 85 above, Ta Ma Su Seal Products, NuTan Furs, GC Rieber Skinn and the Canadian Seal Marketing Group are active in the placing on the market of seal products from Inuit and non-Inuit hunters and trappers. As such, they are concerned by the contested regulation like any other trader who places seal products on the market.

91 In that regard, the applicants submit that the bodies representing both Inuit and non-Inuit companies active in the seal product production chain and the companies active in the processing of seal products are individually concerned at least in so far as their Inuit members or Inuit products are concerned.

92 That argument cannot be accepted. Even if the applicants concerned were covered, in addition to the general prohibition, by the exception relating to products of Inuit origin, that would not be sufficient to distinguish them individually in the same way as the addressee of a decision. Furthermore, the applicants do not explain how the contested regulation affects those bodies and companies by reason of certain attributes peculiar to them or by reason of a factual situation which differentiates them from all other persons.

93 It follows from the foregoing that Ta Ma Su Seal Products, NuTan Furs and GC Rieber Skinn as well as the Canadian Seal Marketing Group are not individually concerned by the contested regulation.

94 In view of all of the foregoing, the present action for annulment must be declared inadmissible and there is no need to rule on the Council's application for the removal from the case-file of Annex A-7 to the application and the quotation in that application of part of that document.

Costs

95 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to bear their own costs and to pay those of the Parliament and the Council, as applied for in the form of order sought by the latter.

96 Furthermore, in accordance with Article 87(4) of those rules, the Kingdom of the Netherlands and the European Parliament are to bear their own costs.

On those grounds,

THE GENERAL COURT (Seventh Chamber, Extended Composition)

hereby orders:

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

2. **Inuit Tapiriit Kanatami, Nattivak Hunters and Trappers Association, Pangnirtung Hunters' and Trappers' Association, Jaypootie Moesesie, Allen Kooneeliusie, Toomasie Newkingnak, David Kuptana, Karliin Aariak, Efstathios Andreas Agathos, the Canadian Seal Marketing Group, Ta Ma Su Seal Products, the Fur Institute of Canada, NuTan Furs, Inc., GC Rieber Skinn AS, Inuit Circumpolar Conference Greenland (ICC), Johannes Egede and Kalaallit Nunaanni Aalisartut Piniartullu Kattuffiat (KNAPK) shall bear their own costs and pay those incurred by the European Parliament and the Council of the European Union.**

3. **The Kingdom of the Netherlands and the European Commission shall bear their own costs.**

Luxembourg, 6 September 2011.

E. Coulon
Registrar

A. Dittrich
President