ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)

8 September 2005 *

In Case T-287/04,

Lorte SL, established in Seville (Spain),

Oleo Unión, Federación empresarial de organizaciones de productores de aceite de oliva, established in Seville,

Unión de organizaciones de productores de aceite de oliva (Unaproliva), established in Jaén (Spain),

represented by R. Illescas Ortiz, lawyer, with an address for service in Luxembourg,

applicants,

* Language of the case: Spanish.

Council of the European Union, represented by M. Balta and F. Gijón, acting as Agents,

defendant,

APPLICATION for the partial annulment of Council Regulation (EC) No 864/2004 of 29 April 2004 amending Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, and adapting it by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union (OJ 2004 L 161, p. 48), and of Council Regulation (EC) No 865/2004 of 29 April 2004 on the common organisation of the market in olive oil and table olives and amending Regulation (EEC) No 827/68 (OJ 2004 L 161, p. 97),

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

composed of M. Jaeger, President, J. Azizi and E. Cremona, Judges,

Registrar: H. Jung,

makes the following

Order

Legal context

1 On 22 September 1966, the Council adopted Regulation No 136/66/EEC on the establishment of a common organisation of the market in oils and fats (OJ, English Special Edition 1965-1966, p. 221; 'the Basic Regulation'). In particular, the Basic Regulation set up a common organisation of the market in olive oil, structured around a system of intervention prices, storage contracts and aid for production and consumption.

2 The mechanisms introduced by the Basic Regulation have been amended several times subsequently, in particular by Council Regulation (EEC) No 1915/87 of 2 July 1987 (OJ 1987 L 183, p. 7), by Council Regulation (EC) No 1638/98 of 20 July 1998 (OJ 1998 L 210, p. 32), and by Council Regulation (EC) No 1513/2001 of 23 July 2001, which also amends Regulation No 1638/98 as regards the extension of the period of validity of the aid scheme and the quality strategy for olive oil (OJ 2001 L 201, p. 4).

3 Those amendments, based on the principles of the common agricultural policy (CAP) reform initiated in 1992, were designed essentially to replace the scheme supporting prices and production with a scheme supporting the income of farmers.

That reform culminated, so far as concerns certain agricultural products, in the adoption of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1).

4 Similarly, in order to adapt the common organisations of the markets in the olive oil, raw tobacco, hops and cotton sectors to the CAP reform, the Council adopted, on 29 April 2004, Regulation (EC) No 864/2004, amending Regulation (EC) No 1782/2003 and adapting it by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union (corrected version: OJ 2004 L 206, p. 20). On the same date, the Council also adopted Regulation (EC) No 865/2004 on the common organisation of the market in olive oil and table olives and amending Regulation (EEC) No 827/68 (corrected version: OJ 2004 L 206, p. 37) ('the contested Regulations').

5 Regulation No 864/2004 repealed the former aid scheme for olive oil production and introduced a system under which the aid is not linked to the quantity of olive oil actually produced, known as a 'single payment' or 'decoupled aid' system. However, for certain types of production, a system known as 'coupled aid' or 'production-linked aid' was retained under certain conditions and within certain limits.

6 So far as concerns olive oil, point (7) of Article 1 of Regulation No 864/2004 amended Article 37(1) of Regulation No 1782/2003 by establishing as the reference amount for calculating the amount of decoupled aid 'the four-year average of the

total amounts of payments which a farmer was granted under the olive oil support scheme referred to in Annex VI [to Regulation No 1782/2003], calculated and adjusted according to Annex VII [to Regulation No 1782/2003], during the marketing years 1999/2000, 2000/01, 2001/02 and 2002/03'.

7 Furthermore, point (11) of Article 1 of Regulation No 864/2004 amended Article 44 (2) of Regulation No 1782/2003 by providing that a hectare eligible for decoupled aid means any area under olive trees planted before 1 May 1998 (except in the case of Cyprus and Malta), or new olive trees replacing existing olive trees, or olive trees within approved planting schemes and registered in a geographic information system.

8 Moreover, point (20) of Article 1 of Regulation No 864/2004 inserts an Article 110g in Regulation No 1782/2003, providing for the grant of aid to farmers as a contribution to the maintenance of olive groves of environmental or social value. However, that aid is granted subject to certain conditions, inter alia that the surfaces correspond either to olive trees planted before 1 May 1998 (except in the case of Cyprus and Malta) or to replacing trees or surfaces covered by a programme approved by the Commission.

9 Lastly, the annex to Regulation No 864/2004, supplementing Annex VI to Regulation No 1782/2003, provides that olive oil producers who received production aid under Article 5 of the Basic Regulation may benefit from the single payment system.

10 Regulation No 865/2004 applies from the marketing year 2005/06, the period from which the common organisation of the market in oils and fats introduced by the Basic Regulation, as well as the olive oil production aid and the national guaranteed amounts relating to it, are abolished.

11 However, by way of a transitional measure, Article 22 of Regulation No 865/2004 deletes the first paragraph of Article 5 of Regulation No 1638/98, which repealed Article 5 of the Basic Regulation introducing aid for olive oil production. Aid for olive oil production therefore applies during the marketing year 2004/05.

Procedure and forms of order sought by the parties

12 The applicants are Lorte SL, a company governed by Spanish law, acting in its capacity as an olive oil producer and member of the association Oleo Unión, Federación empresarial de organizaciones de productores de aceite de oliva ('Oleo Unión'), and two associations of olive oil producers, Oleo Unión and Unión de organizaciones de productores de aceite de oliva (Unaproliva).

13 Oleo Unión is a non-profit-making association governed by Spanish law which, according to its memorandum and articles of association, was set up to protect its own economic and social interests as well as those of the undertakings, trade associations and olive oil producers which produce or process the product in the Comunidad autónoma de Andalucía (Autonomous Community of Andalusia).

14 Unaproliva is also a non-profit-making association governed by Spanish law, whose object is in particular to channel the subsidies and aid granted by the Community, inter alia those for olive oil production. In that capacity, Unaproliva may, according to its memorandum and articles of association, take any measure serving to attain its object and to protect the interests of its members or of the economic sector concerned, even if that measure is not expressly provided for in its memorandum and articles of association.

15 By application lodged at the Registry of the Court of First Instance on 13 July 2004, the applicants brought the present action.

16 By separate document lodged at the Court Registry on 14 October 2004, the Council raised an objection of inadmissibility under Article 114(1) of the Rules of Procedure of the Court of First Instance.

17 In their observations on the objection of inadmissibility, lodged on 29 November 2004, the applicants claimed that the Court should dismiss the objection.

18 By application lodged at the Court Registry on 2 December 2004, the Commission sought leave to intervene in support of the forms of order sought by the Council.

19 The applicants and the defendant lodged their observations on the Commission's application to intervene on 24 January 2005 and 16 December 2004 respectively.

20 The applicants claim that the Court should:

— annul points (7), (11) and (20) of Article 1 of Regulation No 864/2004, and the annex thereto;

— annul Article 22 of Regulation No 865/2004;

— order the Council to pay the costs.

21 By its objection of inadmissibility, the Council contends that the Court should:

— dismiss the action as inadmissible;

— order the applicants to pay the costs.

22 In their observations on the objection of inadmissibility, the applicants claim that the Court should:

— dismiss the objection of inadmissibility raised by the Council;

— order the Council to pay the costs.

Law

Arguments of the parties

23 The Council pleads the inadmissibility of the present action on the ground that the applicants are not individually concerned by the contested provisions.

24 In that regard, the Council points out that an individual cannot bring an action under the fourth paragraph of Article 230 EC for annulment of a regulation unless he is directly and individually concerned by reason of certain attributes peculiar to him, or by reason of a factual situation which differentiates him from all other persons and distinguishes him individually in the same way as the addressee of a decision (Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, 107, and Case C-452/98 *Nederlandse Antillen* v *Council* [2001] ECR I-8973, paragraph 60).

25 The applicants maintain that they are individually concerned by the contested provisions. They point out, as a preliminary observation, that the Council does not deny that they are directly concerned by those provisions.

26 First of all, the applicants claim that the contested provisions are not measures of general application. They maintain that, owing to the specific or individual effects those provisions have on some addressees, they are akin to decisions. The individual application of those provisions arises from the fact that, owing to biological and botanical factors, the olive groves planted in particular between 1995 and 1998 had no production during the reference period fixed for the purposes of calculating the 'decoupled aid'. In consequence, Lorte is not eligible for the aid in question.

27 Secondly, the applicants put forward several arguments with a view to establishing that, in any event, they are individually concerned, within the meaning of the fourth paragraph of Article 230 EC, by the contested provisions.

28 Lorte claims, first, that it is not affected by the contested provisions in its objective capacity as an olive oil producer, since, during the reference period, and so far as concerns the olive groves planted between 1995 and 1998, it produced nothing owing to biological and botanical factors.

29 Thus, given that Lorte did not produce anything during the reference period, Lorte is in a factual situation which differentiates it from all other persons. Furthermore, Lorte points out that the national and Community authorities knew of that situation from the annual statements submitted by Lorte relating to olive oil production.

30 Thirdly, the contested provisions produce effects vis-à-vis Lorte that are different from those they produce in relation to the other olive oil producers, by excluding it from the aid for olive oil introduced by those provisions. Thus Lorte belongs to a closed and narrow group of olive oil producers owing, on the one hand, to the biological and botanical factors which prevented production in the olive groves planted — in particular, between 1995 and 1998 — and, on the other, to the reference period fixed by the contested provisions. However, membership of that closed group is not a consequence inherent in the very objective of the contested provisions (order in Case T-11/99 *Van Parys and Others* v *Commission* [1999] ECR II-2653, paragraph 48). It must therefore be concluded that the contested provisions are of individual concern to Lorte. In support of that argument, Lorte also refers to the judgments of the Court of Justice in Case 120/86 *Mulder* [1988] ECR 2321 and Case 170/86 *von Deetzen* [1988] ECR 2355).

31 Oleo Unión submits, for its part, that it has standing to bring the present action in order to act in the interests of its members who, like Lorte, have standing to bring proceedings since they are directly and individually concerned by the contested provisions.

32 Unaproliva merely states that, by virtue of the wide powers conferred on it by its memorandum and articles of association, it is entitled to represent the interests of its members as regards, primarily, the Community aid received by olive oil producers, and that it therefore has standing to act in these proceedings.

33 The applicants maintain, lastly, that if the Court were to declare their action inadmissible, it would in so doing deprive them of their right to effective judicial protection. The possibility of bringing an action for damages, of raising a plea of illegality or of requesting a reference for a preliminary ruling could not, even if it were a plausible option, remedy such an infringement of the right to effective judicial protection.

Findings of the Court

34 Pursuant to Article 114 of the Rules of Procedure, the Court may, following an application by one of the parties, rule on the question of admissibility without addressing the merits of the case. Under Article 114(3) of those rules, the remainder of the proceedings is to be oral unless the Court decides otherwise. In the present case, the Court considers that the information in the documents before it is sufficient for there to be no need to proceed to the oral stage of the proceedings.

35 Under the fourth paragraph of Article 230 EC, 'any natural or legal person may ... institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or of a decision addressed to another person, is of direct and individual concern to the former'.

36 According to settled case-law, the primary objective of the fourth paragraph of Article 230 EC — which allows individuals to challenge any decision which, although in the form of a regulation, is of direct and individual concern to them — is to prevent the Community institutions from being able, merely by choosing the form of a regulation, to preclude an individual from bringing an action against a decision which concerns him directly and individually and thus to make it clear that the nature of a measure cannot be changed by the form chosen (Joined Cases 789/79 and 790/79 *Calpak and Società emiliana lavorazione frutta* v *Commission* [1980] ECR 1949, paragraph 7; orders in Case T-122/96 *Federolio* v *Commission* [1997] ECR II-1559, paragraph 50, and Case T-173/98 *Unión de Pequeños Agricultores* v *Council* [1999] ECR II-3357, paragraph 34).

37 It is also settled case-law that the criterion for distinguishing between a regulation and a decision has to be sought in the general application or otherwise of the measure in question (Joined Cases 16/62 and 17/62 *Confédération nationale des producteurs de fruits et légumes and Others* v *Council* [1962] ECR 471, 478, and Case 307/81 *Alusuisse* v *Council and Commission* [1982] ECR 3463, paragraph 19; order in Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraph 28). Thus, an act has general application if it applies to objectively determined situations and entails legal effects for categories of persons regarded generally and in the abstract (Case C-244/88 *Usines coopératives de déshydratation du Vexin and Others* v *Commission* [1989] ECR 3811, paragraph 13; Case C-41/99 P *Sadam Zuccherifici and Others* v *Council* [2001] ECR I-4239, paragraph 24; order in Case T-231/02 *Gonnelli and AIFO* v *Commission* [2004] ECR II-1051, paragraph 29, and the case-law cited therein).

38 The provisions contested in the present case are undoubtedly measures of general application. In that regard, it should be pointed out that the contested provisions lay down the criteria for calculating aid in the olive oil sector within the framework of Regulation No 1782/2003 (see paragraph 6 above).

39 It must be stated that those criteria are set out in general and abstract terms. Indeed, the method of calculating the reference amounts and the amount of the aid is established without any account whatsoever being taken of the specific circumstances of each olive oil producer affected by the contested provisions, but rather through the application of objective and general criteria.

40 Accordingly, the contested provisions apply to objectively determined situations and produce legal effects vis-à-vis categories of persons conceived generally and in the abstract. In that regard, it should be pointed out that the provisions of a measure are deemed to apply to objectively determined situations if they apply to an objective legal or factual situation, as defined by the measure in relation to its purpose (order in *Unión de Pequeños Agricultores* v *Council*, cited in paragraph 36 above, paragraph 40).

41 In the present case, the applicants are concerned by the contested provisions by reason specifically of an objective factual situation. They are affected by the contested provisions in their capacity as an association whose members produced olive oil during the reference period and received aid under one of the aid schemes established by legislation. That situation is defined in terms of the very purpose of the regulations containing the contested provisions: the introduction of a new aid scheme in the olive oil sector.

42 What is more, there are no factors to support a finding that the contested provisions are decisions adopted in the form of a regulation. The applicants' argument cannot confute that assessment.

43 The fact that the contested provisions may have a particular effect on certain olive oil producers — and, more specifically, the effect of excluding them from entitlement to aid because of the criteria laid down for calculating it — cannot automatically divest the contested provisions of their general application, since they apply to all the economic operators concerned who are in the same objectively determined factual or legal situation. As it is, the applicants have not adduced evidence that the position was otherwise with regard to application of the contested provisions (see, to that effect, the order in *Unión de Pequeños Agricultores* v *Council*, cited in paragraph 36 above, paragraph 39).

44 It follows that the contested provisions constitute in their entirety, by their nature and scope, measures of general application, not decisions within the meaning of Article 249 EC.

45 However, it has been held repeatedly that the fact that the contested measure is, by its nature, of general scope and does not constitute a decision within the meaning of Article 249 EC is not sufficient in itself to preclude an action for its annulment being brought by an individual (see Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 19, and Case C-451/98 *Antillean Rice Mills* v *Council* [2001] ECR I-8949, paragraph 49; order in *Gonnelli and AIFO* v *Commission*, cited in paragraph 37 above, paragraph 31, and the case-law cited therein).

46 In certain circumstances, even a measure of general application to all traders may be of direct and individual concern to some of them (Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501, paragraph 13, and *Codorniu* v *Council*, cited in paragraph 45 above, paragraph 19; orders in Case T-223/01 *Japan Tobacco and JT International* v *Parliament and Council* [2002] ECR II-3259, paragraph 29, and *Gonnelli and AIFO* v *Commission*, cited in paragraph 37 above, paragraph 32).

47 For that to be the case, a natural or legal person must be directly and individually affected by the measure in question by reason of certain attributes peculiar to that person, or by reason of a factual situation which differentiates that person from all other persons and distinguishes him individually in the same way as the addressee of a decision (*Plaumann* v *Commission,* cited in paragraph 24 above, and order in Case C-258/02 P *Bactria* v *Commission* [2003] ECR I-15105, paragraph 34; order in *Gonnelli and AIFO* v *Commission,* cited in paragraph 37 above, paragraph 35).

48 If that condition is not fulfilled, a natural or legal person does not have standing to bring an action for annulment (Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677, paragraph 37, and order in *Asocarne* v *Council,* cited in paragraph 37 above, paragraph 26).

49 Consequently, it must be ascertained whether, in the present case, the applicants are affected by the contested provisions by reason of certain attributes peculiar to them or a factual situation which differentiates them from all other persons.

50 It is therefore necessary, first, to examine the admissibility of the action brought by Lorte in its capacity as an olive oil producer.

51 In that regard, Lorte — contrary to its own submissions — is affected by the contested provisions by reason of its objective capacity as an olive oil producer who, during the reference period, was eligible for aid under one of the schemes established by the earlier legislation in the same way as any other producer or economic trader active in the sector to which the contested provisions apply. The fact that a measure of general application affects the legal situation of an individual does not call into question the nature and scope of that measure (see, to that effect, the order in *Gonnelli and AIFO* v *Commission,* cited in paragraph 37 above, paragraph 38).

52 Furthermore, as the Council rightly points out, the contested provisions — laying down the conditions for granting aid in the olive oil sector and the criteria for calculating it — apply equally to all olive oil producers, irrespective of the quantity actually produced by them or, indeed, of whether they produced any quantity at all, during the reference period. The criteria for calculating the aid are fixed independently of the individual circumstances of each olive oil producer.

53 It should also be pointed out that the fact that a measure of general application may have practical effects which differ as between the various persons to whom it applies is not such as to differentiate them in relation to all the other operators concerned where that measure is applied on the basis of an objectively determined situation (see Case T-138/98 *ACAV and Others* v *Council* [2000] ECR II-341, paragraph 66, and the case-law cited therein). In the present case, even if the contested provisions may produce effects which vary from one olive oil producer to another, that is not sufficient to show that Lorte has attributes which are peculiar to it or is in a factual situation which differentiates it from other olive oil producers.

54 Moreover, even supposing that, pursuant to the contested provisions, Lorte were not eligible for the aid in the olive oil sector, it still cannot be individually concerned by the contested provisions. The fact that certain traders are economically more affected by a measure than the other traders in the same sector is not sufficient for them to be regarded as individually concerned by that measure (orders in *Van Parys and Others* v *Commission*, cited in paragraph 30 above, paragraphs 50 and 51, and *Gonnelli and AIFO* v *Commission*, cited in paragraph 37 above, paragraph 45).

55 Furthermore, even if it were to be established that Lorte is ineligible, the fact remains that similar consequences would ensue for all the other olive oil producers with olive groves planted between 1995 and 1998 (see, to that effect, Case C-142/00 P *Commission* v *Nederlandse Antillen* [2003] ECR I-3483, paragraph 77).

56 Moreover, Lorte's reference to *Mulder* and *von Deetzen* (see paragraph 30 above) has no bearing at all in proceedings brought under the fourth paragraph of Article 230 EC — as in the present case — since, in those judgments, the Court of Justice was considering a question referred for a preliminary ruling.

57 It should be pointed out that, in those judgments, the Court of Justice, on being called upon to rule on the validity of a Community regulation concerning an additional levy on milk, held that the institution which had adopted the measure at issue had acted in breach of the principle of the protection of legitimate expectations, in that certain milk producers were excluded from the new scheme introduced by that measure because they had not produced milk during the period fixed by the contested measure for the purposes of allocating a reference quantity. The reason why no milk had been produced during the reference period was that the producers in question had previously entered into an undertaking, pursuant to a Community measure, to suspend marketing of the product for a limited period, in the general interest and against payment of a premium.

58 The Court considered that the effect on certain milk producers of the regulation whose validity was contested — exclusion from the new additional levy scheme introduced by that regulation — constituted a restriction which affected those producers in particular, precisely because they had made use of the option which had been made available under the earlier Community regulation in order to encourage them to suspend production of the product concerned.

59 However, in the present case, it is clear that such matters properly fall under the consideration of the merits and have no bearing on the question whether Lorte is individually affected (see, to that effect, the order in *Gonnelli and AIFO* v *Commission*, cited in paragraph 37 above, paragraph 43).

60 Moreover, even if it were to be established that the effects of the contested provisions differ to the extent relied upon by Lorte, it must be stated that, unlike the measures whose legality was at issue in the cases referred to, that diversity does not have its origin in a Community measure.

61 In any event, Lorte has in no way shown to what extent the contested provisions affected it differently as compared with the other members of the 'closed and narrow group' of olive oil producers which had not produced olive oil owing to biological and botanical factors concerning the olive groves, and to the reference period.

62 Similarly, the fact, if it is true, that the Council had been informed of the applicants' position, before the adoption of the contested provisions, by the competent national authorities and by the Commission, cannot single out Lorte in relation to those provisions. Lorte has neither alleged nor, a fortiori, established that the Council is obliged under a provision of Community law to take special account, with regard to the conditions for being granted 'decoupled aid' in the olive oil sector, of the specific situation of certain olive oil producers (see, to that effect, Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, paragraphs 21 and 28; Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477, paragraph 11; Case T-158/95 *Eridania and Others* v *Council* [1999] ECR II-2219, paragraphs 58 and 59; and order in Case T-391/02 *Bundesverband der Nahrungsmittel- und Speiseresteverwertung and Kloh* v *Parliament and Council* [2004] ECR II-1447, paragraph 55).

63 It is apparent from the foregoing considerations that Lorte has not shown that it was affected by the contested provisions by reason of certain attributes peculiar to it, or by reason of a factual situation which differentiated it from all other economic traders. Accordingly, Lorte cannot be individually concerned by the contested provisions.

64 Secondly, with regard to the actions brought by Oleo Unión and Unaproliva, it should be pointed out that actions brought by associations have been held to be admissible in three types of situations: where a legal provision expressly confers on professional associations a number of powers of a procedural nature; where the association represents the interests of undertakings which themselves have locus standi; and where the association is differentiated by reason of the impact on its own interests as an association, in particular because its position as a negotiator has been affected by the measure of which the annulment is sought (orders in *Federolio* v *Commission*, cited in paragraph 36 above, paragraph 61; Case T-38/98 *ANB and Others* v *Council* [1998] ECR II-4191, paragraph 25; *Unión de Pequeños Agricultores* v *Council*, cited in paragraph 36 above, paragraph 47; and Case T-196/03 *EFfCI* v *Parliament and Council* [2004] ECR II-4263, paragraph 42).

65 In the present case, Oleo Unión and Unaproliva cannot invoke any of those three situations in order to establish their applications for annulment are admissible.

66 In that regard, the Court finds, as regards the first situation, that those applicants are not asserting any procedural right accorded to them under Community law in the field of the common organisation of the market in olive oil.

67 The same is true as regards the second situation in which an action may be admissible, since it is settled case-law that an association formed in order to promote the collective interests of a category of persons cannot be regarded as individually concerned if those persons themselves are not individually concerned (orders in Case C-409/96 P *Sveriges Betodlares and Henrikson* v *Commission* [1997] ECR I-7531, paragraph 45, and Case T-78/98 *Unione provinciale degli agricoltori di Firenze and Others* v *Commission* [1999] ECR II-1377, paragraphs 36 and 37).

68 In the present case, Oleo Unión and Unaproliva have adduced no evidence to support a finding that their members are affected by the contested provisions by reason of certain attributes peculiar to them or a factual situation which differentiates them from all other persons.

69 As regards the third situation, there is no information in the documents before the Court to substantiate a conclusion that those applicants are singled out in relation to the contested provisions by reason of the effects on their own interests, such as, for example, their position as negotiators.

70 It follows that Oleo Unión and Unaproliva cannot be regarded as individually concerned.

71 Moreover, as regards the applicants' assertion that, if the Council's objection of inadmissibility were upheld, they would be deprived of effective judicial protection, it should be pointed out that, by Articles 230 EC and 241 EC, on the one hand, and by Article 234 EC, on the other, the EC Treaty has established a comprehensive system of legal remedies and procedures designed to ensure judicial review of the legality of acts of the institutions, and has entrusted such review to the Community Courts. Under that system, where natural or legal persons cannot, by reason of the conditions for admissibility laid down in the fourth paragraph of Article 230 EC, directly challenge Community measures of general application, they are able, depending on the case, either indirectly to plead the invalidity of such acts before the Community Courts under Article 241 EC or to do so before the national courts and ask them, since those courts have no jurisdiction themselves to declare those measures invalid, to refer a question on that point to the Court of Justice for a preliminary ruling (*Union de Pequeños Agricultores* v *Council*, cited in paragraph 48 above, paragraph 40).

72 The Court has also held that it is for the Member States to establish a system of legal remedies and procedures which ensure respect for the right to effective judicial protection and that it is not acceptable to adopt an interpretation of the rules on admissibility, laid down in Article 230 EC, to the effect that an action for annulment should be declared admissible where it can be shown, following an examination by the Community Court of the particular national procedural rules, that those rules do not allow the individual to bring proceedings contesting the validity of the Community measure at issue (*Unión de Pequeños Agricultores* v *Council*, cited in paragraph 48 above, paragraph 43). A direct action for annulment could not be brought before the Community Court even if it could be shown, following an examination by that Court of the national procedural rules, that those rules do not allow an individual to bring proceedings contesting the validity of the Community measure at issue. Such an approach would require the Community Court, in each individual case, to examine and interpret national procedural law, which would go beyond its jurisdiction in relation to the review of the legality of Community measures (order in *Bactria* v *Commission*, cited in paragraph 47 above, paragraph 58).

73 In any event, the Court of Justice has clearly established — with regard to the condition, laid down by the fourth paragraph of Article 230 EC, that an applicant must be individually concerned — that, although that condition must be interpreted in the light of the principle of effective judicial protection, account being taken of the various circumstances that may distinguish an applicant individually, such an interpretation cannot have the effect of setting aside the condition in question, which was expressly laid down in the Treaty, without going beyond the jurisdiction conferred by the Treaty on the Community Courts (*Unión de Pequeños Agricultores* v *Council*, cited in paragraph 48 above, paragraph 44).

74 Furthermore, while it is admittedly possible to envisage a system of judicial review of the legality of Community measures of general application different from the system which was established by the founding Treaty and the principles of which have never been amended, it is for the Member States, if necessary, in accordance with Article 48 EU, to reform the system currently in force (*Unión de Pequeños Agricultores* v *Council*, cited in paragraph 48 above, paragraph 45).

75 Consequently, the applicants cannot plead that, if the action for annulment were to be declared inadmissible, they would have no means of defending their rights before the courts, and in any case they have adduced no evidence to that effect (see, to that effect, the order in *Gonnelli and AIFO* v *Commission,* cited in paragraph 37 above, paragraphs 52 to 56).

76 The requirement of effective judicial protection cannot therefore cast doubt on the conclusion that the contested provisions are not of individual concern to the applicants. Their action must therefore be dismissed as inadmissible.

77 Moreover, the Court considers that there is no need to adjudicate on the application by the Commission for leave to intervene (see, to that effect, Case C-341/00 P *Conseil national des professions de l'automobile and Others* v *Commission* [2001] ECR I-5263, paragraphs 35 to 37).

Costs

78 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 pay the costs of the proceedings, including those incurred by the Council, as applied for by the latter.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby orders:

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

2. **The applicants must bear their own costs and pay those incurred by the Council.**

3. **There is no need to adjudicate on the application by the Commission for leave to intervene.**

Luxembourg, 8 September 2005.

H. Jung — Registrar

M. Jaeger — President