

ORDER OF THE COURT OF FIRST INSTANCE (Fifth Chamber)

30 September 1997 *

In Case T-122/96,

Federazione Nazionale del Commercio Oleario (Federolio), an association constituted under Italian law, established in Rome, represented by Livia Magrone Furlotti, of the Rome Bar, with an address for service in Luxembourg at the Chambers of Marc Loesch, 11 Rue Goethe,

applicant,

v

Commission of the European Communities, represented by Eugenio de March, Legal Adviser, and Paolo Ziotti, 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 partial annulment of Commission Regulation (EC) No 887/96 of 15 May 1996, amending Regulation (EEC) No 2677/85 laying down implementing rules in respect of the system of consumption aid for olive oil (OJ 1996 L 119, p. 16 and OJ 1985 L 254, p. 5, respectively),

* Language of the case: Italian.

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

composed of: R. García-Valdecasas, President, J. Azizi and M. Jaeger, Judges,

Registrar: H. Jung,

makes the following

Order

The relevant legislation

- 1 Regulation No 136/66/EEC of the Council of 22 September 1966 (OJ, English Special Edition 1965-1966, p. 221, hereinafter 'Regulation No 136/66') established a common organization of the markets in oils and fats. Council Regulation (EEC) No 1562/78 of 29 June 1978 amending Regulation No 136/66/EEC (OJ 1978 L 185, p. 1, hereinafter 'Regulation No 1562/78'), introduced a system of aids for olive oil. More specifically, as regards the marketing of the oil, it established a system providing for the grant of consumption aid to ensure that olive oil is sold at prices which are competitive with the prices of seed oils.
- 2 According to Article 1 of Council Regulation (EEC) No 3089/78 of 19 December 1978 laying down general rules in respect of aid for the consumption of olive oil (OJ 1978 L 369, p. 12, hereinafter 'Regulation No 3089/78'), that aid is to be

granted only to approved olive-oil packaging plants. Pursuant to Article 11(2) and (3) of Regulation No 136/66 as amended by Council Regulation (EEC) No 1917/80 of 15 July 1980 (OJ 1980 L 186, p. 1, hereinafter 'Regulation No 1917/80') it is to be granted at the request of the undertaking concerned or at the request of trade organizations recognized by the Member State concerned. For the purpose of applying the consumption aid system a Member State may recognize one or more trade organizations. Those organizations then assist in determining the quantities of canned or bottled olive oil eligible for aid, under the supervision of the Member State concerned. Packaging undertakings not belonging to a trade organization can have the work done by an organization of their own choice. In such cases, the organizations in question have the power to apply for and receive aid for those undertakings.

- 3 Under Article 11(5) of Regulation No 136/66, as amended by Regulation No 1917/80, by way of a fee the recognized trade organizations are to receive a percentage, determined by the Council, of the amount of consumption aid paid to them. The purpose of that fee is to cover the expenditure incurred in the work done pursuant to the provisions set out above.
- 4 Pursuant to Article 4(1)(a) of Regulation No 3089/78, as amended by Council Regulation (EEC) No 3461/87 of 17 November 1987 (OJ 1987 L 329, p. 1), consumption aid is to be granted in respect of olive oil which complies with one of the definitions given in point 1(a) and (b) and points 3 and 6 of the Annex to Regulation No 136/66/EEC, as amended by Council Regulation (EEC) No 356/92 of 10 February 1992 (OJ 1992 L 39, p. 1), namely extra virgin olive oil, virgin olive oil, olive oil and olive-residue oil.
- 5 Pursuant to Article 7 of Regulation No 3089/78, Member States are required to institute a system of supervision to ensure that the product for which aid has been applied qualifies for such aid. The first paragraph of Article 8 provides that aid is

to be paid when the supervisory body designated by the Member State in which packaging takes place has checked that the conditions for granting the aid have been satisfied.

- 6 As regards, more specifically, the conditions for grant of aid relating to type and quality provided for in Article 4(1)(a) of Regulation No 3089/78, the Commission adopted Regulation (EEC) No 2568/91 of 11 July 1991 on the characteristics of olive oil and olive-residue oil and on the relevant methods of analysis (OJ 1991 L 248, p. 1, rectification OJ 1992 L 347, p. 69, hereinafter 'Regulation No 2568/91').

- 7 As regards the supervisory measures intended for the detection of fraud, the first subparagraph of Article 5(1) of Commission Regulation (EEC) No 2677/85 of 24 September 1985 laying down implementing rules in respect of the system of consumption aid for olive oil (OJ 1985 L 254, p. 5, hereinafter 'Regulation No 2677/85'), as amended by Commission Regulation No 1008/92 of 23 April 1992 (OJ 1992 L 106, p. 12, hereinafter 'Regulation No 1008/92'), provides that Member States are to check by sampling, using the methods set out in the Annexes to Regulation No 2568/91, that bottled or canned oil meets one of the definitions referred to in Article 4(1)(a) of Regulation No 3089/78, namely extra virgin olive oil, virgin olive oil, olive oil and olive-residue oil.

- 8 As regards the system of penalties, Article 5(2) of that regulation, as amended by Regulation No 1008/92, was drafted in the following terms before the regulation at issue entered into force:

'Where the competent authority in each Member State finds that the oil in question does not meet one of the definitions referred to in paragraph 1 as a result of blending or other chemical processes intended to render oil not eligible for consumption aid so eligible, the competent authority shall forthwith withdraw the plant's approval for a period of one to five years depending on the gravity of the

infringement, without prejudice to any other penalties. In addition, the plant concerned shall be required to pay the Member State a sum equal to twice the consumption aid applied for in the course of one of the months following that in which the samples were taken. The sum collected by the Member State shall be deducted from the expenditure of the European Agricultural Guidance and Guarantee Fund by the authorities or paying agencies of the Member States.

Where irregularities other than those referred to in the first subparagraph are observed, the competent authority shall be notified thereof in each case.'

- 9 With a view to clarifying the facts constituting the infringements described above and to ensuring that the penalties applied are commensurate with the gravity of each case, the Commission adopted Regulation (EC) No 887/96 of 15 May 1996, amending Regulation No 2677/85 (OJ 1996 L 119, p. 16, hereinafter 'the regulation at issue' or 'Regulation No 887/96').
- 10 Article 1(1) of the regulation at issue provides that Article 5(2) of Regulation No 2677/85 is to be replaced by the following:

'2. Where the competent authority in any Member State finds that the oil in question does not meet any of the definitions referred to in paragraph 1:

- if the quality ascertained meets one of the other definitions set out in the Annex to Regulation No 136/66/EEC, it shall apply a penalty equal to between 20% and 80% of the monthly average of consumption aid applied for in the 12 months preceding that in which the samples were taken, depending on the seriousness of the infringement;

- in all other cases, it shall immediately withdraw the undertaking's approval for a period of one to five years, depending on the seriousness of the infringement, any other penalties notwithstanding. In addition, the undertaking in question shall be required to pay the Member State an amount equal to twice the average monthly consumption applied for in the 12 months preceding that in which samples were taken.

The penalties provided for in the first subparagraph shall not apply where the packaging undertaking proves to the satisfaction of the Member State that the failure of the oil to meet the definitions in question is the result of exceptional circumstances beyond the undertaking's control.

[...]

Where irregularities other than those referred to in the first subparagraph are observed, the competent authorities shall be notified immediately in each case.'

Subject-matter of the dispute

- ¹¹ The Federazione Nazionale del Commercio Oleario (hereinafter 'Federolio') is a non-profit-making association established under Italian law to represent, protect and assist undertakings engaged in packaging or acting as wholesalers or intermediaries on the market for edible vegetable oils, in Italy and abroad (Article 1 of its statutes). It was recognized by the Italian authorities as a trade organization for the purposes of the application of the system of consumption aid, under Article 11(3) of Regulation No 136/66.

- 12 In the present case it seeks the partial annulment of Regulation No 887/96 in so far as Article 1, amending the first indent of Article 5(2) of Regulation No 2677/85, introduced a system of penalties with respect to packaging undertakings which are recognized under Article 2 of Regulation No 3089/78 when the oil in respect of which aid was granted does not exhibit the characteristics laid down by the Community rules in order to benefit from such aids.

Procedure and forms of order sought by the parties

- 13 The applicant lodged the originating application in the present case on 6 August 1996.
- 14 In that application it claims that the Court of First Instance should:
- annul the part of the regulation at issue which lays down a system of penalties linked to substantively strict liability, that is to say non-conformity of the product with the characteristics set out in the tables annexed to Regulation No 2568/91, without specifying that such non-conformity must be imputable to an act on the part of the party on whom the penalty is imposed;
 - similarly, annul all measures linked to the aforementioned measure, whether adopted before, at the time of, or after that measure;
 - order the Commission to pay the costs.
- 15 By document lodged at the Registry of the Court of First Instance on 9 October 1996, the Commission raised a plea of inadmissibility, contending that the Court of First Instance should:
- declare the action brought by Federolio inadmissible;
 - order the applicant to pay the costs.

16 In its observations on the plea of inadmissibility, lodged on 19 November 1996, the applicant contended that the Court of First Instance should:

- dismiss the plea and, alternatively, reserve it for the final judgment;
- fix a hearing for oral argument to be heard on the plea of inadmissibility raised by the Commission.

Admissibility of the action

Arguments of the parties

17 The Commission recalls the wording and the purpose of the fourth subparagraph of Article 173 of the EC Treaty concerning the right of individuals to bring proceedings in respect of regulations and the characteristics distinguishing a regulation from a decision which have been identified by the Court of Justice and by the Court of First Instance. It stresses that the contested provision specifies and varies the penalties to be applied by the competent authorities of the Member States in respect of oil-packaging undertakings where, following an inspection by the national inspection authorities, the oil in respect of which an application for consumption aid has been made is found not to meet the characteristics laid down by the Community rules in order to be eligible for such aid. The provision is intended to ensure that the penalties applied are commensurate with the varying degrees of gravity of the irregularities detected and, at the same time, to ensure that they constitute a sufficient deterrent to carrying out fraudulent transactions at the expense of Community funds. It consequently applies to objectively defined situations which produce legal effects with respect to persons envisaged in a general and abstract manner, that is to say all undertakings which satisfy the conditions laid down by Regulation No 3089/78 and have been recognized by the Member States for the purposes of consumption aid or could be so recognized in due course.

- 18 The Commission claims that the provision at issue does not concern a particular and ascertained group of persons, which cannot subsequently change. The system of penalties for which it provides applies to infringements committed by any undertaking which has been granted recognition by the Member States concerned on the basis of Regulation No 3089/78, even before that regulation entered into force. According to the defendant, the number and identity of those undertakings could therefore clearly not have been known when the regulation at issue was adopted. Its nature and scope therefore confer on it a legislative character. It does not constitute a decision within the meaning of Article 189 of the Treaty.
- 19 The Commission states that the principle that an association, in its capacity as the representative of a category of undertakings, is individually concerned by a measure affecting the general interests of that category cannot be accepted.
- 20 The Commission recalls the situations in which case-law has acknowledged the right of associations or organizations created for the promotion of collective interests to bring proceedings and then sets out the reasons for which it considers that the applicant does not find itself in any of those situations.
- 21 First, the applicant cannot rely on the judgment in Case 191/82 *Fediol v Commission* [1983] ECR 2913. In that case the Court of Justice accepted that a trade association had an interest in bringing proceedings against a Commission decision in view of the fact that it enjoyed a number of procedural rights. The procedure for the adoption of an agricultural regulation does not provide for any participation by individuals.
- 22 Second, Federolio's position cannot in any way be assimilated to that of the applicant in Case C-313/90 *CIRFS and Others v Commission* [1993] ECR I-1125, paragraphs 28 to 30, whose interest in bringing proceedings against a decision on aids was recognized, not only in the light of the role which it had played in the

procedure prior to the proceedings, but also on the basis of the fact that that association had been the Commission's interlocutor and that its position in its capacity as a negotiator of the discipline had therefore been affected by the contested decision. From that point of view, the mere fact that Federolio exchanged correspondence with the Commission concerning the proposed amendments to Regulation No 2677/85 and that it submitted comments on them is not sufficient to accord it a legitimate interest in bringing proceedings, since it was in no way the Commission's interlocutor with regard to the adoption of the regulation at issue.

- 23 Third, this case does not concern a group action brought through the association by some of its members who could have brought individual proceedings in their own right. In contrast to the situation in Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and Others v Commission* [1995] ECR II-1971, paragraph 62, the applicant association has not submitted that the individual situation of any (or, possibly, all) of the associated undertakings is such as to differentiate them from other undertakings in the sector.
- 24 Finally, in the present case, the case-law derived from the judgment in Case C-309/89 *Codorniu v Council* [1994] ECR I-1853 cannot apply because, in contrast to the regulation at issue in that case, Regulation No 887/96 did not prejudice any specific right of the association and its members.
- 25 The applicant claims that the contested measure is not legislative in nature. It notes that approximately one thousand packaging undertakings are entitled to benefit from the consumption aid, in a total market of several million traders receiving production or export aids and intervention measures. That group of undertakings, which could easily be identified at the date on which the regulation at issue entered into force, was directly and individually concerned by the provision for a penalty not linked to any finding of liability and, consequently, unforeseeable and unavoidable, even if the undertaking acted with all due diligence in carrying out

the inspections prescribed at the packaging stage. Those factors deprive the regulation of its legislative character and confer on it the quality of a decision.

- 26 Even if the regulation is considered to be general and abstract in character, it could none the less adversely affect a specific interest of Federolio, so justifying the latter's claim that it is directly and individually affected.
- 27 According to the applicant, its capacity to bring proceedings results from the fact that (a) it has an interest which is distinct from that of its members and (b) the harm caused to that interest by Regulation No 887/96 distinguishes it from the persons to whom the Community measure was addressed.
- 28 Federolio claims, first, that its role is not exclusively to act as the spokesperson for its members' interests. On the contrary, it is constantly required to act as mediator, conciliator and filter of conflicting interests amongst packaging undertakings. That being so, it fulfils an institutional role which is legally recognized by the Italian State and consists, first, in continuous and active involvement, alongside the competent authorities, in the development and dissemination of national and Community policies for the promotion of a native product, whilst exposing and condemning abuse and fraud when appropriate and, second, permanently informing and advising its members.
- 29 It stresses that it is a trade organization recognized under Article 11 of Regulation No 136/66 and that, as such, on the basis of an ad hoc agreement, it is responsible for the payment of aids to packaging undertakings. For that reason also, it has a specific interest of its own in the proper organization and operation of the system of consumption aid as a whole.

- 30 Second, it is apparent from the case-law both of the Community courts and the courts of the Member States that an association can have an interest which is not limited to that of its members and have duties and interests which are not the sum of those of its various components, but belong to the trade category taken as a whole.
- 31 As regards Italy, more specifically, the Corte di Cassazione (Court of Cassation) expressly confirmed the principle that a corporation of persons constituted so as not to exceed the bounds of the objects recognized as proper to a legal person has legal capacity to bring proceedings (Cassazione Civile, judgment of 12 May 1973, *Soc. Acque Caraci del Fasano v Consorzio Utenti Acque del Fasano*, *Foro Italiano* 1973, I, p. 816).
- 32 As regards the case-law of the Community courts, the order of the Court of First Instance in Case T-585/93 *Greenpeace and Others v Commission* [1995] ECR II-2205, paragraph 59, admittedly confirmed the principle that 'an association formed for the protection of the collective interests of a category of persons cannot be considered to be directly and individually concerned for the purposes of the fourth paragraph of Article 173 of the Treaty by a measure affecting the general interests of that category, and is therefore not entitled to bring an action for annulment where its members may not do so individually'. However, that order added (also at paragraph 59) that 'special circumstances such as the role played by an association in a procedure which led to the adoption of an act within the meaning of Article 173 of the Treaty may justify holding admissible an action brought by an association whose members are not directly and individually concerned by the contested measure'.
- 33 Those decisions confirm the view that a distinction can be made between the interests of the association and those of its members. According to that view, in determining whether a person has an interest in bringing proceedings for the purposes of Article 173, it is necessary to seek to establish which factors would make it

possible to identify a distinct interest on the part of the association, such as to confer on the association capacity to bring proceedings against a measure under Article 173 of the Treaty, independently of its members.

34 In that respect, the Community case-law concerning challenges to Commission decisions on State aids and anti-dumping measures attaches particular importance to two factors. First, that the undertaking or trade association was the source of the complaint which led to the opening of the investigation procedure, that its views were heard during that procedure and that they largely determined the conduct of it (to that effect, in respect of anti-dumping measures, see Case 264/82 *Timex v Council* [1985] ECR 849; that principle was extended to the procedure referred to in Article 93 of the Treaty by the judgment in Case 169/84 *Cofaz and Others v Commission* [1986] ECR 391). Second, in the case of anti-dumping measures, that the regulation itself acknowledged that an association whose members have been affected by the dumping has a legitimate interest in seeking protective measures.

35 As regards participation in the procedure, the Court of Justice held in the judgment in *Cofaz and Others v Commission*, cited at paragraph 34 above, that the applicant could only bring proceedings under two circumstances:

(1) active participation in the investigation procedure,

(2) significant jeopardy to its market position.

36 At first sight, therefore, the existence of an interest in bringing proceedings appears to depend on external factors which, in any event, are not necessarily linked to the substantive situation of the association. Indeed, the Court and the Court of First Instance have repeatedly held that participation in the investigation can be

evidence that the measure in question is of concern to the applicant within the meaning of Article 173 of the Treaty (to that effect, see *AITEC and Others v Commission*, cited at point 23 above, paragraph 36).

37 None the less it is important not to lose sight of the fact that active participation in the procedure is only one of the factors which may indicate that the applicant's position is directly affected by the measure. In other words, that participation is just one of the possible indicators of the harm suffered by the applicant. There is no reason why the significant harm caused to the applicant may not be proven by other means. If the contrary were true, the result would be unacceptable inequality between applicants who were significantly affected by the contested measure, according to whether or not they had been able to participate in the procedure resulting in the adoption of that measure.

38 In the present case, Federolio certainly had no formal involvement in the adoption of the contested regulation, although it was in constant correspondence with the Commission. However, it is undeniably true that, notwithstanding its normative tenor, the regulation has a direct effect on the applicant's interest in the protection, promotion and proper operation of the oil market, particularly from the point of view of competition. That market, and the very system of consumption aids which Federolio is required to administer together with the competent authorities, suffers irreparable damage as a result of the penalties linked to substantively strict liability, in so far as they are not based on intentional wrongdoing or on fault on the part of the undertaking receiving the aid.

39 Since the judgment in *Fediol v Commission* (cited at paragraph 21 above), it has been regarded as of decisive import that Council Regulation (EEC) No 3017/79 of 20 December 1979 on protection against dumped or subsidized imports from countries not members of the European Economic Community (OJ 1979 L 339, p. 1) expressly grants trade associations a number of procedural rights.

40 The grounds of that judgment are suggestive of two different orders of consideration.

41 First, it is not purely by chance that the anti-dumping regulations formally acknowledge the capacity of trade associations to bring proceedings. The fact is that this reflects the role actually played by the associations on the market affected by the dumping. However, it is not clear why that right to bring proceedings should be exclusively attached to the existence of a formal element, such as reference to the association in the regulation, even though the right has a substantive basis. Parity of reasoning requires that an association's capacity to bring proceedings should also be recognized when the association's position is similar to that of an association formally mentioned in an anti-dumping regulation, even though the Community measure does not contain any specific reference to that association. It is not permissible that the applicant's position should differ according to whether State aid or anti-dumping measures are involved, on the one hand, or a regulation concerning Community aid, on the other, even though it is established that that regulation is such as to affect the applicant's position on the market in the same way as the first two types of measure.

42 The judgments of the Court of Justice in Case C-358/89 *Extramet Industrie v Council* [1991] ECR I-2501 and *Codorniu v Council*, cited at paragraph 24 above, abandoned the purely formal criteria, such as the general or specific character of the measure or whether the persons to whom the measure is addressed constitute an open and indistinct category or a closed category, the members of which are individually distinguished.

43 What is now important is only that the contested measure should produce effects for the applicant. If the measure affects it in such a way that the harm suffered is capable of putting it in a position which differs substantially from that of the persons to whom the measure is addressed, its capacity to bring proceedings under the fourth paragraph of Article 173 of the Treaty must be acknowledged.

- 44 Second, if formal reference to the association is the necessary condition for its capacity to bring proceedings under the fourth paragraph of Article 173 of the Treaty to be recognized, and even though the Community measure contains no such recognition, that conformity is none the less recognized under Italian law, which confers specific tasks and functions on Federolio which, in coordination with those of the competent administrative authorities, effectively contribute to the regulation and development of the olive-oil market.
- 45 The relevance of such recognition at national level is confirmed by Community case-law. In his Opinion in *Fediol v Commission*, cited at paragraph 21 above, Advocate General Rozès, considering whether or not the trade association had capacity to bring proceedings for the purposes of the second paragraph of Article 173 of the Treaty (now the fourth paragraph), affirmed that in that respect it was not necessary to refer to formal legal personality, but that inquiry must be made as to whether the association in question is recognized by law and endowed with certain powers in order to fulfil the duties entrusted to it (ECR, at 2937, 2939 and 2940).
- 46 Finally, the applicant, in its capacity as a trade association whose institutional tasks, as laid down in its statutes and under Italian law, involve substantially more than merely protecting the interests of its members, should be considered as having capacity to bring proceedings under the fourth paragraph of Article 173 of the Treaty. It may therefore bring an action against Regulation No 887/96, in so far as that measure adversely affects not only an interest of its members, but also an interest which is peculiar to the association itself. More specifically, the applicant is directly and individually affected by the regulation at issue in so far as, by altering the system of consumption aids, it hinders the applicant in the pursuit of the objectives, set out in its statutes, of ensuring the protection and development of the olive-oil market in collaboration with the competent authorities.
- 47 Federolio is indeed affected by Regulation No 887/96 because, by establishing a new system of penalties which was entirely alien to the criteria commonly adopted

in every Member State governed by the rule of law and forming the basis of the Community legal system itself, that measure introduces a system of liability for packaging undertakings which openly flaunts the principles of equality, proportionality and legality in imposing the penalty. That situation affects the applicant directly and individually in respect of what is the principal purpose of its institutional tasks, namely those relating specifically to administration of consumption aid, and to the promotion and development of the olive-oil market.

- 48 Furthermore, in the interests of procedural organization and legal certainty the Court of First Instance should hold the application admissible in order to avoid a multiplicity of actions in respect of the measures imposing penalties, which will form the basis for numerous references to the Court of Justice concerning the validity of the regulation, such as those resulting in the judgment in Joined Cases C-143/88 and C-92/89 *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest* [1991] ECR I-415). That would also involve the additional risk of conflicting judgments being delivered by the various national courts which are, in any event considerably less able than the Community courts to reach a decision in full knowledge of the facts (see the Opinion of Advocate General Jacobs in *Extramet Industrie v Council*, cited at paragraph 42 above, ECR 2507, paragraphs 71 and 73). Finally, Community case-law has stated on a number of occasions that Article 173 of the Treaty should not be interpreted restrictively.

Findings of the Court

- 49 Article 114 of the Rules of Procedure provides that, if a party so requests, the Court of First Instance may give a decision on admissibility, a preliminary issue not going to the substance of the case. In accordance with paragraph 3 of that article, the remainder of the proceedings are to be oral, unless the Court of First Instance decides otherwise. In the present case, the Court of First Instance has sufficient information from examination of the documents on the file and a decision will be given on the application without opening the oral procedure.

- 50 According to settled case-law, the fourth paragraph of Article 173 of the Treaty allows individuals to challenge any decision which, although in the form of a regulation, is of direct and individual concern to them. The objective of that provision is in particular 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 (see judgment in Joined Cases 789/79 and 790/79 *Calpak and Società Emiliana Lavorazione Frutta v Commission* [1980] ECR 1949, paragraph 7, and order in Case T-476/93 *FRSEA and FNSEA v Council* [1993] ECR II-1187, paragraph 19).
- 51 It is also clear from settled case-law that the test for distinguishing between a regulation and a decision is whether or not the measure in question has general application (Case 307/81 *Alusuisse v Council* [1982] ECR 3463, paragraph 8).
- 52 In the present case, it is therefore necessary to examine the character of Regulation No 887/96 and, in particular, the legal effects which it is intended to or does in fact produce.
- 53 The regulation is intended to amend Regulation No 2677/85. It provides for variation of the penalties to be imposed where the competent authority of a Member State finds that the olive oil in question does not meet one of the definitions in the Annex to Regulation No 136/66 or where, although it meets one of those definitions, it does not correspond to the stated quality. Furthermore, it specifies situations in which penalties need not be imposed.
- 54 Such provisions are already measures of general application within the meaning of Article 189 of the Treaty. They apply to objectively defined situations and involve legal effects with respect to categories of persons defined in a general and abstract manner, namely the undertakings which package olive oil, which are recognized

under Article 2 of Regulation No 3089/78 and to which consumption aid for olive oil is granted.

- 55 In accordance with well-settled case-law, the general application and thus the legislative nature of a measure are not called into question by the fact that it is possible to determine the number or even the identity of the persons to whom it applies at a given moment with a greater or lesser degree of precision, as long as it is established that it is applied by virtue of an objective legal or factual situation defined by the measure in relation to the objective of the latter (Case 6/68 *Zuckerfabrik Watenstedt v Council* [1968] ECR 409, 415; Case 64/69 *Compagnie Française Commerciale et Financière v Commission* [1970] ECR 221, paragraph 11, Case 101/76 *Koninklijke Scholten Honig v Council and Commission* [1977] ECR 797, paragraph 23, and order in Case T-183/94 *Cantina Cooperativa fra Produttori Vitivinicoli di Torre di Mosto and Others v Commission* [1995] ECR II-1941, paragraph 48).
- 56 In the present case, the Court finds that, notwithstanding the relatively small number of packaging undertakings receiving consumption aid at the time when it was adopted, the regulation at issue provides for penalties to be imposed on the basis of an objective situation, namely the fact that the quality and/or type of oil declared does not correspond with the quality and/or type specified by the applicable legislation, which is defined with reference to the objective of the regulation, namely the prevention and repression of fraud according to the gravity of the infringement. Furthermore, the number of undertakings affected by the contested regulation can always change.
- 57 It follows that, by its nature and its scope, Regulation No 887/96 is legislative in character and does not constitute a decision within the meaning of Article 189 of the Treaty.
- 58 It has been held in the case-law that, in certain circumstances, even a legislative measure applying generally to the traders concerned may also be of individual concern to some of them (*Extramet Industrie v Council*, cited at paragraph 42 above,

paragraph 13 and *Codorniu v Council*, cited at paragraph 24 above, paragraph 19). In those circumstances, a Community measure could be of a legislative nature and, at the same time, *vis-à-vis* some of the traders concerned, be in the nature of a decision (Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others v Commission* [1995] ECR II-2941, paragraph 50).

- 59 Natural or legal persons may, however, claim that a contested measure is of individual concern to them only if it affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons (Case 25/62 *Plaumann v Commission* [1963] ECR 95, 107, and *Codorniu v Council*, cited at paragraph 24 above, paragraph 20; Case T-12/93 *CCE de Vittel and Others v Commission* [1995] ECR II-1247, paragraph 36).
- 60 In the present case it should therefore be ascertained whether the applicant is affected by the regulation at issue by virtue of certain attributes which are peculiar to it or whether circumstances exist in which it is differentiated from all other persons with regard to that regulation.
- 61 As regards, more specifically, actions brought by associations, these have been held to be admissible in at least three types of situation, namely:

- (a) where a legal provision expressly grants trade associations a series of procedural rights (*Fediol v Commission*, cited at paragraph 21 above, paragraphs 28 to 30, and *CCE de Vittel and Others v Commission*, cited at paragraph 58 above, paragraphs 39 to 42);

(b) where the association represents the interests of undertakings which would be entitled to bring proceedings in their own right (*AITEC and Others v Commission*, cited at paragraph 23 above, paragraph 62);

(c) where the association is differentiated because its own interests as an association are affected, and especially where its position as negotiator is affected by the measure which it seeks to have annulled (Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others v Commission* [1988] ECR 219, paragraphs 21 to 24, and *CIRFS and Others v Commission*, cited at paragraph 22 above, paragraphs 28 to 30; judgment in *Exporteurs in Levende Varkens and Others v Commission*, cited at paragraph 57 above, paragraph 64).

62 In those three situations, the Court of Justice and the Court of First Instance have also taken into account the participation of the associations in question in the procedure.

63 As regards the first type of situation which justifies admitting an action brought by an association, namely where trade associations are legally granted a series of procedural rights, it is sufficient to note that none of the regulations concerning the grant of consumption aids in respect of olive oil grants any procedural rights whatever to trade associations such as Federolio.

64 Nor, in that respect, may the applicant rely on the specific tasks and duties which Italian law recognizes it as having. The fact that the Italian authorities have conferred such tasks/duties on the applicant in the context of the regulation and development of national and Community policies for the promotion of olive oil in Italy, assuming this to be proven, and the consequent capacity which the applicant may have to bring proceedings before the Italian courts, cannot justify a change in the system of remedies which is established by Article 173 of the Treaty and which is designed to confer on the Community courts the power to review the legality of acts of the institutions. That situation cannot in any event, constitute a ground for declaring admissible an action for annulment brought by a natural or legal person

which does not satisfy the conditions laid down by the fourth paragraph of Article 173 of the Treaty (order of the Court of Justice in Case C-87/95 P *CNPAAP v Council* [1996] ECR I-2003, paragraph 38 and orders in *Greenpeace and Others v Commission*, cited at paragraph 32 above, paragraph 51 and *Cantina Cooperativa fra Produttori Vitivinicoli di Torre di Mosto and Others v Commission*, cited at paragraph 54 above, paragraph 59). To hold otherwise would mean that the admissibility of an action for annulment no longer depended on the desire of the Community legislature to involve certain traders and/or trade associations in the process of preparing acts of the institutions, but on an autonomous decision of the national authorities based on the interests of the Member State concerned rather than on the public interest of the Community.

- 65 Furthermore, even assuming that the assignment by national authorities of certain tasks and/or duties to an association may be held to be a factor which serves to distinguish an association individually for the purposes of the fourth paragraph of Article 173 of the Treaty, the fact none the less remains that that situation is not sufficient to distinguish the applicant individually, since it has not established how its position differs from that of any other association in the Community entrusted with tasks and/or duties enjoying like recognition at national level.
- 66 As regards the second justification (see paragraph 60, under (b), above) for the admissibility of the action, inasmuch as the association represents the interests of undertakings which are, themselves, individually affected, the applicant considers that the packaging undertakings in receipt of consumption aid, of which there are a thousand, constituted an easily identifiable group on the date on which the regulation at issue entered into force and are therefore directly and individually affected by its adoption. In those circumstances, Federolio's right to bring proceedings is based on the specific interest of its members, which it represents.
- 67 In that respect, it should be noted that the fact that, at the time it was adopted, the contested regulation affected a limited number of olive-oil packaging undertakings

which were then registered with the national authorities, does not differentiate them from any other undertaking, since they are in a situation which is comparable with that of any other undertaking which might now or at some time in the future enter the olive-oil packaging market and seek consumption aids (order in Case T-116/94 *Cassa Nazionale di Previdenza ed Assistenza a Favore Degli Avvocati e Procuratori v Council* [1995] ECR II-1, paragraph 28).

68 Finally, as regards the third justification (see paragraph 60, under (c), above) for the admissibility of the action, namely that the particular interests of the association itself were affected by the contested act, Federolio considers that its interests consist, first, of its interest in the operation of the system with regard to the objective pursued by the Community and, second, of its interest in the proper organization and operation of the system of consumption aid as a whole, in its capacity as a trade organization recognized under Article 11 of Regulation No 136/66 and responsible for paying aids to packaging undertakings.

69 On that point, it should be borne in mind that, according to settled case-law, an association set up to promote the collective interests of a category of persons cannot be considered to be individually concerned, within the meaning of the fourth paragraph of Article 173 of the Treaty, by a measure affecting the general interests of that category, and, consequently, may not bring an action for annulment when its members could not do so individually (Joined Cases 19/62, 20/62, 21/62 and 22/62 *Fédération Nationale de la Boucherie en Gros et du Commerce en Gros des Viandes and Others v Council* [1962] ECR 491, 499 and Case 72/74 *Union Syndicale and Others v Council* [1975] ECR 401, paragraph 17; order in Case 60/79 *Fédération Nationale des Producteurs de Vins de Table et Vins de Pays v Commission* [1979] ECR 2429, 2432; Case 282/85 *DEFI v Commission* [1986] ECR 2469, paragraph 16; order in Case 117/86 *UFADE v Council and Commission* [1986] ECR p. 3255, paragraph 12; *AITEC and Others v Commission*, cited at paragraph 23 above, paragraphs 58 and 59). None the less, the existence of particular circumstances, such as the role played by an association in a procedure leading to the adoption of an act within the meaning of Article 173 of the Treaty, may justify

admitting an action brought by an association whose members are not directly and individually concerned by the act at issue, particularly when its position as negotiator is affected by it (*Van der Kooy and Others v Commission*, cited at paragraph 60 above, paragraphs 21 to 24, and *CIRFS and Others v Commission*, cited at paragraph 22 above, paragraphs 28 to 30).

- 70 It is therefore necessary to consider whether the specific interests relied on by the applicant, namely its institutional role and its capacity as a body responsible for the payment of aid to the packaging undertakings, are such as to distinguish it individually for the purposes of the fourth paragraph of Article 173 of the Treaty.
- 71 It should first be noted that the tasks described by the applicant as its institutional duties are entrusted to it by its members, that is to say by the olive-oil packaging undertakings and that, by virtue of its statutes, those undertakings undeniably have the power to determine the association's management and tasks and hence also to define the interests which that organization must defend (Articles 5(8) and 27 of its statutes and judgment in *DEFI v Commission*, cited at paragraph 68 above, paragraph 18). In those circumstances, the interests which Federolio claims are particular to it are not distinct from the interests of the olive-oil packaging undertakings, in particular as regards the protection and development of the olive-oil market in Italy.
- 72 It should next be noted that the regulation at issue does not affect the applicant's own interests, in its capacity as an organization responsible for the payment of aids to packaging undertakings. Since it is not a packaging undertaking, penalties cannot be imposed on Federolio under that regulation. Furthermore, in so far as it is a non-profit making organization (Article 1 of its statutes), the fee received in respect of its contribution to the administration of the consumption-aid scheme is intended solely to cover the expenses resulting from administering the system of payment of aids (Article 11(5) of Regulation No 136/66, as amended by Regulation No 1917/80). In those circumstances, any reduction in that source of

income, resulting from the application of the new system of penalties, assuming it is to be proven, could not jeopardize the viability of Federolio as an association (see, by analogy, the judgment in *CCE de Vittel and Others v Commission*, cited at paragraph 58 above, paragraph 52). Finally, Federolio has not established how its capacity as an organization responsible for the payment of aids is different from that of other organizations performing the same task in Italy or elsewhere in the Community and distinguishes it individually for the purposes of the fourth paragraph of Article 173 of the Treaty.

- 73 The applicant is therefore not individually distinguished by any of the criteria adopted by the case-law concerning the admissibility of actions for annulment brought by associations.
- 74 On the basis of its analysis of the judgments in *Fediol v Commission*, cited at paragraph 21 above, *Cofaz and Others v Commission*, cited at paragraph 34 above, *AITEC and Others v Commission*, cited at paragraph 23 above, *Extramet Industrie v Council*, cited at paragraph 42 above, and *Codorniu v Council*, cited at paragraph 24 above, the applicant none the less considers that, since its situation is no different from that of the applicant associations in those cases and, in particular, in *Fediol v Commission*, the Court of First Instance should recognize its capacity to bring proceedings against the regulation at issue. According to the applicant, it would be contrary to the principle of non-discrimination to base a trade association's right to bring proceedings on a concept of individual interest which varies according to the legal basis of the regulation at issue.
- 75 That argument cannot be accepted. The admissibility of actions for annulment under Article 173 of the EC Treaty is dependent, unlike the situation under the ECSC Treaty, on criteria for differentiation which go beyond the mere requirement that the interests of the undertakings and/or associations in question must be affected. As the Court of Justice held in Joined Cases 16/62 and 17/62 *Confédération Nationale des Producteurs de Fruits et Légumes and Others v Council* [1962] ECR 471, 478, 'the system thus established by the Treaties of Rome lays down more restrictive conditions than does the ECSC Treaty for the admissibility of actions for annulment by private individuals'; in so doing, it stressed that 'it would

not be appropriate for the Court to pronounce on the merits of this system'. In those circumstances, the fact that the admissibility of an action for annulment brought by an association representing the interests of certain undertakings may depend on the relevant regulatory framework — since, in the context of a Community measure of a legislative nature, it can distinguish itself individually by participating in the administrative procedure preceding the adoption of the contested act, whilst, in a different context, it would not be able to do so in the absence of a legislative provision providing for such participation — does not constitute a breach of the principle of equality provided that it has not been established that, by so acting, the Community legislature infringed general principles of Community law, such as the right to be heard. The very nature of the process of preparing legislative acts and of such acts themselves, as measures of general application, is such that the participation, by virtue of those principles, of the persons and/or associations affected is not required, their interests being deemed to be represented by the political authorities called upon under the Treaty to adopt those acts.

76 That view is confirmed, at least implicitly, by the judgment in Joined Cases C-15/91 and C-108/91 *Buckl and Others v Commission* [1992] ECR I-6061, paragraphs 28 to 30). In that case, which concerned an action for annulment of a Commission regulation, the applicants claimed that their position was analogous to that of traders faced with a regulation introducing anti-dumping duties, and that the Court of Justice had, in its judgments in that field, accepted that individuals may seek the annulment of such a regulation.

77 However, the Court of Justice did not follow that reasoning, holding that, while it was true that in the context of an anti-dumping proceeding it had accepted that complainants may, in particular cases, be entitled to bring an action for annulment against the refusal of the Commission to institute an anti-dumping proceeding, it had acknowledged that right only in view of the legal position granted to them under the relevant basic regulations. However, it held that no corresponding protection for Community producers was introduced in the context of the regulation at issue, and that the applicants therefore had no ground for claiming that they were entitled to the same judicial protection as that given to complainants in an anti-dumping proceeding.

- 78 In other words, the Court of Justice impliedly, but necessarily, acknowledged that the fact that the interests of an undertaking or an association of undertakings are affected in a manner analogous to those of undertakings and/or associations who are able to exercise procedural rights in the field of anti-dumping measures cannot bring about an extension of the rights of the former to bring an action for annulment, when equivalent rights have not been granted to it by the rules applicable in their field of activity. That decision is based on the very nature of the legislative process which does not, as such, require that all persons affected should be heard, although it does not rule out the possibility for the legislature to seek information from undertakings and/or associations concerned when the characteristics of the economic sector at issue so justify.
- 79 Finally, the applicant cannot claim that declaring the action admissible would avoid the risk of a multiplicity of actions in respect of measures imposing penalties and a risk of conflicting judgments from the various national courts. Even if it is established that such a risk exists, this cannot justify a change in the system of remedies which is established by Article 173 of the Treaty and which is designed to confer on the Community Court the power to review the legality of acts of the institutions. That situation could not in any event constitute a ground for declaring admissible an action for annulment brought by a natural or legal person which does not satisfy the conditions laid down by the fourth paragraph of Article 173 (see, by analogy, the orders in *CNPAAP v Council*, cited at paragraph 63 above, paragraph 38 and *Greenpeace and Others v Commission*, cited at paragraph 32 above, paragraph 51).
- 80 In that respect, the procedure laid down in Article 177 of the Treaty specifically enables legal and natural persons to challenge the validity of acts of the institutions when they are not entitled to bring an action for annulment under Article 173 of the Treaty, whilst avoiding the risk of conflicting decisions from the various national courts.
- 81 It follows from all the foregoing considerations that the applicant is not individually concerned by the regulation at issue. The application must therefore be dismissed as inadmissible.

Costs

- 82 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been asked for in the successful party's pleadings. Since the applicant has been unsuccessful, and the Commission has asked for costs, the applicant must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby orders:

1. **The application is dismissed as inadmissible.**
2. **The applicant is ordered to pay the costs.**

Luxembourg, 30 September 1997.

H. Jung

Registrar

II - 1588

R. García-Valdecasas

President