JUDGMENT OF THE COURT OF FIRST INSTANCE
(Fifth Chamber, Extended Composition)

11 February 1999 *

In Case T-86/96,

Arbeitsgemeinschaft Deutscher Luftfahrt-Unternehmen, an association constituted under German law, having its headquarters in Bonn and comprising the following members:

— **Aero Lloyd Flugreisen GmbH&Co. Luftverkehrs-KG**, a company incorporated under German law, having its registered office in Oberursel (Germany),

— **Air Berlin GmbH&Co. Luftverkehrs KG**, a company incorporated under German law, having its registered office in Berlin,

— **Condor Flugdienst GmbH**, a company incorporated under German law, having its registered office in Kelsterbach (Germany),

— **Germania Fluggesellschaft mbH**, a company incorporated under German law, having its registered office in Berlin,

— **Hapag-Lloyd Fluggesellschaft mbH**, a company incorporated under German law, having its registered office in Langenhagen (Germany),

— **LTU Lufttransport Unternehmen GmbH&Co. KG**, a company incorporated under German law, having its registered office in Düsseldorf (Germany),

* Language of the case: German.

and

Hapag-Lloyd Fluggesellschaft mbH, a company incorporated under German law, having its registered office in Langenhagen, acting on its own behalf,

represented by Gerrit Schohe, Rechtsanwalt, Hamburg, with an address for service in Luxembourg at the Chambers of Marc Baden, 34b Rue Philippe II,

applicants,

v

Commission of the European Communities, represented by Anders Jessen and Paul Nemitz, of its Legal Service, acting as Agents, assisted by Hans-Jürgen Rabe and Georg M. Berrisch, of the Hamburg and Brussels Bars, having an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for annulment of Commission Decision 96/369/EC of 13 March 1996 concerning fiscal aid given to German airlines in the form of a depreciation facility (OJ 1996 L 146, p. 42),

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

composed of: J. D. Cooke, President, R. García-Valdecasas, P. Lindh, J. Pirrung and M. Vilaras, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 29 October 1998,

gives the following

Judgment

Facts

1 In 1965 the Federal Republic of Germany introduced into its tax legislation Paragraph 82f of the Einkommensteuer-Durchführungsverordnung (Implementing Regulation on Income Tax) ('the EStDV'). This established, for a fixed period, special depreciation treatment for the acquisition costs of certain categories of merchant ships, fishing boats and aircraft.

2 Under this treatment, operators acquiring a new aircraft were able, during the year of acquisition and for the four subsequent years, to apply a special depreciation of up to 30% of the total acquisition cost. This special depreciation could be spread at discretion over the first five years. At the end of that period, the balance of the acquisition cost had to be written down according to the straight-line method. The aircraft covered by this provision were aircraft registered in Germany and used commercially for the international transport of goods or persons or for other service activities performed outside Germany.

3 In 1986 the German authorities extended the validity of Paragraph 82f of the EStDV to 31 December 1994.

4 On 21 April 1993 the Commission, pursuant to Article 93(1) of the EC Treaty, informed the German Government that this depreciation facility constituted existing aid incompatible with Article 92 of the Treaty (OJ 1993 C 289, p. 2). The Commission proposed that it should be abolished, within the civil aviation sector, by 1 January 1994 at the latest. This case was registered under the number E 4/93.

5 By letter of 8 September 1993 the German Government informed the Commission that it intended to extend Paragraph 82f of the EStDV from 1 January 1995 to 31 December 1999. This extension was implemented on 13 September 1993 by the Standortsicherungsgesetz (Law for the Improvement of Conditions of Taxation for ensuring that Germany retains its Position, in the Internal European Market, as a Location for Undertakings; *Bundesgesetzblatt* I, p. 1569). However, its entry into force was made expressly conditional on prior authorisation by the Commission (Article 20(2) of the Standortsicherungsgesetz).

6 The Commission took the view that the German Government's letter of 8 September 1993 constituted notification of new aid under Article 93(3) of the Treaty and registered it as such under number N 640/93.

7 On 8 December 1993 the Commission decided to initiate the procedure provided for in Article 93(2) of the Treaty in the two cases E 4/93 and N 640/93. By a communication published in the *Official Journal of the European Communities* of 19 January 1994, it gave formal notice to the other Member States and any interested third parties to submit comments they might have on the measures in question (OJ 1994 C 16, p. 3).

8 On 29 November 1995 the Commission adopted Decision C (95) 3319 final concerning fiscal aid given to German companies in the form of a depreciation facility ('Decision C 3319'). In essence, that decision prohibited Germany from extending Paragraph 82f of the EStDV from 1 January 1995 to 31 December 1999.

9 By application lodged at the Registry of the Court of First Instance on 28 February 1996 under No T-25/96, the applicants brought an action seeking annulment of Decision C 3319.

10 On 13 March 1996 the Commission adopted Decision 96/369/EC concerning fiscal aid given to German airlines in the form of a depreciation facility (OJ 1996 L 146, p. 42) ('the contested decision').

11 The final paragraph in the recitals of Decision 96/369 states that:

'[Decision C 3319] ... should be withdrawn as the German version contained numerous errors, although the substance was the same as this Decision'.

12 The operative part is drafted as follows:

'*Article 1*

The extension from 1 January 1995 to 31 December 1999 of the provisions of [Paragraph] 82f of ... [the EStDV] establishing a special depreciation facility for aircraft constitutes State aid which is incompatible with the common market within the meaning of Article 92 of the EC Treaty and Article 61 of the EEA Agreement.

Article 2

Germany is hereby called upon to discontinue the aid measure referred to in Article 1 as from 1 January 1995.

...

Article 4

The procedure relating to the provisions of the German tax law referred to in Article 1, in the version in force up to 31 December 1994, is terminated.

Article 5

The ... Decision [C 3319] ... is hereby withdrawn.

Article 6

This Decision is addressed to the Federal Republic of Germany.'

13 By order of 14 March 1997 in Case T-25/96 *Arbeitsgemeinschaft Deutscher Luftfahrt-Unternehmen and Hapag-Lloyd* v *Commission* [1997] ECR II-363, the Court ruled that, following the adoption of the contested decision, the action brought against Decision C 3319 had become devoid of purpose and that there was therefore no longer any need for the case to proceed to judgment.

Procedure and forms of order sought by the parties

14 The applicants brought the present action by application lodged at the Court Registry on 31 May 1996.

15 By a separate document lodged on 16 September 1996, the Commission raised an objection of inadmissibility under Article 114 of the Rules of Procedure. The applicants submitted their observations on that objection on 15 November 1996.

16 By order of 8 July 1997 the Court reserved its decision on that objection to the final judgment.

17 By a separate document lodged on 10 December 1997, the applicants brought an application for interim measures, which was dismissed by order of 2 April 1998 by the President of the Fourth Chamber, Extended Composition, of the Court of First Instance in Case T-86/96 R *Arbeitsgemeinschaft Deutscher Luftfahrt-Unternehmen and Hapag-Lloyd* v *Commission* [1998] ECR II-641.

18 Upon hearing the report of the Judge-Rapporteur, the Court (Fifth Chamber, Extended Composition) decided to open the oral procedure without any preparatory inquiry. However, by letter of 1 October 1998 it requested the parties to produce a number of documents and to reply to certain questions. The applicants and the Commission complied with that request within the time allowed.

19 The parties presented oral argument and replied to the Court's questions at the hearing on 29 October 1998.

20 The applicants claim that the Court should:

— declare the action admissible;

— annul the contested decision in so far as it relates to the extension of Paragraph 82f of the EStDV from 1 January 1995 to 31 December 1999;

— order the Commission to pay the costs.

21 The Commission submits that the Court should:

— declare the action inadmissible;

— dismiss it as unfounded;

— order the applicants to pay the costs.

Admissibility

Arguments of the parties

22 The Commission argues that the action is inadmissible because the applicants are not individually concerned by the contested decision within the meaning of the fourth paragraph of Article 173 of the Treaty.

23 It points out that in its judgment in Case T-398/94 *Kahn Scheepvaart* v *Commission* [1996] ECR II-477, at paragraph 39, the Court ruled that Paragraph 82f of the EStDV was a tax provision of general application. It submits that the contested decision relates precisely to that provision. Consequently, it is a measure of general application which cannot, as such, be of individual concern to persons other than the party to which it was addressed, that is to say, Germany.

24 Moreover, according to the Commission, the applicants are not affected by reason of attributes which are peculiar to them or by reason of circumstances which distinguish them from all other persons (Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, at p. 107).

25 According to the applicants, the *locus standi* of the applicant association Arbeitsgemeinschaft Deutscher Luftfahrt-Unternehmen ('ADL') must be distinguished from that of the applicant undertaking Hapag-Lloyd Fluggesellschaft mbH ('HLF').

26 With regard to ADL, the fact that the contested decision is a measure of general application is irrelevant. An action brought by an association concerning State aid is admissible only if its position as the Commission's interlocutor is affected by the contested decision (Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219 and Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125).

27 In this case, ADL's position as interlocutor is attested by the following factors:

— its function in representing and defending the interests of all private airline companies established in Germany;

— its status as an interested third party within the meaning of Article 93(2) of the Treaty, by virtue of which the Commission was under an obligation to allow it to take part in the procedure provided for by that provision (Case C-198/91 *Cook* v *Commission* [1993] ECR I-2487 and Case C-225/91 *Matra* v *Commission* [1993] ECR I-3203);

— the fact that it was given an express mandate by its members to defend their interests in that procedure and that it was under an obligation to answer to them for the result of the negotiations conducted with the Commission;

— its active participation in that procedure through the lodging of written observations on 18 February and 19 March 1994; the lodging of an expert report drawn up in March 1994 by the Price Waterhouse firm; its attendance, on 30 March 1995, at a meeting on the preliminary expert report drawn up in February 1995 by the Jet Finance company; and the maintenance of informal contacts with the Directorate-General for Transport and with the Commission Member responsible for transport;

— its status as a privileged interlocutor of the German Government and, in particular, the Ministry of Transport: ADL thus attended several meetings at which, in the presence of representatives of the various competent federal ministries, it intervened in favour of an extension of Paragraph 82f of the EStDV (see the documents submitted as Annex K 14 to the observations on the objection of inadmissibility).

28 The applicants further contend that trade associations have a privileged role in the procedure provided for under Article 93(2) of the Treaty. They are in a better position than their members to put their sector's case to the Commission (Opinion of Advocate General Sir Gordon Slynn in *Van der Kooy and Others* v *Commission*, cited above, at p. 246). Consequently, if, at the end of that procedure, the Commission adopts an unfavourable decision, the privileged role of those associations ought to make it possible for them to bring an action against that decision.

29 It follows from these factors, they submit, that the position of ADL, in its capacity as the Commission's interlocutor, is affected by the contested decision. In their view, its action is therefore admissible.

30 Since the applicants have lodged only one application between them, it is not, they argue, necessary, under the case-law, to examine whether HLF has *locus standi* (*CIRFS and Others* v *Commission*, cited above, paragraph 31).

31 However, should the Court find that ADL's action is inadmissible, the applicants submit in the alternative that HLF is directly and individually concerned by the contested decision.

32 HLF, they argue, is directly concerned. In the first place, it is one of the undertakings which benefit from the scheme provided for by Paragraph 82f of the EStDV, the extension of which was prohibited by the contested decision (Case 730/79 *Philip Morris* v *Commission* [1980] ECR 2671, paragraph 5). Second, Germany enjoys no discretion in the implementation of that decision (Opinion of Advocate General Verloren van Themaat in Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, at pp. 216 and 217).

33 HLF, they contend, is also individually concerned. Although the contested decision is a measure of general application, HLF is in a position which, for four reasons, differentiates it from all other persons (*Plaumann* v *Commission*, cited above, at p. 107, and Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 19).

34 First, Paragraph 82f of the EStDV applies directly to it, without any implementing measure being required at national level. The possibility of using the special depreciation treatment provided for by that provision is therefore for it a direct, unconditional and individual advantage. The contested decision had the effect of depriving it of that advantage from 1 January 1995. Consequently, that decision is, in relation to HLF, akin to a measure having individual application. In its capacity as beneficiary of the measure prohibited by the contested decision, HLF is therefore entitled to bring an action even if that decision is addressed to Germany (*Philip*

Morris v *Commission*, cited above, paragraph 5, and Case C-188/92 *TWD Textilwerke Deggendorf* [1994] ECR I-833, paragraph 14).

35 Secondly, in its capacity as an interested third party within the meaning of Article 93(2) of the Treaty, HLF enjoys procedural guarantees entitling it to take part in the procedure provided for under that provision and to submit its observations to the Commission (Case 323/82 *Intermills* v *Commission* [1984] ECR 3809, paragraph 16, *Cook* v *Commission*, cited above, paragraph 24, and *Matra* v *Commission*, cited above, paragraph 18). This circumstance alone entitles it to bring an action so as to ascertain, first, whether its procedural guarantees have been respected and, second, whether the contested decision infringes Community law (Case 169/84 *Cofaz and Others* v *Commission* [1986] ECR 391, paragraph 23, and the orders of the President of the Court of First Instance in Case T-96/92 R *CCE de la Société Générale des Grandes Sources and Others* v *Commission* [1992] ECR II-2579, paragraph 33, and in Case T-12/93 R *CCE Vittel and CE Pierval* v *Commission* [1993] ECR II-449, paragraph 22). It is thus irrelevant whether HLF did or did not take part in the procedure provided for under Article 93(2) of the Treaty (Case T-96/92 *CCE de la Société Générale des Grandes Sources and Others* v *Commission* [1995] ECR II-1213, paragraph 36, Case T-12/93 *CCE de Vittel and Others* v *Commission* [1995] ECR II-1247, paragraph 47, and Joined Cases T-528/93, T-542/93, T-543/93 and T-546/93 *Métropole Télévision and Others* v *Commission* [1996] ECR II-649, paragraph 62).

36 Third, in any event HLF did take part in the procedure under Article 93(2), in accordance with the criteria set out in paragraphs 24 and 25 of *Cofaz and Others* v *Commission*, cited above. In conjunction with ADL, it submitted on two occasions written observations to the Commission, lodged the expert report drawn up by Price Waterhouse, and maintained close contacts with the Commission (see paragraph 27 above).

37 In this regard, HLF cannot be criticised for not being at the origin of the complaint which led to the opening of the procedure (*Cofaz and Others* v *Commission*, cited above, paragraphs 24 and 26). As a beneficiary of the depreciation facility provided for under Paragraph 82f of the EStDV, it intervened in favour of the

extension of that provision, and not against it. Similarly, it cannot be required to demonstrate that its market position was significantly affected by the contested decision (*Cofaz and Others* v *Commission*, cited above, paragraph 25). That criterion is of relevance only in determining whether an action brought by a competitor of the undertaking which benefited from the contested aid is admissible (Opinion of Advocate General Verloren van Themaat in *Cofaz and Others* v *Commission*, cited above, at p. 406).

38 Fourth, HLF's judicial protection depends exclusively on whether the present action is admissible. Both Paragraph 82f of the EStDV and the contested decision are directly applicable to it. Since no implementing measure is required at national level, HLF cannot bring an action before a German court and thus obtain a determination as to whether the contested decision is valid by means of a reference to the Court of Justice for a preliminary ruling under Article 177 of the Treaty (Case T-330/94 *Salt Union* v *Commission* [1996] ECR II-1475, paragraph 39, and Case T-298/94 *Roquette Frères* v *Council* [1996] ECR II-1531, paragraph 45).

Findings of the Court

39 It is necessary to examine, first, the *locus standi* of HLF and, second, that of ADL.

Locus standi of HLF

40 Under the fourth paragraph of Article 173 of the Treaty natural or legal persons may challenge decisions which are addressed to them or decisions which, although in the form of a regulation or a decision addressed to another person, are of direct and individual concern to them.

41 Whether the action brought by HLF is admissible depends therefore on whether the contested decision, which is addressed to Germany, is of direct and individual concern to HLF.

42 It is settled case-law that persons other than those to whom a decision is addressed may claim to be individually concerned within the meaning of the fourth paragraph of Article 173 of the Treaty only if the decision affects them by reason of certain attributes peculiar to them or by reason of factual circumstances in which they are distinguished from all other persons, and by virtue of those factors distinguishes them individually in the same way as the person addressed (*Plaumann* v *Commission*, cited above, at p. 107, order in Case T-585/93 *Greenpeace and Others* v *Commission* [1995] ECR II-2205, paragraph 48, upheld by the judgment of the Court of Justice in Case C-321/95 P *Greenpeace Council and Others* v *Commission* [1998] ECR I-1651, paragraphs 27 and 28, Joined Cases T-481/93 and T-484/93 *Vereniging van Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraph 51, and *Kahn Scheepvaart* v *Commission*, cited above, paragraph 37).

43 In the present case, in prohibiting the extension of Paragraph 82f of the EStDV from 1 January 1995 to 31 December 1999, the contested decision affects the position of any natural or legal person acquiring a new aircraft registered in Germany and used commercially for the international transport of goods or persons or for other service activities performed outside Germany. Those persons include, in particular, airline companies, operators who purchase aircraft for the purpose of leasing them out, and those who offer individualised air-transport services.

44 Moreover, at the hearing, the parties stated that any person acquiring a holding in an investment fund whose assets included one or more aircraft was entitled to the special depreciation provided for by Paragraph 82f of the EStDV. Those persons are thus also affected by the contested decision.

45 Because it prohibits the extension of tax provisions having general application, the contested decision, although addressed to a Member State, appears, *vis-à-vis* the potential beneficiaries of those provisions, to be a measure of general application covering situations which are determined objectively and entailing legal effects for a class of persons envisaged in a general and abstract manner.

46 HLF cannot therefore claim that the advantage of which the contested decision deprives it is individual in nature. In prohibiting the extension of Article 82f of the EStDV, that decision affects it merely by virtue of its objective position as a potential beneficiary of the depreciation facility in question, in the same way as any other operator who is, or might in the future be, in the same situation (Case 231/82 *Spijker* v *Commission* [1983] ECR 2559, paragraph 9, *Piraiki-Patraiki and Others* v *Commission*, cited above, paragraph 14, and *Van der Kooy and Others* v *Commission*, cited above, paragraph 15).

47 Moreover, the fact that HLF is an interested third party within the meaning of Article 93(2) of the Treaty cannot confer on it *locus standi* entitling it to bring an action against the contested decision.

48 In the procedure laid down by Article 93 of the Treaty, the preliminary stage for reviewing aid under Article 93(3), which is intended merely to allow the Commission to form a prima facie opinion on the partial or complete conformity of the aid in question, must be distinguished from the examination under Article 93(2) (Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 38). That stage of the examination is designed to provide those concerned with the guarantee of putting their case and to enable the Commission to be fully informed of all the facts of the case (Case 70/72 *Commission* v *Germany* [1973] ECR 813, paragraph 19, Case 84/82 *Germany* v *Commission* [1984] ECR 1451, paragraph 13, *Commission* v *Sytraval and Brink's France*, cited above, paragraph 38, and Joined Cases T-126/96 and T-127/96 *BFM and EFIM* v *Commission* [1998] ECR II-3437, paragraph 45). It is for this reason that only Article 93(2) of the

Treaty imposes an obligation on the Commission to give the parties concerned notice to submit their comments (*Germany* v *Commission*, cited above, paragraph 13, *Cook* v *Commission*, cited above, paragraph 22, *Matra* v *Commission*, cited above, paragraph 16, and Case T-188/95 *Waterleiding Maatschappij* v *Commission* [1998] ECR II-3713, paragraph 52).

49 A natural or legal person may be individually concerned by reason of its status as an interested third party only by a Commission decision refusing to open the examination stage provided for by Article 93(2) of the Treaty (*Cook* v *Commission*, paragraphs 23 to 26, *Matra* v *Commission*, paragraphs 17 to 20, *Commission* v *Sytraval and Brink's France*, paragraphs 40, 41, 47 and 48, and Case T-11/95 *BP Chemicals* v *Commission* [1998] ECR II-3235, paragraphs 88 and 89). In such a case, it can ensure that its procedural guarantees are complied with only if it is entitled to challenge that decision before the Community judicature (*Cook* v *Commission*, paragraph 23, *Matra* v *Commission*, paragraph 17, *Commission* v *Sytraval and Brink's France*, paragraph 40, and *BP Chemicals* v *Commission*, paragraph 89). However, where, as in the present case, the Commission adopted its decision at the end of the examination stage, interested third parties did in fact avail themselves of their procedural guarantees, so that they can no longer be regarded, by virtue of that status alone, as being individually concerned by that decision.

50 As for HLF's participation in the procedure under Article 93(2) of the Treaty, this circumstance of itself does not suffice to distinguish it individually as it would the person to whom the contested decision is addressed.

51 It follows from the case-law that, in State-aid matters, participation in the above-mentioned procedure is only one of the factors capable of establishing that a natural or legal person is individually concerned by the decision which it seeks to have annulled (see, in particular, *Cofaz and Others* v *Commission*, paragraph 25, and order in Case T-189/97 *Comité d'Entreprise de la Société Française de Production and Others* v *Commission* [1998] ECR II-335, paragraph 44).

52 Finally, even the point made by HLF to the effect that German national law might not provide any remedy cannot constitute a ground for the Court to exceed the limits of its jurisdiction as set by the fourth paragraph of Article 173 of the Treaty (orders in Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraph 26, and in Case C-87/95 P *CNPAAP* v *Council* [1996] ECR I-2003, paragraph 38, and *Kahn Scheepvaart* v *Commission*, cited above, paragraph 50).

53 It follows that HLF has failed to establish attributes peculiar to it or that it is in a special situation, apart from its participation in the procedure provided for by Article 93(2) of the Treaty, which distinguishes it from any other potential beneficiary of the depreciation treatment introduced by Paragraph 82f of the EStDV.

54 In those circumstances, the action must be declared inadmissible in so far as it concerns HLF, and it is not necessary to examine whether it is directly concerned by the contested decision.

Locus standi of ADL

55 It is established case-law that an association formed to further the collective interests of a category of persons cannot be considered to be 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 (see, in particular, the order in *Greenpeace and Others* v *Commission*, cited above, paragraph 59, upheld by the Court of Justice in its judgment in *Greenpeace Council and Others* v *Commission*, cited above, and the order in Case C-409/96 P *Sveriges Betodlares Centralförening and Henrikson* v *Commission* [1997] ECR I-7531, paragraph 45).

56 According to that case-law, in the absence of special circumstances such as the role which it could have played in the procedure leading to the adoption of the measure

in question, such an association is not entitled to bring an action for annulment where its members may not do so individually (*Sveriges Betodlares Centralförening and Henrikson* v *Commission*, cited above, paragraph 45).

57 In the present case, it has already been held that HLF, which is a member of ADL, was not individually concerned by the contested decision. Moreover, ADL has failed to furnish any evidence to support its contention that its other members are in a position to bring an admissible action. ADL cannot therefore be regarded as having legitimately taken the place of one or more of its members (see Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and Others* v *Commission* [1995] ECR II-1971, paragraph 62).

58 It is thus necessary to examine whether it can justify its *locus standi* by virtue of special circumstances.

59 Referring to the judgments in *Van der Kooy and Others* v *Commission* and *CIRFS and Others* v *Commission*, cited above, ADL submits that it has specific *locus standi* because its position as Commission interlocutor is affected by the contested decision. In support of that argument, it points out that (i) it is the representative of the sector in question; (ii) it is an interested party; (iii) it has a mandate conferred by its members to protect their interests in the procedure under Article 93(2) of the Treaty; (iv) it actively participated in that procedure; and (v) it is the privileged interlocutor of the German Government.

60 The first four points simply show that ADL intervened with the Commission for the purpose of defending the collective interests of its members. They cannot therefore establish that ADL has specific *locus standi* in its own right to bring an action against the contested decision.

61 So far as its status as interlocutor of the German Government is concerned, it is clear from the documents submitted in Annex K 14 that ADL was requested by the Ministry of Transport to attend three meetings in order to exchange information and to define, with the other participants, a common course of conduct *vis-à-vis* the Commission. Attendance at such meetings cannot confer on ADL the status of negotiator within the meaning of the judgments in *Van der Kooy and Others* v *Commission* and *CIRFS and Others* v *Commission*, cited above.

62 Unlike the applicant association in *Van der Kooy and Others* v *Commission*, ADL did not, in the present case, negotiate and sign any agreement establishing or extending the tax provisions challenged by the Commission, and is not required, in order to give effect to the contested decision, to initiate fresh negotiations or conclude a new agreement concerning those provisions.

63 Similarly, unlike the applicant association in *CIRFS and Others* v *Commission*, ADL did not play any role in the restructuring of the air-transport sector by negotiating, with the Commission, the establishment, extension and adaptation of constraints on State aid in that sector.

64 In those circumstances, the action must also be declared inadmissible in so far as ADL is concerned.

65 To hold ADL's action admissible in the circumstance of this case, in which its members are not individually concerned and in which ADL has no *locus standi* of its own, would have the consequence of allowing natural and legal persons to circumvent the fourth paragraph of Article 173 of the Treaty by means of a collective action (see *AITEC and Others* v *Commission*, cited above, paragraph 60).

66 It follows from all of the foregoing that the action is inadmissible in its entirety.

Costs

67 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, as applied for by the Commission.

On those grounds,

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

hereby:

1. Dismisses the action as inadmissible;

2. Orders the applicants jointly and severally to pay the costs.

Cooke García-Valdecasas Lindh

Pirrung Vilaras

Delivered in open court in Luxembourg on 11 February 1999.

H. Jung J. D. Cooke

Registrar President