ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)
6 July 2004 *

In Case T-370/02,

Alpenhain-Camembert-Werk, established in Lehen/Pfaffing (Germany),

Bergpracht Milchwerk GmbH & Co. KG, established in Tettnang (Germany),

Käserei Champignon Hofmeister GmbH & Co. KG, established in Lauben (Germany),

Bayerland eG, established in Nuremberg (Germany),

Hochland AG, established in Heimenkirch (Germany),

Milchwerk Crailsheim-Dinkelsbühl eG, established in Crailsheim (Germany),

Rücker GmbH, established in Aurich (Germany),

applicants,

* Language of the case: German.

represented by J. Salzwedel and J. Werner, lawyers, with an address for service in Luxembourg,

supported by

United Kingdom of Great Britain and Northern Ireland, represented by P. Ormond, acting as Agent,

intervener,

v

Commission of the European Communities, represented by J.L. Iglesias Buhigues, S. Grünheid and A.-M. Rouchaud-Joët, acting as Agents,

defendant,

supported by

Hellenic Republic, represented by V. Kontolaimos, I. Chalkias and M. Tassopoulou, acting as Agents,

and by

Association of Greek Dairy Products Industries (Sevgap), represented by N. Korogiannakis, lawyer,

interveners,

APPLICATION for the annulment of Commission Regulation (EC) No 1829/2002 of 14 October 2002 amending the Annex to Regulation (EC) No 1107/96 with regard to the name 'Feta' (OJ 2002 L 277, p. 10) as a protected designation of origin,

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

composed of: J. Azizi, President, M. Jaeger and F. Dehousse, Judges,
Registrar: H. Jung,

makes the following

Order

Legal background

1 Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and

foodstuffs (OJ 1992 L 208, p. 1 — 'the basic regulation') lays down in Article 1 the rules on Community protection of designations of origin and geographical indications for certain agricultural products and foodstuffs.

2 Under Article 2(2)(a) of the basic regulation, 'designation of origin' means 'the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:

— originating in that region, specific place or country, and

— the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area'.

3 Article 2(3) of the basic regulation provides:

'Certain traditional geographical or non-geographical names designating an agricultural product or a foodstuff originating in a region or a specific place, which fulfil the conditions referred to in the second indent of paragraph 2(a) shall also be considered as designations of origin.'

4 Under Article 3 of the basic regulation, names that have become generic may not be registered. For the purposes of that regulation, a 'name that has become generic' means the name of an agricultural product or a foodstuff which, although relating to the place or the region where that product or foodstuff was originally produced or marketed, has become the common name of an agricultural product or a foodstuff.

5 To establish whether or not a name has become generic, account is taken of all factors, in particular:

— the existing situation in the Member State in which the name originates and in areas of consumption,

— the existing situation in other Member States,

— the relevant national or Community laws.

6 Registration of the name of an agricultural product or foodstuff as a protected designation of origin must, for that purpose, satisfy the conditions laid down by the basic regulation and, in particular, the product or foodstuff must comply with a specification defined in Article 4(1) of that regulation. Such registration confers Community protection on the designation in question.

7 Articles 5 to 7 of the basic regulation lay down a procedure for registration of a designation, known as the 'normal procedure', which enables any group, defined as an association of producers and/or processors working with the same agricultural product or foodstuff or, under certain conditions, any natural or legal person, to apply for registration in the Member State in which the geographical area is located. The Member State checks that the application is justified and forwards it to the Commission. If it considers that the designation satisfies the conditions for registrability, the Commission publishes in the *Official Journal of the European Communities* the specific information detailed in Article 6(2) of the basic regulation.

8 Article 7 of the basic regulation, as amended by Council Regulation (EC) No 535/97 of 17 March 1997 (OJ 1997 L 83, p. 3), provides:

'1. Within six months of the date of publication in the *Official Journal of the European Communities* referred to in Article 6(2), any Member State may object to the registration.

2. The competent authorities of the Member States shall ensure that all persons who can demonstrate a legitimate economic interest are authorised to consult the application. In addition and in accordance with the existing situation in the Member States, the Member States may provide access to other parties with a legitimate interest.

3. Any legitimately concerned natural or legal person may object to the proposed registration by sending a duly substantiated statement to the competent authority of the Member State in which he resides or is established. The competent authority shall take the necessary measures to consider these comments or objection within the deadlines laid down.

...'

9 If no Member State lodges a statement of objections to the proposed registration, the name is entered in a register kept by the Commission entitled 'Register of protected designations of origin and protected geographical indications'.

10 If the Member States concerned do not, in the event of an admissible objection, reach agreement among themselves in accordance with Article 7(5) of the basic regulation, the Commission adopts a decision under the procedure provided for in Article 15 thereof (the regulatory committee procedure). Article 7(5)(b) of the basic regulation provides that the Commission is to have regard, for the purposes of its decision, to 'traditional fair practice and ... the actual likelihood of confusion'.

11 Article 17 of the basic regulation establishes a registration procedure, known as the 'simplified procedure', which differs from the normal procedure. Under that procedure, the Member States notify the Commission which of their legally protected names or names established by usage they wish to register pursuant to the basic regulation. The procedure envisaged in Article 15 applies *mutatis mutandis*. The second sentence of Article 17(2) of that regulation states that the objection procedure under Article 7 is not applicable in the simplified procedure.

The facts giving rise to the dispute

12 By letter of 21 January 1994, the Greek Government asked the Commission to register the name 'Feta' as a protected designation of origin, in accordance with Article 17 of the basic regulation.

13 On 19 January 1996, the Commission submitted to the regulatory committee set up by Article 15 of the basic regulation a proposal for a regulation containing a list of names that could be registered as geographical indications or protected designations of origin, in accordance with Article 17 of the basic regulation. That list included the term 'Feta'. Since the regulatory committee did not give a decision on that proposal within the time-limit notified to it, the Commission forwarded it to the Council, in accordance with the fourth paragraph of Article 15 of the basic regulation, on 6 March 1996. The Council did not give a decision within the period of three months laid down in the fifth paragraph of Article 15 of the basic regulation.

14 Consequently, in accordance with the fifth paragraph of Article 15 of the basic regulation, on 12 June 1996 the Commission adopted Regulation (EC) No 1107/96 of 12 June 1996 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of [the basic regulation] (OJ 1996 L 148, p. 1). Under Article 1 of Regulation No 1107/96, the name 'Feta', appearing in Part A of the annex to that regulation, under the heading 'Cheeses' and under the country heading 'Greece', was registered as a protected designation of origin.

15 By judgment of 16 March 1999 in Joined Cases C-289/96, C-293/96 and C-299/96 *Denmark, Germany and France* v *Commission* [1999] ECR I-1541, the Court of Justice annulled Regulation No 1107/96 to the extent to which it registered 'Feta' as a protected designation of origin. In its judgment, the Court stated that, when considering whether Feta constituted a generic name, the Commission had not taken due account of all the factors which Article 3(1) of the basic regulation required it to take into consideration.

16 Following that judgment, on 25 May 1999 the Commission adopted Regulation (EC) No 1070/1999 of 25 May 1999, amending the Annex to Regulation No 1107/96, which removed the name 'Feta' from the Register of Protected Geographical Indications and Designations of Origin and from the Annex to Regulation No 1107/96 (OJ 1999 L 130, p. 18).

17 The Commission then re-examined the Greek Government's application for registration and submitted a proposal for a regulation to the regulatory committee under the second paragraph of Article 15 of the basic regulation, proposing to register the term 'Feta', on the basis of Article 17 of the basic regulation, as a protected designation of origin, in the register of protected designations of origin and protected geographical indications. Since the committee did not give a decision on that proposal within the time-limit notified to it, the Commission forwarded it to the Council pursuant to the fourth paragraph of Article 15 of the basic regulation.

18 Since the Council did not give a decision on the proposal within the time-limit laid down in the fifth paragraph of Article 15 of the basic regulation, on 14 October 2002 the Commission adopted Regulation (EC) No 1829/2002 of 14 October 2002 amending the Annex to Regulation (EC) No 1107/96 with regard to the name 'Feta' (OJ 2002 L 277, p. 10 — 'the contested regulation'). Pursuant to that regulation, the name 'Feta' was again registered as a protected designation of origin and it was added to Part A of the Annex to Regulation No 1107/96, under the heading 'Cheeses' and under the country heading 'Greece'.

19 By application lodged at the Registry of the Court of First Instance on 12 December 2002, the applicants brought the present action.

20 By letter of 14 February 2003, the Commission requested that the proceedings be suspended until judgment had been delivered in Cases C-465/02 and C-466/02.

21 By letter of 17 March 2003, the applicants gave notice that they opposed the request for suspension and requested that the Court of First Instance refer the present case to the Court of Justice to be joined to Cases C-465/02 and C-466/02.

22 By decision of 19 March 2003, the Court of First Instance rejected the request for suspension and the request that the case be referred to the Court of Justice and ordered that the proceedings continue.

23 By a separate document lodged at the Registry of the Court of First Instance on 12 June 2003, the Commission raised an objection of inadmissibility under Article 114 of the Rules of Procedure of the Court of First Instance. On 1 August 2003, the applicants submitted their written observations on that objection.

24 By applications lodged at the Registry of the Court of First Instance on 16 April and 2 May 2003 respectively, the Hellenic Republic and the Association of Greek Dairy Product Industries (Sevgap) requested leave to intervene in support of the forms of order sought by the Commission.

25 By application lodged at the Registry on 28 April 2003, the United Kingdom of Great Britain and Northern Ireland applied for leave to intervene in support of the forms of order sought by the applicants.

26 By orders of 4 March 2004, the Hellenic Republic, the United Kingdom of Great Britain and Northern Ireland and Sevgap were granted leave to intervene.

27 On 30 March 2004, the Hellenic Republic submitted its statement in intervention in support of the forms of order sought by the Commission.

28 The United Kingdom of Great Britain and Northern Ireland did not submit a statement in intervention within the prescribed time-limit.

29 Since Sevgap was granted leave to intervene under Article 116(6) of the Rules of Procedure, its intervention is limited to the presentation of oral argument at the hearing.

Forms of order sought

30 In their application, the applicants claim that the Court of First Instance should:

— annul the contested regulation to the extent to which it registers the name 'Feta' as a protected designation of origin;

— order the Commission to pay the costs.

31 In its objection of inadmissibility, the Commission contends that the Court of First Instance should:

— dismiss the action as inadmissible;

— order the applicants to pay the costs.

32 In their observations on the objection of inadmissibility, the applicants contend that the Court of First Instance should reject the objection of inadmissibility.

33 In its statement in intervention, the Hellenic Republic submits that the Court of First Instance should dismiss the action as inadmissible.

The admissibility of the action

34 By the present action, the applicants, seven German companies which produce Feta cheese from cow's milk, seek the annulment of the contested regulation. They allege in particular an infringement of Articles 3 and 17 of the basic regulation and, in the alternative, of Articles 2 and 4 of that regulation and of Article 30 EC and of the fundamental rights upheld within the Community legal order concerning protection of property and the right to exercise a profession.

35 The Commission considers that the action is inadmissible on the ground that the applicants have no standing to bring proceedings under the fourth paragraph of Article 230 EC.

36 Pursuant to Article 114(1) of the Rules of Procedure, if a party so requests the Court of First Instance may give a decision on inadmissibility without considering the substance. Under paragraph 3 of the same article, the remainder of the proceedings are oral, unless otherwise decided by the Court. In this case, the Court considers that it has sufficient information from an examination of the documents in the file to give a decision on the objection raised by the Commission without opening the oral procedure.

Arguments of the parties

37 The Commission contends that the action is concerned with a regulation of general application, within the meaning of the second paragraph of Article 249 EC, and that the contested regulation is not of individual concern to the applicants.

38 The applicants argue that the action is admissible.

39 The applicants claim, first, that, with the exception of the Greek producers, they, together with one Danish producer, are the largest producers of Feta in the Community and produce more than 90% of the Feta cheese produced in Germany.

40 Having produced Feta for many years in large quantities, they have commercial relations and traditional outlets which are well established and stable, involving long-term supply contracts. Accordingly, the contested regulation is of particular concern to them within the meaning of the case-law of the Court of Justice (Joined Cases 106/63 and 107/63 *Toepfer and Getreide-Import Gesellschaft* v *Commission* [1965] ECR 405 and Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207).

41 The applicants claim, secondly, that the Commission's recourse to the simplified procedure under Article 17 of the basic regulation deprived them of the procedural safeguards available under the normal procedure which, pursuant to Article 7 of the basic regulation, grants every person with a legitimate interest an opportunity to object to the proposed registration. In that context, they point out that, in its proposal for amendment of the basic regulation with a view to abolishing the simplified procedure under Article 17 of that regulation, the Commission expressly

stated as a reason for its proposal that the right of objection provided for under the normal procedure was an 'essential requirement for protecting acquired rights and preventing injury on registration'.

42 Third, the applicants maintain that their action is admissible on the basis of the judgment of the Court of First Instance in Case T-177/01 *Jégo-Quéré* v *Commission* [2002] ECR II-2365, and in the Opinion of Advocate General Jacobs preceding the judgment of the Court of Justice in Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6681, according to which a natural or legal person is to be regarded as individually concerned by a Community measure of general application that concerns him directly if the measure in question affects his legal position, in a manner which is both definite and immediate, by restricting his rights or by imposing obligations on him. The contested regulation harms their interests, since its effect is that they will no longer be able to use the designation 'Feta' after the end of the transitional period.

43 In their observations on the objection of inadmissibility, the applicants, whilst conceding that the contested regulation is a measure of general application, observe that, although it extends its favourable effects to all Greek producers of Feta manufactured with goat's or sheep's milk, both present and future, who, from now on, will be the only producers still entitled legally to use that designation, the contested regulation only adversely affects, on the other hand, all the non-Greek producers of Feta manufactured using cow's milk existing at present, who will be prohibited from using that designation after the end of the transitional period. They emphasise that it is solely to the detriment of the latter that the contested measure produces its effects in the market.

44 The applicants state that the designation 'Feta' has been a generic designation, worldwide, for a considerable time and that, accordingly, it could not be entered, pursuant to Article 3(1) of the basic regulation, on the register of protected designations of origin and geographical designations under the contested regulation. The Commission was wrong to adopt the contested regulation in the belief that the non-Greek markets for Feta produced using cow's milk had come into being only through illegal exploitation of the prestige attaching to Greek Feta cheese made using sheep's milk.

45 As a result of the Commission's retroactive intervention effecting a correction in the market, the contested regulation cannot be regarded as having 'general and abstract' effects since it is addressed only to a limited circle of economic operators who are in a particular situation in the market and whose particular rights are individually affected. In reality, the contested regulation will lead to destruction of the market for Feta made from cow's milk which has developed in Germany and, more widely, in Europe, given that habitual consumers of Feta made from cow's milk would not quickly recognise that product under any other designation.

46 The applicants consider that it would be incompatible with the expectations which, in the European Union, derive from the legal protection offered by the Court of Justice for the operators concerned not to be able to secure judicial review of the legality of the contested regulation, which will lead to total destruction of their outlets.

47 The Court of First Instance has not accepted that either proceedings before a national court, with an order for reference submitted to the Court of Justice under Article 234 EC, or proceedings to establish non-contractual liability of the Community under Article 235 EC and the second paragraph of Article 288 EC constitute an effective remedy enabling interested parties to contest the legality of Community provisions of general application which directly restrict their legal position. Actions for damages, under Article 235 EC and the second paragraph of Article 288 EC, cannot moreover take the place of effective protection of fundamental rights at European level, since they do not enable a measure to be removed from the Community legal order when it is found to be illegal.

48 Moreover, since the prohibition of further use of the generic designation 'Feta' for Feta made from cow's milk after the date specified in the contested regulation has direct effect and does not require implementing measures in the Member States against which an action can be brought before the national courts, the applicants could not take action to establish that their fundamental rights had been infringed by the Community measure at issue unless they contravened the provisions of that measure and, in the context of legal proceedings brought against them, contended that those provisions were illegal.

49 According to recent case-law of the Court of First Instance, it is appropriate to take as a starting point the principle according to which effective legal protection for individuals is available only where undertakings which are directly and individually concerned by a Community measure of general application also have access to the Community courts. An undertaking is individually concerned where it is definitely and immediately affected by reason of the fact that the measure restricts its rights or imposes obligations on it. That is not seriously open to doubt in the applicants' case, since their outlets are endangered and their market shares are liable to be destroyed, at least within a foreseeable period.

50 According to the applicants, the Court of First Instance has emphasised that access to the Community judicature is one of the constituent elements of a Community governed by the rule of law and is based on constitutional traditions common to the Member States and on Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. They draw attention to the fact that Article 47 of the Charter of Fundamental Rights of the European Union reaffirms that right to access to effective remedies for any person whose rights or freedoms upheld by the law of the Union have been impaired.

Findings of the Court

51 The fourth paragraph of Article 230 EC provides that 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, is of direct and individual concern to that person.

52 It is settled case-law that the criterion for distinguishing between a regulation and a decision must be sought in the general application or otherwise of the act in question (orders of the Court of Justice of 23 November 1995 in Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraph 28, and of 24 April 1996 in Case

C-87/95 P *Cassa nazionale di previdenza ed assistenza a favore degli avvocati e dei procuratori* v *Council* [1996] ECR I-2003, paragraph 33). A measure is of general application if it applies to objectively determined situations and produces its legal effects with respect to categories of persons envisaged in the abstract (Case T-482/93 *Weber* v *Commission* [1996] ECR II-609, paragraph 55 and the case-law there cited).

53 In this case, the contested regulation gives the designation 'Feta' the protection afforded to designations of origin by the basic regulation. A designation of origin is defined by Article 2(2)(a) thereof as being the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff originating in that region, specific place or country, and the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area.

54 That protection consists in reserving the use of the designation 'Feta' to the original producers in the defined geographical area whose products comply with the geographical and quality requirements laid down in the specification for the production of Feta. As the Commission has rightly emphasised, the contested regulation, far from being addressed to specified operators, such as the applicants, recognises that all undertakings whose products satisfy the prescribed geographical and qualitative requirements have the right to market them under the above-mentioned designation and refuses that right to all producers whose products do not fulfil those conditions, which are identical for all undertakings. The contested regulation applies in the same way to all manufacturers — both present and future — of Feta who are legally authorised to employ that designation as it does to all those who will be prohibited from using it after the end of the transitional period. It is not aimed solely at producers in the Member States but also produces legal effects vis-à-vis an unknown number of producers in non-member countries wishing to import Feta into the Community, either now or in the future.

55 The contested regulation thus constitutes a measure of general application within the meaning of the second paragraph of Article 249 EC. It applies to situations determined objectively and produces its legal effects vis-à-vis categories of persons envisaged in the abstract (see, to that effect, the orders of the Court of First Instance of 15 September 1998 in Case T-109/97 *Molkerei Großbraunshain and Bene Nahrungsmittel* v *Commission* [1998] ECR II-3533; of 26 March 1999 in Case T-114/96 *Biscuiterie-confiserie LOR and Confiserie du Tech* v *Commission* [1999] ECR II-913, paragraphs 27 to 29; and of 9 November 1999 in Case T-114/99 *CSR Pampryl* v *Commission* [1999] ECR II-3331, paragraphs 42 and 43). That general application is apparent, moreover, from the purpose of the rules in question, which is to ensure protection, *erga omnes* and throughout the European Community, for validly registered geographical indications and designations of origin.

56 However, the possibility cannot be ruled out that a provision which, by reason of its nature and scope, may be of a legislative character may be of individual concern to natural or legal persons. That is the case where the measure at issue affects them by reason of certain attributes peculiar to them or by reason of a factual situation which differentiates them from all other persons and thereby distinguishes them individually in the same way as an addressee (Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, at 107; Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraphs 19 and 20; *Unión de Pequeños Agricultores* v *Council* paragraph 36; and *Weber* v *Commission*, paragraph 56).

57 In this case, the factual allegations made by the applicants, if assumed to be correct, do not give the slightest indication of any attribute peculiar to them or of any factual circumstances distinguishing them and, accordingly, individually differentiating them from the other economic operators concerned. On the contrary, the applicants are concerned by the contested regulation only in their capacity as economic operators producing or marketing cheese that does not fulfil the conditions for use of the protected designation 'Feta'. The applicants are affected in the same way as all other undertakings whose products likewise do not satisfy the requirements of the Community provisions at issue.

58 As regards the applicants' contention that, if the Greek producers and one Danish producer are disregarded, they are the main producers of Feta in the European Community and produce more than 90% of the Feta manufactured in Germany, it need merely be pointed out that the fact that an undertaking holds a large share of the relevant market is not sufficient in itself to distinguish that undertaking from all other economic operators concerned by the contested regulation (order in *CSR Pampryl* v *Commission*, paragraph 46).

59 Similarly, the applicants' assertion that the contested regulation affects, in essence, only eight producers is not only contradicted by their application, in which it is stated that Feta cheese is manufactured in substantial quantities in six Member States of the European Community and in a large number of non-member countries but is also, in any event, irrelevant since, according to settled case-law, the general application and, therefore, the legislative nature of a measure are not called in question by the fact that it is possible to determine with a greater or lesser degree of precision the number or even the identity of the persons to which it applies at a given time, 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 its objective (Case 6/68 *Zuckerfabrik Watenstedt* v *Council* [1968] ECR 409, at 414 and 415, and order of the Court of First Instance of 29 June 1995 in Case T-183/94 *Cantina cooperativa fra produttori vitivinicoli di Torre di Mosto and Others* v *Commission* [1995] ECR II-1941, paragraph 48). That is the case here, since the contested regulation affects without distinction all present and future producers wishing to market cheese under the designation 'Feta' in the Community.

60 The applicants also submit that they are distinguished by the fact that the measure is of economic concern to them. Referring to the judgments of the Court of Justice in *Toepfer and Getreide-Import Gesellschaft* v *Commission* and *Piraiki-Patraiki and Others* v *Commission*, they claim that the prohibition, which the contested regulation applies to undertakings producing Feta from cow's milk, of using the designation 'Feta' makes it practically impossible for them to continue to market that cheese at all and that those undertakings can no longer comply with and keep in force their long-term supply contracts.

61 It must be observed in that connection, first, that the contested regulation does not affect any supply contracts concluded on a long-term basis but simply prohibits, in connection with Article 13 of the basic regulation and after the end of a transitional period, any usurpation or imitation of or reliance upon the protected designation 'Feta'. That prohibition applies in the same way to the applicants as to any other producer who is at present or potentially in the same situation.

62 Next, it must be borne in mind that, in any event, the fact that a measure of general application may have effects which differ according to the various persons to whom it applies is not such as to distinguish them from all other operators concerned where, as in this case, the measure is applied on the basis of an objectively determined situation (Case T-138/98 *ACAV and Others* v *Council* [2000] ECR II-341, paragraph 66, and order of the Court of First Instance of 30 January 2001 in Case T-215/00 *La Conqueste* v *Commission* [2001] ECR II-181, paragraph 37). The Court of Justice has expressly confirmed that the fact that an applicant finds himself, when a regulation registering a designation of origin is adopted, in a situation requiring it to make changes to its production structure in order to fulfil the conditions laid down by the regulation is not sufficient for it to be individually concerned in a manner analogous to that in which the addressee of a measure would be concerned (order of the Court of Justice of 30 January 2002 in Case C-151/01 P *La Conqueste* v *Commission* [2002] ECR I-1179, paragraph 35).

63 The applicants are wrong to maintain that they are in the same situation as the applicants in *Toepfer and Getreide-Import Gesellschaft* v *Commission* and *Piraiki-Patraiki and Others* v *Commission*.

64 In *Toepfer and Getreide-Import Gesellschaft* v *Commission*, the contested measure affected only importers whose number and identity were known and who had applied, before the adoption of the contested decision, for import licences the issue of which had been made impossible by the decision at issue. Similarly, in *Piraiki-Patraiki and Others* v *Commission*, which concerned the legality of a Commission decision authorising France to make imports of cotton yarn from Greece subject to a system of quotas, the applicants were individually concerned by the contested

decision as members of a limited circle of economic operators particularly affected by the contested decision by reason of the fact that they had previously concluded sales contracts in good faith, the performance of which fell within the period of application of the safeguard measure contained in the decision and had therefore been rendered wholly or partially impossible by reason of excedence of the authorised quota.

65 Moreover, it likewise cannot be concluded that the applicants are individually concerned on the basis of the judgment given in *Codorniu*, in which the applicant was prevented, by a provision of general application, from using a graphic mark which it had registered and used traditionally over a long period before the adoption of the regulation at issue in that case, so that it was distinguished from all the other economic operators. In this case, the applicants have neither demonstrated, nor even purported to demonstrate, that their use of the designation 'Feta' derives from a similar specific right which they acquired at national or Community level before the adoption of the contested regulation and which was adversely affected by that regulation.

66 The fact, in particular, that the applicants may have marketed their products under the designation 'Feta' does not confer any specific right on them under the case-law cited above. The applicants' situation is not thereby distinguished from that of the other operators who have also marketed their products under the designation 'Feta' and who are no longer authorised to use that name, which is henceforth protected by its registration as a designation of origin. The absence of a specific right conferred on any other economic operator is, moreover, confirmed by the fact that that situation is explicitly governed in an abstract and general manner by Article 13(2) of the basic regulation, which provides for a transitional period allowing all producers without distinction, subject to certain conditions, a sufficiently long period of adjustment to obviate any loss.

67 As regards, finally, the applicants' argument relating to procedural rights of which they were allegedly deprived through use of the simplified procedure for registration of the designation 'Feta', it must be borne in mind that the Court of First Instance has held on several occasions that the case-law relied on by the applicants, which developed principally in the areas of anti-dumping duties, competition law and State aid, cannot be transposed to the procedure for registration of protected designations under the basic regulation (order in *Molkerei Großbraunshain and Bene Nahrungsmittel* v *Commission*), in so far as that regulation does not provide for specific procedural safeguards, at Community level, in favour of individuals (order in *CST Pampryl* v *Commission*).

68 The Court of Justice confirmed that case-law in its order of 26 October 2000, in Case C-447/98 P *Molkerei Großbraunshain and Bene Nahrungsmittel* v *Commission* [2000] ECR I-9097, paragraphs 71 to 73 (see also, to that effect, the order in Case T-215/00 *La Conqueste* v *Commission,* paragraphs 43 and 44), by stating:

> '71 Even if recourse to the procedure under Article 17 of [the basic regulation] had been unlawful, and the existence of procedural rights expressly guaranteed to an individual by the relevant legislation or the mere fact that that individual has taken part in the procedure for the adoption of a legislative measure by a Community institution were capable of distinguishing him individually within the meaning of the fourth paragraph of Article [230] of the Treaty, the exercise of the possibility of objecting, as provided for in the ordinary registration procedure, would still not be such as to give the appellants the right to bring an action against the act adopted as a result of that procedure.
>
> 72 On this point, it must be noted, first, that under Article 7(1) and (3) of [the basic regulation] a statement of objection to a proposed registration may be made to the Commission only by a Member State which has been applied to by a natural or legal person who can demonstrate a legitimate economic interest.

73 Second, it appears from Article 7(5) of [the basic regulation] that, once an admissible objection has been made to the Commission, the objection procedure confronts the Member State or States which object to registration and the Member State which has applied for registration. Under that provision, it is for the Member States concerned to seek agreement among themselves and notify the Commission if agreement is reached.'

69 It follows that the argument concerning the existence of procedural rights is not capable of distinguishing the applicants individually.

70 It follows from the foregoing that since the contested regulation constitutes a measure of general application and the applicants are not adversely affected by reason of circumstances peculiar to them or by a factual situation in which they are differentiated from all other persons and thereby distinguished individually, the application is inadmissible.

71 That conclusion cannot be called in question by the applicants' argument concerning the requirement of effective judicial protection.

72 Besides the fact that it is incumbent on the Member States to provide a complete system of legal remedies and procedures which ensure respect for the right to effective judicial protection, 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 to contest the validity of the Community measure at issue (order of the Court of Justice of 12 December 2003 in Case C-258/02 P *Bactria* v *Commission* [2003] ECR I-15105, paragraph 58). The Court has clearly established, in relation to the condition of individual interest laid down by the fourth paragraph of Article 230 EC, that, whilst it is true that the latter provision must be interpreted in the light of the principle of effective judicial protection, having regard to the various circumstances by which an applicant can be individually distinguished, such an interpretation cannot lead to disapplication of the condition in question, which is

expressly laid down by the Treaty, without the jurisdiction conferred on the Community Courts by the Treaty thereby being exceeded. It follows that if that condition is not fulfilled, a natural or legal person does not, under any circumstances, have standing to bring an action for annulment of a regulation (*Unión de Pequeños Agricultores* v *Council*, paragraphs 36 and 37).

73 It follows from the foregoing considerations that the contested regulation cannot be considered to be of individual concern to the applicants within the meaning of the fourth paragraph of Article 230 EC and that, therefore, the action must be dismissed as inadmissible.

Costs

74 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, in the light of the forms of order sought by the Commission, be ordered to bear their own costs and pay those incurred by the Commission.

75 Under the first subparagraph of Article 87(4) of the Rules of Procedure, Member States which intervene must bear their own costs. In this case, the Hellenic Republic and the United Kingdom of Great Britain and Northern Ireland must be ordered to bear their own costs.

76 Under the third subparagraph of Article 87(4) of the Rules of Procedure, interveners other than Member States and institutions may be ordered to bear their own costs. In this case, Sevgap should bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber),

hereby orders:

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

2. **The applicants shall bear their own costs and those of the Commission.**

3. **The Hellenic Republic, the United Kingdom of Great Britain and Northern Ireland and the Association of Greek Dairy Product Industries (Sevgap) shall bear their own costs.**

Luxembourg, 6 July 2004.

H. Jung — Registrar

J. Azizi — President