ORDER OF THE COURT OF FIRST INSTANCE (Second Chamber)
15 September 1998 *

In Case T-100/94,

Kapniki A. Michailidis AE,

P. Moskof AE Kapna eis Fulla,

M. Vogiatzoglou exagogikos oikos kapnon AE,

Diethnis Kapniki-Georgios Allamanis AE,

Exelka Emporikai kai Viomichanikai Epicheiriseis AE,

companies incorporated under Greek law, established in Thessaloniki, Greece, represented by Eleni Metaxaki, of the Athens Bar, with an address for service in Luxembourg at the chambers of Aikaterini Thill-Kamitaki, 4 Rue de l'Avenir,

applicants,

* Language of the case: Greek.

supported by

Hellenic Republic, represented by Panagiotis Mylonopoulos, Legal Adviser, of the Special Legal Service for the European Communities of the Ministry of Foreign Affairs, and Dimitra Tsangaraki, Lawyer and Special Counsel to the Secretary of State for Foreign Affairs, and Meletis Tsotsanis, Lawyer at the Ministry of Agriculture, acting as Agents, assisted by Eleni Lyratzaki, of the Athens Bar, with an address for service in Luxembourg at the Greek Embassy, 117 Val Sainte-Croix,

intervener,

v

Commission of the European Communities, represented by Maria Kontou-Durande, of its Legal Service, acting as Agent, 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 3477/93 of 17 December 1993 concerning the agricultural conversion rates to be applied in the tobacco sector (OJ 1993 L 317, p. 30),

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

composed of: A. Kalogeropoulos, President, C. W. Bellamy and J. Pirrung, Judges,

Registrar: H. Jung,

makes the following

Order

Legal background

1 Regulation (EEC) No 727/70 of the Council of 21 April 1970 on the common organisation of the market in raw tobacco (OJ, English Special Edition 1970 (I), p. 206) provided, in respect of harvests up to and including 1992, a common system, *inter alia*, for guaranteeing Community producers the disposal of their harvests at fair prices. That system was based upon norm prices and intervention prices, which were to be fixed annually by the Council. On the one hand, it obliged the national intervention agencies to purchase leaf tobacco at a minimum price (the intervention price) and, on the other, provided for the grant of premiums to encourage users to purchase leaf tobacco directly from Community producers. The latter measure was intended to enable producers to achieve production prices closer to the norm prices, which were higher than the intervention prices. The object of the premiums was to make up the difference between the prices prevailing on the world market and the higher Community norm prices.

2 Under Article 3 of Regulation No 727/70, the premiums were to be paid to first purchasers of leaf tobacco, provided that they had paid at least the intervention price to the producers and that the raw tobacco had been brought under supervision. For the purposes of applying that provision, Regulation (EEC) No 1726/70 of the Commission of 25 August 1970 on the procedure for granting the premium for leaf tobacco (OJ, English Special Edition 1970 (II), p. 587) introduced (Article 1) a system of supervision at the stage of first processing and market preparation enabling checks to be made at the beginning and end of those processes. The system included (Article 2(1)) a 'premium certificate' the object of which was to supply proof that leaf tobacco harvested in the Community had been brought under supervision in the Member State issuing the certificate.

3 Given that no definitive right to the premium accrued unless the tobacco delivered had been processed, the final amount of the premium could only be calculated at the time when the tobacco left the place in which it had been under supervision. Until 1990 there was no fixed time by which tobacco must leave the place of supervision, with the result that several years could elapse before it did so.

4 Later, Council Regulation (EEC) No 1329/90 of 14 May 1990 amending Regulation No 727/70 (OJ 1990 L 132, p. 25) limited to four years the period during which the processing undertaking could withdraw the tobacco from supervision. Article 3(1)(iv) of Regulation No 727/70, as amended by Regulation No 1329/90, provided that the premium was to be granted only to purchasers who provided proof before the expiry of a period of four years following the year of harvest that the tobacco had been sold for incorporation into manufactured products or exported to third countries.

5 To enable the processing undertaking to pay the producer the minimum price when purchasing tobacco, Article 7(2) of Regulation No 1726/70 provided that the purchaser could, subject to certain conditions, obtain an advance of the whole of the premium at the time when the tobacco was brought under supervision. The payment in advance of the whole of the premium was subject, first, to the agree-

ment of a 'European cultivation contract', that is to say a sale and purchase agreement between the processing undertaking and the producer and, secondly, to the processing undertaking lodging a guarantee equal to 20% of the amount of the premium. Since 1991 agreements between producers and processing undertakings have had to be registered with the national supervision authorities. Under the applicable rules, premiums were also granted to producers who themselves carried out the first processing and market preparation of their own leaf tobacco.

6 Under the supervision arrangements established by Regulation No 1726/70, the amount of the premium was to be paid in the relevant national currency and was to be calculated using the conversion rate applicable on the date the tobacco was removed from the place where it had been under supervision.

7 The first and second subparagraphs of Article 6(1) of Regulation No 1726/70, in the version resulting from Regulation (EEC) No 1353/75 of the Commission of 28 May 1975 (OJ 1975 L 138, p. 12) and Commission Regulation (EEC) No 887/85 of 2 April 1985 (OJ 1985 L 96, p. 12) provided:

'The right to the premium shall accrue as soon as the tobacco [...] leaves the place in which it was under supervision.

The event giving entitlement to the premium [...] shall be considered to have occurred on that date.'

8 Under Article 7(1) of the same regulation, the premium (expressed in ecus) fell due as soon as the right to it accrued and was paid in the Member State which issued the premium certificate.

9 The result of the application of those different provisions was that if, between the date on which the premium was advanced and the date on which the premium was due, that is to say the date on which the tobacco left supervision, the national currency had been devalued, the undertaking responsible for processing received, when the tobacco left supervision, a supplementary payment corresponding to the difference between the value of the premium converted into national currency at the rate applicable at the time the advance was paid and the same amount converted at the rate applicable when the tobacco left supervision.

10 In its judgment in Case C-244/95 *Moskof* v *EOK* [1997] ECR I-6441, at paragraphs 53 and 93, the Court observed that the lapse between the time when the processor actually received an advance of the whole of the premium and the date on which the right to the premium accrued meant that processors in Member States with a weak currency chose to remove tobacco from supervision as late as possible, in order to derive the maximum speculative profit from the devaluation of the national currency and consequently from the increase in the supplementary premium. The Court pointed out (at paragraph 53) that, even after 1990, when it was limited to a period of four years, the lapse of time between payment of the advance on the premium and the removal from supervision entailed expenditure which was unjustified, as was stressed in particular by the Court of Auditors in point 3.4 of Special Report No 8/93 on the common organisation of the raw tobacco market (OJ 1994 C 65, p. 1).

11 Regulation No 727/70 was replaced by Council Regulation (EEC) No 2075/92 of 30 June 1992 on the common organisation of the market in raw tobacco (OJ 1992 L 215, p. 70). The system of norm pricing was abandoned and, although the premium still passes via the first processor, it is now ultimately payable to the grower.

12 The first indent of Article 6(1) of Regulation No 2075/92 provides that the first processor must pay to the grower, in addition to the purchase price, a sum equal to the premium at the time of delivery of the tobacco. Article 6(2) goes on to provide that the first processor is to be reimbursed the amount of the premium by the

competent body against presentation of the relevant documentary proof. Thus the time lapse involved in the payment of premiums, which characterised the old system, disappeared.

13 However, because the repeal of Regulation No 727/70 by Article 28 of Regulation No 2075/92 took effect only from the 1993 harvest onwards, Regulation No 727/70 continued to apply to earlier tobacco harvests falling within the description contained in Article 3(1) and (2). Given the four-year 'marketing period', that continued to be the case until 1997 when the original common organisation of the markets came to a definitive end. In respect of harvests prior to 1993, processing undertakings thus continued to be entitled to an advance of the premium when the tobacco was brought under supervision and the final premium only became payable once the tobacco left supervision after processing. The monetary consequences arising from the lapse of time thus, in principle, also persisted.

14 In those circumstances, the Commission adopted Regulation (EC) No 3477/93 of 17 December 1993 concerning the agricultural conversion rates to be applied in the tobacco sector (OJ 1993 L 317, p. 30, hereinafter 'the contested regulation' or 'Regulation No 3477/93').

15 The contested regulation introduced the principle of fixed dates for the conversion into national currency of the various grants of aid and premiums provided for in the new common organisation of the market.

16 Furthermore, to avoid market distortion, it takes 1 July 1993 as the operative event for the premium for tobacco from harvests prior to 1993 (seventh recital).

17 To that end, it provides, in Article 5:

'For tobacco from harvests prior to the 1993 harvest, leaving supervision from 1 July 1993, the agricultural conversion rate for the premium provided for in Article 3 of Regulation (EEC) No 727/70 shall be the rate applicable on 1 July 1993.'

18 The first indent of Article 6 of the contested regulation repeals the second subparagraph of Article 6(1) of Regulation No 1726/70.

19 The second paragraph of Article 7 states that the contested regulation applies with effect from 1 July 1993.

20 The contested regulation was adopted on the basis of Council Regulation (EEC) No 3813/92 of 28 December 1992 on the unit of account and the conversion rates to be applied for the purposes of the common agricultural policy (OJ 1992 L 387, p. 1), which modified the preceding agrimonetary system, with a view to the creation of the internal market on 1 January 1993.

21 Article 6(1) of Regulation No 3813/92 adopts the principle, already recognised in the preceding agrimonetary system, that the agricultural conversion rate which applies to a price or specific amount is the one which prevails at the time when the operative event occurs, that is to say 'the event whereby the economic objective of the operation is attained'. Article 6(2) nevertheless permits the Commission to decide upon a specific operative event for the agricultural conversion rate different from the general operative event referred to in Article 6(1).

22 Article 13(1) of Regulation No 3813/92 provides that, where transitional measures prove necessary, such measures are to be adopted by the Commission and are to remain applicable for the period strictly necessary to facilitate the introduction of the new arrangements.

23 Article 23 of Commission Regulation (EEC) No 1068/93 of 30 April 1993 on detailed rules for determining and applying the agricultural conversion rates (OJ 1993 L 108, p. 106) states that the provisions concerning operative events for the agricultural conversion rates (Articles 9 to 12) are to apply from 1 July 1993 with regard to products or amounts for which there is no marketing year. That is the case for raw tobacco, as the Court observed in *Moskof* (at paragraph 18).

24 That being so, and as the Court observed in *Moskof* (at paragraphs 71 and 78), Article 5 of the contested regulation is to be viewed as a transitional measure, the purpose of which was to avoid the inconsistency which would have resulted from the simultaneous application of the old and new agrimonetary rules and would probably have resulted in tobacco from harvests prior to 1993 being removed from supervision later than tobacco from the 1993 harvest and subsequent ones.

The impact of the contested regulation on the applicants

25 The applicants complain that, by the contested regulation, the Commission 'froze' at 1 July 1993 the operative event for the agricultural conversion rate and abandoned the preceding system of variable operative events under which the right to payment of the premium could be exercised by tobacco processing undertakings at any time during the four-year marketing period. When purchasing raw tobacco, those undertakings had, according to the applicants, paid the producers a higher price which already incorporated the premium that they were subsequently to be reimbursed when the tobacco was withdrawn from supervision. Because of the new system, they are no longer able to cover the increased purchase price, given that they will no longer be reimbursed the premium at the agricultural conversion

rate in force at the time when the tobacco is removed from supervision. Because of the continuing depreciation of Greek currency as against the ecu, 'freezing' the agricultural conversion rate thus causes the applicants considerable harm.

Procedure

26 By application lodged at the Registry of the Court of First Instance on 11 March 1994, the applicants brought the present action.

27 By order of 6 October 1994, the President of the First Chamber, Extended Composition, granted the Hellenic Republic leave to intervene in the proceedings in support of the form of order sought by the applicants.

28 By decision of 4 July 1995, the First Chamber, Extended Composition, put to the parties a number of questions concerning the admissibility of the action. The answers were given within the period allowed for the purpose.

29 By decision of the Court of First Instance of 19 September 1995, the Judge-Rapporteur was assigned to the Second Chamber, Extended Composition, to which the case was consequently assigned.

30 By order of 9 January 1996, the Court of First Instance (Second Chamber, Extended Composition) stayed proceedings in the present case until delivery of the judgment of the Court of Justice in Case C-244/95 *Moskof*, disposing of the proceedings on a reference by a Greek court for a preliminary ruling on the validity of Regulation No 3477/93.

31 In *Moskof*, the Court of Justice found that its examination of the various grounds referred to by the national court in its questions did not reveal any factor capable of affecting the validity of Article 5 of Regulation No 3477/93.

32 At the request of the Court of First Instance, between 5 and 16 February 1998, the parties submitted their observations on the possible implications for the present action of the judgment in *Moskof*.

33 After arguing that the present action is inadmissible, the Commission expressed the view that, in *Moskof*, the Court of Justice had, in substance, adopted a position in relation to all the grounds relied upon equally by the applicants in seeking the annulment of the contested regulation. The defendant inferred from that that the present action must, in any event, be dismissed as unfounded.

34 The Hellenic Republic also took the view that the Court of Justice has already answered the questions of law raised before the Court of First Instance. It leaves it to the Court of First Instance to decide what course the present proceedings should take.

35 The applicants have criticised, from various viewpoints, the findings of fact made and the legal inferences drawn by the Court of Justice in *Moskof*.

36 By decision of the Court of First Instance of 9 June 1998, adopted in accordance with Articles 14 and 51 of the Rules of Procedure, the present case was referred to the Second Chamber, composed of three Judges.

Forms of order sought by the parties

37 The applicants claim that the Court should:

— declare Article 5, the first indent of Article 6, and the second paragraph of Article 7 of the contested regulation invalid;

— order the Commission to pay the costs.

38 The intervener claims that the Court should:

— uphold the action for annulment;

— order the Commission to pay the costs.

39 The Commission contends that the Court should:

— declare the action inadmissible, or, in the alternative, unfounded;

— order the applicants to pay the costs.

Admissibility of the action

Arguments of the parties

40 The Commission argues that the action is inadmissible on the ground that the requirements laid down in the fourth paragraph of Article 173 of the Treaty are not satisfied. It is, the Commission says, clear merely from reading its provisions that the contested regulation governs the application of the agricultural conversion rates in the tobacco sector in a general way and is addressed to all natural persons and legal entities marketing the product. Even if the contested regulation were equivalent to a decision addressed to tobacco dealers, the fact remains that such a decision cannot be of individual concern to the applicants.

41 Whilst the applicants consider themselves to be individually concerned because

— they entered into 'European cultivation contracts' with producers for the 1989, 1990, 1991 and 1992 harvests,

— the tobacco therefrom had not been removed from supervision by 1 July 1993,

— the contracts had already been registered with the competent national authorities and

— the advances on the premiums have already been paid,

the Commission stresses that it has no knowledge of those contracts and, moreover, need have no knowledge of them in order to manage the common organisation of the market.

42 The Commission adds that it has never asked the Member States to supply it with personal data of that kind. It learns of the total amount of tobacco imported and exported as a result of quality and variety control checks and not by exercising any control over the producers delivering tobacco or the processing undertakings receiving it.

43 The applicants' businesses, as they themselves have confirmed, represent less than 40% of the Greek tobacco market. That, says the Commission, implies that the contested regulation concerns a much wider category of Greek undertakings, to which all Italian tobacco traders should be added, if indeed it is true that companies marketing tobacco in Member States with stable currencies are less deeply affected by the contested regulation. Moreover, whilst Greece is the chief tobacco-producing country in the Community, it is not the only producer and it is certainly not the only country to experience inflationary pressures or, as a result, a tendency to strong currency fluctuations.

44 Lastly, the Commission observes that, even if the category of processing undertakings affected by the contested regulation had definitively closed at the time when that regulation was adopted, it would nevertheless include practically all Community tobacco processing undertakings that might have entered into European cultivation contracts. The fact that the number of traders is limited does not suffice to identify them individually, since otherwise it could be argued that any measure of the kind at issue concerns, in the abstract, a particular category of traders, be it a large or small one. Taking the argument to extremes, one possible conclusion would be that almost all common agricultural policy regulations are of individual concern to the farmers affected by them, of whom the administration is, at all times, aware, either because they appear in the registers or because they have actually applied for assistance under the various mechanisms implementing that policy. The fact that a party can be identified individually — and any person might be in that position — in no way corresponds to the particular interest which is required under Article 173 of the Treaty.

45 The applicants, supported by the Greek Government, maintain, on the contrary, basing their argument on the case-law of the Court of Justice (in particular, Joined Cases 41/70, 42/70, 43/70 and 44/70 *International Fruit Company and Others* v

Commission [1971] ECR 411, Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, Joined Cases 87/77, 130/77, 22/83, 9/84 and 10/84 *Salerno and Others* v *Commission and Council* [1985] ECR 2523, Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477, Case C-354/87 *Weddel* v *Commission* [1990] ECR I-3847, Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501, and Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853), that the contested measure is a regulation in form only and constitutes, in reality, a decision which is of direct and individual concern to them. It concerns them directly because the provisions at issue apply to the Member States, which enjoy no margin of discretion in determining the final amount of the premium to be paid to processing undertakings under Article 7 of Regulation No 1726/70, and individually because those provisions, which are retroactive, apply to a well-defined category of undertakings and thus constitute a bundle of individual decisions.

46 On this last point, the applicants and the intervener point out that Article 5 of the contested regulation concerns only those processing undertakings whose tobacco from the 1989, 1990, 1991 and 1992 harvests had not been removed from supervision by 1 July 1993. Those undertakings therefore form a restricted, unchanging group which could not be expanded once the contested regulation had been adopted. Furthermore, they were known to the Commission when that regulation was adopted. In accordance with Regulation No 1726/70, they were in possession of premium certificates drawn up when the tobacco was brought under supervision, which stated precisely the quantities of tobacco, the year of the harvest and the name of the processing undertakings. Thanks to those premium certificates and the European cultivation contracts concluded with producers and then registered, the Commission would have known exactly, for all harvests prior to 1993, the amount of tobacco brought under supervision and the persons who brought it under supervision, the amount of tobacco removed from supervision, and the amount of tobacco still subject to supervision arrangements at the time when the contested regulation was adopted.

47 The applicants and the intervener infer from this that the legal position of the persons to whom the contested regulation is addressed has been affected on account of a situation of fact which differentiates them from all other undertakings processing tobacco from harvests prior to the 1993 harvest. The Commission was aware of that special situation, that is to say the limited number, size and identities

of the undertakings concerned, or was at least in a position to learn of it. It would have been duly informed by all the Member States of all procedures for bringing under supervision and removing from supervision tobacco from harvests prior to the 1993 harvest. Moreover, it paid the applicants advances on the premiums for the tobacco in question.

48 With reference to the Commission's reply to Special Report No 8/93 of the Court of Auditors on the common organisation of the raw tobacco market (cited at paragraph 10), the applicants observe that the Commission, emphasising the limited number of traders present in the sector, has itself confirmed that its knowledge of the market has improved (point 7.3). Lastly, the applicants state that Greece is the Community's largest tobacco producer and that Greek currency diverges particularly widely from the ecu. Consequently, by adopting the contested regulation, the Commission affected mainly Greek processing undertakings, which, therefore, are sufficiently well identified. The common organisation of the tobacco market does not seek exclusively to bolster the production sector; it also extends the favourable arrangements introduced to traders, who have an important role to play in the system established. It is only thanks to the premiums, incorporated into European cultivation contracts, that processing undertakings are in a position to market tobacco produced within the Community. Now that the agricultural conversion rate has been 'frozen' under the contested regulation, the applicants will no longer be able to execute the cultivation contracts they have signed, except at the cost of very serious damage that goes beyond any conception of commercial risk.

Findings of the Court

49 Under Article 113 of the Rules of Procedure, the Court of First Instance may, when ruling in the circumstances set out in Article 114(3) and (4) of the Rules, at any time and of its own motion, consider whether there exists any absolute bar to proceeding, including, according to settled case-law, a failure to satisfy the conditions governing admissibility laid down in Article 173 of the Treaty (Case

C-246/95 *Coen* [1997] ECR I-403, paragraph 21 and the order in Case T-181/97 *Meyer and Others* v *Court of Justice* [1998] ECR-SC II-481, paragraph 10 et seq.).

50 In the present case, the Court of First Instance is of the view that it has sufficient information from the documents before it to rule on the admissibility of the present action under the fourth paragraph of Article 173 of the Treaty, without opening the oral procedure.

51 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 Joined Cases 789/79 and 790/79 *Calpak and Società Emiliana Lavorazione Frutta* v *Commission* [1980] ECR 1949, paragraph 7, and the order in Case T-476/93 *FRSEA and FNSEA* v *Council* [1993] ECR II-1187, paragraph 19).

52 The test for distinguishing between a regulation and a decision is whether or not the measure in question is of general application (see Case 307/81 *Alusuisse Italia* v *Council and Commission* [1982] ECR 3463, paragraph 8).

53 In the present case, it is therefore necessary to analyse the nature of the contested provisions of Regulation No 3477/93 and, in particular, the legal effects which they seek to produce or do in fact produce.

54 Those provisions regulate a particular product, namely tobacco from harvests prior to the 1993 harvest, which was not removed from supervision before 1 July 1993,

and fix the conversion rate between the ecu and the various national currencies which is to be applied to the premium granted in respect of that product. As a corollary, they repeal the conflicting provisions of the prior system. The contested provisions are drafted in general and abstract terms. They do not mention the applicants by name and are not addressed to particular traders such as the applicant companies.

55 The contested regulation thus appears to be a measure having general application, within the meaning of Article 189 of the Treaty. It applies to objectively determined situations and produces its legal effects with respect to categories of persons envisaged in the abstract (see, to this effect, the order in Case T-107/94 *Kik* v *Council and Commission* [1995] ECR II-1717, paragraph 35, and the case-law cited therein), namely all traders active in the tobacco sector who, within the Community, have brought under supervision tobacco from harvests prior to the 1993 harvest and whose tobacco had not been removed from supervision by 1 July 1993.

56 Nevertheless, in certain circumstances, even a legislative measure which applies to the traders concerned in general may be of individual concern to some of them provided that 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 (*Codorniu* v *Council*, paragraphs 19 and 20).

57 It is therefore appropriate to consider whether the applicants are individually identified by the regulatory provisions at issue.

58 The applicants, supported by the intervener, argue that they belong to a restricted and, at the material time, that is, on 1 July 1993, irrevocably fixed category of undertakings, the identities, number and size of which were known to the Commission, and that the contested provisions thus constitute, in fact, a bundle of individual decisions taken by the Commission with regard only to those undertakings. On that point, it should be borne in mind that the fact that the number or even the

identities of the persons to whom a measure applies at any given time may be ascertained more or less precisely is not sufficient to call into question the general application, and thus the legislative nature, of that measure and by no means implies that it must be regarded as being of individual concern to those persons as long as it is established that the measure is applicable as a result of an objective legal or factual situation which the measure defines with reference to its purpose (Case 6/68 *Zuckerfabrik Watenstedt* v *Council* [1968] ECR 409, at 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 the orders in Case C-131/92 *Arnaud and Others* v *Council* [1993] ECR I-2573, paragraph 13, Case C-168/93 *Gibraltar and Gibraltar Development* v *Council* [1993] ECR I-4009, paragraph 12, and Case C-409/96 P *Sveriges Betodlares and Henrikson* v *Commission* [1997] ECR I-7531, paragraph 37).

59 In the present case, it has not been established that the contested provisions, which fix the conversion rate between the ecu and national currencies, were aimed specifically at the applicant companies. On the contrary, it is apparent that the economic operators concerned form a relatively mixed group which, in accordance with Article 3 of Regulation No 727/70, is comprised of purchasers of tobacco, that is to say, trading companies, and producers who bring their own tobacco under supervision. Furthermore, it is clear from Special Report No 8/93 of the Court of Auditors, to which the applicants refer, that those two categories of operators exist in all seven Member States of the Community which produce leaf tobacco, namely Belgium, Germany, Spain, France, Italy, Greece and Portugal. Consequently, there are seven distinct relationships between the ecu and national currencies.

60 Next, it should be borne in mind that the contested provisions lay down transitional rules designed to ease the passage from the old general agrimonetary system to the new one, without there being any doubt about the legislative nature of either system. Therefore, even if the provisions at issue concern a restricted category of economic operators, that does not alter their legislative nature. On this point, the Court held, in *Arnaud and Others* v *Council* (at paragraphs 4, 13, 15 and 16), that a provision whose purpose is to lay down a transitional measure, even if

it concerns a closed group of economic operators — that is to say, all those who carried on a particular economic activity for a certain period of time and whose businesses were recorded in a Community register — produces legal effects for classes of persons envisaged in a general and abstract manner.

61 The applicants argue that Greek tobacco producers are particularly badly affected by the contested provisions. On this point, it must be acknowledged that traders established in a country with a less stable currency, such as Greece or Italy at the material time, may encounter difficulties, whilst traders established in a country with a strong currency could even benefit from that fact if the conversion rate applicable on 1 July 1993 is more favourable than the rate prevailing on a later date when their tobacco is actually removed from supervision. Nevertheless, the fact that the contested provisions may have different material effects for the various persons to whom they apply is not in itself inconsistent with their legislative nature if that situation is objectively determined (*Koninklijke Scholten Honig* v *Council and Commission*, paragraph 24, and *Sveriges Betodlares and Henrikson* v *Commission*, paragraph 37).

62 Given that the provisions at issue in the present case concern different categories of persons and different monetary conversion situations, they cannot be regarded as a bundle of individual decisions in the sense contemplated in the judgments in *International Fruit Company and Others* v *Commission* (paragraph 21) and *Weddel* v *Commission* (paragraph 23), on which the applicants rely. It should be observed that those judgments refer to specific situations concerning individual requests for import licences, and that the regulations at issue in those cases were adopted in response to those requests. In the present case, the adoption of the transitional regulation at issue was not based on the receipt by the Commission of any request from the applicants. Consequently, the two abovementioned judgments are irrelevant to the resolution of the present dispute.

63 The same applies to the judgment in *Salerno and Others* v *Commission and Council*. That judgment was delivered in the particular context of the civil service and concerned a regulation adopted with a view to the recruitment of 56 members of staff whose identities had been definitively ascertained at the time of its adoption.

64 As regards the judgment in *Sofrimport* v *Commission*, it should be borne in mind that, in the case which gave rise to that judgment, the application brought by an importer against a regulation which prohibited the issue of import licences was held to be admissible on the sole ground that the applicant found himself in a position covered by another regulation which specifically required the Commission to take account of that position (paragraphs 11 to 13). In the present case, the relevant Community regulation contains no specific provision obliging the Commission to take account, at the time when it adopted the contested provisions, of the effect of those provisions on the applicants' position.

65 Moreover, the fact that the applicants may suffer loss or damage when they carry out certain European cultivation contracts relating to tobacco from harvests covered by the contested regulation is not such as to identify them individually in the sense contemplated in the judgment in *Piraiki-Patraiki and Others* v *Commission*. Unlike the decision reviewed in that judgment, which was a decision to authorise the introduction of a trade protection measure preventing the performance of import contracts which the applicant had entered into before the adoption of the decision at issue (paragraph 19), the contested regulation, whilst it may cause economic difficulties for the applicants, does not prevent performance of the contracts in question.

66 The applicants also rely upon the judgment in *Codorniu* v *Council*. In that judgment, the Court did indeed hold that a legislative provision may be of individual concern to certain traders in so far as it adversely affects their specific rights (see the order in Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraph 43, and the judgment in Case T-482/93 *Weber* v *Commission* [1996] ECR II-609, paragraph 67). In the present case, however, the applicants had not, before the adoption

of the contested regulation, acquired any right to have a particular conversion rate applied. The conversion rate was a function solely of the monetary evolution of the drachma and was thus dependent on movements in the markets and any relevant measures taken by the competent Greek authorities.

67 Therefore, the facts that the applicants are in possession of premium certificates, that they have signed registered European cultivation contracts and that the Commission has already paid them advances on premiums do not serve to differentiate them further. Those three circumstances, far from conferring any specific monetary rights, are part of the normal commercial activity of any undertaking marketing tobacco under the arrangements for the common organisation of the market.

68 Lastly, the judgment in *Extramet Industrie* v *Council* does not assist the applicants' case. In the case that gave rise to that judgment, the application, made against a regulation introducing anti-dumping duties, was held to be admissible on the ground that the applicant had established the existence of a set of factors constituting a special situation, because of his very particular economic position and his situation *vis-à-vis* competitors (paragraph 17). There are, however, no comparable special factors in the present case.

69 In addition, as the Court held in *Moskof* (at paragraphs 68 to 70), Article 5 of Regulation No 3477/93, which removes the possibility for tobacco processors to choose when the operative event for the agricultural conversion rate occurs, does not breach the principle of the protection of legitimate expectations. Moreover, those processing undertakings cannot claim a vested right to the maintenance of an advantage which they derive from the establishment of the common organisation of the market and which they enjoyed at a given time. Consequently, the applicants can point to neither a legitimate expectation nor a vested right, the breach of which by the contested regulation would be of a nature such as to identify them individually for the purposes of the fourth paragraph of Article 173 of the Treaty.

70 It follows from the foregoing considerations that the applicants are not individually concerned by Article 5, the first indent of Article 6 or the second paragraph of Article 7 of Regulation No 3477/93.

71 The application must therefore be dismissed as inadmissible, without its being necessary to rule on the question whether the applicants are directly concerned by the provisions in question.

72 For the sake of completeness, it should be observed that, although the Court has held the present action to be inadmissible, the applicants could have challenged the legality of Article 5 of Regulation No 3477/93. As may be seen from the judgment in *Moskof*, one of the applicants contested before the competent national court a decision of the national intervention agency which, taken on the basis of Article 5, adversely affected him, and the national court referred to the Court of Justice for a preliminary ruling under Article 177 of the Treaty a question calling in issue the validity of Regulation No 3477/93 from 11 different points of view (see paragraphs 30 to 35 above.)

Costs

73 Under Article 87(2) of the Rules of Procedure, the unsuccessful party shall 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 jointly and severally to pay the costs incurred by the Commission, as applied for by the Commission.

74 In accordance with Article 87(4) of the Rules of Procedure, the Hellenic Republic, as intervener, is to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby orders:

1. The application is dismissed as inadmissible.

2. The applicants shall jointly and severally pay the costs incurred by the Commission. The intervener shall bear its own costs.

Luxembourg, 15 September 1998.

H. Jung — A. Kalogeropoulos

Registrar — President