JUDGMENT OF THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)
10 July 1996 *

In Case T-482/93,

Martin Weber and Maria Weber, residing at Hemau (Germany),

Martin Weber GdbR, a firm constituted under German law, established at Hemau,

represented by Hartwig Schneider, Rechtsanwalt, Pacellistraße 8, Munich,

applicants,

v

Commission of the European Communities, represented by Ulrich Wölker and Claudia Schmidt, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: German.

APPLICATION for the annulment of Commission Regulation (EEC) No 525/93 of 8 March 1993 establishing the value of the final regional reference amounts for producers of soya beans, rape seed, colza seed and sunflower seed for the 1992/93 marketing year (OJ 1993 L 56, p. 18),

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

composed of: H. Kirschner, President, B. Vesterdorf, C. W. Bellamy, A. Kalogeropoulos and A. Potocki, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 13 March 1996,

gives the following

Judgment

Facts and legal background

1 The applicant Martin Weber GdbR is a firm constituted under German civil law ('Gesellschaft des bürgerlichen Rechts') and managed by Martin and Maria Weber,

its only members. It operates an agricultural holding of 42 hectares in Bavaria which is used in part for the cultivation of colza.

The support system for oilseeds

2 Council Regulation (EEC) No 3766/91 of 12 December 1991 establishing a support system for producers of soya beans, rape seed and colza seed and sunflower seed (OJ 1991 L 356, p. 17, hereinafter 'Regulation No 3766/91') introduced a system based on the principle of direct compensatory payment to producers of a fixed sum per hectare, varying according to the average yields of the different regions of the Community. The procedures for implementing that system were established by Commission Regulation (EEC) No 615/92 of 10 March 1992 laying down detailed rules for a support system for producers of soya beans, rape seed, colza seed and sunflower seed (OJ 1992 L 67, p. 11, hereinafter 'Regulation No 615/92').

3 Article 3(1) of Regulation No 3766/91 provides: 'A projected reference price for oil-seeds is set at ECU 163 per tonne'. According to the explanations provided by the Commission, that price represents an estimate of the projected short-term reference price for oilseeds on a stabilized world market.

4 Article 3(2) of that regulation provides: 'A Community reference amount for oilseeds is set at ECU 384 per hectare'. According to the Commission, that sum is a theoretical value representing the projected average amount of the compensatory payment per hectare within the Community.

5 The amount of the compensatory payment to be paid to producers is established in two stages.

6 First, in accordance with Article 3(3) of Regulation No 3766/91, the Commission establishes, for each production region identified pursuant to Article 2 of that regulation, a 'projected regional reference amount' reflecting the ratio between the average Community cereals or oilseeds yield and the relevant average yield for the region in question.

7 Second, the Commission, acting in accordance with the 'management committee' procedure laid down in Article 38 of Regulation No 136/66/EEC of the Council of 22 September 1966 on the establishment of a common organization of the market in oils and fats (OJ, English Special Edition 1965-1966, p. 221), establishes, before 30 January in each marketing year, a 'final regional reference amount', in accordance with Article 3(4) of Regulation No 3766/91.

8 Article 3(4) provides:

'(...) the Commission (...) shall calculate a final regional reference amount based on the observed reference price for oil-seeds. The final calculation shall be made by substituting the observed reference price for the projected reference price; no account shall be taken of price variations within 8% of the projected reference price'.

9 It follows that, if the observed reference price established pursuant to Article 3(4) of Regulation No 3766/91 differs by more than 8% from the projected reference price, the final regional reference amount is to be established by adjusting the projected regional reference amount in proportion to the variation in question. In addition, in accordance with Article 6(2) of Regulation No 3766/91, the final regional reference amount is to be reduced if the area planted to the seed in question exceeds the maximum guaranteed area fixed in Article 6(1).

10 According to Article 4(1) of Regulation No 3766/91, only producers established in the Community who sow and intend to harvest the products listed in Article 1 of that regulation are to be entitled to apply for a regionalized system of direct payments. Under Article 4(2), in order to qualify for any payment a producer must, by the date specified for the region in question, have sown the seed and have lodged an application. Article 4(3) states that applications may only be made in respect of arable land cultivated during the period 1989/90 to 1990/91.

11 Entitlement to receive direct payments is granted only in respect of areas meeting the criteria laid down by Article 3(1) of Regulation No 615/92. Applications must contain the data and declarations required by Article 3(2) of, and Annex II to, that regulation.

12 Article 4(5) of Regulation No 3766/91 provides that producers who apply are to be entitled to an advance payment of no more than 50% of the projected regional reference amount, and that the Member States are to carry out the necessary checks to ensure that entitlement to the advance is justified.

13 Article 5 of Regulation No 615/92 provides that entitlement to receive the final payment is to be granted to a producer only in those cases where a harvest declaration containing at least the minimum information specified in Annex III to that regulation has been lodged with the relevant competent authority by a specified date.

14 Article 8 of that regulation states that Member States are to make the final payments to eligible producers not later than 60 days after the publication of the final regional reference amounts in the *Official Journal of the European Communities.*

The 1992/93 marketing year

15 Because of the delays resulting from the implementation of the new system, the Member States were authorized by Commission Regulation (EEC) No 1405/92 of 27 May 1992 establishing the value of the advance payments to be made to producers of soya beans, rape seed, colza seed and sunflower seed for the 1992/93 marketing year (OJ 1992 L 146, p. 56) to make advance payments to producers equal to 50% of the projected regional reference amount derived from the data supplied to the Commission in support of their regionalization plans.

16 On 24 May 1992 Martin Weber GdbR lodged with the competent national authorities an application under Article 4(2) of Regulation No 3766/91 and Article 3 of Regulation No 615/92, signed by Martin Weber, for a direct payment for the 1992/93 marketing year.

17 On 23 August 1992 Martin Weber GdbR sent the competent national authorities its harvest declaration, signed by Martin Weber, in accordance with Article 5 of Regulation No 615/92. That declaration shows that Martin Weber GdbR cultivated 6.37 hectares of colza and harvested 27.4 tonnes. It states that the final net price obtained after cleaning and drying the colza amounted to DM 263.10, equivalent to ECU 111.76, per tonne.

18 By decision of 23 September 1992 the Amt für Landwirtschaft und Bodenkultur Regensburg (Office for Agriculture and Soil Cultivation, Regensburg) granted Martin Weber GdbR an advance payment of DM 3 879.65 (ECU 1 648.11) pursuant to Article 4(5) of Regulation No 3766/91 and Article 4 of Regulation No 615/92.

19 On 5 March 1993 the Commission adopted Regulation (EEC) No 515/93 establishing the value of the projected regional reference amounts for producers of soya beans, rape seed, colza seed and sunflower seed for the 1992/93 marketing year (OJ 1993 L 55, p. 43, hereinafter 'Regulation No 515/93'). The projected regional reference amount for Bavaria was fixed at ECU 517.42 (DM 1 218.10) per hectare.

20 On 8 March 1993 the Commission adopted Regulation (EEC) No 525/93 establishing the value of the final regional reference amounts for producers of soya beans, rape seed, colza seed and sunflower seed for the 1992/93 marketing year (OJ 1993 L 56, p. 18, hereinafter 'the contested regulation'). Annex II to the contested regulation shows that the final regional reference amount for Bavaria was also fixed at ECU 517.42 (DM 1 218.10) per hectare.

21 Annex I to the contested regulation provides a succinct explanation of the calculation of the final regional reference amounts, as follows:

'An observed reference price, which represents the average price recorded on the world market during the 1992/93 marketing year, has been determined separately for each oil-seed.

These observed reference prices have been calculated using quotations and executed transaction prices, expressed on a Rotterdam equivalent basis, for bulk consignments of oil-seeds delivered in representative port areas. The prices and

quotations were recorded during the period July 1992 to January 1993. Wherever possible, account was taken of both the current month and the term delivery prices of the transactions and quotations.

The values of the observed reference prices are such that no adjustment of the projected regional reference amounts, pursuant to the provisions of Article 3(4) of Regulation (EEC) No 3766/91, is necessary.

The latest estimates of the areas of eligible oil-seed sowings have been calculated.

The sizes of the areas calculated are such that no adjustment of the projected regional reference amounts, pursuant to the provisions of Article 6(2) of Regulation (EEC) No 3766/91, is necessary.

For the 1992/93 marketing year the final regional reference amounts are confirmed as being of the same value as the projected regional reference amounts, and are set out in Annex II.'

22 By decision of 28 April 1993 the Amt für Landwirtschaft und Bodenkultur Regensburg granted Martin Weber GdbR a direct total payment corresponding to the product of the final regional reference amount as determined for Bavaria according to the area cultivated, in the sum of:

DM 1 218.10 (ECU 517.42) x 6.37 = DM 7 759.29 (ECU 3 296.22).

23 Taking account of the advance payment of DM 3 879.65 already made, it fixed the balance due in the sum of DM 3 879.64.

24 Martin Weber GdbR appealed against that decision within the time-limit prescribed by national law. It has requested the Amt für Landwirtschaft und Bodenkultur Regensburg not to give its ruling on that appeal pending the outcome of the present action before the Community judicature. Consequently, the national appeal proceedings are currently stayed.

Procedure

25 By application lodged at the Registry of the Court of Justice on 11 May 1993 and registered under case number C-273/93, Martin Weber GdbR brought the present proceedings. The application was accompanied by a letter of authority signed by the two members, Martin and Maria Weber.

26 By separate document, lodged on 28 May 1993, the Commission raised an objection of inadmissibility, maintaining, first, that Martin Weber GdbR did not have *locus standi* and, second, that the contested regulation was not of 'individual concern' to the applicant within the meaning of the second paragraph of Article 173 of the EEC Treaty.

27 By order of 27 September 1993, the Court of Justice referred the case to the Court of First Instance in accordance with Council Decision 93/350/Euratom, ECSC,

EEC of 8 June 1993 amending Decision 88/591/ECSC, EEC, Euratom establishing the Court of First Instance of the European Communities (OJ 1993 L 144, p. 21). It was registered in the Court of First Instance under case number T-482/93.

28 By order of 30 March 1994, the Court of First Instance (First Chamber) provisionally rectified the designation of the applicant by adding to Martin Weber GdbR the names of its members, Martin and Maria Weber, also regarded as applicants, in their capacity as natural persons. Next, the Court of First Instance reserved its decision on the objection of inadmissibility for the final judgment. In addition, it requested Martin Weber GdbR and Mr and Mrs Weber ('the applicants') to produce the application and the declaration which had been submitted to the national authorities in order to obtain the direct payment in issue.

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

30 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Second Chamber, Extended Composition) decided to open the oral procedure without any preparatory inquiry. However, the defendant was requested, in the context of the measures of organization of procedure provided for in Article 64 of the Rules of Procedure, to provide written answers to certain questions and to produce a number of documents regarding the calculation of the 'reference price' referred to in Article 3(4) of Regulation No 3766/91 and Annex I to the contested regulation. The defendant lodged its answer on 20 February 1996.

31 The parties presented oral argument and answered questions put to them by the Court at the hearing in open court on 13 March 1996.

Forms of order sought

32 The applicants claim that the Court should:

— annul the contested regulation as regards the final regional reference amounts for producers of soya beans, rape seed, colza seed and sunflower seed for the 1992/93 marketing year;

— order the Commission to pay the costs.

33 The defendant contends that the Court should:

— dismiss the action as inadmissible or, in the alternative, as unfounded;

— order the applicants to pay the costs.

Pleas in law and arguments of the parties

34 In support of their claims, the applicants put forward two grounds of annulment. The first, which is based on Article 190 of the Treaty, alleges that the regulation is inadequately reasoned. The second alleges a breach of the principle of Community law prohibiting arbitrary acts. The applicants contend, in essence, that the direct payment received by them was too low, since the Commission calculated the 'reference price' referred to in Article 3(4) of Regulation No 3766/91 in an arbitrary manner in order to prevent that price from being more than 8% lower than the projected reference price of ECU 163 per tonne established by Article 3(1) of that

regulation, thereby avoiding any increase in the direct payments to producers. They argue that the contested regulation does not in any way reflect actual market conditions during the period under consideration. The Commission wrongly took account of prices for the months of February and March 1993, contrary to Article 3(4) of Regulation No 3766/91. It also wrongly added to the observed price for Hamburg the hypothetical costs of transportation to Rotterdam. At the hearing, the applicants relied, in support of their claims, on the figures provided to the Court by the Commission (see paragraph 30 above).

35 The Commission contends, as its principal argument, that the action is inadmissible or, in the alternative, unfounded.

Admissibility

36 The defendant raises two pleas of inadmissibility. First, Martin Weber GdbR does not have *locus standi*. Second, the contested regulation was not of 'individual concern' to it within the meaning of the second paragraph of Article 173 of the EEC Treaty.

The plea alleging that Martin Weber GdbR does not have locus standi

Arguments of the parties

37 The defendant argues that Martin Weber GdbR, a firm constituted under civil law in accordance with Paragraph 705 et seq. of the Bürgerliches Gesetzbuch (German Civil Code), has no legal personality under German law and that, according to Article 50 of the Zivilprozeßordnung (German Code of Civil Procedure), it cannot therefore have *locus standi*. Even though the meaning of 'legal person' in the

second paragraph of Article 173 of the Treaty is not necessarily the same as in the various legal systems of the Member States (judgment of the Court of Justice in Case 135/81 *Groupement des Agences de Voyages* v *Commission* [1982] ECR 3799, paragraph 10), Martin Weber GdbR does not fulfil the criteria of autonomy and responsibility determining *locus standi* (order of the Court of Justice in Case 15/63 *Lassalle* v *Parliament* [1964] ECR 50, at 51, and the judgment of the Court of Justice in Case 18/74 *Syndicat Général du Personnel* v *Commission* [1974] ECR 933, paragraph 7). According to the defendant, the present action should therefore have been brought by Mr and Mrs Weber and not by Martin Weber GdbR.

38 The applicants concede that Martin Weber GdbR does not have legal personality, but maintain that its statutes show that it possesses the necessary 'autonomy and responsibility' required by the case-law of the Court of Justice. Consequently, Martin Weber GdbR has the capacity to bring proceedings before the Community judicature.

39 In the alternative, Mr and Mrs Weber request the Court to regard them as the applicants in the present case. They point out that it was they who signed the letter annexed to the application authorizing the institution of the proceedings, and that they are the only members of Martin Weber GdbR.

Findings of the Court

40 It is apparent from page 2 of the application, and from the statutes of Martin Weber GdbR annexed thereto, that its only members and representatives are Martin Weber and his wife, Maria Weber. Furthermore, the authority granted to the lawyer who initiated the proceedings, which is also annexed to the application, is signed by Martin and Maria Weber in their own names. In those circumstances, the application initiating the proceedings must be construed as having been made not only on behalf of Martin Weber GdbR but also by Martin and Maria Weber.

41 Since the proceedings involve a single application, there is no need to consider the *locus standi* of Martin Weber GdbR before the Community judicature (see the judgment of the Court of First Instance in Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission* [1995] ECR II-2305, paragraph 79).

42 The first plea of inadmissibility must therefore be rejected.

The plea alleging that the contested regulation is not of individual concern to the applicants

Arguments of the parties

43 The defendant points out that a regulation can be of individual concern to economic operators only if it affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the addressee of a decision (judgments of the Court of Justice in Case 25/62 *Plaumann* v *Commission* [1963] ECR 95 and Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501). Martin Weber GdbR is merely one of a number of producers of oilseeds and is in no way different from other undertakings of that kind. Legal protection would be available to the applicants before the competent German courts, which could if necessary make a reference to the Court of Justice under Article 177 of the EC Treaty.

44 Moreover, the legislative nature of a measure is not called in question by the fact that it is possible to determine more or less precisely the number or even the identity of the persons to whom it applies at any given time, as long as it is established that it applies to them by virtue of an objective legal or factual situation defined by the measure in question in relation to its purpose (see the judgments of the Court of Justice in Case 123/77 *UNICME* v *Council* [1978] ECR 845, Case 26/86 *Deutz*

and Geldermann v *Council* [1987] ECR 941 and Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, and the order of the Court of Justice in Case C-131/92 *Arnaud and Others* v *Council* [1993] ECR I-2573).

45 The contested regulation fixes the final regional reference amount in accordance with objective criteria laid down by Regulation No 3766/91, in particular Article 4 thereof, which are applicable to all producers qualifying for aid, irrespective of individual data concerning persons lodging an application. Furthermore, Regulations Nos 3766/91, 515/93 and 525/93 together form a corpus of provisions of a legislative nature.

46 It is only because the determination of the final amount of aid must reflect actual market conditions as closely as possible that the final regional reference amounts were required to be fixed at a time when all the recipients had already been identified. In cases where the Court of Justice has acknowledged the existence of an individual interest in bringing proceedings on the ground that the applicants concerned belonged to a 'closed class', the legislation in issue specifically affected firmly established legal positions which, by contrast with the present case, had already been settled definitively, and not merely provisionally. In the present case, the final amount of the aid was not known until after the regional reference amounts had been finally fixed.

47 The adjustment provided for by Article 6(2) of Regulation No 3766/91 (see paragraph 9 above) does not bear out the applicants' argument, since the maximum guaranteed area is fixed not in relation to individual producers but on a Community-wide basis, and any reduction made is applicable irrespective of the identity of the producer responsible for that area having been exceeded.

48 The defendant maintains in the alternative that only the final regional reference amount established for Bavaria is of individual concern to the applicants.

49 The applicants maintain that, by reason of the errors of law and arbitrary acts perpetrated by it (see paragraph 34 above), the Commission fixed the final regional reference amounts referred to in the contested regulation at too low a level, so that the direct payment to which they were entitled was unlawfully reduced. The contested regulation is therefore of direct and individual concern to the applicants.

50 Persons are individually concerned, first, where the contested measure relates to specific applications which have already been formulated and the category of interested parties cannot be extended following the adoption of the measure (judgments of the Court of Justice in Joined Cases 106/63 and 107/63 *Töpfer and Others* v *Commission* [1965] ECR 405 and Case 88/76 *Exportation des Sucres* v *Commission* [1977] ECR 709) and, second, where there exists a causal link between the determinable nature of the persons concerned and the measure in question (Opinion of Advocate General Mancini in Case 294/83 *Les Verts* v *Parliament* [1986] ECR 1339, at 1341). Such cases involve a conglomeration of individual decisions taken under the guise of a regulation (judgment of the Court of Justice in Joined Cases 41/70, 42/70, 43/70 and 44/70 *International Fruit Company and Others* v *Commission* [1971] ECR 411, paragraph 21).

51 That is precisely the position in the present case, since, under Article 4(2) of Regulation No 3766/91, in order to qualify for support for the 1992/93 marketing year, a producer was obliged, by the date specified for the region in question, to have sown the seed and to have lodged an application. The contested regulation governed only cases in which such applications had already been formulated. Consequently, the persons concerned were capable of being identified by the Commission before it adopted the measure, and the category of interested parties was not capable of being extended thereafter. There was also a direct causal link between the possibility of determining the addressees and the measure in question.

52 Since, by virtue of having already lodged their application, the applicants had acquired a firmly established legal position, the fact that a large number of other producers of oilseeds had likewise attained the same legal position is immaterial in

law. The reason for which the regional reference amounts at issue were not fixed until after the applications had been lodged by the various producers, including the applicants, is also immaterial.

53 Similarly, the contested regulation took account of the conduct of producers of oilseeds, in that Article 6(2) of Regulation No 3766/91 requires them not to exceed the maximum guaranteed area.

54 Lastly, the defendant's alternative argument, to the effect that only the final regional reference amount established for Bavaria is of individual concern to the applicants, is unfounded, because the various regional reference amounts are calculated on the basis of the same final reference price as the one in issue in the present case.

Findings of the Court

55 Under the second paragraph of Article 173 of the EEC Treaty (now reconstituted as the fourth paragraph of Article 173 of the EC Treaty), the admissibility of proceedings brought by a natural or legal person for annulment of a regulation is subject to the condition that the provisions of the regulation at issue in the proceedings constitute in reality a decision of direct and individual concern to the applicant (see, for example, the judgment in *Codorniu* v *Council*, cited above, paragraph 17). The criterion for distinguishing between a regulation and a decision must be sought in the general application or otherwise of the act in question (see the orders of the Court of Justice in Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraph 28, and in Case C-87/95 P *CNPAAP* 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 (see, for example, the order of 28 March 1996 in Case C-270/95 P *Kik* v *Council* [1996] ECR I-1987, paragraph 10).

56 However, a provision which, by virtue of its nature and scope, is general in character may be of individual concern to natural or legal persons where 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 and by virtue of these factors distinguishes them individually just as in the case of the addressee of a decision (see, for example, the judgments in *Plaumann* v *Commission*, cited above, page 107, and *Codorniu* v *Council*, cited above, paragraphs 19 to 20, as well as the order in *Asocarne* v *Council*, cited above, paragraph 43).

57 In the present case, the contested regulation establishes, for all regions of the Community and for all Community producers of the oilseeds concerned, the final regional reference amounts for the 1992/93 marketing year, as provided for in Article 3(4) and (5) of Regulation No 3766/91. Those final regional reference amounts are established in accordance with three factors, namely the projected regional reference amounts provided for in Article 3(3) of Regulation No 3766/91, the 'reference price' referred to in Article 3(4) of that regulation, and, where appropriate, the extent to which the maximum guaranteed area laid down in Article 6(1) and (2) of that regulation is exceeded.

58 Each of those factors is determined on the basis of data of a general and abstract nature, without taking any account of the situation of individual producers such as the applicants.

59 First of all, the projected regional reference amounts, which are updated in due course to form the final regional reference amounts, are calculated by taking into account, first, the Community reference amount of ECU 384 per hectare fixed by Article 3(2) of Regulation No 3766/91 and, second, the average Community and regional yields for the products in question, in accordance with Article 3(3) of that regulation (see paragraphs 4 and 6 above). The projected regional reference amounts are not referable, therefore, to the situation of individual producers.

60 Next, the 'reference price' referred to in Article 3(4) of Regulation No 3766/91, which is used to calculate the final regional reference amount, is established in respect of the entire Community on the basis of prices which have actually been observed on the Community market during the marketing year in question. It is apparent from the documents before the Court that in the present case the market prices taken into account by the Commission were based on information supplied by the authorities of the Member States in relation to observed wholesale prices and/or 'free at oil mill' prices for various oilseeds in certain Community port areas during the 1992/93 marketing year, disregarding any reference to individual transactions and, *a fortiori*, to the situation of individual producers such as the applicants.

61 Lastly, as regards the possible reduction of final reference amounts provided for by Article 6(2) of Regulation No 3766/91 where the maximum guaranteed area is exceeded, it must be observed that the maximum guaranteed area is fixed on a Community-wide basis, and that the extent to which it may be exceeded is likewise calculated on that basis. Consequently, contrary to the applicants' contentions, the reduction provided for is objectively applicable to all the Community producers concerned, irrespective of the situation of individual producers.

62 It follows that the contested regulation must be regarded as a measure of general application directed, on a general and abstract basis, to all the Community producers concerned. The position is the same as regards the final regional reference amount of ECU 517 per hectare fixed for Bavaria.

63 As regards the argument that the contested regulation is of individual concern to the applicants because they belong to a 'closed class', the Court finds that, in consequence of their application of 24 May 1992, their harvest declaration of 23 August 1992 and the acknowledgement by the competent authorities on 23 September 1992 of their entitlement to an advance payment, the applicants in fact formed part, at the time when the contested regulation was adopted, of a fixed

number of producers, namely those who had (1) sown the seed for the 1992/93 harvest in accordance with the conditions laid down, (2) lodged an application containing the data and declarations required, (3) submitted a harvest declaration and (4) received an advance payment equal to 50% of the projected regional reference amount (see Article 4 of Regulation No 3766/91 and Articles 3, 4, 5 and 6 of Regulation No 615/92).

64 However, as the Court of Justice and the Court of First Instance have consistently held, the general application and hence the general nature of a measure are not called in question by the fact that it is possible to determine more or less precisely the number or even the identity of the persons to whom it applies at any given time, as long as it is established that it applies to them by virtue of an objective legal or factual situation defined by the measure in question (see, for example, the orders of the Court of Justice in *Asocarne* v *Council*, cited above, paragraph 30, and *CNPAAP* v *Council*, cited above, paragraph 34, as well as the order of the Court of First Instance in Case T-183/94 *Cantina Cooperativa fra Produttori Vitivinicole di Torre di Mosto and Others* v *Commission* [1995] ECR II-1941, paragraph 48, and the case-law cited).

65 That is the position in the present case (see paragraphs 57 to 62 above). The 'closed class' invoked by the applicants results from the very nature of the system established by Regulation No 3766/91 and concerns the applicants no differently from all other oilseed producers in the same situation.

66 The case-law relied on by the applicants (see paragraph 50 above) cannot be transposed to the present case. It relates to certain specific situations concerning either individual applications for import licences lodged during a given period of brief duration and in respect of established quantities (see the judgments cited above in *Töpfer* v *Commission*, at p. 411, and *International Fruit Company and Others* v *Commission*, paragraphs 16 to 22, together with the judgments of the Court of Justice in Case 62/70 *Bock* v *Commission* [1971] ECR 897, paragraph 10 and Case C-354/87 *Weddel* v *Commission* [1990] ECR I-3847, paragraphs 20 to 23; see also, by analogy, the judgment of the Court of Justice in Case 232/81 *Agricola Commerciale Olio* v *Commission* [1984] ECR 3881) or established categories of

export licences with refunds fixed in advance, obtained during a given period and still valid on a specific date (see the judgment in *Exportations des Sucres* v *Commission*, cited above, paragraphs 9 to 11, and the judgment of the Court of Justice in Case 100/74 *CAM* v *Commission* [1975] ECR 1393, paragraphs 14 to 19). The present case, on the other hand, concerns a measure which applies generally and without distinction to all Community producers of oilseeds, regardless of the specific situation of certain producers and irrespective of the nature or contents of the individual applications.

67 Nevertheless, the applicants further maintain that the contested regulation has adversely affected the 'firmly established legal position' which was theirs at the time of its adoption. It is necessary to examine, therefore, whether they can be differentiated in the sense contemplated in the judgment in *Codorniu* v *Council*, as interpreted by the Court of Justice in its orders in *Asocarne* v *Council* and *CNPAAP* v *Council*, according to which a provision of general scope may, in certain circumstances, be of individual concern to an economic operator in so far as it adversely affects that operator's specific rights.

68 The Court finds in that regard that, prior to the adoption of the contested regulation, the applicants, who had fulfilled all the applicable conditions and had already received an advance payment equal to 50% of the projected regional reference amount, were entitled to believe that they would receive from the national authorities, within 60 days from the date of publication of the final regional reference amounts (Article 8 of Regulation No 615/92), the balance of the direct payment, increased or reduced as appropriate, in accordance with Article 3(4) of Regulation No 3766/91, where the observed reference price differed by more than 8% from the projected reference price, and adjusted as necessary, in accordance with Article 6(2) of that regulation, in the event of the maximum guaranteed area being exceeded.

69 It follows, first, that, prior to the adoption of the contested regulation, the applicants had not acquired any right to the direct payment of a precise total amount and, second, that their legal situation did not differ from that of all the other Community producers to whom that regulation applied. In those circumstances, the

mere fact that the applicants lodged the necessary applications and declarations, and that they were already in receipt of an advance payment, is not such as to establish that their specific rights have been adversely affected to such an extent that they must be regarded as individually concerned within the meaning of the judgment in *Codorniu* v *Council*.

70 In the present case, the applicants' rights did not assume concrete form until the national authorities adopted their individual decision of 28 April 1993 awarding them a final payment of a specific sum (see paragraph 22 above). Since the applicants can contest that decision before the competent national court (see paragraph 24 above), it is open to that court, if necessary, to refer a question to the Court of Justice for a preliminary ruling under subparagraph (b) of the first paragraph of Article 177 of the EC Treaty, pursuant to which the Court of Justice has jurisdiction to rule on the validity and interpretation of acts of the institutions of the Community.

71 It follows from the foregoing that the contested regulation is not of individual concern to the applicants. Consequently, the application must be dismissed as inadmissible.

Costs

72 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 and the Commission has applied for costs, the applicants should be ordered to pay the costs.

On those grounds,

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

hereby:

1. Dismisses the application as inadmissible;

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

Kirschner Vesterdorf Bellamy

Kalogeropoulos Potocki

Delivered in open court in Luxembourg on 10 July 1996.

H. Jung H. Kirschner

Registrar President