ORDER OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
21 March 2003 *

In Case T-167/02,

Établissements Toulorge, established in Bricquebec (France), represented by D. Waelbroeck and D. Brinckmann, lawyers

applicant,

v

European Parliament, represented by C. Pennera and E. Waldherr, acting as Agents, with an address for service in Luxembourg,

and

Council of the European Union, represented by I. Díez Parra and F.P. Ruggeri Laderchi, acting as Agents,

defendants,

* Language of the case: French.

supported by

Federal Republic of Germany, represented by W.-D. Plessing and M. Lumma, acting as Agents,

and by

Commission of the European Communities, represented by A. Bordes, acting as Agent, with an address for service in Luxembourg,

interveners,

APPLICATION for annulment of Directive 2002/2/EC of the European Parliament and of the Council of 28 January 2002 amending Council Directive 79/373/EEC on the circulation of compound feedingstuffs and repealing Commission Directive 91/357/EEC (OJ 2002 L 63, p. 23) and for compensation for the damage allegedly suffered,

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

composed of: V. Tiili, President, P. Mengozzi and M. Vilaras, Judges,

Registrar: H. Jung,

makes the following

Order

1 On 28 January 2002, the Parliament and the Council adopted Directive 2002/2/EC amending Council Directive 79/373/EEC on the circulation of compound feedingstuffs and repealing Commission Directive 91/357/EEC (OJ 2002 L 63, p. 23; 'Directive 2002/2' or 'the contested directive').

2 As regards labelling, Council Directive 79/373/EEC of 2 April 1979 on the marketing of compound feedingstuffs (OJ 1979 L 86, p. 30) provided for a flexible declaration confined to the indication of the feed materials without stating their quantity in feedingstuffs for production animals, while retaining the possibility of declaring categories of feed materials instead of declaring the feed materials themselves (recital 3 in the preamble to Directive 2002/2).

3 It is mentioned in recital 4 in the preamble to Directive 2002/2 that the bovine spongiform encephalopathy and dioxin crises have demonstrated the inadequacy of those provisions and the need for more detailed qualitative and quantitative information on the composition of compound feedingstuffs for production

animals. It is stated in recital 5 in that preamble that detailed quantitative information may help to ensure that potentially contaminated feed materials can be traced to specific batches, which will be beneficial to public health and avoid the destruction of products which do not present a significant risk to public health.

4 Accordingly, Article 5(1)(l) of Directive 79/373, as amended by Article 1 of Directive 2002/2, provides:

'1. Member States shall prescribe that compound feedingstuffs may not be marketed unless the particulars listed below, which shall be clearly visible, legible and indelible and for which the manufacturer, packer, importer, seller or distributor established within the Community shall be held responsible, are shown, in a space provided for that purpose, on the packaging on the container or on a label attached thereto:

...

(l) in the case of compound feedingstuffs other than those intended for pets, the indication "the exact percentages by weight of feed materials used in this feedingstuff may be obtained from:..." (name or trade name, address or registered office, telephone number and e-mail address of the person responsible for the particulars referred to in this paragraph). This information shall be provided at the customer's request.'

5 Article 1 of Directive 2002/2 also provides that Article 5c of Directive 79/373 is to be amended as follows:

'1. All feed materials used in the compound feedingstuff shall be listed by their specific names.

2. The listing of feed materials for feedingstuffs shall be subject to the following rules:

(a) compound feedingstuffs intended for animals other than pets:

(i) listing of feed materials for feedingstuffs with an indication, in descending order, of the percentages by weight present in the compound feedingstuff;

(ii) as regards the above percentages, a tolerance of ±15% of the declared value shall be permitted;

...'

6 Article 3 of Directive 2002/2 provides:

'1. Member States shall adopt and publish not later than 6 March 2003, the laws, regulations and administrative provisions necessary to comply with this directive. They shall forthwith inform the Commission thereof.

They shall apply these measures as from 6 November 2003...'

Facts and procedure

7 The applicant is an animal food undertaking whose main activity is the development and manufacture of compound feedingstuffs for production animals. It claims to have, as a result of considerable research and development work, a highly specialised knowledge of animal nutrition, enabling it to manufacture very specific compound feedingstuffs and thus to extend its business.

8 It claims, in essence, that the contested directive introduces new labelling rules for compound feedingstuffs which will have the effect of disclosing its know-how and business secrets, thereby seriously affecting its economic activities and even threatening its viability.

9 By application lodged at the Court Registry on 30 May 2002, the applicant brought the present action.

10 By separate documents lodged at the Court Registry on 16 August and 30 September 2002, the Parliament and the Council raised pleas of inadmissibility under Article 114 of the Rules of Procedure of the Court of First Instance. The applicant lodged its observations on those pleas on 18 November 2002.

11 By documents lodged at the Court Registry on 10 and 11 September 2002, the Federal Republic of Germany and the Commission applied for leave to intervene in these proceedings in support of the forms of order sought by the defendants. By order of 2 October 2002, the President of the Fourth Chamber of the Court of First Instance allowed that intervention. The Commission and the Federal Republic of Germany lodged their statements on 29 October and 11 November 2002.

Forms of order sought

12 In its application, the applicant claims that the Court should:

— annul Directive 2002/2;

— declare the non-contractual liability of the Community, as represented by the defendants, and order them to make good any damage suffered as a consequence of Directive 2002/2;

— order the parties to produce, within a reasonable period after the Court of First Instance delivers its decision, exact figures to quantify the damage which the parties have agreed or, or in the absence of such agreement, 'additional submissions containing such exact figures';

— order the defendants to pay the costs.

13 In their plea of inadmissibility, the defendants contend that the Court should:

— dismiss the application in its entirety as inadmissible;

— order the applicant to pay the costs.

14 In its observations on the pleas of inadmissibility, the applicant claims that the Court should:

— dismiss the pleas of inadmissibility or, at least, reserve a decision on admissibility for the final judgment and declare those pleas unfounded in the judgment on the merits;

— order the defendants to pay the costs.

15 In their statements in intervention, the interveners contend that the Court should:

— dismiss the application as inadmissible;

— order the applicant to pay the costs.

Law

16 Under Article 114(1) of the Rules of Procedure, if a party so requests, the Court may decide the question of inadmissibility as a preliminary issue. By virtue of Article 114(3), the remainder of the proceedings are to be oral, unless the Court otherwise decides. In the present case, the Court is of the view that it is sufficiently well informed by the documents before it to give a ruling on the claims submitted by the defendants without initiating the oral procedure.

17 It is necessary, first of all, to examine the admissibility of the application in so far as it seeks the annulment of the contested directive.

The nature of the contested act

Arguments of the parties

18 The defendants, supported by the interveners, claim that the fourth paragraph of Article 230 EC does not mention a directive but only a decision addressed to a

natural or legal person and a decision which, 'although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former'.

19 In those circumstances, it is necessary to determine, as the Court of Justice did in its order in Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, whether Directive 2002/2 is in fact of general application. According to the defendants, Directive 2002/2 is indeed a legislative measure, because it applies in a general and abstract manner to objectively determined situations, and not a 'disguised' decision.

20 This application for annulment should therefore be declared inadmissible by the mere fact that the form and content of the directive coincide and it is unnecessary to decide whether the applicant is directly and individually concerned by the contested directive.

21 The applicant points out that, although Article 230 EC does not deal expressly with the admissibility of actions for annulment brought against a directive, it is nevertheless clear from the case-law that the legislative nature of a measure, including in the case of a directive, does not prevent an individual from contesting the measure, if he is at all directly and individually concerned by it (judgment in Case T-135/96 *UEAPME* v *Council* [1998] ECR II-2335), which is the position in the present case.

22 It therefore challenges the defendants' analysis of the case-law, according to which an action brought by an individual against a directive is, as a matter of principle, precluded, unless, on account of its specific provisions, the directive resembles an individual decision.

Findings of the Court

23 Under the fourth paragraph of Article 230 EC, '[a]ny 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 or a decision addressed to another person, is of direct and individual concern to the former'.

24 Although the fourth paragraph of Article 230 EC makes no express provision regarding the admissibility of actions brought by natural or legal persons for annulment of a directive, it is clear from the case-law that that fact in itself is not sufficient to render such actions inadmissible (judgment in *UEAPME* v *Council*, cited above, paragraph 63, and order in Case T-223/01 *Japan Tobacco and JT International* v *Parliament and Council* [2002] ECR II-3259, paragraph 28). It should also be pointed out that the Community institutions cannot, merely by means of their choice of legal instrument, deprive individuals of the judicial protection which is afforded them by that provision of the Treaty (order in *Japan Tobacco and JT International* v *Parliament and Council*, cited above, paragraph 28). It is therefore necessary to establish whether the contested directive is not a decision of direct and individual concern to the applicant, within the meaning of the fourth paragraph of Article 230 EC.

25 In the present case, the parties agree that the contested directive is indeed of a legislative character. The rules which it contains, particularly the duty to state the exact percentages by weight of the feed materials used in the feedingstuffs intended for production animals, are stated generally, apply to objectively determined situations and have legal effects for categories of persons envisaged in a general and abstract manner, namely the manufacturers, packers, importers, sellers and distributors of compound animal feedingstuffs.

26 However, the fact that the contested measure is legislative in character and is not a decision within the meaning of Article 249 EC is not, in itself, enough to preclude the applicant from bringing an action for its annulment.

27 In some circumstances, even a legislative measure applying to all the economic operators concerned may be of direct and individual concern to some of them (judgments in Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501, paragraph 13, and Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 19; and order in *Japan Tobacco and JT International* v *Parliament and Council*, cited above, paragraph 29).

28 It follows that the plea of inadmissibility based on the legislative nature of the contested measure must be rejected and it is therefore necessary to ascertain whether the applicant is individually and directly concerned by the contested directive.

The locus standi of the applicant

Arguments of the parties

29 The defendants and the interveners consider that the applicant is not individually concerned by the contested directive.

30 As regards, in particular, the applicant's arguments based on the principle of effective judicial protection, the Parliament states that the interpretation of that principle cannot have the effect of setting aside the application of the conditions contained in the fourth paragraph of Article 230 EC, according to which a natural or legal person may bring an action for annulment against a measure of general application only if it is directly and individually concerned by it (judgment in Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677, paragraph 44).

31 The Council states that, even if the Court of Justice, in the abovementioned judgment, had followed the approach suggested by Advocate General Jacobs in his Opinion concerning the admissibility of actions brought against regulations, the extension of that approach to directives would, in point of fact, reduce certainty and the legal protection of individuals. They could no longer wait until they knew the implementing measures and thus assess the applicable rules, overall and in detail, before contesting them before the national courts, because, if they did not bring an action before the Community court within the strict time-limits laid down in Article 230 EC, a possible question on the validity of the directive could no longer be referred for a preliminary ruling in accordance with the judgment in Case C-188/92 *TWD* [1994] ECR I-833.

32 The applicant claims that it fulfils the condition of individual interest, as interpreted by the Court of First Instance in Case T-177/01 *Jégo-Quéré* v *Commission* [2002] ECR II-2365, paragraph 51.

33 Accordingly, there is no doubt that the applicant's legal position is affected in a manner which is both definite and immediate, within the meaning of the abovementioned judgment, by the contested directive. Indeed, the indication of the exact percentages by weight of the feed materials in the feedingstuffs introduced by that measure would deprive the applicant of its rights over its know-how and its business secrets, which would also adversely affect its right freely to exercise its economic activity.

34 In reply to the Parliament's argument that the Court of Justice, in its judgment in *Unión de Pequeños Agricultores* v *Council*, cited above, confirmed the traditional case-law on individual interest, from which the judgment in *Jégo-Quéré* v *Commission*, cited above, departed, the applicant claims that the Court of Justice did not expressly reject the reasoning of the Court of First Instance. In actual fact, the Court of Justice did not give a clear ruling on the meaning to be given to the condition of individual interest, since the applicant's arguments concerning the right to an effective remedy invited it purely and simply to set aside the aforementioned condition. That is not the applicant's approach in the present case.

35 In any event, the action is admissible even in the light of the case-law prior to the judgment in *Jégo-Quéré* v *Commission*.

36 Firstly, the applicant maintains, referring to the judgment in *Codorniu* v *Council*, cited above, that it is individually concerned by Directive 2002/2 since the directive denies it specific rights, namely the rights relating to know-how and business secrets. Those rights, which are protected in the legal systems of the Member States and by the 'GATT-TRIPS' rules, are specific, because, in the very words used by the Court of Justice in Case 53/85 *AKZO Chemie* v *Commission* [1986] ECR 1965, paragraphs 28 and 29, they are afforded 'very special protection' in Community law.

37 Community law thus recognises that know-how is an essential feature of competition and that an undertaking granting, for example, a licence on its know-how to another undertaking deserves judicial protection against the disclosure of that know-how which is fully comparable to protection of a patent (Case 161/84 *Pronuptia* [1986] ECR 353, paragraph 16; Article 5(b) of

Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices (OJ 1999 L 336, p. 21) and Article 2(1) of Commission Regulation (EC) No 240/96 of 31 January 1996 on the application of Article [81](3) of the Treaty to certain categories of technology transfer agreements (OJ 1996 L 31, p. 2)).

38 The applicant points out that the protection of business secrets is expressly referred to in Article 287 EC and has been confirmed repeatedly by the Community legislature and the Court of Justice.

39 Furthermore, the Commission has acknowledged the specific nature of the rights in question and the Parliament, in the present case, does not dispute that the information which the applicant will have to reveal is substantial and secret.

40 The mere fact that the applicant is not the only undertaking affected by the contested directive, as the Parliament points out in support of its plea of inadmissibility, is completely irrelevant to the extent that the rights it invokes are not general but specific, that is to say, different from those of its competitors (Case C-390/95 P *Antillean Rice Mills and Others* [1999] ECR I-769, paragraph 67 et seq.; Case T-435/93 *ASPEC and Others* v *Commission* [1995] ECR II-1281, and *Jégo Quéré* v *Commission*, cited above, paragraph 51). This is the position in the present case, because the applicant's know-how has been obtained through continuous research into animal nutrition.

41 The applicant maintains, secondly, that it is also individually concerned, within the meaning of the judgment in *Extramet Industrie* v *Council*, cited above, since, as a small or medium-sized undertaking (SMU), it risks being gravely affected by

the contested directive, because its economic activity depends, to a large extent, on the protection afforded to its know-how. Directive 2002/2 would deprive the applicant of what is, is practice, its main competitive asset and the essential added value of its activity, while giving a significant competitive advantage to the applicant's rivals and, in particular, to the large manufacturers of compound feedingstuffs.

42 It states that the Court has repeatedly noted the interest of undertakings in their business secrets not being revealed and the extremely serious damage which could result from the unlawful disclosure of documents to a competitor (*AKZO Chemie* v *Commission*, cited above, paragraphs 28 and 29). In general, it is clear from the case-law that, in order to assess the admissibility of an action, account is taken of the significance of the effect of the measure in question, and not only its purpose, or merely the obligation to take account of specific rights.

43 The applicant points out that its situation is unique compared with that of many other mixers. There are, more and more frequently in the sector concerned, situations of 'vertical integration', from the breeder to the abattoir, via food production. In that case, the interest in not revealing know-how disappears because the integrated undertaking is both supplier and its own customer. The applicant infers that the harm it suffers is therefore very specific.

44 Referring to the judgment in *Jégo-Quéré* v *Commission* and to the Opinion delivered by Advocate General Jacobs in *Unión de Pequeños Agricultores* v *Council*, the applicant maintains, thirdly, that only a direct action before the Court of First Instance will offer it adequate judicial protection. It considers that the Court of First Instance was right to hold, in the aforementioned judgment, that the procedures provided for in Article 234 EC, on the one hand, and Article 235 EC and the second paragraph of Article 288 EC, on the other, can no

longer be regarded — in the light of Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), signed in Rome on 4 November 1950, and of Article 47 of the Charter of Fundamental Rights of the European Union, proclaimed in Nice on 7 December 2000 (OJ 2000 C 364, p. 1) — as guaranteeing persons the right to an effective remedy enabling them to contest the legality of Community measures of general application which directly affect their legal situation.

45 In that regard, the argument relating to the protection of legal certainty, as set out in the aforementioned Opinion, applies *a fortiori* in the case of a directive whose transposition by the Member States may vary considerably in time. Such a situation justifies the need for a centralised and immediate review of legality in order to prevent effects which are harmful, and in the present case irreparable, as a result of the application of the measure in question.

46 The applicant considers that the defendants are wrong to maintain that the judgment in *Unión de Pequeños Agricultores* v *Council*, cited above, shows the irrelevance of its argument based on the principle of effective judicial protection. In that judgment the Court of Justice acknowledges the right to such protection, enshrined in Articles 6 and 13 of the ECHR, and that the condition of individual interest — which, it is not disputed, must be fulfilled in this case — must be interpreted in the light of the principle of effective judicial protection by taking into account the various circumstances which differentiate an applicant.

47 In response to the Council's argument concerning the impact which the admissibility of the present action would have on the possibility of raising questions on the validity of the contested directive before the national courts as a result of the solution adopted in the judgment in *TWD*, the applicant claims that that judgment concerned an individual decision and that that solution is not applicable to acts of general application and, in particular, to directives (Case C-408/95 *Eurotunnel and Others* [1997] ECR I-6315).

Findings of the Court

48 It should be pointed out that, according to the case-law, natural or legal persons can claim to be individually concerned by a measure only if it 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, accordingly, distinguishes them individually in the same way as an addressee (judgment in Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, 107, and judgment in *UEAPME* v *Council*, cited above, paragraph 69).

49 That condition for the admissibility of an action brought by a natural or legal person has also been recalled recently by the Court of Justice in identical wording to that referred to in paragraph 48 above (*Unión de Pequeños Agricultores*, cited above, paragraph 36).

50 In the present case, the parties agree that the rules contained in the contested directive, in particular the obligation to indicate the exact percentages by weight of the feed materials in feedingstuffs are stated in a general way, apply to objectively determined situations and have legal effects for categories of person contemplated in a general and abstract manner, namely manufacturers, packers, importers, sellers and distributors of compound animal feedingstuffs.

51 It follows that Directive 2002/2 concerns the applicant only in its objective capacity as a manufacturer of such feedingstuffs, in the same way as any other economic operator active in that sector.

52 That conclusion is not invalidated by the applicant's arguments alleging that the rights it claims to have, and which it would be denied by the contested directive, are specific.

53 First of all, it should be pointed out that the alleged existence of 'very special protection' in Community law, or even in the national legal systems or other rules, for an undertaking's know-how and business secrets does not distinguish the applicant individually from all the other feed manufacturers concerned by the contested directive, who could equally invoke that protection for their own benefit.

54 In that regard, the situation giving rise to the judgment in *Codorniu* v *Commission*, cited above, is clearly different from that of this case. Unlike this case, that judgment concerned an applicant undertaking which was prevented, by a legislative provision governing the use of a designation, from using the graphic trade mark which it had registered and used for a long time before the adoption of the contested regulation, so that it was distinguished from all the other economic operators.

55 It should also be pointed out that it is clear from the applicant's own pleadings that the most important competitive element for 'feed manufacturers' is the 'recipe' of their product, which is based on formulae using their knowledge and know-how concerning the nutritional needs of animals, and that Directive 2002/2 would have the effect of revealing the basic know-how and business secrets 'of the manufacturers of compound feedingstuffs, including the applicant'.

56 In that context, the applicant's claim that it has specific rights, different from those of its competitors, since its know-how has been acquired by its continuous research into animal nutrition, is completely irrelevant to the requirement of individual interest.

57 Indeed, the fact that the applicant manufactures compound feedingstuffs from formulae which are peculiar to it, doing exactly what its competitors do, does not in any way show that it is in a specific position in relation to any other manufacturer of the products in question. All manufacturers of compound animal feedingstuffs will — should the case arise — be affected in the same way by the contested directive, since each of them makes its products from its own 'recipes' and on the basis of its own know-how.

58 Nor is the conclusion stated in paragraph 51 above called into question by the applicant's argument that its economic activities will be seriously affected by Directive 2002/2, within the meaning of the judgment in *Extramet Industrie* v *Council*, cited above.

59 In that judgment, which concerns an anti-dumping regulation, the Court of Justice considered that the applicant undertaking, acting as an independent importer, was individually concerned by the contested measure owing to exceptional circumstances. Thus, the applicant had established, first, that it was the largest importer of the product forming the subject-matter of the anti-dumping measure and, at the same time, the end-user of the product and, secondly, that its business activities depended to a very large extent on its imports and, thirdly, that those activities were seriously affected by the regulation in question by reason of the limited number of manufacturers of the product concerned and of the difficulties which it encountered in obtaining supplies from the sole Community producer, which, moreover, was its main competitor for the processed product.

60 In the present case, even if Directive 2002/2 might affect the applicant's situation, it has not adduced evidence of circumstances to support the conclusion that the harm allegedly suffered distinguishes it individually from all the other manufacturers of compound feedingstuffs, which are concerned by the directive in the same way as itself.

61 Accordingly, unless the intention is to indicate that the applicant is seriously affected by Directive 2002/2 because it is the only producer of compound animal feedingstuffs not in a vertical integration structure, which is not established, the argument referred to in paragraph 43 above is irrelevant since, far from being unique, the applicant's situation is shared by all manufacturers of compound feedingstuffs which, like the applicant, are not also meat breeders and producers (see, by analogy, order in Case T-39/98 *Sadam Zuccherifici and Others* v *Council* [1998] ECR II-4207, paragraph 22).

62 Similarly, the fact that the applicant may be particularly affected as an SMU is not enough to distinguish it individually within the meaning of Article 230 EC, since there are, as the Parliament rightly points out, many operators affected in the same way by Directive 2002/2.

63 It should also be pointed out that the fact that a legislative measure may have specific effects which differ according to the various persons to which it applies is not such as to differentiate the applicant from all the other operators concerned, where that 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), which is unquestionably the position in this case.

64 Finally, the applicant's claim that, in the judgments of the Court of Justice in Case 11/82 *Piraiki-Patraiki* v *Commission* [1985] ECR 207, Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477, and *Antillean Rice Mills and Others*, cited above, there was no examination of whether the applicants were in a unique position, is based on a misinterpretation of those judgments. It should be noted that, in each of those cases, the Court determined whether the parties concerned had adduced proof of the existence of certain particular qualities or a factual situation differentiating them in relation to any other person and, therefore, distinguishing them individually in the same way as an addressee. It then

concluded that that was indeed the case for each of the applicants since a provision of higher-ranking law required the author of the legislative measure in question to take into consideration their situation specifically in relation to that of any other person concerned by that measure.

65 As regards the applicant's arguments based on the right to effective judicial protection, it need only be pointed out, as the Court stated in *Unión de Pequeños Agricultores* v Council, cited above, that the EC Treaty, in Articles 230 and 241, on the one hand, and in Article 234, on the other, established a complete system of legal remedies and procedures designed to permit the Court of Justice to review the legality of measures adopted by the institutions (see also Case 294/83 *Les Verts* v *Parliament* [1986] ECR 1339, paragraph 23). Under that system natural and legal persons, who, by reason of the conditions of admissibility laid down in the fourth paragraph of Article 230 EC, cannot contest directly Community measures of general application, may, depending on the circumstances, plead the illegality of those measures either as an incidental plea under Article 241 EC before the Community court or before the national courts and cause the latter, which do not have jurisdiction themselves to declare those measures illegal (judgment of the Court of Justice in Case 314/85 *Foto-Frost* [1987] ECR 4199, paragraph 20) to request the Court of Justice for a preliminary ruling (*Unión de Pequeños Agricultores* v *Council*, cited above, paragraph 40).

66 Apart from the fact that it is for the Member States to provide for a system of remedies and procedures guaranteeing observance of the right to effective judicial protection, the Court of Justice has also held that an interpretation of the rules on admissibility laid down in Article 230 EC, to the effect that an action for annulment should be declared admissible where it is shown, following an examination by the Community judicature of the particular national procedural rules, that those rules do not allow an individual to bring proceedings to contest the validity of the Community measure at issue, is not acceptable. Indeed, 'such

an interpretation would require the Community Court, in each individual case, to examine and interpret national procedural law. That would go beyond its jurisdiction when reviewing the legality of Community measures' (*Unión de Pequeños Agricultores* v *Council*, cited above, paragraph 43). That assessment must be accepted *a fortiori* where it is not alleged, as in the present case, that there are no legal remedies before the national courts making it possible to challenge the validity of the directive at issue (see to that effect order of the President of the Court of First Instance in Case T-155/02 R *VVG International and Others* v *Commission* [2002] ECR II-3239, paragraph 39).

67 In those circumstances, the applicant's arguments based on the right to effective judicial protection, including the considerations regarding the requirement of legal certainty put forward in that connection, must be rejected.

68 It is apparent from all these considerations that the applicant cannot be regarded as individually concerned by the directive at issue. Since it does not satisfy one of the conditions for admissibility laid down by the fourth paragraph of Article 230 EC, it is not necessary to consider the argument put forward by the defendants and the interveners that the applicant is not directly concerned by the directive.

69 It follows that the application, in so far as it seeks annulment of Directive 2002/2, must be dismissed as inadmissible.

70 On the other hand, a decision on the claims submitted by the defendants that the application, in so far as it seeks compensation for damage allegedly suffered, should be declared inadmissible must be reserved for the final judgment.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby orders:

1. The application is dismissed as inadmissible in so far as it seeks annulment of Directive 2002/2/EC of the European Parliament and of the Council of 28 January 2002 amending Council Directive 79/373/EEC on the circulation of compound feedingstuffs and repealing Commission Directive 91/357/EEC.

2. A decision on the claims submitted by the defendants, that the application, in so far as it seeks compensation for damage allegedly suffered, should be declared inadmissible is reserved for the final judgment.

3. Costs are reserved.

Luxembourg, 21 March 2003.

H. Jung

Registrar

V. Tiili

President