JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)
10 March 2004 *

In Case T-177/02,

Malagutti-Vezinhet SA, in judicial liquidation, established in Cavaillon (France), represented by B. Favarel Veidig and N. Boron, lawyers, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by M.-J. Jonczy and M. França, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for compensation for the damage allegedly suffered by the applicant after the Commission issued a rapid alert message notifying the presence of pesticide residues in apples from France and giving the applicant's name as the exporter of the goods in question,

* Language of the case: French.

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

composed of: N.J. Forwood, President, J. Pirrung and A.W.H. Meij, Judges,

Registrar: B. Pastor, Deputy Registrar,

having regard to the written procedure and further to the hearing on 4 November 2003,

gives the following

Judgment

Relevant provisions and facts

Community rapid alert system

1 Council Directive 92/59/EEC of 29 June 1992 on general product safety (OJ 1992 L 228, p. 24, 'the directive') established on a Community level a general safety requirement for any product placed on the market that is intended for consumers or likely to be used by consumers. To that end the directive set up a system of

rapid exchange of information in emergencies involving product safety. This is the 'Community rapid alert system for food and feed' ('RASFF'), in which the States signatories to the Agreement on the European Economic Area (EEA), including the Republic of Iceland, also take part.

2 Article 2(b) of the directive defines as a 'safe product' 'any product which, under normal or reasonably foreseeable conditions of use, including duration, does not present any risk or only the minimum risks compatible with the product's use, considered as acceptable and consistent with a high level of protection for the safety and health of persons'.

3 Articles 5 and 6 of the directive lay down the obligations and powers of the Member States with regard to monitoring product safety.

4 Article 7 of the directive provides:

'1. Where a Member State takes measures which restrict the placing of a product or a product batch on the market or require its withdrawal from the market, the Member State shall ... inform the Commission of the said measures, specifying its reasons for adopting them. This obligation shall not apply where the measures relate to an event which is local in effect and in any case limited to the territory of the Member State concerned.

2. The Commission shall enter into consultations with the parties concerned as quickly as possible. Where the Commission concludes, after such consultations, that the measure is justified, it shall immediately inform the Member State which initiated the action and the other Member States. Where the Commission concludes, after such consultations, that the measure is not justified, it shall immediately inform the Member State which initiated the action.'

5 Article 8 of the directive provides in respect of the RASFF:

'1. Where a Member State adopts or decides to adopt emergency measures to prevent, restrict or impose specific conditions on the possible marketing or use, within its own territory, of a product or product batch by reason of a serious and immediate risk presented by the said product or product batch to the health and safety of consumers, it shall forthwith inform the Commission thereof ...

2. On receiving this information, the Commission shall check to see whether it complies with the provisions of this directive and shall forward it to the other Member States, which, in turn, shall immediately inform the Commission of any measures adopted.'

6 Annex I to the directive lays down the detailed procedures for applying the RASFF.

Background to the case

7 The applicant exports fruit and vegetables from France, in particular to the Netherlands and the United Kingdom.

8 It is apparent from several invoices dated August 2001 that it sold to the Netherlands company van den Bosch several hundred boxes of apples from France which had been treated with the pesticide dicofol.

9 On Thursday, 6 September 2001, the Commission was informed under the RASFF by the Icelandic contact point that the competent Icelandic authority had decided on 4 September to withdraw and dispose of a batch of apples of French origin distributed via the Netherlands, following the discovery on 3 September of the presence of a level of 0.8 mg/kg of dicofol in those apples. The information stated that the goods had been distributed by the company J.P. Viens SA via the Netherlands and that the Icelandic importer had bought them from the Netherlands company Greevecetrus; a copy of the results of the analysis was attached to that message.

10 It is common ground between the parties that the maximum permitted dicofol level for apples was set at 0.02 mg/kg by the Community rules on the maximum levels of pesticide residues in fruit and vegetables in force at the time of the relevant facts, so that the apples analysed by the Icelandic authorities in September 2001 should have complied with that maximum level.

11 On Monday, 10 September 2001, following consultation with the competent technical services, the Commission sent the message from the Icelandic authorities to the contact points of the States belonging to the RASFF, using the original notification, reference No 2001/KL. The notification read as follows:

'pesticide residues (Dicofol) in apples from France via the Netherlands ... The product has been recalled and will be rejected. Exporter: JP Viens S.A. The contact points in France and in the Netherlands are kindly requested to provide the

Commission services with the possible distribution to other members of the EEA of the product involved'.

12 On Friday, 14 September 2001, the Commission received an e-mail from the Netherlands contact point giving it information on the various parties involved in distributing the apples in question, including the applicant. The Commission immediately circulated this message as an additional notification, reference No 2001/KL-add01, for the attention of RASFF contact points. That notification read as follows:

'pesticide residues (Dicofol) in apples from France via the Netherlands. The company "Greve" (NL) mentioned in the notification received the apples from the company "Bosch" situated in Alkmaar (NL) which in his turn receives them from the below mentioned company:

Supplier in France: Company "Malagutti" at Cavaillon (FR)

Tel. +33-4900-66767; Fax: +33-490066768

The Consignment has been received by the company "Greve" on 20-08-2001 and no stock remained. The distribution is still subject of investigation.

How the name "Viens" is involved is completely unknown'.

13 On 17 and 18 September 2001 two British agencies (the Pesticides Safety Directorate and the Fresh Produce Consortium) sent out messages warning of the danger linked to the presence of dicofol in the apples exported by the applicant. Those messages were sent to the main players within the United Kingdom distribution system, expressly stating that the applicant's products should not be imported or placed on the market.

14 The applicant subsequently found that all trade with the United Kingdom was halted. Two consignments of apples that had already been dispatched were returned to France and the applicant was forced to pay the return transport costs and the costs of storage in the United Kingdom. The sale of a third consignment was cancelled. All those consignments were sold at a price below the prices prevailing in the United Kingdom.

15 On 19 September 2001 the French authorities took samples at the applicant's warehouse from the same category of apples as those disposed of in Iceland.

16 On 20 September 2001 the applicant sent a fax to the Commission stating that it had never exported apples to Iceland and seeking a formal retraction from the Commission. On 25 September 2001, it challenged the grounds on which the messages were sent out and informed the Commission of the damage suffered.

17 On 26 September 2001 the French authorities notified the Commission's RASFF contact point of the result of the analyses it had carried out on the applicant's apples sampled on 19 September. The notification stated that:

'The French official monitoring authorities took samples at the premises of the undertaking concerned ... No dicofol was detected in the five samples analysed.'

18 Also on 26 September 2001, the Commission brought the full text of that notification, indicating that it had received it from the contact point in France, to the attention of the RASFF contact points in an additional notification (reference 2001/KL-add02), which read as follows:

'outcome of investigation in France — Analysis for the detection of pesticide residues performed in France at the establishment mentioned in notification 2001/KL-add01 on 5 samples gave negative results (no detection of dicofol). The contact point in the Netherlands is kindly reminded [of] the request for submission of accompanying documents of the consignments involved'.

19 On 29 November 2001 the Commission received a claim for compensation for the damage suffered by the applicant following the circulation, under the RASFF, of messages concerning detection of dicofol in excess of the maximum permitted level in the apples it had exported.

20 By letter of 3 April 2002, the Commission rejected that claim for compensation.

Procedure and forms of order sought

21 It was in those circumstances that the applicant brought the present action by an application lodged at the Court Registry on 10 June 2002.

22 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Second Chamber) decided to open the oral procedure.

23 The parties presented oral argument and their replies to the questions from the Court at the hearing on 4 November 2003. On that occasion the Commission lodged a document. After the applicant's written observations on that document had been communicated, the oral procedure was closed on 1 December 2003.

24 The applicant claims that the Court:

— should order the Commission to pay compensation of EUR 704 998.74 in compensation for the damage sustained;

— should order the Commission to pay the costs.

25 The Commission contends that the Court should:

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

— order the applicant to pay the costs.

Admissibility

26 Although it has not raised a formal objection of inadmissibility, the Commission considers that the action is inadmissible.

27 The communication by the Commission to the Member States of the information received under Article 8 of the directive took place in the context of internal cooperation with the national agencies responsible for applying the Community rules, namely the RASFF. Such cooperation cannot cause the Community to incur liability towards individuals since the alert system is ultimately triggered on the initiative of, and according to an analysis made by, the national authorities alone.

28 The applicant should therefore have referred the matter to the national court having jurisdiction. The question of compensation by a national agency for damage caused to private individuals by national agencies, either by reason of an infringement of Community law or by an act or omission contrary to national law, must be determined by the national courts (Case 101/78 *Granaria* [1979] ECR 623). The applicant has by no means demonstrated that a claim for compensation brought before the national courts of any of the States involved would not have enabled it to obtain fair compensation for the damage at issue.

29 In that connection, suffice it to say that the unlawful conduct complained of by the applicant in the present case is that of the Commission and cannot be regarded as attributable to the national agencies.

30 The applicant contends that the Commission had its own part to play in the context of the RASFF: under Article 8(2) of the directive and the annex thereto, it was required to check whether the messages received complied with the provisions of the directive and to assess whether the risk concerned was genuine and whether it was immediate and serious, before forwarding those messages to the other Member States. Those checks and assessments and the repercussions of the alert are entirely the responsibility of the Commission. According to the applicant, if

the Commission had not unlawfully made public the applicant's name in the context of the RASFF, the United Kingdom agencies which called for its products to be boycotted — who acted on the basis of the official alert messages circulated by the Commission — would not have put out their boycott calls, which caused it serious damage.

31 The applicant has thus adduced pertinent reasons to show that the Commission's conduct was such as to adversely affect its commercial interests and cause the damage suffered (see to this effect Case 169/84 *COFAZ and Others* v *Commission* [1986] ECR 391, paragraph 28). The application must therefore be declared admissible, since the question whether the conduct for which the Commission is criticised is indeed unlawful goes to the substance of the case.

Substance

32 It is settled case-law that non-contractual liability on the part of the Community is subject to a number of conditions: unlawfulness of the conduct alleged against the Community institutions, actual damage and the existence of a causal link between the conduct of the institution and the damage complained of. If one of those conditions is not satisfied, the entire action must be dismissed and it is not necessary to consider the other conditions (see, in particular, Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraph 80, and Case T-220/96 *EVO* v *Council and Commission* [2002] ECR II-2265, paragraph 39, and the case-law cited).

33 In the present case it is necessary to consider first of all the various arguments put forward by the applicant to show that the conduct for which the Commission is criticised was unlawful.

Arguments of the parties

34 The applicant argues with regard to the apples it exported in 2001 that the rules applying at national and Community level specified a [maximum] dicofol level of 1 mg/kg at the time those apples were treated, which was in January 2001. The requirement to reduce the dicofol level to 0.02 mg/kg was laid down in respect of France in the order of 8 February 2001 published in the *Journal officiel de la République française* of 3 April 2001. The Community rules providing for the reduction in the dicofol level to 0.02 mg/kg did not enter into force until 1 July 2001. The requirement to reduce the dicofol level therefore came into force only after the apples in question had already been placed on the market.

35 The applicant maintains that the Commission's conduct is unlawful, since the legal requirement to consult it before circulating the contested alerts, under Article 7(2) of the directive, was not complied with. So far as the applicant is concerned, there is no doubt that the United Kingdom agencies did indeed act on the basis of the alert messages circulated by the Commission, and if it had not been for those messages they would not have called for a boycott of the applicant's products.

36 The applicant adds that the failure to consult constitutes an infringement of the right to a fair hearing and that the circulation of its name, address and other details is contrary to the principle of confidentiality.

37 The Commission should also have checked whether the measures adopted by the Icelandic authorities were in accordance with the principle of proportionality. The measures were as restrictive as possible, since the goods had been withdrawn from the market and were to be disposed of.

38 The applicant stresses that there was no evidence of the origin of the products that were checked. The message which Iceland put out related to apples exported by another French company, J.P. Viens SA. The applicant sold its apples to a Netherlands company, however. It is therefore not certain that the apples that were checked in Iceland came from the applicant.

39 The applicant maintains that the message put out by the Icelandic authorities did not state that there was a serious and immediate risk, only that the maximum dicofol level had been exceeded in a batch of apples that had been checked. There was in fact no serious and immediate risk in the present case. Moreover, the Commission did not initiate the appropriate procedure for a case of serious and immediate risk.

40 According to the applicant, a quick check would have shown that the analyses carried out revealed a dicofol level that complied with the rules in force at the time the apples were treated and that consumers were not exposed to any danger. The analyses carried out by the French laboratories in September and October 2001 showed that the apples intended for the United Kingdom market were in full compliance with the Community rules. Whilst acknowledging that those analyses were not carried out on the same batches as those that were the subject of the Icelandic authorities' action, the applicant considers that their negative results raise a strong presumption that the products it distributes comply with the legal requirements.

41 The Commission points out that the RASFF requires it to circulate any message that relates to problems or risks concerning food that does not comply with the food safety rules. Having been informed by the Icelandic contact point of the detection of dicofol residues exceeding the maximum permitted level in apples coming from France, it was required to circulate the Icelandic alert message. Contrary to what the applicant maintains, a product containing a level of dicofol exceeding that authorised by the Community legislation is not a safe product.

42 Consequently, none of the complaints raised against it by the applicant is well founded.

Findings of the Court

43 It should be noted first of all that the directive laid down two different procedures for checking product safety and for adopting appropriate measures in the event of a dangerous product being detected.

44 The first procedure, introduced by Articles 6 and 7 of the directive, permits the national authorities to make the placing of a product on the market subject to prior conditions designed to ensure product safety, to prohibit the placing on the market of a product which has proved dangerous, and to organise the withdrawal of a dangerous product already on the market (Article 6(1)(d), (g) and (h)). Where national authorities take one of the measures provided for in Article 6(1) they must inform the Commission of the measure and the Commission must enter into consultations with the parties concerned as quickly as possible, check whether the measure that has been taken is justified, and immediately inform the national authorities (Article 7).

45 The second procedure, introduced by Article 8 of the directive and by the annex thereto, concerns emergency situations at Community level: where national authorities adopt, or envisage adopting, emergency measures to prevent the marketing of a product by reason of a serious and immediate risk presented by the said product to the health and safety of consumers, it must forthwith inform the Commission thereof, which on receiving this information must check to see whether it complies with the provisions of the directive and then forward it to the other national authorities, which, in turn, must immediately inform the Commission of any measures adopted (Article 8). Detailed procedures for the rapid alert system (RASFF) are set out in the annex to the directive.

46 Thus the national authorities, as soon as they detect a serious and immediate risk the effects of which extend or could extend beyond their territory, must forthwith inform the Commission, where possible after consulting the producer or distributor of the product concerned. The communication must, in particular, contain information to identify the product and the supply chain where such information is possible, and it is stressed that the speed with which the information is communicated is a crucial aspect of the system (points 3 and 4 of the annex). The Commission for its part, having verified the conformity of the information received with Article 8 of the directive, contacts the notifying country, if necessary, and then forwards the information immediately by telex or fax to the relevant authorities in the other Member States (point 7 of the annex).

47 In the present case, it is clear from the form used by the Icelandic authorities that the latter contacted the Commission under the RASFF and not in order to ask it whether the withdrawal and disposal of the apples imported from France via the Netherlands were justified under Articles 6 and 7 of the directive. Since those apples contained dicofol at a level 40 times greater than the maximum permitted level and three countries, namely France, the Netherlands and Iceland, were involved in their distribution, the Icelandic authorities were clearly of the opinion that it was necessary to inform the Commission that there was a risk that other apples containing the same level of dicofol had been placed on the market in other countries. After it was informed, the Commission also reacted strictly within the limits of the RASFF by transmitting the Icelandic alert message and the subsequent messages to all the RASFF contact points.

48 The present claim for compensation can therefore only concern the liability that the Commission must assume under the RASFF. It cannot, however, legitimately seek compensation for the damage caused by the fact that on 4 September 2001 the Icelandic authorities withdrew the apples concerned from the market and disposed of them.

49 In that regard, it should be pointed out that on that date the applicant's name had not yet been mentioned and the applicant had not yet been identified as having been the probable exporter of the apples in question. Moreover, the Commission was not informed until later of the measures adopted by the Icelandic authorities, so it cannot in any case be held liable in that regard. The particular fate that befell those apples in Iceland is irrelevant as regards the outcome of the present case and the complaint that the Commission infringed the principle of proportionality must be rejected.

50 As regards the RASFF, the applicant contends, in essence, that there is no evidence that it was the exporter of the apples to which the Icelandic authorities objected. It contends that if the Commission had complied with its obligation to check the origin of the apples before triggering the rapid alert it would have found that it was not involved. It also complains that the Commission failed to consider whether the apples in question actually did present a serious and immediate risk to health, since the mere fact that the maximum permitted dicofol level was exceeded was insufficient in that regard. It adds that, at any event, as the analyses carried out in France in September and October 2001 showed, a quick check would have shown that the apples it exported did not exceed that maximum level.

51 In that connection, it should be pointed out that under the RASFF it is only the national authorities, and not the Commission, which are responsible for establishing whether there is a serious and immediate risk to the health and safety of consumers, as it provides that the national authorities must, on the one hand, 'judge each individual case on its merits' since 'it is impossible to lay down specific criteria as to what, precisely, constitutes an immediate and serious risk' and, on the other hand, 'should endeavour to obtain the maximum of information on the products and the nature of the danger, without compromising the need for rapidity' (points 2 and 3 of the annex to the directive). In addition, it is incumbent upon the national authorities, once they have detected a serious and immediate risk the effects of which extend or could extend beyond their territory, immediately to inform the Commission and provide it with information to identify the product and the supply chain (point 4 of the annex to the directive).

52 Although point 7 of the annex to the directive requires the Commission to check 'the conformity of the information received with Article 8 of [the] directive', that duty is limited to checking whether the information falls, as such, within the scope of that provision, and the accuracy of the findings and analyses that led the national authorities to send that information does not have to be checked. As was stated above, responsibility for those findings and analyses lies solely with the national authorities. The Commission therefore had neither an obligation to check before circulating its message of 14 September 2001 whether the apples objected to in Iceland were indeed those exported by the applicant, nor the appropriate power to do so.

53 So far as warning of risks for the health of consumers is concerned, it was sufficient for it to have plausible evidence of a link between the applicant and the apples objected to in Iceland. The information gathered and communicated by the Icelandic authorities referred to apples of French origin imported via the Netherlands, and mentioned in particular the name of the Netherlands company Greevecetrus. The information provided by the Netherlands authorities then added details concerning the companies involved in the distribution process, and mentioned the names of the company 'Greve' (Netherlands), the company 'Bosch' established in Alkmaar (Netherlands) and the name of the applicant. As is clear from the invoices dated August 2001 submitted by the applicant itself, the latter exported apples of French origin to the Netherlands company van den Bosch in Alkmaar. In those circumstances, it cannot be accepted that the Commission, in its message of 14 September 2001 based on the information received from the Netherlands authorities, circulated information that was not plausible.

54 If any doubt remains in that regard, it should be pointed out that under the precautionary principle prevailing in the matter of the protection of public health the competent authority may be obliged to take appropriate measures to prevent certain potential risks for public health without having to wait until the existence and seriousness of those risks has been fully demonstrated (see to this effect Case T-13/99 *Pfizer Animal Health* v *Council* [2002] ECR II-3305, paragraph 139 and the case-law cited, and Case T-392/02 *Solvay Pharmaceuticals* v *Council* [2003]

ECR II-4555, paragraphs 121 and 122). If it was necessary to wait until all the research was completed before adopting such measures the precautionary principle would be rendered devoid of purpose (*Pfizer Animal Health* v *Council*, cited above, paragraphs 142, 386 and 387). That reasoning also applies in the case of a rapid information procedure such as the one introduced by the directive. The applicant, which is a victim of that alert system introduced in order to protect human health, must accept its adverse economic consequences, since the protection of public health must take precedence over economic considerations (*Solvay Pharmaceuticals* v *Council*, paragraph 121, and *Pfizer Animal Health* v *Council*, paragraph 456).

55 Although the applicant contends in this context that merely exceeding the maximum dicofol level of 0.02 mg/kg does not necessarily constitute a serious and immediate risk for human health, especially since a level of 1 mg/kg was previously permitted, suffice it to point out, on the one hand, that it is not for the Commission to call in question, in the context of the RASFF, the findings and analyses that led the national authorities to accept the existence of a serious and immediate risk requiring the triggering of that system and, on the other hand, that it is common ground that the apples objected to contained 0.8 mg/kg of dicofol, whereas the maximum permitted level was 0.02 mg/kg. The applicant, which did not challenge under Article 241 EC the legality of the rules laying down that maximum limit, has by no means shown that consumption of apples with a dicofol level 40 times greater than the maximum permitted level would not have any harmful effect on the health of consumers, although scientific research on the subject had shown that it was necessary to replace the former maximum level with a level of 0.02 mg/kg.

56 As regards the complaints that Article 7(2) of the directive and the right to a fair hearing have been infringed because the Commission failed to consult the applicant before circulating its name, address and other details under the RASFF, it should be pointed out that that system does not require the Commission to carry out such consultation in every case, since Article 7(2) of the directive does not apply with regard to the rapid alert procedures introduced by the directive in order to protect the health of consumers. It would also be difficult to achieve that

objective of rapid protection if the Commission had to take due account of the observations and objections of the undertaking concerned before circulating information covered by the directive to the other RASFF contact points.

57 Nor does the Commission's failure to consult the applicant constitute an infringement of the principle of the right to a fair hearing. Although that principle requires the Commission to hear the person concerned before adopting a measure adversely affecting that person (see, for example, Case T-82/01 *Josanne and Others* v *Commission* [2003] ECR II-2013, paragraph 77 and the case-law cited), in the present case the Commission did not adopt any measure directly addressed to the applicant and having an adverse effect on it. It merely circulated a notification, namely that received from the Netherlands contact point on 14 September 2001 and intended, in accordance with point 4 of the annex to the directive, to lead to identification of the apples in question and the relevant supply chain.

58 It is true that points 7 and 8 of the annex to the directive provide that the Commission 'may', on the one hand, contact the Member State presumed to be the country of origin of the product to carry out the necessary verifications and, on the other hand, 'when it considers it to be necessary' and 'in exceptional circumstances', institute an investigation on its own. It is possible that the Commission might in such circumstances be led to consult the undertaking in respect of which the rapid alert is circulated. However, the applicant has not been able to show that the Commission was negligent in the circumstances of the present case in not consulting it.

59 The only argument submitted in that connection is that the level of dicofol in the apples which the applicant exported to the Netherlands in 2001 did not, when they were treated in January 2001, exceed the maximum level of 1 mg/kg permitted in France at that time. The applicant therefore appears to consider that the Commission should have taken its commercial interests into consideration by consulting it, in the light of the special situation resulting from the amendment of

the rules concerning the maximum permitted dicofol level which took place in July 2001 whilst the apples from France were in the process of being shipped to the country of export.

60 That argument cannot be accepted.

61 In the first place, the applicant has not provided any details regarding the dates of its exports; the only information in that connection appears in the invoices dated August 2001 which show deliveries to van den Bosch in Alkmaar (Netherlands). That information does not show that the apples treated in January 2001 had necessarily left France and reached their country of destination before July 2001. It is just as likely that its apples were not exported until August 2001.

62 Secondly, the Community rules relating to the maximum permitted dicofol level in fruit and vegetables are contained in a series of Council directives addressed to the Member States for implementation. France introduced the maximum level of 0.02 mg/kg by the order of 8 February 2001 amending the order of 5 August 1992 on maximum permissible levels of pesticide residues in and on certain products of plant origin (JORF of 3 April 2001, p. 5200). As stated in the preamble to that order, the measure was adopted in order to transpose, in particular, Commission Directive 2000/42/EC of 22 June 2000 amending the Annexes to Council Directives 86/362/EEC, 86/363/EEC and 90/642/EEC on the fixing of maximum levels for pesticide residues in and on cereals, foodstuffs of animal origin and certain products of plant origin, including fruit and vegetables respectively (OJ 2000 L 158, p. 51), Article 4 of which was to be transposed by the Member States by 28 February 2001 at the latest, and the measures transposed were to be applied from 1 July 2001. That directive was published in the *Official Journal of the European Communities* on 30 June 2000. Any well informed and prudent trader should therefore have arranged his commercial activities from that latter date so that apples intended for export that were likely to be placed on the market after

June 2001 complied with the new maximum dicofol level. The applicant, which did not challenge under Article 241 EC either the legality of the rules laying down the maximum level of 0.02 mg/kg or the date on which those rules took effect, cannot therefore complain that the Commission circulated the Netherlands message under the RASFF without consulting it beforehand.

63 At any event, even if it had consulted the applicant beforehand, it is unreasonable to consider that that would have prevented the Commission from circulating the message containing the applicant's name, address and other details. The only effective way the applicant could have protected itself from the negative effects of the RASFF would have been to take a sample, under the supervision of an independent person or institution, from the batch of apples intended for export to the Netherlands and arrange for an officially certified analysis to be made of the dicofol level in that sample. Only if it had submitted such a certified analysis immediately on being consulted could it have avoided its name being circulated under the RASFF system. The applicant has neither asserted nor established that it had the apples in question analysed *in tempore non suspecto*, as described above.

64 As regards the analyses carried out in France in September 2001 which are alleged to have shown that the apples exported by the applicant complied with the Community rules, suffice it to say that those analyses were not carried out on the batch of apples objected to in Iceland. They could not therefore prove that the Icelandic analyses were inaccurate. They merely establish that the apples that were analysed in September 2001 complied with the relevant legislation.

65 In this context, the Commission cannot be held responsible for the fact that the batch of apples analysed in Iceland apparently disappeared after it was withdrawn from the market and that it was therefore no longer possible to verify the accuracy

of the Icelandic analyses or precisely identify the apples as being those which the applicant had exported to the Netherlands. As stated above, the Commission's responsibility under the RASFF is limited to the circulation of information as such.

66 Lastly, the applicant cannot complain that the Commission infringed the obligation of confidentiality by circulating its name, address and other details. Point 6 of the annex to the directive states expressly that the need to take effective measures to protect consumers normally outweighs considerations of confidentiality. As the alert message from the Icelandic authorities notified the presence of dicofol in 'apples of French origin distributed via the Netherlands', it was in the interest of both the competent authorities and the traders concerned that the circle of undertakings involved should be limited as far as possible, otherwise all apples of French origin might have been subject to a boycott. As stated above, it was both reasonable and necessary in the circumstances of this case to give the applicant's name in that context in order to protect public health.

67 It is clear from all the above considerations that the applicant has not established that the Commission acted wrongfully in such a way as to incur liability. The application must therefore be dismissed in its entirety, without there being any need to consider whether there is a causal link or whether the alleged damage exists.

Costs

68 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, 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 applicant has been unsuccessful it must be ordered to pay the costs, as applied for by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the applicant to pay the costs.**

Forwood Pirrung Meij

Delivered in open court in Luxembourg on 10 March 2004.

H. Jung J. Pirrung

Registrar President