ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
22 December 1995 *

In Case T-219/95 R,

Marie-Thérèse Danielsson, Pierre Largenteau and **Edwin Haoa,** all residing in Tahiti, French Polynesia, represented by Phon van den Biesen, of the Amsterdam Bar, and Denis Waelbroeck, of the Brussels Bar, assisted during the written procedure by Gerrit Betlem and Sven Deimann, with an address for service in Luxembourg at the office of Déi Gréng, 31 Grand-Rue,

applicants,

v

Commission of the European Communities, represented by Richard Wainwright, Principal Legal Adviser, and Thomas Cusack, Legal Adviser, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, Wagner Centre, Kirchberg,

defendant,

supported by

* Language of the case: English.

French Republic, represented by Catherine de Salins, Assistant Director in the Legal Directorate of the Ministry of Foreign Affairs, Marc Fonbaustier and Jean-François Dobelle, acting as Agents, with an address for service in Luxembourg at the French Embassy, 9 Boulevard du Prince Henri,

intervener,

APPLICATION for suspension of the operation of the decision of the Commission of the European Communities of 23 October 1995 regarding French nuclear tests and for an order that the Commission take all measures necessary to preserve and protect the applicants' rights under the EAEC Treaty,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES

makes the following

Order

Facts and procedure

1 The atolls of Mururoa and Fangataufa form part of French Polynesia. The capital of French Polynesia is Papeete, on the island of Tahiti, some 1 200 km to the west-

north-west of Mururoa and Fangataufa. Pitcairn Island, the nearest territory of another Member State, the United Kingdom, lies some 800 km to the east-south-east.

2 Mururoa and Fangataufa were used by the French authorities for the testing of nuclear devices from 1966 to 1991, when experiments were interrupted under a voluntary moratorium. Atmospheric explosions were carried out until 1974, but only underground tests thereafter.

3 On 13 June 1995, the French authorities announced that they intended to carry out a further series of nuclear tests on Mururoa. On 28 July 1995, the European Parliament asked the Commission to ensure that Articles 34 and 35 of the EAEC Treaty ('the Treaty') would be scrupulously observed (*Europe* No 6532, 29 July 1995).

4 Article 34 of the Treaty provides as follows:

'Any Member State in whose territories particularly dangerous experiments are to take place shall take additional health and safety measures, on which it shall first obtain the opinion of the Commission.

The assent of the Commission shall be required where the effects of such experiments are liable to affect the territories of other Member States.'

5 Article 35 requires Member States to establish the facilities necessary to carry out continuous monitoring of air, water and soil radioactivity levels and to ensure compliance with basic standards; it also requires them to allow the Commission to have access to such facilities and to verify their operation and efficiency.

6 On 11 August 1995, the French Republic agreed to a meeting between French and Commission experts, which took place on 25 August 1995, and to the sending of a Commission mission to the test site.

7 On 5 September 1995, the first test was carried out on Mururoa.

8 On 6 September 1995, the President of the Commission, Mr Santer, informed the European Parliament that the Commission was not in a position to state whether Article 34 applied or not, but confirmed its intention to be involved in a scientific assessment mission.

9 A verification visit under Article 35 of the Treaty took place between 18 and 29 September 1995, and the verification team of three Commission officials published its report on 3 October 1995. It concluded that the monitoring systems inspected and the information received showed a generally satisfactory situation in relation to the basic safety standards, but stressed that it had not been allowed access to certain facilities and that certain information had not been made available.

10 The second nuclear test in the series was conducted on 1 October 1995.

11 On 23 October 1995, four days before the third test was carried out, the Commission adopted a final position on the question of the application of Article 34 to the nuclear tests in question. That position, which is reproduced in the minutes of the 1266th meeting of the Commission at Brussels on 23 October 1995, produced before the Court, was presented to the plenary session of the European Parliament by the President of the Commission on the following day (European Parliament, Verbatim Report of Proceedings, 24 October 1995, pp. 32 and 33).

12 The Commission's substantive position, as presented by Mr Santer, was that Article 34 applied to both civil and military experiments, and that an experiment was to be regarded as particularly dangerous for the purposes of that article if it presented a perceptible risk of significant exposure of workers or the general public to ionizing radiation. An experiment involving the explosion of a nuclear device might entail such a risk and could therefore be regarded, in certain circumstances, as 'particularly dangerous'.

13 On that basis, and following the provision by the French authorities of important additional information as requested, the Commission concluded that the tests in French Polynesia did not present a perceptible risk of significant exposure for workers or the general public. Even in the worst hypothesis, a scientific assessment showed that the basic standards would be met. Article 34 therefore did not apply.

14 The act by which that position was adopted constitutes the measure which three individuals, Ms Danielsson, Mr Largenteau and Mr Haoa, who reside in Tahiti, seek to have annulled in their main action, Case T-219/95, and whose operation they seek to have suspended in the present application for interim measures, Case T-219/95 R. Both applications were registered at the Court on 2 December 1995.

15 In their application for interim measures, the applicants claim that the President of the Court should:

— suspend the operation of the Commission's decision of 23 October 1995 regarding French nuclear tests until the Court of First Instance has given judgment on the main action or until the Commission has issued a new decision based on Article 34 of the Treaty having regard to proper proceedings and to its general legal obligations;

— order the Commission to take all measures necessary to preserve and protect the applicants' rights under the Treaty, including measures ensuring that France will fully comply with the provisions of the Treaty, until the Court has given judgment on the main action or until the Commission has issued a new decision based on Article 34 of the Treaty;

— immediately suspend the operation of the Commission's decision of 23 October 1995 even before the Commission's observations are submitted, until the President of the Court has had an opportunity to decide on the request for interim measures; and

— order the Commission to pay the costs of the interlocutory proceedings.

16 By application lodged at the Court Registry on 12 December 1995, the French Republic sought leave to intervene in support of the Commission.

17 Oral argument was heard from the parties on 15 December 1995.

Law

18 Under Articles 157 and 158 of the Treaty, taken together with Article 4 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1), as amended by Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 (OJ 1993 L 144, p. 21), the Court may, if it considers that circumstances so require, order that the application of the contested act be suspended or prescribe any necessary interim measures.

19 Article 104(2) of the Rules of Procedure of the Court of First Instance provides that applications for interim measures are to state the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measures applied for. The measures sought must be provisional in that they must not prejudge the decision on the substance (order of 7 November 1995 in Case T-168/95 R *Eridania Zuccherifici Nazionali and Others* v *Council* [1995] ECR II-2817, paragraph 14).

Arguments of the parties

Admissibility of the main action

20 First, the applicants submit that the contested act is a decision by which the Commission either granted its assent under the second paragraph of Article 34 to the French nuclear tests on Mururoa or refused to consider that Article 34 was applicable to such tests. In either case, it is a definitive act taken under the provisions of the Treaty and having legal effects.

21 The applicants point out that, unlike an opinion under the first paragraph of Article 34, assent under the second paragraph is necessary to enable the Member State concerned to carry out the experiments in question. In the present case, they consider, scientific evidence indicates that the effects of the tests are liable to affect the territory of another Member State, namely Pitcairn Island, and that the Commission's assent was therefore required by the Treaty. Such assent is accordingly a challengeable act in the same way as a Commission decision authorizing State aid.

22 Alternatively, if the contested act constitutes a refusal to apply Article 34 of the Treaty, such refusal may be challenged in the same way as the act which the institution concerned refuses to take might have been challenged (Case 30/59 *Steenkolenmijnen* v *High Authority* [1961] ECR 1).

23 Secondly, the applicants submit that the contested act is of individual concern to them within the meaning of the fourth paragraph of Article 146 of the Treaty.

24 Reviewing the recent case-law of the Court of Justice and the Court of First Instance (in particular Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501, Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853 and the judgment of 14 September 1995 in Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission* [1995] ECR II-2305), the applicants consider that they are individually concerned because they are particularly seriously affected by the Commission's decision, in which it failed to take properly into account the serious impact which the nuclear tests could have on their health.

25 More particularly, they consider that they are members of the general public for whose protection Article 30 of the Treaty provides that the basic standards referred to in Chapter 3 are to be laid down and on whom a subjective right is thus conferred. They thus fall within the definition in paragraph 67 of *Antillean Rice Mills*, according to which 'where the Commission is, by virtue of specific provisions,

under a duty to take account of the consequences of a measure which it envisages adopting for the situation of certain individuals, that fact distinguishes them individually'. Their case differs from that in Case T-585/93 *Greenpeace International and Others* v *Commission* (order of 9 August 1995, ECR II-2205), where the applicants were unable to claim that a provision giving them a real subjective right to protection had been violated. It is inconceivable that a person whose subjective rights are threatened or violated should be unable to bring an action for annulment under Article 146 of the Treaty.

26 Also in support of their claim that they are individually concerned by the contested act, the applicants assert that they have no means of challenging it in the national courts and that one of the main grounds on which the right to bring a direct action has been refused does not, therefore, apply. They refer to Case 294/83 *Les Verts* v *Parliament* [1986] ECR 1339, paragraph 23, in which the Court of Justice affirmed the necessity of a complete system of legal remedies and procedures designed to permit the Court to review the legality of measures adopted by the institutions. In that context, the applicants state that it is normally sufficient, in order to be able to institute proceedings against general or individual acts of national authorities in the judicial systems of the Member States, to have a direct and personal interest, and submit that Community law should as far as possible be interpreted by reference to such general principles common to the laws of the Member States.

27 Thirdly, to deny the applicants *locus standi* to bring such an action would constitute a breach of Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ('the European Convention on Human Rights'), which guarantee, respectively, a fundamental right to access to a tribunal and the right to an effective remedy when a right or freedom set forth in that Convention has been violated.

28 Thirdly, the applicants claim that the contested act is of direct concern to them within the meaning of the fourth paragraph of Article 146 of the Treaty because it

authorizes the French Republic to proceed with the tests in question and because the possibility that the French Republic may change its mind is purely theoretical (see the judgment of 27 April 1995 in Case T-442/93 *AAC and Others* v *Commission*, [1995] ECR II-1329, paragraphs 45 and 46). Moreover, the measure which the applicants are seeking to provoke, namely a refusal by the Commission to give its assent to the tests, is of direct concern to them since it would leave the French Republic no choice but to stop its experiments (see Case 69/69 *Alcan* v *Commission* [1970] ECR 385).

29 In view of the foregoing submissions, the applicants consider that their main application is at least not manifestly inadmissible.

30 As regards the legal nature of the contested act, the Commission states that it did not, in adopting its position, grant any assent but merely concluded that Article 34 of the Treaty did not apply. Having reached that conclusion, it could neither give nor withhold assent within the meaning of the second paragraph of that article. Even if it had reached the contrary conclusion, it could only have issued a non-binding opinion under the first paragraph, because the ionizing radiations with which the article is concerned were not liable to affect the territory of another Member State. Neither a non-binding opinion nor, *a fortiori*, a decision not to issue such an opinion, can be contested before the Court.

31 The Commission further denies that the applicants are directly and individually concerned by the contested act. The applicants, as residents of Tahiti, could be concerned only by an opinion on the additional health and safety measures referred to in the first paragraph of Article 34, which is not open to challenge. The question of assent under the second paragraph arises only if the territory of another Member State is liable to be affected. A decision to give or withhold such assent could therefore be of direct and individual concern only to residents of such a territory — in the present case, Pitcairn and not Tahiti.

32 In addition, in so far as the applicants refer to their rights under the European Convention on Human Rights of access to a tribunal and to an effective remedy, the Commission considers that their argument is not relevant, since such rights can arise only where there is a subjective right which it is the courts' duty to protect. Nor does the Commission agree that the applicants have no remedy in the national courts; the last paragraph of Article 150 of the Treaty guarantees, ultimately, access to the Community judicature in all cases.

33 For its part, the French Government submitted at the hearing that the provisions of Chapter 3 of the Treaty do not apply to nuclear activities in the military sphere. It also denied that the position in issue, adopted by the Commission on the basis of Article 34 of the Treaty, is in the nature of a decision.

Prima facie case

34 In order to demonstrate the risks to which they consider they may be exposed as a result of the tests in issue, the applicants refer to, and quote from, a number of publicly available scientific reports. They divide the risks into those from short-term and those from long-term effects.

35 Short-term effects include geological damage and the venting of gaseous and volatile fission products into the biosphere. Nuclear tests, the applicants say, can cause landslides and did indeed cause a major underwater landslide at Mururoa in 1979, when a nuclear device was exploded after jamming half-way down its shaft. Since the geology of Mururoa is already unstable due to large-scale fracturing caused by previous tests, further major landslides are likely. Such landslides are liable to give rise and have in the past given rise to tsunamis, or tidal waves, causing coastal damage in areas as far away as Pitcairn and Tahiti and endangering residences such as

that of Ms Danielsson. They could also release radioactive material into the sea, with catastrophic effects on the food chain in an area such as French Polynesia where fish is an important part of the diet.

36 Leakage of fission products from nuclear waste into the biosphere may occur accidentally through fissures caused by the explosions. In 1987, according to one study cited, a small amount of radioactive gas was accidentally released as a result of a Soviet nuclear test on the island of Novaya Zemblya, following which air and milk were found to be contaminated in areas up to 2 000 km away, further than the distance between Mururoa and either Pitcairn or Tahiti.

37 The long-term effects include gradual leakage of radioactive material from tests and/or stored waste through natural or other fissures. The applicants state that such leakage already occurs at Mururoa at rates found by scientists to be higher than those assumed by the French authorities, and stress that the geology of the island makes it unsuitable to contain such waste safely. Leakage of radioactive material, exacerbated by meteorological events such as hurricanes, can damage the local marine ecology and enter the food chain.

38 The applicants also cite statistics on the incidence of cancer-related deaths in French Polynesia and other areas of the South Pacific which, they claim, demonstrate a higher incidence in areas closer to Mururoa which cannot be correlated to living standards.

39 They stress that, for both short-term and long-term effects, the risks increase with each test carried out.

40 With regard to those factual allegations, the Commission asserts that the material from which the applicants quote is far from probative in any rigorous scientific sense and the conclusions which they draw are tentative and extrapolatory.

41 In order to demonstrate that their claims are, prima facie, well founded, the applicants put forward six pleas in law, alleging: (i) breach of Article 34 of the Treaty; (ii) breach of Council Directive 80/836/Euratom of 15 July 1980 amending the Directives laying down the basic safety standards for the health protection of the general public and workers against the dangers of ionizing radiation (OJ 1980 L 246, p. 1); (iii) breach of the precautionary principle; (iv) breach of customary international law; (v) breach of human rights; and (vi) breach of Article 162 of the Treaty.

42 In support of their first plea in law, the applicants argue, essentially, that the Commission infringed Article 34 of the Treaty by misinterpreting the term 'particularly dangerous experiments'. Its definition of such experiments as those which 'present a perceptible risk of significant exposure of workers or the general public to ionizing radiation' was insufficient and ignored the risks of indirect damage through contamination of the atmosphere, the ocean or the soil.

43 In their second plea, the applicants claim that the Commission failed to take proper account of the principles laid down in Article 6 of Council Directive 80/836/Euratom regarding the basic standards referred to in Chapter 3 of the Treaty. There are three such principles: activities resulting in exposure must be justified by the advantages produced; exposures must be kept as low as reasonably achievable; and specific dose limits must not be exceeded. The Commission applied only the last. By not requiring the French Republic to prove the justification of the

activities and by not carrying out an environmental impact assessment to determine whether exposure is as low as reasonably achievable, the Commission failed to comply with its obligations as regards the first two principles. Furthermore, by failing to demand from the French Republic full disclosure of medical health information for French Polynesia, the Commission failed to apply properly Articles 41 and 42 of the same directive, concerning the duties of the Member States with regard to operational protection of the population.

44 In their third plea, the applicants refer to the precautionary principle laid down in Article 130r(2) of the EC Treaty, which they consider is relevant in the context of Article 34 of the EAEC Treaty but has been incorrectly applied by the Commission. That principle requires preventive action to be taken as soon as there is a strong suspicion of potential harm to health and environment; an independent public assessment of health and environmental impact should therefore have been carried out in the light of the expert opinion to which the applicants refer in their allegations of fact.

45 In their fourth plea, the applicants claim that it has become a requirement of customary international law to carry out an environmental impact assessment and/or a probabilistic safety assessment with regard to planned nuclear power plants, nuclear waste sites and activities likely to affect the environment. They refer in particular to Article 206 of the United Nations Convention on the Law of the Sea of 10 December 1982, Article 2 of the Convention on Environmental Impact Assessment in a Transboundary Context of 25 February 1991 (not yet in force) and Principle 17 of the Rio Declaration on Environment and Development of 14 June 1992, to all of which the Community and the French Republic were parties. By failing to carry out such assessment, the Commission has failed to take account of its legal duties under international law.

46 In their fifth plea, the applicants contend that by not adequately protecting them against risks to their health from possible exposure to radiation and to their lives from possible tidal waves, the Commission has violated their right to life under Article 2 of the European Convention on Human Rights and Article 6 of the United Nations Covenant on Civil and Political Rights.

47 Finally, the applicants submit that the statement of reasons given by the Commission for its contested act is inadequate because it failed to take into account the readily available scientific information concerning, or methods designed to assess, nuclear radiation activities.

48 In its observations on the application for interim measures, the Commission remarks that Article 34 of the Treaty falls within Chapter 3, on 'Health and Safety', the purpose of which is, according to Article 30, to protect the health of workers and the general public against the dangers arising from ionizing radiations. Account is not to be taken of potential damage to the environment, such as that caused by landslides or tidal waves, not having any radiological consequences. The opinion to be given by the Commission under the first paragraph of Article 34 concerns, moreover, not the experiments themselves but the additional health and safety measures to be taken. The expression 'particularly dangerous experiments' must be read in that context, as must the notion in the second paragraph of Article 34 of such experiments affecting the territory of another Member State, which is limited to effects of ionizing radiation on the health of people living in that territory.

49 In any event, the Commission contends that its research was thorough and based on a comprehensive range of information, including the report of the verification visit and documentation either made available by the French authorities or obtained independently. On 17 October 1995, the Commission received further information

from the French authorities, which was substantiated by the Institute for Transuranium Elements in Karlsruhe. It based the decision it took on 23 October 1995 on all that information.

50 The French Government denies the existence of the risks alleged by the applicants.

Circumstances giving rise to urgency

51 The applicants consider that the damage caused to them in the event of immediate continuation of the nuclear tests may prove irreparable. The health and safety risks are considerable and increase with each further test. It is not possible to await the outcome of the main proceedings, since the next test is to be expected from 15 December 1995 onwards.

52 With more particular regard to their application for suspension of the operation of the contested act, the applicants submit, in substance, that, as long as no valid decision has been issued by the Commission and in particular as long as no valid study of the impact of the tests on the population and the environment has been carried out, they cannot be assured that those tests will not cause them serious and irreparable harm.

53 As regards their application for an injunction against the Commission, the applicants submit that mere suspension of the operation of the contested act would not be sufficient, since the French Government has not in the past awaited the Commission's assent to carry out nuclear tests.

54 The Commission, supported by the French Government, denies that serious and irreparable damage can occur to the applicants if the operation of the contested act is not suspended.

Balance of interests

55 The applicants submit that the relief which they seek does not inflict on the Commission or on the Member State concerned any threat of serious and irreparable damage or any burden going beyond what is necessary to ensure the protection to which the applicants are entitled. It would merely require the Commission and France to await the Court's decision in the main action or a validly adopted decision of the Commission, whereas the applicants' interests concern their health and even their lives.

56 The Commission does not claim that the relief sought would inflict an unreasonable burden on it, but points out that the suspension or annulment of the contested act could do no more than oblige the Commission to reconsider whether Article 34 of the Treaty might be applicable; it could not confer on the Commission a power which it does not have to refuse assent to the tests.

57 The French Government submits that, in the light of its formal undertaking to carry out no more nuclear tests after May 1996, suspension of the operation of the contested act would definitively preclude any continuation of the tests in issue, since the Court's decision in the main action will certainly not be given any sooner.

Findings of the President

The allegation that the main action is manifestly inadmissible

58 It is settled case-law that, in principle, the issue of the admissibility of the main action should not be examined in proceedings relating to an application for interim measures, so as not to prejudge the Court's decision on the substance of the case. It should be reserved for the examination of the main action, unless it is apparent at first sight that the latter is manifestly inadmissible (see Case C-117/91 R *Bosman* v *Commission* [1991] ECR I-3353, paragraph 7, and, most recently, Case T-168/95 R *Eridania*, cited above, paragraph 27).

59 In the present case, therefore, the President must examine whether, as is claimed by the Commission, supported by the French Republic, the main application for the annulment of the act by which the Commission adopted its position of 23 October 1995, concluding that Article 34 of the Treaty was not to be applied to the present series of nuclear tests in French Polynesia, is to be considered as being at first sight manifestly inadmissible.

60 As regards the material embodiment of the contested act, the Commission's final position, reproduced in the minutes of its 1266th meeting at Brussels on 23 October 1995, which have been lodged with the Court, was presented to the plenary session of the European Parliament by the President of the Commission on 24 October 1995 (Verbatim Report of Proceedings, pp. 32 and 33) and at the same time communicated to the French authorities, as the parties confirmed at the hearing.

61 As regards the scope of the contested act, it is explicitly clear from the minutes and from the declarations made by the President of the Commission to the European Parliament that the contested act ruled out the application of Article 34 of the

Treaty, imposing certain obligations on the Member State concerned, in the present case because the nuclear tests in question did not meet the requirement laid down therein for its application since, according to the Commission's assessment, those tests were not particularly dangerous.

62 It is not appropriate to rule in advance, in the present interim proceedings, on the question whether, in accordance with the Commission's interpretation, which was challenged by the French Government at the hearing, Chapter 3 of the Treaty, concerning health and safety measures, and Article 34 in particular, is applicable to nuclear activities of a military nature. Consideration of that question belongs to the examination of the merits of the contested act.

63 It must be determined here whether, at first sight, the main application for annulment may be considered to meet the conditions for admissibility as regards both the nature of the contested act and the *locus standi* of the applicants.

64 First, as regards the nature of the contested act of the Commission, it appears, prima facie, both from the tenor of that act and from the legal and factual context in which it was adopted that it may be construed, with a certain probability and in accordance with well-established case-law, as being in the nature of a decision in that it embodies the final position adopted by the Commission, which is intended to have legal effects (see Case 22/70 *Commission* v *Council* [1971] ECR 263, paragraphs 38 to 42), in so far as, in any event, it has the effect of ruling out the application of Article 34 of the Treaty, which requires the Member State concerned to take additional health and safety measures on which it must first obtain the opinion of the Commission.

65 The contested act may therefore be considered, prima facie, as being in the nature of a decision.

66 Secondly, as regards the *locus standi* of the applicants, under the fourth paragraph of Article 146 of the Treaty, any natural or legal person may, under the conditions laid down in the first paragraph of that article, 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.

67 In the present case, the contested decision was not addressed to the applicants but to the French Government. It must therefore be determined whether it is none the less of direct and individual concern to them.

68 As regards, first, the question whether the contested decision is of individual concern to the applicants, it has consistently been held that 'persons other than those to whom a decision is addressed may claim to be individually concerned by that decision 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 if by virtue of those factors it distinguishes them individually just as in the case of the person addressed' (see Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, Joined Cases 67/85, 68/85 and 70/85 *van der Kooy* v *Commission* [1988] ECR 219, paragraph 14, and the order of 6 July 1995 in Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC* v *Commission* [1995] ECR II-1971, paragraph 34).

69 In the present case, the applicants submit that they meet the condition set out above because, essentially, the contested decision affects them in a particularly serious manner and does not properly take into consideration the harmful effects of the

nuclear tests in issue on their health, although they are members of the general public referred to in Article 30 of the Treaty, whose health must be protected, *inter alia*, pursuant to Article 34.

70 That argument cannot be accepted because, at first sight, the contested decision concerns the applicants only in their objective capacity as residents of Tahiti, in the same way as any other person residing in Polynesia.

71 Even on the assumption that the applicants might suffer personal damage linked to the alleged harmful effects of the nuclear tests in question on the environment or on the health of the general public, that circumstance alone would not be sufficient to distinguish them individually in the same way as a person to whom the contested decision is addressed, as is required by the fourth paragraph of Article 146 of the Treaty, since damage of the kind they cite could affect, in the same way, any person residing in the area in question (see Case T-585/93 *Greenpeace International*, cited above, paragraphs 49 to 55).

72 The applicants have not adduced any evidence capable of showing that, prima facie, the contested decision affects them by reason of certain attributes or circumstances which are peculiar to them. Nor do they allege that the decision encroaches on a right which is specific to them and which, with regard to that decision, differentiates them from all other persons residing in Polynesia (see Case C-309/89 *Codorniu*, cited above, paragraphs 20 to 22, and the order of 23 November 1995 in Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraph 43).

73 In particular, in the legal context of the present dispute, it is necessary to reject the applicants' argument that the Commission was, by virtue of certain specific provisions of the Treaty, under a duty to take account of the consequences for their situation of the measure which it envisaged adopting, in accordance with settled case-law (see Case 11/82 *Piraiki-Patraiki* v *Commission* [1985] ECR 207, paragraph

28 et seq., Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477, paragraphs 11 and 12, and Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills*, cited above, paragraph 67).

74 No such obligation is apparent at first sight from the Treaty provisions on which the applicants rely. On the contrary, analysis of the relevant provisions of Chapter 3 of the Treaty shows clearly that, in the context of Article 34, the Commission is under an obligation to assess the effects capable of being caused by the nuclear tests in issue on all members of the general public and workers concerned. Interpreted within the scheme of Chapter 3, in particular in relation to Article 30, which concerns specifically 'the protection of the health of workers and the general public', Article 34 requires the Commission to make its assessment of whether the experiments which a Member State intends to carry out are dangerous within the context of the general objective of protecting the health of workers and the general public as a whole, by means of general preventive action based on considerations of public interest. When it takes such action, the Commission cannot be required to take into consideration the particular situation of each individual resident and worker within the geographical area concerned by a given experiment unless there are specific grounds for taking such considerations into account in the light of the objectives envisaged.

75 In the present case, therefore, the Commission was prima facie not under an obligation to single out for consideration the applicants' situation from that of the other inhabitants of Polynesia when assessing the risks connected with the nuclear tests in issue in order to determine whether those tests were particularly dangerous within the meaning of Article 34 of the Treaty.

76 In those circumstances, the applicants cannot be regarded as being prima facie individually concerned by the contested decision. It is thus apparent at first sight that the main action is manifestly inadmissible, without there being any need to

consider whether the applicants meet the other condition for admissibility in the fourth paragraph of Article 146 of the Treaty, that the contested decision must be of direct concern to them.

77 Contrary to the applicants' arguments, that conclusion is not incompatible with their right of access to the courts, since the judicial protection of individuals is ensured, in the Community system of remedies, not only by the various rights of direct action which they enjoy before the Community judicature under the conditions laid down in the Treaty but also by the procedure for seeking a preliminary ruling under Article 150 of the Treaty in the context of actions brought before the national courts, which are the ordinary courts of Community law.

78 The present application for interim measures must therefore be dismissed.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. The French Republic is granted leave to intervene in support of the form of order sought by the Commission.

2. The application for interim measures is dismissed.

3. Costs are reserved.

Luxembourg, 22 December 1995.

H. Jung

Registrar

A. Saggio

President