ORDER OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
24 January 2001 *

In Joined Cases T-112/00 and T-122/00,

Iberotam, SA, established in Barcelona (Spain),

Probelete, SA, established in Murcia (Spain),

Agripraza, SA, established in Torres Vedras (Portugal),

Protex SA, established in Wijnegem (Belgium),

Laboratoire d'achat pour l'agriculture (LAPA), established in Omicourt (Belgium),

Afrasa, SA, established in Fuente del Jarro-Paterna (Spain),

Herbex, SA, established in Sintra (Portugal),

European Crop Care Association (ECCA), established in Eghezee (Belgium),

represented by M. Roca Junyent and J. Roca Sagarra, lawyers, with an address for service in Luxembourg,

applicants in Case T-112/00,

and,

K & N Efthymiadis SA, established in Thessalonika (Greece), represented by M. Roca Junyent and J. Roca Sagarra, lawyers, with an address for service in Luxembourg,

applicant in Case T-122/00,

* Language of the case: French.

Commission of the European Communities, represented by G. Berscheid and A.-M. Alves Vieira, acting as Agents, with an address for service in Luxembourg,

defendants,

APPLICATION for the annulment of Commission Regulation (EC) No 451/2000 of 28 February 2000 laying down the detailed rules for the implementation of the second and third stages of the work programme referred to in Article 8(2) of Council Directive 91/414/EEC (OJ 2000 L 55, p. 25),

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

composed of: P. Mengozzi, President, V. Tiili and R.M. Moura Ramos, Judges,

Registrar: H. Jung,

makes the following

Order

Facts and legal context

1 The plant protection sector encompasses undertakings that are involved in the production, importation, distribution and/or marketing of active substances and plant protection substances. These products, or preparations, are those which contain one or more active substances and which are used to protect plants against harmful organisms, to affect their vital functions, to ensure their care and to destroy undesirable plants or part of them.

2 The applicants are small and medium-sized undertakings belonging to that sector. They are all members of the European Crop Care Association (ECCA), an association of small and medium-sized undertakings in the plant protection sector.

3 There is another association in the sector concerned, the European Crop Protection Association (ECPA) composed, inter alia, of 20 national associations and around 18 large undertakings that produce active substances. Its members produce 90% of the plant protection products marketed in the Community market.

4 On 15 June 1991, the Council adopted Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1, 'the Directive'). The object of the Directive is to establish uniform rules governing the conditions and procedures that are to apply in relation to authorisations to place products on the market (hereinafter referred to as 'AMMs') and the use of those products.

5 Its principal objective is not only to improve agricultural production through the use of effective plant protection products, but also to protect humans, animals and the environment against the risks and dangers of the poorly supervised use of those products. It is therefore intended to ensure that the products that are placed on the market are safe and will not, directly or indirectly, have any harmful effect on human or animal health or on the environment. It has as an additional objective the removal of barriers to the free movement of this type of goods.

6 Article 2, point 1, of the Directive defines plant protection products as active substances and preparations containing one or more active substances, put up in the form in which they are supplied to the user and that have the specific actions set out in that provision. Article 2, point 4, defines active substances as substances or micro-organisms, including viruses having general or specific action on harmful organisms or on plants, parts of plants or plant products.

7 According to Article 3(1) of the Directive, the Member States are to prescribe that plant protection products may not be placed on the market and used in their territory unless they have authorised the product in accordance with the Directive.

8 Article 4 of the Directive lays down the conditions and the ordinary procedure that apply for the purposes of the grant of the authorisation (Article 4(1) to (4)), renewal (Article 4(5)) and cancellation (Article 4(6)) of AMMs for plant protection products. Paragraph (1)(a) of that article specifies that only products

whose active substances are listed in Annex I may be the subject of an authorisation. It is for the Commission to create the list of authorised active substances according to a specified procedure.

9 The conditions for the inclusion of active substances in Annex I are prescribed in Article 5 of the Directive. Inclusion is only possible if, in the light of current scientific and technical knowledge, it may be expected that plant protection products that contain the relevant active substance will fulfil certain conditions relating to absence of harmful properties.

10 In derogation from the ordinary procedure prescribed by Article 4 of the Directive, and pending the adoption of a list of authorised active substances, the Community legislature has provided for transitional measures of two types. According to Article 8 of the Directive, the grant of an AMM for a product that contains an active substance not listed in Annex I is subject to a different regime depending on whether the active substance concerned is an 'existing' one, that is, whether it is contained in a product that is already on the market two years after the date of notification of the Directive (first subparagraph of Article 8(2)) or not (first subparagraph of Article 8(1)).

11 According to the first subparagraph of Article 8(2) of the Directive, a Member State may, during a period of 12 years following the notification of the Directive, authorise plant protection products containing existing active substances to be placed on the market in its territory.

12 The same article provides that the Commission is to commence a programme of work for the gradual examination of those active substances within the 12-year period referred to above. The programme may require interested parties to submit all requisite data to the Commission and the Member States within a

period provided for in the programme. It also provides that the Commission is to adopt a regulation setting out all the provisions necessary for the implementation of the programme.

13 During that 12-year period, it may be decided that an active substance, following its examination by the Standing Committee on Plant Health, may be included in Annex I to the Directive, and under which conditions, or, in cases where the requirements of Article 5 are not satisfied or the requisite information and data have not been submitted within the prescribed period, that the active substance will not be included in the Annex. The Member States are to ensure that the relevant authorisations are granted, withdrawn or varied, as appropriate, within the prescribed period.

14 Article 13 of the Directive sets out the requirements as to the data that have to be produced by an applicant for an AMM, the protection of those data and their confidentiality. It provides in particular that each applicant for an AMM for a plant protection product must include with his application 'for each active substance in the plant protection product, a dossier satisfying, in the light of the current scientific and technical knowledge, the requirements set out in Annex II'. The article also requires the relevant national authorities to keep confidential for a certain period the data provided by the applicant in support of his application for an authorisation (Article 13(3)).

15 Annex I to the Directive contains a list of active substances authorised to be included in plant protection products. Annex II lists 'the requirements for the dossier to be submitted for the inclusion of an active substance in Annex I'. The conditions to be satisfied in submitting a dossier for an authorisation for an active substance are to be found in Annex III.

16 The work programme for the gradual examination of existing active substances has been the subject of two regulations. First, Commission Regulation (EEC)

No 3600/92 of 11 December 1992 laying down the detailed rules for the implementation of the first stage of the programme of work referred to in Article 8(2) of Council Directive 91/414/EEC concerning the placing of plant protection products on the market (OJ 1992 L 366, p. 10) laid down a procedure for the evaluation of 90 existing active substances with a view to their possible inclusion in Annex I to the Directive.

17 Subsequently, Commission Regulation (EC) No 451/2000 of 28 February 2000 laying down the detailed rules for the implementation of the second and third stages of the work programme referred to in Article 8(2) of Council Directive 91/414/EEC (OJ 2000 L 55, p. 25, hereinafter 'the contested regulation') provided for the evaluation of the active substances listed in Annex I to that regulation with a view to their inclusion in Annex I to the Directive (the second stage) and the evaluation of the active substances listed in Annex II to that regulation with a view to their possible inclusion on a preliminary list, and in a later stage, in Annex I to the Directive (the third stage).

18 Articles 4 to 9 of that regulation relate to the implementation of the second stage of the work programme. Article 4(1) provides:

'Any producer wishing to secure the inclusion of an active substance referred to in Annex I to this Regulation, or any variants thereof ... shall so notify, for each active substance separately, the rapporteur Member State ... within six months after the date of entry into force of this Regulation.'

19 Article 4(3) provides:

'Any producer who has not notified any given active substance referred to in paragraph (1) within the time-limit referred to in that paragraph or whose notification was rejected in accordance with the provisions of Article 5(2) shall be

permitted to participate in the programme only collectively with one or more notifiers of the active substance, whose notification was accepted in accordance with Article 5(2), in submitting a joint dossier.'

20 Article 5(1) provides that for each active substance the Member State designated as rapporteur is to report to the Commission on the admissibility of the notifications received within the period of three months after expiry of the period prescribed in Article 4(1). Next, the Commission is to submit the reports to the Standing Committee on Plant Health, which is to examine whether the application should be admitted. The second subparagraph of Article 5(2) provides:

'Following that examination, a regulation shall be adopted ... establishing the list of active substances, adopted for evaluation with a view to their possible inclusion in Annex I to the Directive. Only active substances for which at least one notification was considered admissible in accordance with the provisions of the first subparagraph shall be included in that Regulation.'

21 According to Article 6, every producer wishing to have an active substance listed in Annex I to the Directive must, whether individually or collectively, submit a complete dossier to the national authority within the time-limit referred to in the regulation that establishes the list of active substances for evaluation.

22 Article 6(7) provides:

'... the Commission shall decide ... not to include [in Annex I to the Directive] an active substance for which no notification or no dossier has been submitted

within the prescribed time limit mentioning the reasons for the non-inclusion. Member States shall withdraw by 25 July 2003 authorisations of plant protection products containing those active substances.'

23 Article 7, relating to the completeness check of dossiers, provides, in paragraph (3), the same type of consequences in cases where a complete dossier is not submitted within the prescribed period.

24 Article 8 sets out the procedure to be followed in the evaluation of dossiers by rapporteur Member States and by the Commission. The dossiers are to be analysed by the rapporteur Member States, which are then to send a report of their evaluation to the Commission, recommending, with reasons, whether an active substance should be included or not in Annex I to the Directive. Article 8(4) provides that the Commission is to adopt, after a procedure of consultation, in particular with the Standing Committee on Plant Health, either a directive serving to include the active substance in Annex I to the Directive, setting out, where appropriate, the conditions, including the time-limit, for such inclusion or a decision addressed to the Member States withdrawing the authorisations of plant protection products containing the active substance, pursuant to the fourth subparagraph of Article 8(2) of the Directive, whereby that active substance is not included in Annex I to the Directive, mentioning the reasons for the non-inclusion.

25 Article 10 of the contested regulation sets out the conditions under which active substances covered by the third stage of the work programme are to be notified. Article 10(1) provides in particular that 'any producer wishing to secure the inclusion of an active substance referred to in Annex II to this Regulation, in Annex I to the Directive shall so notify the body referred to in Annex VII to this Regulation'.

26 Article 11(2) of the contested regulation provides that the Commission is to decide not to include in Annex I to the Directive the active substances covered by

this stage of the evaluation for which no admissible notification or full data package has been submitted within the prescribed time-limit, mentioning the reasons for the non-inclusion. The Member States are, by 25 July 2003, to withdraw authorisations of plant protection products containing those active substances.

27 Before the adoption of the contested regulation, ECCA had notified the Commission of its criticisms concerning the regime established by the Directive.

28 ECCA had, in particular, lodged complaints with the Directorates-General for Competition (13 November 1998 and 5 January 2000), for Agriculture (9 December 1998), and for Enterprise Policy, Distributive Trades, Tourism and Co-operatives (9 December 1998 and 21 July 1999). Those complaints were made with the purpose of informing the Commission of the situation of small and medium-sized undertakings in the plant protection sector following the first applications in practice of the system set up by the Directive and by Regulation No 3600/92. They objected in particular to the behaviour of some undertakings protected by the rule, set out in Article 13 of the Directive, relating to the confidentiality of data (see paragraph 14 above).

29 During the contested regulation's preparatory phase ECCA sent the Commission comments on the various preparatory texts of the regulation in five letters dated 9 and 17 February, 8 and 22 March and 20 May 1999. It appears from those letters that part of those comments related to the complaint that ECCA had sent to the Commission concerning an alleged infringement of the rules on competition by large undertakings to the detriment of the members of ECCA, an infringement which, it was claimed, was facilitated by the rules laid down in the Directive concerning the confidentiality of data.

30 The Commission gave its response to the comments by ECCA in letters dated 6 April and 28 July 1999. In the letter of 6 April 1999, the Commission stated:

'I would like to consult you about a draft working document (6304/VI/98 rev.1) relating to the second programme of re-examination of active substances in plant protection products under Directive 91/414 ... If significant amendments have to be made in the light of consultation among the departments you will be informed of these as soon as possible.

I would like to receive any observation you wish to make by 26 April at the latest.'

31 In its letter of 28 July 1999, the Commission wrote:

'I must thank you for your letter of 20 May 1999 with your comments on the draft Commission regulation. I can assure you that we have given due weight to your observations. They were also passed on to the Member States at the plant protection products legislation working party and discussed with them.

Not all your observations can be given a positive response. However, I can assure you that within the scope of Directive 91/414 ... we have tried to give as much weight to your observations as possible.

...

For your information I attach the most recent version of the draft proposal.'

32 Between the date when the contested regulation was adopted and August 2000, 98 active substances were notified.

Proceedings and forms of order sought by the parties

33 The applicants brought these actions by applications registered at the Registry of the Court of First Instance on 2 May 2000 (Case T-112/00) and 8 May 2000 (Case T-122/00).

34 The Commission, by separate documents lodged at the Registry of the Court of First Instance on 19 July 2000 and 7 August 2000, raised a plea of inadmissibility against each of the actions under Article 114 of the Rules of Procedure of the Court of First Instance. The applicants lodged their observations on those pleas on 21 September 2000 in Case T-122/00 and on 26 September 2000 in Case T-112/00.

35 By documents lodged at the Registry of the Court of First Instance on 6 October 2000, ECPA applied for leave to intervene in Cases T-112/00 and T-122/00 in support of the form of order sought by the defendant.

36 In accordance with Article 50 of the Rules of Procedure, and having heard the parties, the Court considers it appropriate to join Cases T-112/00 and T-122/00 for the purposes of this order.

37 In their application in Cases T-112/00 and T-122/00, the applicants claim that the Court should:

— annul the contested regulation;

— order the Commission to pay the costs.

38 In Cases T-112/00 and T-122/00, the Commission contends that the Court of First Instance should:

— dismiss the application as inadmissible;

— order the applicants to pay the costs.

39 In their observations on the pleas of inadmissibility, the applicants in Cases T-112/00 and T-122/00 contend that the Court of First Instance should declare the application admissible.

Admissibility

40 Under Article 114(3) of the Rules of Procedure the remainder of the proceedings on the plea of inadmissibility is to be oral unless the Court of First Instance otherwise decides. The Court considers that in the present case it is sufficiently well informed by the documents in the case and that it is unnecessary to open the oral procedure.

Arguments of the parties

41 The Commission maintains that the action on the basis of the fourth subparagraph of Article 230 EC is inadmissible for three reasons. First, the true purpose of the application is annulment of the Directive and not of the contested regulation. Assuming that the applicants were entitled to challenge the Directive before the Court of First Instance, the limitation period of two months for bringing an action for annulment has long since expired, given that the Directive was published in the *Official Journal of the European Communities* on 19 August 1991.

42 Second, and leaving aside the true purpose of the action, the applicants are not directly concerned by the contested regulation. The Commission states that the sole object of the regulation is to set out the procedure for notifying and evaluating the existing active substances that are the subject of the second and third stages of the programme of evaluation provided for in Article 8 of the Directive. It is only the Commission's later decision to include or not to include an active substance in Annex I to the Directive and, as a result, the possible decision to withdraw an active substance from the market, that can produce definitive effects *vis-à-vis* the applicants.

43 Moreover, the applicants cannot claim to be affected by the contested regulation, given that they have not specified anywhere in their applications which active

substances they produce and consequently in what way the contested regulation can adversely affect them.

44 Third, the Commission contends that the applicants are not individually concerned by the contested regulation since it applies to situations that are objectively identified and entails legal consequences for a class of persons envisaged generally and in the abstract. The regulation cannot, therefore, be characterised as a decision adopted in the guise of a regulation.

45 Furthermore, the applicants are not adversely affected by the contested regulation by reason of circumstances in which they are differentiated from all other persons and which affect them individually as if they were the person to whom the regulation is addressed.

46 For their part, the applicants maintain that the contested regulation is really a decision in the guise of a regulation. First of all, and to the extent to which it lays down a procedure for notifying and evaluating the active substances listed in Annexes I and II, the contested regulation does not concern active substances in general but a list of active substances that is closed and detailed.

47 Second, by regulating in a specific way how producers of the active substances with which it is concerned may seek the inclusion of those substances in Annex I to the Directive, the contested regulation affects exclusively those producers who, on the date on which it entered into force, were manufacturing those substances. It therefore produces effects with regard to a group of producers that is clearly defined and that cannot be changed in the future.

48 In any event, as has been consistently held, even assuming that the measure at issue is legislative in character (which the applicants deny), that does not exclude the possibility that it may individually concern certain economic operators (Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, 107 and Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 20; Joined Cases T-125/96 and T-152/96 *Boehringer* v *Council and Commission* [1999] ECR II-3427, paragraph 163).

49 In essence, the applicants put forward three arguments to show that they are individually concerned by the contested regulation.

50 First, they rely on the fact that ECCA (of which they are all members) took part in the process of preparation of the contested regulation. That participation is proved by the exchange of correspondence between ECCA and the Commission, and in particular by the Commission's letter of 6 April 1999 and by the comments that ECCA sent to the Commission on the draft texts of the contested regulation (see paragraph 29 above).

51 Second, the contested regulation entails a substantial change in the applicants' legal position and adversely affects specific rights held by them. Undertakings which are not in a position to present the complete dossier required by the contested regulation for notification of active substances for the purposes of having them included in Annex I to the Directive are deprived of the possibility of marketing the plant protection products containing those substances. The applicants are at present holders of AMMs in the Member States that may be withdrawn if they are unable to meet the new requirements in the contested regulation which relate to notification of active substances and presentation of complete dossiers.

52 Third, the specific situation in which the applicants find themselves *vis-à-vis* the contested regulation stems also from the nature of the plant protection sector, and the regulation does not take this into account.

53 In that connection, the applicants point out that there are two groups of operators in the sector. The first group comprises those who produce active substances and then use them to make products. The operators concerned here are companies that hold patents and are mostly multinationals. The operators in the second group, like the applicants, specialise mainly in the manufacture of products from active substances which were developed by the operators in the first group but for which the patents have expired. By contrast, these companies do not have research facilities available to them for developing new active substances, and are mostly nationally-based concerns which also export products as a sideline.

54 The operators that belong to the second group depend on the producers belonging to the first group for their supply of active substances. Furthermore, as they do not produce active substances, they are not in a position to furnish the information necessary for the purposes of notification of those substances. In those circumstances, the undertakings that produce the active substances need only fail to notify them for the operators in the second group to find themselves unable to continue using them. The contested regulation does not take into account the fact that the applicants are dependent on the big multinationals for the information held by the latter. By not taking into account that situation of dependency in which the applicants find themselves with respect to the information possessed by the large multinationals, the contested regulation has a serious and irreversible effect on the competitiveness of the applicants because they are completely unable to continue marketing certain products.

55 The harm that the contested regulation causes to the competitiveness of the applicant undertakings constitutes, according to the case-law of the Court of First Instance, a fact that singles them out individually in relation to a Community act (Joined Cases T-447/93 to T-449/93 *AITEC and Others* v *Commission* [1995] ECR II-1971, paragraphs 59 to 61).

56 The applicants submit next, that they are directly concerned by the contested regulation because it does not leave those responsible for implementing it, that is to say, the Member States, with any margin of discretion. Even though the relevant authorities in each Member State are responsible for examining the notifications of active substances, it is ultimately for the Commission to decide whether to accept those active substances and to list them in Annex I to the Directive. In any event, what adversely affects the applicants is the requirement to notify active substances which the contested regulation imposes on them and not the Commission's final decision authorising or refusing to authorise a particular active substance.

57 Lastly, the applicants maintain that the present actions are the only legal avenue open to them to obtain judicial review of the contested regulation since that regulation does not require transposition and the applicants can therefore never contest its legality before a national court.

Findings of the Court of First Instance

58 Under the fourth subparagraph of Article 230 EC, any natural or legal person may institute proceedings 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.

59 The applicants submit, first, that the contested measure is not regulatory in nature and that it is to be regarded as a decision of which they, as members of a closed and restricted class of economic operators affected by it, are addressees.

60 In that regard, it must be borne in mind that the criterion for distinguishing between a regulation and a decision is to be sought in the general application or otherwise of the contested measure, a matter which calls for a determination of the nature of that measure and, in particular, the legal effects which it is intended to or does in fact produce (see Case 26/86 *Deutz and Geldermann* v *Council* [1987] ECR 941, paragraph 7, Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraph 28, and Case C-87/95 P *CNPAAP* v *Council* [1996] ECR I-2003, paragraph 33).

61 In the present case, the contested regulation, drafted in general and abstract terms, has as its object the drawing up, from among existing active substances, of a list of those authorised for the purposes of the grant of the AMM prescribed by the Directive. To that end, it lays down the procedure for notifying and evaluating a certain number of active substances which it lists. The addressee of the regulation is therefore 'any producer wishing to secure the inclusion of an active substance referred to in Annex I to this Regulation, or any variants thereof ... , in Annex I to the Directive'. It is therefore a measure whose application is determined by an objective factual and legal situation defined by it in relation to its purpose.

62 Even assuming that it is possible to identify the producers of active substances concerned by the contested measure at the time when it entered into force, it is to be borne in mind that, according to settled case-law, the regulatory nature of a contested measure is not called in question by the possibility of determining more or less precisely the number, or even the identity, of the persons to which it applies (see, for example, Case C-209/94 P *Buralux and Others* v *Council* [1996] ECR I-615, paragraph 24).

63 It follows that the contested regulation is, by virtue of its general application, legislative in nature and does not constitute a decision within the meaning of Article 249 EC.

64 Nevertheless, the legislative character of the contested regulation does not by itself rule out the possibility that it may be of direct and individual concern to certain natural or legal persons in the sense contemplated in the fourth subparagraph of Article 230 EC (see *Codorniu* v *Council*, paragraph 19; Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission* [1995] ECR II-2305, paragraph 66, Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraph 50). This is the case if the provision in question adversely affects a natural or legal person because of certain qualities that are specific to him or of circumstances in which he is differentiated from all other persons (*Codorniu* v *Council*, paragraph 20).

65 In this context, the applicants raise, in essence, three arguments: first, the participation of ECCA — the association of which they are all members — in the process of drafting the contested regulation; second, the substantial change that the regulation brings about in their legal position, in that it affects specific rights that they hold; and, third, the economic impact that the notification system prescribed by the contested regulation has on their market position.

66 It is appropriate to examine, first, and jointly, the arguments designed to establish that the contested measure is of individual concern to the applicant undertakings and then to examine the argument that relates to the situation of ECCA in its capacity as an association.

67 The applicants argue that the contested regulation adversely affects their specific rights in that they are holders of AMMs in different Member States and that those AMMs may be called into question if they do not satisfy the requirements of that regulation.

68 In that regard, it need merely be observed that, since in the majority of Member States economic operators have to be holders of AMMs in order to be able to

market plant protection products containing active substances, the fact of holding an AMM does not constitute a particular attribute or a specfic factual situation of a nature such as to identify the applicants individually in a manner similar to that in which the addressees of a decision would be identified.

69 The applicants maintain, however, that their legal position is specifically affected by the contested regulation because, unlike producers of active substances, they are unable to furnish the data needed for the listing of the active substances that they use in Annex I to the Directive. As a result, they may be unable to market their products and, because of this, risk suffering serious damage.

70 On that point, it must be borne in mind that the fact that certain operators are more affected by a measure than their competitors is not sufficient for them to be regarded as individually concerned by the measure (Case T-11/99 *Van Parys and Others* v *Commission* [1999] ECR II-2653, paragraph 50).

71 There is no cause to examine the applicants' argument based on *AITEC and Others* v *Commission* because they have in any event not put anything forward before the Court to show that the contested regulation is capable of having a substantial effect on their market position. The applicants have confined themselves to making assertions of a general nature to the effect that they market plant protection products containing active substances falling within the scope of the contested regulation and that they are not in a position to provide the information they need for the listing of those active substances in Annex I to the Directive, without adducing any evidence before the Court capable of substantiating those assertions. In that regard, it is to be observed that neither the annexes attached by the applicants to their observations on the pleas of inadmissibility nor the copies of the complaints that ECCA lodged with the Commission and which the applicants have produced to the Court contain

anything to show that their economic activities depend to a significant extent on the authorisation of the active substances covered by the contested regulation.

72 It follows from all the foregoing considerations that the applicant undertakings cannot be regarded as individually concerned by the contested regulation.

73 It is appropriate next to consider whether ECCA, in its capacity as an association, can be individually concerned by the contested regulation.

74 In that regard, it is settled case-law that an association constituted for the purpose of promoting the collective interests of a class of persons cannot be considered to be individually concerned, within the meaning of the fourth subparagraph of Article 230 EC, by a measure affecting the general interests of that class, and that, as a result, it cannot bring an admissible action for annulment in the name of its members where the latter could not do so individually (Joined Cases 19/62 to 22/62 *Fédération nationale de la boucherie en gros et du commerce en gros des viandes and Others* v *Council* [1962] ECR 491 and Case C-321/95 P *Greenpeace Council and Others* v *Commission* [1998] ECR I-1651, paragraphs 14 and 29). It follows that since, as has just been held above, the applicant undertakings cannot be regarded as individually concerned by the contested regulation, ECCA, as the representative of their collective interests, cannot, in the light of the above case-law, be regarded as so concerned either.

75 Nevertheless, the existence of special circumstances, such as the role played by an association in the process leading to the adoption of an act within the meaning of Article 230 EC may provide a basis for the admissibility of an action brought by an association whose members are not individually concerned by that act,

particularly when that act affected the position of the association as a negotiator (Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219, paragraphs 19 to 25, and Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125, paragraphs 29 and 30).

76 That being so, it is proper to consider whether the exchange of correspondence between the Commission and ECCA constitutes special circumstances capable of conferring on ECCA standing as a professional association to bring an action as the representive of the interests of its members, in the sense contemplated in the case-law just cited.

77 In that regard neither Article 43 of the EC Treaty (now, after amendment, Article 37 EC), which served as the legal basis for the adoption of the Directive, nor the Directive itself provides for the intervention of individuals in the adoption of the legislation in question and the Commission was therefore not required to consult or hear the applicants in the process of adopting the contested regulation. Moreover, as the Court has already held, neither the process of preparation of legislative measures nor those measures themselves, as measures of general application, require, by virtue of the general principles of Community law, such as the right to be heard, the participation of the persons affected, since their interests are deemed to be represented by the political organs called on to adopt those measures (Case T-122/96 *Federolio* v *Commission* [1997] ECR II-1559, paragraph 75, and Case T-109/97 *Molkerei Großbraunshain et Bene Nahrungsmittel* v *Commission* [1998] ECR II-3533, paragraph 60).

78 In those circumstances, ECCA cannot validly plead the existence of an individual interest of its own that is distinct from that of its members as a basis for its standing to bring proceedings.

79 Finally, as to the argument based on the fact that the present actions are the only legal remedies available to the applicants for challenging the legality of the

contested regulation, it must be pointed out that it is for the Commission to make the decision not to include in Annex I to the Directive the active substances which have not been the subject of an admissible notification and/or for which a complete dossier has not been submitted within the prescribed period (see paragraphs 22 and 23 above). In those circumstances, it is not to be excluded, in particular, that the applicants may bring an action on the basis of the fourth subparagraph of Article 230 EC against a Commission decision rejecting an application for listing and, in the context of such an action, to challenge the legality of the contested regulation on the basis of Article 241 EC.

80 It follows from the foregoing considerations that the applicants are not individually concerned by the contested regulation. They are therefore not entitled to apply for its annulment pursuant to the fourth subparagraph of Article 230 EC, and it is not necessary to consider the question whether the contested regulation is of direct concern to them.

81 The applications must therefore be dismissed as inadmissible and no ruling is therefore necessary on the request by ECPA for leave to intervene.

Costs

82 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if applied for by the successful party. Since the applicants have been unsuccessful, they must be ordered to pay the costs, as applied for by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby orders:

1. Cases T-112/00 and T-122/00 are joined;

2. The applications are dismissed as inadmissible;

3. The applicants shall pay the costs;

4. It is not necessary to rule on the application by the European Crop Protection Association (ECPA) for leave to intervene.

Luxembourg, 24 January 2001.

H. Jung

Registrar

P. Mengozzi

President