ORDER OF THE COURT (Second Chamber)
30 January 2002 *

In Case C-151/01 P,

La Conqueste SCEA, established in Morlaas (France), represented by A. Lyon-Caen, F. Fabiani and F. Thiriez, avocats, with an address for service in Luxembourg,

appellant,

APPEAL against the order of the Court of First Instance of the European Communities (Fifth Chamber) in Case T-215/00 *La Conqueste* v *Commission* [2001] ECR II-181, and seeking to have that order set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by A.-M. Rouchaud and X. Lewis, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

* Language of the case: French.

THE COURT (Second Chamber),

composed of: N. Colneric, President of the Chamber, R. Schintgen (Rapporteur) and V. Skouris, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By action lodged at the Court Registry on 6 April 2001, La Conqueste SCEA brought an appeal, pursuant to Article 49 of the EC Statute of the Court of Justice, against the order of the Court of First Instance in Case T-215/00 *La Conqueste* v *Commission* [2001] ECR II-181, hereinafter 'the contested order'), in which the Court of First Instance rejected as inadmissible its action for the annulment of Commission Regulation (EC) No 1338/2000 of 26 June 2000, completing the annex to Regulation (EC) No 2400/96 on the entry of certain names in the 'Register of protected designations of origin and protected geographical indications' provided for in Council Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 2000 L 154, p. 5), as regards registration as a protected geographical indication of the name 'Canard à foie gras du Sud-Ouest'.

Regulatory framework

2 Council Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1), as amended by Council Regulation (EC) No 535/97 of 17 March 1997 (OJ 1997 L 83, p. 3, hereinafter 'Regulation No 2081/92'), defines, as indicated in Articles 1(1) and 2(1) thereof, the rules concerning Community protection of designations of origin and geographical indications for which certain agricultural products and foodstuffs are eligible.

3 According to Article 2(2)(b) of Regulation No 2081/92:

'For the purposes of this regulation:

(a) ...

(b) "geographical indication" means the name of the region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:

— originating in that region, specific place or country,

and

— which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area.'

4 Article 4(1) of Regulation No 2081/92 provides that 'to be eligible to use a protected designation of origin (PDO) or a protected geographical indication (PGI) an agricultural product or foodstuff must comply with a specification'. Article 4(2) of the same regulation lists the elements that must be included in the specification, including pursuant to subparagraph (c), the definition of the geographical area.

5 According to the 12th recital in the preamble to Regulation No 2081/92 'to enjoy protection in every Member State geographical indications and designations of origin must be registered at Community level'. According to the 13th recital, 'the registration procedure should enable any person individually and directly concerned in a Member State to exercise his rights by notifying the Commission of his opposition'.

6 Articles 5 to 7 of Regulation No 2081/92 define the so-called 'ordinary' procedure for registration of geographical indications and designations of origin. The application for registration, by a group of producers and/or processors or, subject to certain conditions, a natural or legal person (Article 5(1) and (2)), must include *inter alia* the specification referred to in Article 4 of the same regulation (Article 5(3)) and must be addressed to the Member State in which the geographical area concerned is located (Article 5(4)). The Member State checks that the application has been substantiated and when it considers that the requirements of the said regulation have been fulfilled, forwards it to the Commission together with the specification and other documents upon which its decision was based (Article 5(5)).

7 Article 6 of Regulation No 2081/92 defines the procedure according to which the Commission processes the application for registration of a name. The Commission checks, within six months, by means of a formal investigation, whether the registration application includes all the particulars provided for in Article 4 of the regulation (Article 6(1)). If it concludes that the name qualifies for protection, it publishes a notice in the *Official Journal of the European Communities* (Article 6(2)). If no statement of objection is notified to it in accordance with Article 7, it enters the name in a register entitled 'Register of protected designations of origin and protected geographical indications' (Article 6(3)). The names entered in the register are then published in the *Official Journal of the European Communities* (Article 6(4)). If, on the other hand, in the light of the investigation provided for in Article 6(1) of Regulation No 2081/92, the Commission concludes that the name does not qualify for protection, it decides, in accordance with the procedure provided for in Article 15 of the said regulation, not to proceed with the publication provided for in Article 6(2) (Article 6(5)).

8 Article 7 of Regulation No 2081/92, which lays down the procedure for objecting to a registration, provides:

'1. Within six months of the date of publication in the *Official Journal of the European Communities* referred to in Article 6(2), any Member State may object to the registration.

2. The competent authorities of the Member States shall ensure that all persons who can demonstrate a legitimate economic interest are authorised to consult the application. In addition and in accordance with the existing situation in the Member States, the Member States may provide access to other parties with a legitimate interest.

3. Any legitimately concerned natural or legal person may object to the proposed registration by sending a duly substantiated statement to the competent authority of the Member State in which he resides or is established. The competent authority shall take the necessary measures to consider these comments or objection within the deadlines laid down.

4. A statement of objection shall be admissible only if it:

— either shows non-compliance with the conditions referred to in Article 2,

— shows that the registration of a name proposed would jeopardise the existence of an entirely or partly identical name or of a trade mark or the existence of products which have been legally on the market for at least five years preceding the date of the publication provided for in Article 6(2),

— or indicates the features which demonstrate that the name whose registration is applied for is generic in nature.

5. Where an objection is admissible within the meaning of paragraph 4, the Commission shall ask the Member States concerned to seek agreement among themselves in accordance with their internal procedures within three months. If:

(a) agreement is reached, the Member States in question shall communicate to the Commission all the factors which made agreement possible together with

the applicant's opinion and that of the objector. Where there has been no change to the information received under Article 5, the Commission shall proceed in accordance with Article 6(4). If there has been a change, it shall again initiate the procedure laid down in Article 7;

(b) no agreement is reached, the Commission shall take a decision in accordance with the procedure laid down in Article 15, having regard to traditional fair practice and of the actual likelihood of confusion. Should it decide to proceed with registration, the Commission shall carry out publication in accordance with Article 6(4).'

Facts of the case and procedure before the Court of First Instance

9 The facts of the case are set out in the contested order as follows:

'7 The applicant is an undertaking established in south western France which produces and hatches mallard duck eggs, and also rears and force-feeds the ducks.

8 On 5 May 1999, the French Government forwarded to the Commission, pursuant to Article 5(5) of Regulation No 2081/92, an application for registration as a protected geographical indication, of the name "Canard à foie gras du Sud-Ouest" from the Association pour la défense du palmipède à foie gras du Sud-Ouest.

9 On 28 September 1999, the application was published in the *Official Journal of the European Communities* in accordance with Article 6(2) of Regulation No 2081/92 (OJ 1999 C 274, p. 5).

10 By letter dated 6 October 1999 the applicant sent the French Minister for Agriculture and Fisheries a statement of objections to the registration on the basis of Article 7(3) of Regulation No 2081/92. It stated, particularly, that the procedure for registering as a protected geographical indication the name "canard à foie gras du Sud-Oest" had not been adequately publicised at national level and that the specifications accompanying the application for registration made by the Association pour la défense du palmipède à foie gras du Sud-Ouest contained particulars which had nothing to do with the protection of geographical origin. In particular, the applicant disputed the relevance of the requirements relating to the maximum production capacity of the structures for rearing and force-feeding ducks for foie gras and maintained that those requirements had very serious consequences for the health, hygiene and safety of production, owing to the fact that the traditional small-scale structures would be put in the position of having a monopoly.

11 On 6 October 1999, the applicant also sent that statement of objections to the Commission which, by letter of 20 October 1999, pointed out to the applicant that, under Article 7(3) of Regulation No 2081/92, the statement should be sent to the competent French authorities. By letter of 2 November 1999 the applicant replied to the Commission saying that it had sent the statement to the Commission and to the French authorities at the same time.

12 By letter of 8 March 2000 the French Ministry of Agriculture and Fisheries notified the applicant that its statement of objections did not satisfy the conditions for admissibility laid down by Regulation No 2081/92 and that therefore, it would not be forwarded to the Commission. The Ministry

pointed out, in particular, that the applicant's argument that the restriction on the size of the farms and force-feeding houses would have serious consequences for the health, hygiene and safety of production could not be accepted, since the hygiene and safety rules apply to everyone, whatever the size of the structures. By application lodged 8 April 2000, the applicant brought an action for the annulment of that decision before the French Council of State.

13 On 28 March 2000 France's permanent representative at the European Union sent a note to the Commission setting out the reasons for which the competent French authorities had decided not to forward the applicant's statement of objection to the Commission.

14 The Commission adopted Regulation ... No 1338/2000 ... . The third recital in the preamble to that regulation states: "No statements of objection have been received by the Commission under Article 7 of that regulation in respect of the name given in the Annex to this regulation following its publication in the *Official Journal of the European Communities*". The Commission considered, therefore, that the name "canard à foie gras du Sud-Ouest" deserved to be entered in the Register of protected designations of origin and protected geographical indications and, consequently, to be protected at Community level as a protected geographical indication.'

10 By application lodged at the Court Registry on 22 August 2000 the applicant brought an action under the fourth paragraph of Article 230 EC for the annulment of Regulation No 1338/2000.

11 By separate application lodged at the Court Registry on 12 October 2000 the Commission raised a plea of inadmissibility in respect of the action in accordance with Article 114(1) of the Rules of Procedure of the Court of First Instance. The applicant lodged its observations concerning this plea on 21 November 2000.

The contested order

12 By the contested order the Court of First Instance rejected the action as inadmissible.

13 After recalling the settled case-law on the admissibility of an action for annulment brought by an individual contesting a regulation, the Court of First Instance first found, at paragraph 32 of the contested order, that Regulation No 1338/2000, far from being addressed to particular economic operators, such as the appellant, confers on all undertakings whose products satisfy the geographical and qualitative requirements the right to market them under the name 'Canard à foie gras du Sud-Ouest' and refuses that right to all those undertakings whose products do not fulfil these conditions, which are the same for all producers. The Court of First Instance deduced from this, at paragraph 33 of that order, that the said regulation is a measure of general application that applies to objectively specified situations and produces legal effects as regards persons concerned in a general and abstract manner, namely as regards all undertakings manufacturing a product having objectively defined characteristics.

14 The Court of First Instance then examined the appellant's arguments in order to establish whether, notwithstanding its general application and legislative character, Regulation No 1338/2000 concerns the appellant individually in so far as it is affected owing to certain attributes peculiar to it or owing to a situation of fact that differentiates it from any other person and therefore distinguishes it in the same way as the addressee of a decision would be.

15 The appellant argued that, because its activities fell within those of a production industry that is integrated vertically and situated entirely within the geographical area concerned, it could not meet the requirements provided for in the specification attached to the application for registration concerning the maximum number of ducks that may be bred and force-fed annually per holding or per

farmer and that it could therefore no longer use the name in question, under which it has marketed its products for more than 20 years. In reply to that argument the Court of First Instance pointed out at paragraph 36 of the contested order, that any other producer, who is now, or may be in the future, in the same position as the appellant, are affected by Regulation No 1338/2000 in the same way.

16 The Court of First Instance added, in the same paragraph of the contested action, that the appellant's claim that the said specification requirements had been introduced with the sole aim of ousting it from the market in ducks for 'foie gras du Sud-Ouest' were not corroborated by any concrete evidence. The Court of First Instance, in paragraph 37 of the contested order, also denied any relevance to whether Regulation No 1338/2000 had a serious economic impact on the appellant's business, considering that because a legislative act may have specific effects which differ according to the various persons to whom it applies is not such as to differentiate them in relation to all the other operators concerned where — as in this case — that measure is applied on the basis of an objectively determined situation.

17 As regards the argument drawn from the judgment of the Court in Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, that a provision of legislative character may concern an economic operator individually when it adversely affects the latter's specific rights, the Court of First Instance found at paragraph 40 of the contested order that the appellant had not proved, or even claimed, that the use of the geographical designation relied on was the consequence of a similar specific right to the right in question in the above cited *Codorniu* v *Council* judgment, acquired at national or Community level before the adoption of Regulation No 1338/2000 and adversely affected within the meaning of that judgment by that regulation.

18 The appellant also maintains that it should be regarded as individually concerned by Regulation No 1338/2000 because of the adverse effect on its procedural safeguards, which it should have been accorded on the basis of Article 7(3) of

Regulation No 2081/92, in the absence of which it would be deprived of the right to genuine redress before the Community judicature. In that regard, the Court of First Instance began by recalling its case-law at paragraph 42 of the contested order, according to which neither the process of drawing up legislative acts nor legislative acts themselves, being measures of general application, require, by virtue of the general principles of Community law, such as the right to a hearing, the participation of the affected persons whose interests are deemed to be represented by political bodies called upon to adopt those acts and according to which, consequently, in the absence of procedural rights that have been expressly guaranteed, it would be contrary to the wording and the spirit of Article 230 EC to allow any individual where he has participated in the preparation of a legislative measure, subsequently to bring an action against that measure (orders of the Court of First Instance in Case T-109/97 *Molkerei Großbraunshain and Bene Nahrungsmittel* v *Commission* [1998] ECR II-3533, paragraphs 60 and 68, and in Case T-114/99 *CSR Pampryl* v *Commission* [1999] ECR II-3331, paragraph 50). The Court of First Instance concluded at paragraph 43 of the contested order that the admissibility of an action before it should be evaluated only in the light of the procedural safeguards afforded to individuals by Regulation No 2081/92.

19 In that regard the Court of First Instance found, at paragraphs 44 to 47 of the contested order, that Regulation No 2081/92 does not establish specific procedural safeguards at Community level in favour of individuals but that in the context of the procedure to object to registration under Article 7 of that regulation, the procedural safeguards accorded individuals are the sole responsibility of the Member States and do not involve the exercise of any power of evaluation by the Commission. The Court of First Instance found in particular, at paragraph 45 of the contested order, that Article 7(1) of the said regulation grants to the Member States the right to raise objections to registration before the Commission and that Article 7(3) thereof does not require the Member State in question to forward to the Commission objections stated to it by a natural or legal person individually and directly concerned but requires only the adoption of those measures necessary in order to take account of that objection within the requisite time-limit.

20 Finally, the Court of First Instance ruled at paragraph 48 of the contested order that even if the French competent authority had infringed certain of the

appellant's procedural rights by refusing to forward the appellant's objection to the Commission, it does not follow that the action is inadmissible for that reason alone. In support of this conclusion, the Court of First Instance relied on the following reasoning:

'49 In an action for annulment under Article 230 EC, the Community judicature has no jurisdiction to rule on the lawfulness of a measure taken by a national authority, even if the measure in question forms part of a Community decision-making procedure, where it clearly follows from the division of powers in the field in question between the national authorities and the Community institutions that the measure adopted by the national authority binds the Community regulatory body and as a result determines the wording of the forthcoming Community rules (order in the above-cited Case C-114/99 *CSR Pampryl* v *Commission*, paragraph 57).

50 Such is the case when a national competent authority decides not to transmit the statement of objection, addressed to it by an individual on the basis of Article 7(3) of Regulation No 2081/92, to the Commission (order in the above cited Case C-114/99 *CSR Pampryl* v *Commission*, paragraph 58). It follows from the above (see paragraph 45 above) that the Commission is bound by that decision and may not take into account an objection addressed to it by a person other than a Member State.

51 Without prejudice to a possible action before the Court on the basis of Article 226 EC, it is for national courts alone to rule, where appropriate after the Court's preliminary ruling, on the legality of the national act in question as well as on the possible responsibility of the Member State concerned should it be alleged to have caused damage (order in the above cited Case C-114/99 *CSR Pampryl* v *Commission*, paragraph 59).

52 In that regard, it suffices to establish that the applicant brought an action before the French Conseil d'État against the decision of the French competent authority not to send its statement of objection to the Commission.'

The appeal

21 In support of its appeal, the appellant puts forward four pleas in law.

22 Firstly, it submits that the Court of First Instance erred in law by omitting to consider whether Regulation No 1338/2000 affects it individually on the basis of the factual circumstances and, in particular, its production structure compared to all other producers in the region in question. In this respect it argues at paragraph 36 of the contested order, that the Court of First Instance should not have reasoned in the abstract in regard to the comparison with 'all other producers actually or potentially in an identical situation'. Taking into account the very object of Regulation No 1338/2000 which would protect the designation 'Sud-Ouest' in the designation of products based on duck, the Court of First Instance ought to have analysed the situation of the appellant in a concrete way, as it stood at the time of adoption of the said regulation, in comparison to that of other enterprises established in that region.

23 This being the case, the appellant submits that the Court of First Instance should have found that the appellant at that time was the only undertaking in the region concerned to have a vertically integrated production structure and that, taking into account the fact that the specification attached to the application for

registration reserved the profits of the protected geographical indication 'Canard à foie gras du Sud-Ouest' for the benefit of small structures only, comprising small production units of under 1 000 force-feeding places per year and per operator, Regulation No 1338/2000 required the appellant to set up a production structure in conformity with those of all the other undertakings in that region and in fact prohibited any other undertaking from adopting a similar production structure in the future.

24 Second, the appellant complains that the Court of First Instance clearly distorted, in paragraphs 38 to 40 of the contested order, the appellant's pleas in law drawn from the above cited judgment in *Codorniu* v *Council*. It argues that by applying the principles deriving from paragraphs 18 to 20 of that judgment, the action for annulment brought by an individual contesting the said regulation is admissible when, on the one hand, the application of the said regulation adversely affects the specific rights which it was able to acquire and, on the other hand, when the factual circumstances differentiate it from all other economic operators.

25 However, according to the appellant, by excluding those arguments drawn from the above cited *Codorniu* v *Council* judgment, the Court of First Instance failed to recognise that the appellant was in a special situation because of its finding that the designation of origin it had affixed to its products for 20 years did not benefit from intellectual property protection.

26 Third, the appellant argues that the contested order is initiated by a lack of reasoning as concerns its plea based on the failure to observe the right to genuine judicial redress. In this regard it argues that the Court of First Instance failed to reply to the argument that the right to genuine redress recognised in the Community legal order as a general principle of law, precludes the interpretation of Article 7 of Regulation No 2081/92 so as to exclude such a possibility, in that it does not expressly provide that a legitimately concerned person may address a statement of objection to the Commission in the event of a Member State's failure to act.

27 Fourth, the appellant argues that the Court of First Instance has erroneously interpreted Article 7 of Regulation No 2081/92 and has infringed the right to genuine redress.

28 In this regard, it argues on the one hand that, having regard to the general background of Regulation No 2081/92, as is stated in the third recital to the preamble, Article 7 thereof should have been interpreted to mean that where a Member State refuses to send to the Commission a statement of objection introduced by a legitimately concerned natural or legal person and which moreover fulfils the admissibility requirements of Article 7(4), that person may raise an objection directly with the Commission.

29 The appellant argues, secondly, that, in any event, the interpretation of the Court of First Instance that such a direct objection in the case of failure by the Member State is not permitted, is contrary to the general principle of Community law which safeguards the right of individuals to genuine redress before the Community judicature.

30 In its reply it adds that, in holding in the order in Case C-447/98 P *Molkerei Großbraunshain and Bene Nahrungsmittel* v *Commission* [2000] ECR I-9097, paragraph 74, that it follows from the wording and the scheme of Article 7 of Regulation No 2081/92 that a statement of objection to a registration cannot come from the Member State which has applied for registration, the Court created important, even insuperable, obstacles to legitimately concerned individuals having a right to a genuine redress before the Community judicature against Commission regulations on the registration of a designation of origin or geographical indication.

31 The appellant submits in this context that the possibility of reviewing the legality of such a regulation by means of a reference for a preliminary ruling to assess its validity, the introduction of which would depend on the discretionary assessment of the national courts, is definitively precluded in the present case since, by judgment of 8 June 2001, the French Conseil d'État refused to examine the legality of the French authorities' refusal to take into account the appellant's objection to the registration, under the conditions at issue, of the name 'Canard à foie gras du Sud-Ouest'.

Findings of the Court

32 By virtue of Article 119 of the Rules of Procedure, when the appeal is manifestly unfounded, the Court may at any point, by means of a reasoned order, dismiss the appeal.

The first plea

33 With regard to the first plea, it is necessary to establish whether the Court of First Instance correctly applied the case-law of the Court according to which a natural or legal person can claim to be individually concerned by a provision which, by its very nature and scope is legislative in character only if that provision adversely affects it because of certain attributes which are peculiar to it or factual circumstances that differentiate it from all other persons (see in particular

Codorniu v *Council*, cited above, paragraphs 19 and 20, and order in Case C-341/00 P *CNPA and Others* v *Commission* [2001] ECR I-5263, paragraphs 25 and 26).

34 It appears in this case that Regulation No 1338/2000 only concerns the appellant owing to its objective status as an economic operator producing ducks for foie gras in the geographical area, as defined in the specification attached to the application for registration, and marketing the goods produced. That is an economic activity that, at any point in time, may be carried out by any undertaking.

35 The fact that, at the time of adoption of Regulation No 1338/2000, the appellant had to adjust its production structure in order to fulfil the said conditions is not sufficient for it to be individually concerned in a manner analogous to that of the addressee of a measure.

36 First, even on the supposition that the Commission, when adopting Regulation No 1338/2000, ought to have taken into account, under a specific provision of Regulation No 2081/92, the consequences that the measure entailed for certain individuals including the appellant, such a constraint would not have discharged the latter from the obligation of proving that it had been adversely affected by Regulation No 1338/2000 by virtue of factual circumstances differentiating it from all other persons (see in this connection judgment in Case C-451/98 *Antillean Rice Mills* v *Council* [2001] ECR I-8949, paragraphs 59 and 62).

37 On the other hand, as the appellant itself has pointed out, adopting a production structure compatible with the maximum limits for duck production provided for

in the specification attached to the application for registration in question, applies to all economic operators wishing to market duck products by using the protected geographical indication 'Canard à foie gras du Sud-Ouest'.

38 In those circumstances the Court of First Instance correctly ruled at paragraph 36 of the contested order, that Regulation No 1338/2000 affected the appellant in the same way as all other operators who were, actually or potentially, in an identical situation to it. Therefore, the first plea is manifestly unfounded.

The second plea

39 As regards the second plea, it suffices to state that it appears from paragraphs 14 to 16 of the present order that it is at paragraphs 36 to 37 of the contested order that the Court of First Instance precluded the appellant's arguments based on its specific situation compared to other producers of ducks for foie gras in the region concerned.

40 In those circumstances the Court of First Instance cannot be said to have misconstrued the appellant's pleas since, at paragraphs 38 to 40 of the contested order in the context of the arguments taken from the above cited judgment in *Codorniu* v *Council*, it limited its examination to whether the appellant was individually concerned by Regulation No 1338/2000 on the ground that the latter adversely affected specific rights which, in terms of that judgment, the appellant could rely upon.

41 Consequently, the second plea is also manifestly unfounded.

The third and fourth pleas

42 In order to judge the well-foundedness of the third and fourth pleas, which must be examined together, it follows from paragraphs 42 to 52 of the contested order that in order to reject the appellant's plea of the adverse affect on the procedural safeguards that it ought to have been accorded on the basis of Article 7(3) of Regulation No 2081/92, in the absence of which the appellant would be deprived of any genuine redress before the Community judicature, the Court of First Instance has successively held that the said regulation establishes no specific procedural safeguards at Community level in favour of individuals and that, subject to a possible referral to the Court on the ground of a procedural failure under Article 226 EC, it is for the national courts to rule, after a reference for a preliminary ruling under Article 234 EC should the case arise, on the legality of a measure in which a national competent authority decides not to forward a statement of objection addressed to it by an individual in accordance with Article 7(3).

43 In that regard the Court has already held, at paragraph 72 of the above cited order in *Molkerei Großbraunshain and Bene Nahrungsmittel* v *Commission*, that, according to Article 7(1) and (3) of Regulation No 2081/92, an objection to an intended registration may only be made to the Commission by a Member State to which a natural or legal person able to demonstrate a legitimate economic interest has applied.

44 As the Court of First Instance correctly ruled at paragraph 45 of the contested order, that interpretation cannot be called in question by reference to the 13th recital in the preamble to Regulation No 2081/92 in so far as that recital expressly provides that the notification to the Commission of an objection by a person that can demonstrate legitimate economic concern must be effected through a Member State.

45 At paragraph 74 of the order in *Molkerei Großbraunshain and Bene Nahrungsmittel* v *Commission*, the Court also held that the procedure for objecting to a

registration established by Article 7 of Regulation No 2081/92 is not intended to deal with objections between the Member State's competent authority and a natural or legal person resident or established in that Member State (see also judgment in Case C-269/99 *Kühne and others* [2001] ECR I-9517, at paragraph 55).

46 Contrary to the appellant's argument, this interpretation of Article 7 of Regulation No 2081/92 is not contrary to the right of any person to secure judicial redress, as safeguarded by Community law as a general principle flowing from the constitutional traditions common to the Member States and enshrined in Articles 6 and 13 of the European Convention on Human Rights (Case 222/84 *Johnston* [1986] ECR 1651, paragraphs 18 and 19, and Case 222/86 *Heylens and Others* [1987] ECR 4097, paragraph 14).

47 In accordance with that general principle of Community law, it is for the national courts to rule on the legality of an application for registration of a name introduced by the competent authority of a Member State to the Commission, in the same circumstances as those applicable to all definitive measures which, having been taken by the same national authority, threaten adversely to affect third parties' rights under Community law and, consequently, to regard an action to that end as admissible even if no provision is made for such a case in the internal rules of procedure (*Kühne and Others*, paragraphs 57 and 58).

48 Moreover, it should be stated that the French Conseil d'État, in its judgment of 8 June 2001, produced by the same appellant in annex to the reply, expressly rejected as unfounded the appellant's application for annulment of the decision by the French Government to send the application for registration to the Commission. It did so on the ground that, by including the capacity of the force-feeding workshops in the criteria assuring the quality of the products in question, the competent French authorities had not committed a manifest error of assessment.

49 The appellant thus being able, in the present case, to bring an action before the national courts and, what is more, having in fact exercised that right, there is no need to examine whether the right to judicial redress as guaranteed by Community law, requires the Court, as the appellant contends, to declare admissible an action for annulment by a natural or legal person who does not satisfy the conditions laid down in the fourth paragraph of Article 230 EC.

50 It follows from the foregoing that the third and fourth pleas are also manifestly unfounded.

51 The appeal must therefore be dismissed as clearly unfounded under Article 119 of the Rules of Procedure.

Costs

52 Under Article 69(2) of the Rules of Procedure of the Court of Justice, applicable to the procedure on appeal by virtue of Article 118 thereof, the unsuccessful party is to be ordered to pay costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the appellant has been unsuccessful, La Conqueste SCEA must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber),

hereby orders:

1. **The action is dismissed.**

2. **La Conqueste SCEA is ordered to pay the costs.**

Luxembourg, 30 January 2002.

R. Grass

Registrar

N. Colneric

President of the Second Chamber