ORDER OF THE COURT OF FIRST INSTANCE (Second Chamber)
11 July 2005 *

In Case T-40/04,

Emma Bonino, residing in Rome (Italy),

Marco Cappato, residing in Vedano al Lambro (Italy),

Gianfranco Dell'Alba, residing in Livourne (Italy),

Benedetto Della Vedova, residing in Tirano (Italy),

Olivier Depuis, residing in Rome,

Marco Pannella, residing in Rome,

Maurizio Turco, residing in Pulsano (Italy),

Liste Emma Bonino, established in Rome,

represented by G. Vandersanden and L. Levi, lawyers,

applicants,

* Language of the case: French.

European Parliament, represented by H. Krück, N. Lorenz and D. Moore, acting as Agents, with an address for service in Luxembourg,

and

Council of the European Union, represented by M. Sims and I. Díez Parra, acting as Agents,

defendants,

APPLICATION for annulment of Regulation (EC) No 2004/2003 of the European Parliament and of the Council of 4 November 2003 on the regulations governing political parties at European level and the rules regarding their funding (OJ 2003 L 297, p. 1),

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

composed of J. Pirrung, President, N.J. Forwood and S. S. Papasavvas, Judges,

Registrar: H. Jung,

makes the following

Order

Legal framework and background

1 On 4 November 2003, the European Parliament and the Council of the European Union adopted Regulation (EC) No 2004/2003 on the regulations governing political parties at European level and the rules regarding their funding (OJ 2003 L 297, p. 1) ('the contested regulation'). That regulation was adopted on the basis of the second paragraph of Article 191 EC, which provides that '[t]he Council, acting in accordance with the procedure referred to in Article 251 [EC], shall lay down the regulations governing political parties at European level and in particular rules on funding'.

2 Articles 2 to 5 of the contested regulation are worded as follows:

'Article 2

Definitions

For the purposes of this Regulation:

1. "political party" means an association of citizens:

— which pursues political objectives, and

— which is either recognised by, or established in accordance with, the legal order of at least one Member State;

2. "alliance of political parties" means structured cooperation between at least two political parties;

3. "political party at European level" means a political party or an alliance of political parties which satisfies the conditions referred to in Article 3.

Article 3

Conditions

A political party at European level shall satisfy the following conditions:

(a) it must have legal personality in the Member State in which its seat is located;

(b) it must be represented, in at least one quarter of Member States, by Members of the European Parliament or in the national Parliaments or regional Parliaments or in the regional assemblies, or

it must have received, in at least one quarter of the Member States, at least three per cent of the votes cast in each of those Member States at the most recent European Parliament elections;

(c) it must observe, in particular in its programme and in its activities, the principles on which the European Union is founded, namely the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law;

(d) it must have participated in elections to the European Parliament, or have expressed the intention to do so.

Article 4

Application for funding

1. In order to receive funding from the general budget of the European Union, a political party at European level shall file an application with the European Parliament each year.

The European Parliament shall adopt a decision within three months and authorise and manage the corresponding appropriations.

2. The first application shall be accompanied by the following documents:

(a) documents proving that the applicant satisfies the conditions laid down in Article 3;

(b) a political programme setting out the objectives of the political party at European level;

(c) a statute defining in particular the bodies responsible for political and financial management as well as the bodies or natural persons holding, in each of the Member States concerned, the power of legal representation, in particular for the purposes of the acquisition or disposal of movable and immovable property and of being a party to legal proceedings.

3. Any amendment concerning the documents referred to in paragraph 2, in particular a political programme or statute, which have already been presented, shall be notified to the European Parliament within two months. In the absence of such notification, funding shall be suspended.

Article 5

Verification

1. The European Parliament shall verify regularly that the conditions set out in Article 3(a) and (b) continue to be met by political parties at European level.

2. With regard to the condition specified in Article 3(c), at the request of one quarter of its members, representing at least three political groups in the European Parliament, the European Parliament shall verify, by a majority of its members, that the condition in question continues to be met by a political party at European level.

Before carrying out such verification, the European Parliament shall hear the representatives of the relevant political party at European level and ask a committee of independent eminent persons to give an opinion on the subject within a reasonable period.

The committee shall consist of three members, with the European Parliament, the Council and the Commission each appointing one member. The secretariat and funding of the committee shall be provided by the European Parliament.

3. If the European Parliament finds that any of the conditions referred to in Article 3(a), (b) and (c) is no longer satisfied, the relevant political party at European level, which has for this reason forfeited this status, shall be excluded from funding under this Regulation.'

3 The subsequent articles of the contested regulation concern the sources of funding and obligations of political parties at European level connected with funding (Article 6), a prohibition of using Community funding in order to support other political parties, in particular national parties (Article 7), and the nature of the expenditure for which appropriations received from the general budget of the European Union may be used (Article 8). Article 9 lays down budgetary rules, in particular in relation to the implementation of appropriations and the control of funding. Article 10 regulates the key for distribution of the appropriations between the political parties at European level.

4 Article 13 of the contested regulation, entitled 'Entry into force and application', provides:

'This Regulation shall enter into force three months following the date of its publication in the Official Journal of the European Union.

Articles 4 to 10 shall apply from the date of the opening of the first session held after the European Parliament elections of June 2004.'

5 The first session of the European Parliament after the European elections of June 2004 took place on 20 July 2004.

Procedure and forms of order sought by the parties

6 By application lodged at the Court Registry on 6 February 2004, the applicants brought the present action.

7 By separate documents lodged at the Court Registry on 7 and 30 April respectively, the Parliament and the Council raised objections of inadmissibility under Article 114 (1) of the Rules of Procedure of the Court of First Instance.

8 The applicants lodged their observations on the objections of inadmissibility on 16 June 2004.

9 The European Parliament and the Council claim that the Court should

— dismiss the action as inadmissible;

— order the applicants to pay the costs.

10 In their observations on the objections of inadmissibility raised by the defendants, the applicants contend that the Court should:

— dismiss the objections of inadmissibility;

— order the substantive procedure to continue;

— order the defendants to pay the costs.

Law

11 The defendants raise a plea on inadmissibility under the fourth paragraph of Article 230 EC. In the case of the applicant political party, the Liste Emma Bonino, the Parliament further maintains that the formal requirements laid down in Article 44 (5) of the Rules of Procedure have not been satisfied.

12 The Court will consider first of all whether the applicants satisfy the conditions of admissibility laid down in the fourth paragraph of Article 230 EC.

Arguments of the parties

Arguments of the defendants

13 The Parliament and the Council maintain, in substance, that the contested regulation is not of direct or individual concern to the applicants. The Council further submits that the contested regulation is not an attackable act for the purposes of the fourth paragraph of Article 230 EC.

— The nature of the contested act

14 The Council submits, first of all, that the contested regulation is not a 'disguised' decision, but that it has all the characteristics of a measure of general scope, applying generally and in the abstract to objectively determined situations. Such an act cannot be challenged under the fourth paragraph of Article 230 EC. The Council does not preclude that even an act of general scope may, in certain circumstances, be of direct and individual concern to a natural or legal person, whereas, for the other persons affected, it assumes a normative character of general scope. It maintains, however, that such particular circumstances do not exist in the present case.

15 The Parliament submits that the direct applicability of the contested regulation, and in particular Articles 2 to 5 thereof, under the second paragraph of Article 249 EC, is not to be confused with its being of direct concern within the meaning of the fourth paragraph of Article 230 EC. The admissibility of the action cannot be inferred from the second paragraph of Article 249 EC or from the direct applicability of the contested regulation.

— The absence of direct concern to the applicants

16 As regards direct concern to the applicants, the Parliament and the Council maintain, in the first place, that the applicants are not, or at least are not all, the persons at whom the contested regulation is aimed.

17 First, as regards the applicant MEPs, the Council and the Parliament maintain that the contested regulation is aimed at political parties at European level within the meaning of Article 2 of the regulation, composed either of clearly distinguished associations of citizens or of a structured cooperation between two or more of those associations. As the applicant MEPs are natural persons distinct from the parties to which they belong, the contested measure is not of direct concern to them. The Parliament further submits that any indirect concern, owing to the fact that the national political parties of which the applicant MEPs are members would be excluded from Community funding under the contested regulation, is not sufficient to satisfy the requirements of the fourth paragraph of Article 230 EC. It also observes that the application does not explain to what extent the applicant MEPs ought to be regarded as constituting a political party at European level.

18 The Parliament further submits that the possible exclusion from Community funding of the national parties to which the applicant MEPs belong would not affect

the conditions of the exercise of their mandates, as funding for their work is ensured by other rules, in particular the rule on fees and indemnities of Members of the Parliament and also by budgetary item 3701.

19 Second, as regards the Liste Emma Bonino, the Parliament contends that it, too, is not a person at whom the contested regulation is aimed. As that regulation is aimed only at political parties at European level within the meaning of Article 2 of the contested regulation, and the Liste Emma Bonino as a national political party does not satisfy the conditions necessary to obtain the status of a political party at European level, the rules are not of direct concern to it.

20 In the second place, the Parliament contends that Articles 2 and 3 of the contested regulation, which fix the requirements which political parties at European level must satisfy, do not have any legal effects before the entry into force of Articles 4 to 10 of that regulation, which regulate inter alia the grant of Community funding, the rights and obligations of political parties at European level and the conditions in which funding which has been granted is brought to an end. In accordance with Article 13 of the contested regulation, Articles 4 to 10 were to apply only from 20 July 2004. The Parliament submits that at the time when the action was brought, which determines the admissibility of the action, the contested regulation had not yet produced effects on the applicants' legal situation. The Council essentially adopts the Parliament's line of argument.

21 In the third place, the Council claims that the contested regulation requires implementing measures on the part of the Parliament. The grant or refusal of funding does not come into being automatically, but requires a step on the part of the political party wishing to benefit from funding. Furthermore, the contested regulation provides, at various points, that the Parliament has a discretion in implementing the contested regulation.

— The absence of individual concern

22 First, the defendants contend that the applicants are concerned by the contested regulation solely by virtue of objective criteria which apply to any political formation. The applicants are concerned in exactly the same way as all other persons.

23 Second, the defendants take the view that the applicants are not part of a closed group of persons concerned by the contested regulation. As regards the applicant MEPs, the Council observes that, at the time when the contested regulation became wholly applicable (on 20 July 2004), the mandates which they held at the time of lodging the actions had expired. The Parliament observes, in that regard, that the composition of the Parliament may vary from one legislature to another and even during a legislature. Furthermore, as regards the Liste Emma Bonino, the Parliament observes that the composition of the Parliament, as concerns the parties, may also change from one legislature to another. In addition, the contested regulation may also concern political parties not represented in the Parliament, although that group is not identifiable.

24 Third, the Council maintains that the contested regulation does not infringe specific rights of the applicants within the meaning of the judgment of the Court of Justice in Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853.

25 Fourth, the Parliament refutes the applicants' argument that the contested regulation is of individual concern to them on account of the fact that they participated in the legislative procedure that led to the adoption of the contested regulation and that they have always expressed their opposition to the rules adopted.

26 Last, the Parliament observes that the applicant MEPs in question are not individually concerned by the contested regulation, since they are not directly concerned.

— Effective judicial protection

27 The Parliament maintains that the applicant MEPs enjoy sufficient judicial protection in that the normal remedies against acts adopted by the Parliament in implementation of the contested regulation will be available to them at the appropriate time. It submits, moreover, that the present dispute may be distinguished from that in which the Court of Justice delivered its judgment in Case 294/83 *Les Verts* v *Parliament* [1986] ECR 1339, in that the provisions of the contested regulation on the funding of political parties at European level apply only after the European elections in June 2004. Accordingly, there is no risk of discrimination comparable to that found in *Les Verts* v *Parliament*.

Arguments of the applicants

28 The applicants contend that, by virtue of the judgment in *Les Verts* v *Parliament*, they must be considered to be directly and individually concerned by the contested regulation. They maintain that the situation of fact and of law corresponds essentially to the situation which led to that judgment.

— The nature of the contested act

29 The applicants maintain that the contested regulation is a challengeable act for the purposes of Article 230 EC. Even on the assumption that the contested regulation has a general scope, it is at the same time of direct and individual concern to certain individuals, including the applicants.

— Direct concern to the applicants

30 The applicants claim, first of all, that the contested regulation is an act 'complete in itself' which, in order to be implemented, does not require any implementing measure on the part of the Member States and which leaves no discretion to the institutions responsible for applying it. The contested regulation has the effect of excluding, owing to the restrictive criteria set out in Article 3, the Liste Emma Bonino from the status of a political party at European level and, accordingly, from Community funding. The exclusion of their party also concerns the applicant MEPs, who, should the Liste Emma Bonino be weakened by comparison with other political formations in receipt of Community funding, would not be able to present themselves in the same way and with the same arms in the face of the electors.

31 As the direct concern to the applicants flows from Article 3 of the contested regulation, the applicants proceed to refute the defendants' arguments concerning the subsequent entry into force of Articles 4 to 10 of that regulation. They further claim that those arguments are inoperative in so far as the financial consequences of

the contested regulation were already certain and foreseeable at the time when the action was lodged. Nor could they have awaited the entry into force of articles 4 to 10 of the contested regulation without exceeding the period for bringing an action prescribed in the fifth paragraph of Article 230 EC.

32 Last, the applicants dispute the argument that neither the Liste Emma Bonino nor the applicant MEPs are not persons at whom the contested regulation is aimed. As in *Codorniu* v *Council*, the Liste Emma Bonino is concerned on account of its exclusion from the beneficiaries of the contested regulation and of the resulting discriminatory treatment. The applicant MEPs are directly concerned because the Liste Emma Bonino, on which they appear, is directly concerned.

— Individual concern to the applicants

33 The applicants maintain that they are individually concerned by the contested regulation for three reasons. First, during the legislative procedure preceding the adoption of the contested regulation, the applicant MEPs expressed their opposition to the terms of the regulation. Second, the Liste Emma Bonino was identifiable and identified by the Parliament as constituting a national political party which is excluded from any Community funding. Third, the contested regulation is not an act containing objective criteria, since the conditions set out in Article 3 infringe certain fundamental principles of Community law such as the principles of non-discrimination, democracy and proportionality, and also Article 191 EC and Declaration No 11 annexed to the Final Act of Nice. The applicants submit that the contested regulation causes them considerable harm in that it treats them unfavourably by comparison with other political parties. They conclude that, just as in *Codorniu* v *Council*, they must be recognised as having an individual interest in taking action.

— The absence of effective judicial protection

34 The applicants maintain that a direct action against the contested regulation is the only remedy available in the present case. Implementation of the contested regulation does not in their view require any implementing measure at national level, so that there is no remedy before the national courts and no possibility of relying on an objection of illegality in that context. Accordingly, the present dispute is to be distinguished from Case C-263/02 P *Commission* v *Jégo-Quéré* [2004] ECR I-3425 and Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677.

Findings of the Court

35 Pursuant to Article 114(1) of the Rules of Procedure, the Court may, if a party so requests, rule on the question of admissibility without considering the merits of the case. Under Article 114(3), unless the Court otherwise decides, the remainder of the proceedings is to be oral. In the present case, the Court considers that the information in the documents before it is sufficient for there to be no need to proceed to the oral stage of the proceedings.

36 The fourth paragraph of Article 230 EC provides that any natural or legal person may institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation, is of direct and individual concern to that person.

37 As a preliminary point, it must be borne in mind that in certain circumstances an act of general scope such as a regulation may be of individual concern to certain

interested persons (Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501, paragraph 13, and *Codorniu* v *Council*, paragraph 19). In those circumstances, a regulation may constitute a challengeable act for the purposes of the fourth paragraph of Article 230 EC.

38 The Court must therefore consider first of all whether the contested regulation is of direct concern to the applicants.

Direct concern to the applicants

39 According to settled case-law, the condition relating to 'direct concern' within the meaning of the fourth paragraph of Article 230 EC requires that the Community measure complained of directly affect the legal situation of the individual and leave no discretion to the addressees of that measure, who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from Community rules without the application of other intermediate rules (see Case C-404/96 P *Glencore Grain* v *Commission* [1998] ECR I-2435, paragraph 41, and the case-law cited).

40 For the purpose of ascertaining whether those requirements are satisfied in the present case, it is necessary to distinguish the situation of the Liste Emma Bonino from that of the applicant MEPs.

— The situation of the Liste Emma Bonino

41 In the first place, it is necessary to determine the effect that the contested regulation has on the legal situation of the Liste Emma Bonino.

42 In that regard, the Parliament denies, essentially, that the exclusion of the Liste Emma Bonino from Community funding is the consequence of the contested regulation. As the Liste Emma Bonino did not enjoy the status of a political party at European level, and therefore funding, either before or after the adoption of the contested regulation, its legal situation is not affected.

43 It must be pointed out, however, that the creation of an advantageous legal status from which some political formations may benefit while others are excluded is capable of affecting the equality of opportunities of political parties. Accordingly, the legal effect to take into consideration in the present case is that of the exclusion of the Liste Emma Bonino from the status of political party at European level and, accordingly, from the benefit of Community funding, in conjunction with the possibility that certain of its political competitors might benefit from such funding. It follows that the argument which the Parliament derives from the absence of any effect of the contested regulation on the legal situation of the Liste Emma Bonino must be rejected.

44 In the second place, the Court must consider whether the postponement of the application of Articles 4 to 10 of the contested regulation until 20 July 2004, the date of the first sitting of the Parliament following the European elections of June 2004, means that the Liste Emma Bonino was not directly concerned, as the Parliament and the Council claim.

45 The defendants correctly observe that the admissibility of an action for annulment must be assessed at the time when the action is brought (Case 50/84 *Bensider* v *Commission* [1984] ECR 3991, paragraph 8, and Case T-131/99 *Shaw and Falla* v *Commission* [2002] ECR II-2023, paragraph 29).

46 However, the fact that the effects of an act do not materialise until a subsequent date determined in the act does not preclude an individual from being directly affected by it.

47 First, as the applicants are required to comply with the period for bringing an action prescribed in the fifth paragraph of Article 230 EC, any other interpretation would have the consequence that the institution which adopted the act would be able to prevent an individual from bringing a direct action under the fourth paragraph of Article 230 EC by postponing the date of applicability of a provision capable of directly affecting the legal situation of the person concerned.

48 Second, since the legislature provided in this case that Articles 4 to 10 of the contested regulation would become applicable on a specific date and that the application of those provisions did not depend on the occurrence of uncertain events, the fact that the application of those provisions was postponed had no impact on the direct concern of the regulation to the Liste Emma Bonino. Nor is the fact that the mandates held by the applicant MEPs at the time when the action was lodged had expired when Articles 4 to 10 of the contested regulation became applicable a barrier to the regulation's being of direct concern to the Liste Emma Bonino, which is not in any way conditional on the presence of Members of the Parliament representing it within the Parliament or on their identity, as the representation or otherwise of a political party within the Parliament is not among the conditions set out in Article 3 of the contested regulation.

49 In the third place, the fact that the grant of funding depends on an application for funding does not preclude the contested regulation from being of direct concern to the Liste Emma Bonino, since the submission of such an application depends solely on the will of that party (see, to that effect, *Les Verts* v *Parliament*, paragraphs 11 and 31).

50 In the fourth place, it is necessary to examine whether the contested regulation leaves a discretion to the Parliament, which is responsible for implementing it.

51 It is apparent upon reading Articles 2 to 4 of the contested regulation that any political party or any alliance of political parties, within the meaning of Article 2(1)

and (2) of the contested regulation, which satisfies the conditions laid down in Article 3 may benefit from funding from the Community budget. It must be concluded, by contrary inference, that political formations which do not satisfy the conditions set out in Articles 2 and 3 of the contested regulation are excluded from funding. That interpretation is borne out by Article 5(3) of the contested regulation, under which, if the Parliament finds that one of the conditions referred to in Article 3(a), (b) or (c) is not satisfied, the 'political party at European level, which has for this reason forfeited this status, is excluded from financing under the regulation. Funding of political parties from the Community budget cannot be granted in the absence of a legal basis authorising such funding. Furthermore, the Court finds that the criteria referred to in Article 3(a), (b) and (d) of the contested regulation are formulated in such a way as to leave no discretion to the Parliament.

52 The terms of a decision granting or refusing funding in application of those criteria therefore represent the exercise of a mandatory duty, as the decision is purely automatic and flows solely from the contested regulation without the application of other intermediate rules.

53 In the present case, it follows from the brief indications given in the application that, under Italian law, the Liste Emma Bonino does not have legal personality and that it does not satisfy the conditions of representation laid down in Article 3(b) of the contested regulation. Accordingly, the applicants maintain, in substance, that the party will be excluded from funding owing to the criteria set out in Article 3(a) and (b) of the contested regulation.

54 It follows that the contested regulation is of direct concern to the Liste Emma Bonino.

— The situation of the applicant MEPs

55 The applicant MEPs contend that the grant or refusal of funding to the political party to which they belong directly affects the conditions in which they exercise their mandate.

56 In that regard, it should be observed, first, that while it cannot be precluded that the conditions of funding of a political party may have consequences for the exercise of the mandate of the Members of the Parliament belonging to that party, the fact remains that the economic consequences of such funding as may be granted to a competing political formation and denied to the one to which the applicant MEPs belong must be classified as indirect. In reality, the direct economic effect impacts on the situation of the political formation and not on the situation of the Members of the Parliament elected on its list. Furthermore, those economic consequences do not concern the legal situation but only the factual situation of the applicant MEPs (see Joined Cases T-172/98 and T-175/98 to T-177/98 *Salamander and Others* v *Parliament and Council* [2000] ECR II-2487, paragraph 62).

57 Second, it must be held that none of the provisions of the contested regulation is directly applicable to the Members of the Parliament. All of the rights and obligations established by the contested regulation refer only to political parties, alliances of political parties and political parties at European level, and also the Parliament, the Council, the Commission and the Court of Auditors. The provisions of the contested regulation do not directly affect either the rights connected with the mandate, or the remuneration, of Members of the Parliament or the relationship between a Member of the Parliament and the political party to which he belongs, independently of the question whether that national party forms part of an alliance of political parties or whether it is recognised as a political party at European level for the purposes of the contested regulation.

58 It follows that the applicant Members of the European Parliament are not directly concerned by the contested regulation.

59 Consequently, it remains only to consider whether the Liste Emma Bonino is individually concerned by that regulation.

As to whether the Liste Emma Bonino is individually concerned

60 It is settled case-law that in order for a contested act to be of individual concern to natural or legal persons other than the addressee of a decision, the act must affect those persons by reason of certain attributes peculiar to them or by reason of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as the addressee (see *Unión de Pequeños Pescadores* v *Council*, paragraph 36 and the case-law cited there).

61 As the Parliament and the Council correctly observe, the contested regulation applies to objectively determined situations and contains legal effects in regard to categories of persons envisaged generally and in the abstract. In particular, the conditions which must be satisfied by a political party wishing to benefit from Community funding are formulated in general terms and are capable of applying without differentiation to any political formation falling within the scope of the contested regulation.

62 In that regard, it should be made clear, in the first place, that the Liste Emma Bonino does not belong to a closed group of persons concerned by the contested regulation. While it is true that at the time when the action was brought the number of parties represented in the Parliament (Fifth Legislature) was restricted, the fact remains that the relevant provisions, namely those producing effects on the legal situation of the Liste Emma Bonino, were not all applicable before 20 July 2004. Accordingly, the political parties represented in the Parliament (Fifth Legislature) do not constitute the relevant reference group in the context of the examination of admissibility.

63 The reference group is made up of all the political formations capable of being directly concerned by the contested regulation, namely, in particular, all the political parties which participated in the European elections or which expressed the intention of doing so. However, that group is not a closed group for the purposes of the case-law. The fact that it is possible to determine the number or the identity of the political parties which participated in the European elections in June 2004 is not capable of distinguishing the Liste Emma Bonino individually. First, although such identification is still possible as regards the 2004 elections, it is clearly precluded for future elections. Second, the mere fact that it is possible to determine the number or even the identity of certain persons concerned, whereas such a possibility does not exist for other persons concerned, is not capable of distinguishing an applicant sufficiently (see, to that effect, Case 123/77 *UNICME* v *Council* [1978] ECR 845, paragraph 16; Case 45/81 *Moksel* v *Commission* [1982] ECR 1129, paragraph 17; and Case C-451/98 *Antillean Rice Mills* v *Council* [2001] ECR I-8949, paragraph 52).

64 In the second place, the Liste Emma Bonino does not plead any quality peculiar to it or any factual situation which would distinguish it by reference to other political formations concerned by the contested regulation, comparable to those which prevailed in *Codorniu* v *Council*.

65 First, even though the contested regulation is capable of affecting the applicant's rights, it clearly affects other political formations in exactly the same way. In *Codorniu* v *Council*, on the other hand, the contested rules had the consequence of preventing the applicant in that case from using a registered trade mark which it had exploited in Spain since 1924. No comparable circumstance can be found in the present case.

66 Second, as regards the effects that the contested regulation might produce for the factual situation of the Liste Emma Bonino, the funding granted to political parties at European level may certainly have negative consequences for the applicant party by creating financial advantages for its competitors, notably during the election

campaigns. However, that advantage conferred on the political formations which satisfy the criteria of a political party at European level produces its effect on all competing political formations which are precluded in application of objectively-determined rules. The applicant has not pleaded any circumstances which distinguish it individually by reference to other affected political parties.

67 In the third place, the Court must reject the Liste Emma Bonino's argument that the contested regulation does not contain objective criteria determining the refusal of funding, but discriminatory criteria which violate its democratic rights.

68 Even if the legislature was aware that those criteria would have the consequence of excluding certain specific political formations, including the Liste Emma Bonino, that fact remains that those criteria are formulated in an abstract and general manner, in such a way that they are capable of applying to an indeterminate number of political formations now and in the future. In any event, no circumstances have been put forward which would show that the legislature had the Liste Emma Bonino expressly in mind and that the desire to exclude it from funding largely determined the criteria adopted to define the concept of 'political party at European level'.

69 In the fourth place, the applicant recalls that, according to the case-law, in certain conditions the fact that a natural or legal person has played a distinctive part in the procedure leading to the adoption of the contested decision measure may confer *locus standi* on that person (Case 26/76 *Metro* v *Commission* [1977] ECR 1875, paragraph 13; Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, paragraph 28; Case 264/82 *Timex* v *Council and Commission* [1985] ECR 849, paragraphs 14 to 16; Case 169/84 *COFAZ and Others* v *Commission* [1986] ECR 391, paragraphs 23 and 25 to 28; and Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477, paragraphs 11 and 12).

70 On the other hand, the mere fact of having participated in the talks preceding the adoption of a measure does not confer *locus standi* (see, to that effect, Case 72/74 *Union syndicale and Others* v *Council* [1975] ECR 401, paragraph 19). While the position of 'negotiator' of an association whose objective is to promote the interests of its members may possibly suffice to distinguish such an applicant individually (see, to that effect, Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219, paragraph 21, and Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125, paragraphs 29 and 30), that case-law does not apply to an act of a normative nature when the legal basis on which it was adopted does not provide for the intervention of individuals (order of the Court of Justice in Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraphs 39 and 40). Likewise, in the absence of specific procedures involving individuals in the adoption, implementation and monitoring of the decisions in issue, the mere fact of having lodged a complaint and having subsequently exchanged correspondence with the Commission cannot confer on the complainant *locus standi* under Article 230 EC (order of the Court of First Instance in Case T-585/93 *Greenpeace and Others* v *Commission* [1995] ECR II-2205, paragraphs 56, 62 and 63, not called in question by the judgment of the Court of Justice in Case C-321/95 P *Greenpeace and Others* v *Commission* [1998] ECR I-1651).

71 In the present case, it should be borne in mind, first of all, that a distinction must be drawn between the situation between Members of the Parliament who are members of a political party and the situation of the party itself. The fact that the Members of the Parliament participate in the legislative process cannot confer *locus standi* on the Liste Emma Bonino, particularly because, as indicated in paragraph 58 above, the applicant MEPs are not directly concerned by the contested regulation.

72 Next, the applicant has not pleaded any procedural provision requiring the formal participation of the political parties in the procedure which preceded the adoption of the contested regulation and which might confer *locus standi* on the Liste Emma Bonino. Nor has it submitted any facts showing that it acquired the position as an interlocutor of the legislature. The mere fact that in the context of the legislative procedure it objected to the content of the proposed measure, or that a letter was sent to the President of the Commission in which the seven Members of the Parliament belonging to the Liste Emma Bonino expressed their disagreement with the draft contested regulation, cannot confer on the Liste Emma Bonino *locus standi* for the purpose of the fourth paragraph of Article 230 EC.

73 In the fifth place, as the Parliament correctly observes, the facts of the present case may be distinguished from those of *Les Verts* v *Parliament*. That case concerned the unequal allocation of public funds earmarked for the information campaigns of political formations participating in the 1984 elections of the Parliament. The contested budgetary decisions concerned all the political formations although the way in which those decisions treated them varied according to whether or not they were represented in the Assembly elected in 1979. The formations thus represented had participated in the adoption of decisions concerning both their own treatment and the treatment of unrepresented rival formations. The Court of Justice answered in the affirmative the question whether the contested decisions were of individual concern to a political formation which was not represented but which might present candidates in the 1984 election. The Court considered that the argument that only the represented formations were individually concerned by the contested measure created inequality of legal protection in so far as the unrepresented formations were unable to object to the allocation of the budgetary credits intended for the election campaign before the elections had taken place.

74 No inequality of that type exists in the present case, since the contested regulation aims at regulating, generally and without limit in time, the funding of political parties at European level and since, accordingly, it is to apply to all political formations in the same way.

75 It follows from the foregoing that the Liste Emma Bonino is not individually concerned by the contested regulation.

76 Consequently, none of the applicants has the *locus standi* required by the fourth paragraph of Article 230 EC.

77 Finally, it should be added that that finding is not called in question by the possible absence of any effective judicial protection. The Court observes that the Court of Justice has held that it is not acceptable to adopt an interpretation of the system of remedies, such as that favoured by the appellant, to the effect that a direct action for annulment before the Community Court will be available where it can be shown, following an examination by that Court of the particular national procedural rules, that those rules do not allow the individual to bring proceedings to contest the validity of the Community measure at issue (*Unión de Pequeños Agricultores* v *Council*, paragraph 43). The Court of Justice added that, according to the system for judicial review of legality established by the Treaty, a natural or legal person can bring an action challenging a regulation only if it is concerned both directly and individually. It further explained that, although this last condition must be interpreted in the light of the principle of effective judicial protection by taking account of the various circumstances that may distinguish an applicant individually, such an interpretation cannot have the effect of setting aside the condition in question, expressly laid down in the Treaty, without going beyond the jurisdiction conferred by the Treaty on the Community Courts (*Unión de Pequeños Agricultores* v *Council*, paragraph 44).

78 In the present case, it is true that intervention by the national courts is precluded in so far as the contested regulation is exclusively implemented by the Community institutions. However, it cannot be precluded that the Community Courts may review the lawfulness of the contested regulation when an implementing measure, consisting in the grant or refusal by the Parliament of the funding requested by a political formation, is adopted. In any event, as may be seen from a reading of paragraph 43 together with paragraph 44 of the judgment in *Unión Pequeños Agricultores* v *Council*, the Community Courts cannot set aside the conditions of admissibility laid down in the Treaties without going beyond the jurisdiction conferred on them by the Treaties.

79 In those circumstances, the present action must be dismissed as inadmissible, without there being any need for the Court to adjudicate on the second plea of inadmissibility, alleging breach of Article 44(5) of the Rules of Procedure.

Costs

80 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the applicants have been unsuccessful, they must be ordered to pay the costs, in accordance with the form of order sought by the defendants.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

Hereby orders:

1. **The application is dismissed as inadmissible.**

2. **The applicants shall pay the costs.**

Luxembourg, 11 July 2005.

H. Jung

Registrar

J. Pirrung

President