ORDER OF THE COURT (Second Chamber)
23 November 1995 *

In Case C-10/95 P,

Asociación Española de Empresas de la Carne (Asocarne), an association governed by Spanish law, based in Madrid, represented by Paloma Llaneza González, of the Madrid Bar, with an address for service in Luxembourg at the Chambers of Loesch and Wolter, 11 Rue Goethe,

appellant,

APPEAL against the order of the Court of First Instance of the European Communities (First Chamber) of 20 October 1994 in Case T-99/94 *Asocarne* v *Council* [1994] ECR II-871 seeking to have that order set aside,

the other party to the proceedings being:

Council of the European Union, represented by Ramón Torrent, Director of its Legal Service, and Ignacio Díez Parra, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Bruno Eynard, Manager of the Legal Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

* Language of the case: Spanish.

THE COURT (Second Chamber),

composed of: G. Hirsch, President of the Chamber, G. F. Mancini (Rapporteur) and F. A. Schockweiler, Judges,

Advocate General: N. Fennelly,
Registrar: R. Grass,

after hearing the views of the Advocate General,

makes the following

Order

1 By application lodged at the Registry of the Court of Justice on 12 January 1995, the Asociación Española de Empresas de la Carne (hereinafter 'Asocarne') brought an appeal against the order of the Court of First Instance of 20 October 1994 in Case T-99/94 *Asocarne* v *Council* [1994] ECR II-871 for dismissing as inadmissible its action for annulment of Council Directive 93/118/EC of 22 December 1993 amending Directive 85/73/EEC on the financing of health inspections and controls of fresh meat and poultrymeat (OJ 1993 L 340, p. 15).

2 The purpose of Council Directive 85/73/EEC of 29 January 1985 (OJ 1985 L 32, p. 14) was to harmonize the various fees collected on account of health inspections and controls.

3 That directive, as amended by Council Directive 88/409/EEC of 15 June 1988 laying down the health rules applying to meat intended for the domestic market and the levels of the fees to be charged, pursuant to Directive 85/73/EEC, in respect of the inspection of such meat (OJ 1988 L 194, p. 28), provided, before implementation of Directive 93/118, that the Member States were to ensure that a fee was collected when animals of various species, in particular bovine animals, swine and goats, were slaughtered in order to recoup the costs of the health inspections and controls provided for by the Community legislation and, more particularly, by Council Directive 64/433/EEC of 26 June 1964 on health problems affecting intra-Community trade in fresh meat (OJ, English Special Edition 1964, p. 185), by Council Directive 71/118/EEC of 15 February 1971 on health problems affecting trade in fresh poultrymeat (OJ, English Special Edition 1971 (I), p. 106), by Council Directive 72/462/EEC of 12 December 1972 on health and veterinary inspection problems upon importation of bovine animals and swine and fresh meat from third countries (OJ, English Special Edition 1972 (31 December), p. 7) and by Council Directive 86/469/EEC of 16 September 1986 concerning the examination of animals and fresh meat for the presence of residues (OJ 1986 L 275, p. 36).

4 On 15 June 1988 the Council adopted Decision 88/408/EEC on the levels of the fees to be charged for health inspections and controls of fresh meat pursuant to Directive 85/73/EEC (OJ 1988 L 194, p. 24) and especially Article 2 thereof. That decision was addressed to the Member States.

5 In Article 1 Directive 93/118 made a number of amendments to Directive 85/73. Thus, Article 1, as amended, mentions the costs occasioned by health inspections and controls referred to in Directive 93/118 and provides that the Member States must ensure the financing of other veterinary inspections and controls laid down for the products referred to in the directives listed in Annex A to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the conclusion of the internal market (OJ 1989 L 395, p. 13) and the controls provided for by Council Directive 90/675/EEC of

10 December 1990 laying down the principles governing the organization of veterinary checks on products entering the Community from third countries (OJ 1990 L 373, p. 1) for products of animal origin other than the meat referred to in the first indent, including controls to detect the presence of residues. Similarly, Directive 93/118 amended Article 2 of Directive 85/73 and added an annex governing the fees applicable to the meat covered by Directives 64/433, 71/118 and 72/462. It should be pointed out that, according to that annex, the fees are in principle calculated on the basis of standard amounts but the Member States may, under certain conditions, alter those amounts.

6 Article 2 of Directive 93/118 then repeals, with effect from 1 January 1994, Decision 88/408/EEC, the content of which is now included in Directive 85/73 and, in particular, in the annex added to it.

7 Finally, Article 3 of Directive 93/118 provides that the Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with the directive not later than 31 December 1993 as regards the requirements in the Annex and in Article 5, and not later than 31 December 1994 as regards the other provisions.

8 On 10 March 1994 the appellant brought an action under the fourth paragraph of Article 173 of the EC Treaty for the annulment of Directive 93/118.

9 Against that action the Council raised an objection of inadmissibility pursuant to Article 114(1) of the Rules of Procedure of the Court of First Instance.

10 On 26 July 1994 the Commission sought leave to intervene in support of the Council pursuant to Article 115 of those Rules of Procedure. On 16 August 1994 Federació Catalana d'Industries de la Carn (Fecic) and the Asociación Profesional de Salas de Despiece y Empresas Cárnicas (Aprosa-Anec) sought leave to intervene in support of Asocarne.

Order of the Court of First Instance

11 On 20 October 1994 the Court of First Instance made an order, pursuant to Article 111 of its Rules of Procedure, dismissing the action as inadmissible.

12 The Court held first that, even supposing that it were possible — contrary to the wording of the fourth paragraph of Article 173 of the Treaty — to treat directives as regulations in order to allow proceedings against a decision adopted 'in the form of' a directive, the directive at issue neither constituted a 'disguised' decision nor contained any specific provision which had the character of an individual decision. In the view of the Court of First Instance, the contested directive was a normative measure of general application which was directed in a general and abstract manner to all traders in the Member States who fulfilled as from 1 January 1994 the conditions set out in Directive 85/73 and which, furthermore, required, for its application within the Member States, its transposition into each national legal system by means of national implementing measures (paragraph 18).

13 Secondly, the Court held that the directive was not of individual concern to the applicant since it had not affected specific rights of the applicant or of its members (paragraph 20). After pointing out that Asocarne and its members — like all traders in the Community operating in the sector in question — were subject to the national measures adopted for the purposes of transposing the directive, the Court

of First Instance held that the applicant did not belong to a 'closed class' with identifiable members and that it could not therefore be individually concerned by the contested directive (paragraph 21).

14 In those circumstances, the Court of First Instance held that it was not necessary to examine whether the applicant was directly concerned by the directive and there was no need to give a decision on the applications to intervene made by Fecic, the Commission and Aprosa-Anec (paragraph 22).

The pleas in law advanced by the parties

15 In support of the claim for annulment of the order of 20 October 1994 Asocarne puts forward in substance four pleas alleging a breach of the fourth paragraph of Article 173 of the Treaty.

16 First, it claims that the Spanish judicial system does not guarantee sufficient protection of individuals owing to widespread structural delays occurring in cases dealt with by the courts having jurisdiction to hear cases concerning the subject-matter of the directive in question.

17 Secondly, the appellant considers that Directive 93/118 has the character of a decision since its content coincides with that of Decision 88/408 which it repeals and replaces.

18 Thirdly, Asocarne considers that it is individually concerned by the measure in question. First, relying on the judgment of the Court of Justice in Case

C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125, it contends that it had contacts with the Commission through the relevant confederation of associations in Europe, that it addressed a complaint to the Commission on the application of Directive 85/73 and that during the period in which that directive was under preparation it submitted written observations to the Commission whilst remaining in close contact with the competent departments. Secondly, its members form a closed class because, in particular, the persons which the contested directive concerns were identifiable at the time when the directive was adopted since they were registered in the *Registro Sanitario* and were on the list of persons liable to pay fees.

19 Lastly, Asocarne considers that it is directly concerned by the directive in question which fixes in great detail the constituents of the fee without allowing the Member States any latitude.

20 In its reply the Council contends that the appeal should be dismissed.

21 First, in stating that the invalidity of Directive 93/118 could have been asserted before the national courts but this possibility was rejected owing to the widespread generalized delay in the hearing of cases by the courts with jurisdiction to entertain claims concerning the subject-matter of the directive in question, Asocarne admits having used inappropriate procedures for achieving its ends.

22 Secondly, the fact that Directive 93/118 replaced a decision cannot in any way affect the nature of its content, which is general and abstract.

23 Thirdly, contrary to Asocarne's assertions, its members do not form a 'closed class', since, contrary to what is required by settled case-law, the measure in ques-

tion does not concern Asocarne or its members by reason of certain characteristics specific to them or a factual situation which characterizes them in relation to any other person.

24 Fourthly, the discretion left to the Member States regarding the application of the directive means that national measures are needed. Asocarne is not therefore entitled to consider that it is directly concerned by Directive 93/118.

Findings of the Court

25 According to Article 119 of its Rules of Procedure, where an appeal is clearly inadmissible or clearly unfounded, the Court may at any time dismiss the appeal by reasoned order.

The first plea

26 As regards the plea which the appellant bases on the widespread structural delays found to exist in the hearing of cases before the competent national courts, such a circumstance, even if proved, cannot warrant a change in the system of remedies and procedures established by Articles 173, 177 and 178 of the Treaty which is designed to give the Court of Justice the power to review the legality of acts of the institutions. In no case can such a circumstance allow an action for annulment brought by a natural or legal person which does not satisfy the conditions laid down by the fourth paragraph of Article 173 to be declared admissible. The Court of First Instance could not therefore take account of such a circumstance in the contested order.

27 It follows that the first plea must be dismissed.

The second plea

28 As regards the plea that Directive 93/118 has the character of a decision, it should be borne in mind first of all that in its judgment in Joined Cases 16/62 and 17/62 *Confédération Nationale des Producteurs de Fruits et Légumes and Others* v *Council* [1962] ECR 471, the Court held that the term 'decision' used in the second paragraph of Article 173 of the EEC Treaty, which is now the fourth paragraph of Article 173 of the EC Treaty, must have the technical meaning conferred on it by Article 189 of that Treaty and that the criterion for distinguishing between a normative measure and a decision within the meaning of the latter article had to be sought in the general application or otherwise of the measure in question.

29 Even though a directive is in principle binding only on its addressees, the Member States, a directive normally constitutes an indirect mode of legislating or regulating. Indeed, the Court has repeatedly classified a directive as a measure having general scope (see, in particular, the judgment in Case 70/83 *Kloppenburg* v *Finanzamt Leer* [1984] ECR 1075, paragraph 11; the order in Case 160/88 R *Fédération Européenne de la Santé Animale and Others* v *Council* [1988] ECR 4121, paragraph 28, and the judgment in Case C-298/89 *Government of Gibraltar* v *Council* [1993] ECR I-3605, paragraph 16).

30 Moreover, it is settled case-law that the fact that the number and even the identity of the persons to whom a measure applies can be determined more or less precisely is not such as to call in question the normative nature of the measure (judgments in Case 6/68 *Zuckerfabrik Watenstedt* v *Council* [1968] ECR 409; Case 64/69 *La Compagnie Française Commerciale et Financière* v *Commission* [1970] ECR 221, paragraph 11; Case 242/81 *Roquette Frères* v *Council* [1982] ECR 3213, paragraph 7; Joined Cases 97/86, 99/86, 193/86 and 215/86 *Asteris and Others* v *Commission*

[1988] ECR 2181, paragraph 13; order in *Fédération Européenne de la Santé Animale and Others* v *Council*, cited above, paragraph 29; judgments in Joined Cases C-15/91 and C-108/91 *Buckl and Others* v *Commission* [1992] ECR I-6061, paragraph 25; Case C-264/91 *Abertal and Others* v *Council* [1993] ECR I-3265, paragraph 16; and Case C-298/89 *Government of Gibraltar* v *Council*, cited above, paragraph 17).

31 In the present case, the directive in question does not contain any specific provision whose character would be that of an individual decision and it is a measure having general normative scope covering in a general, abstract way all traders of the Member States who, at the end of the period laid down for its implementation, fulfil the conditions which it lays down and whose application moreover requires transposition in each domestic legal system.

32 Consequently, without its being necessary to examine whether directives may be treated like regulations for the purpose of ruling on the admissibility of an action brought by natural and legal persons against a decision adopted in the form of a directive, the Court of First Instance was entitled to consider that the directive in question did not constitute a 'disguised' decision.

33 That finding is not weakened by the fact that the directive in question repeals and replaces a decision. As the Court of First Instance also observed, such a circumstance has no effect on the general and abstract nature of the measure in question.

34 Consequently, the second plea must also be dismissed.

The third plea

35 As regards the plea that an individual interest, within the meaning of the fourth paragraph of Article 173 of the EC Treaty, exists, the situation of the appellant and that of its members must be examined in turn.

36 First, it is true that in its judgment in Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy* v *Commission* [1988] ECR 219 and its judgment in Case C-313/90 *CIRFS and Others* v *Commission*, cited above, the Court held that associations or bodies established in order to promote collective interests may be individually concerned by decisions which abolish aids or refuse to open the procedure laid down by Article 93(2) of the Treaty.

37 However, as the Court of First Instance rightly observed, that case-law cannot be transposed to the present case which concerns a directive, that is to say a normative, general and abstract measure.

38 In particular, as regards its participation in the preparation of Directive 85/73, the position of Asocarne in the present case is quite different from that of the applicants in Case C-313/90 *CIRFS and Others* v *Commission*, cited above.

39 In that last case, the Court held in effect that the Commission's decision to refuse to initiate the procedure provided for by Article 93(2) of the Treaty was of individual concern to an association in which the major undertakings of the economic

sector in question were grouped, which had been in discussions with the Commission on the subject of the introduction, extension and adaptation of constraints concerning State aid in that sector and which, during the procedure prior to the court proceedings, had actively pursued negotiations with the Commission, in particular by submitting to it written observations and staying in close contact with the competent departments. In the present case, however, the action concerns a directive adopted by the Council on the legal basis of Article 43 of the EC Treaty, that is to say in a procedure which, unlike that provided for by Article 93, does not provide for any intervention by individuals.

40 Consequently, it would be contrary to the wording and spirit of Article 173 of the Treaty to allow any individual, where he has participated in the preparation of a legislative measure, subsequently to bring an action against that measure.

41 Secondly, as regards the appellant's contention that its members form part of a closed circle of identifiable persons, it is settled law that in order for persons to be considered to be individually concerned by a measure their legal position must be affected by reason of a factual situation which differentiates them in the same way as the person addressed (see, in particular, the judgment in Case 26/86 *Deutz and Geldermann* v *Council* [1987] ECR 941, paragraph 9, and the order in Case C-131/92 *Arnaud and Others* v *Council* [1993] ECR 2573, paragraph 14).

42 However, that is not the case as regards either Asocarne or its members. The contested directive concerns the latter only by reason of their objective status of economic agents active in the sector envisaged by the directive in question, in the same way as any other Community economic agent carrying on the same activity (see, in particular, the order in Case 34/88 *Cevap and Others* v *Council* [1988] ECR 6265, paragraph 15, and the order in Case 160/88 *Fedesa and Others* v *Council* [1988] ECR 6399, paragraph 14).

43 It is true that in its judgment in Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853 the Court held that a normative provision may, in certain circumstances, be of individual concern to certain interested economic agents. However, as the Court of First Instance rightly observed, that case-law cannot be relied on in the present case since, unlike the regulation contested in that case, the directive contested at first instance has not adversely affected specific rights of the appellant or of its members.

44 The third plea must therefore be dismissed.

45 It follows from the foregoing that the appellant is not individually concerned by the measure contested at first instance. Consequently, the Court of First Instance rightly considered that its action was inadmissible. Accordingly, it is not necessary to examine the fourth ground of appeal which concerns the question whether or not the appellant is directly concerned by the measure in question.

46 In those circumstances, the appeal must be dismissed as clearly unfounded, pursuant to Article 119 of the Rules of Procedure.

Costs

47 Under Article 69(2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if they have been applied for. Since the appellant has been unsuccessful in its pleas, it must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. Dismisses the appeal;

2. Orders the appellant to pay the costs.

Luxembourg, 23 November 1995.

R. Grass — Registrar

G. Hirsch — President of the Second Chamber