ORDER OF THE COURT OF FIRST INSTANCE (First Chamber)
9 November 1999 *

In Case T-114/99,

CSR Pampryl SA, a company incorporated under French law, established in La Courneuve, France, represented by Dominique Couturier-Heller, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Pierrot Schiltz, 4 Rue Béatrix de Bourbon,

applicant,

v

Commission of the European Communities, represented by José Luis Iglesias Buhigues, Legal Adviser, and Xavier Lewis, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: French.

APPLICATION for annulment of Commission Regulation (EC) No 378/1999 of 19 February 1999 supplementing 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 1992 L 46, p. 13), in so far as it registers the names 'Pays d'Auge/Pays d'Auge-Cambremer' as a protected designation of origin,

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

composed of: B. Vesterdorf, President, C.W. Bellamy and M. Vilaras, Judges,

Registrar: H. Jung,

makes the following

Order

Legal background

1 Article 1 of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1, hereinafter 'Regulation No 2081/92') lays down Community rules on the protection of designations of origin and geographical indications of certain agricultural products and certain foodstuffs.

2 Article 2(2)(a) of Regulation No 2081/92 defines a designation of origin as the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or foodstuff originating in that region, specific place or country and the quality or characteristics of which are essentially or exclusively due to the particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area.

3 Registration as a protected designation of origin (PDO) of the name of an agricultural product or foodstuff, which must, for that purpose, satisfy the conditions laid down by Regulation 2081/92 and, in particular, comply with a list of specifications set out in Article 4 of the Regulation, confers Community protection on that name.

4 Articles 5 to 7 of Regulation No 2081/92, as amended by Council Regulation (EC) No 535/97 of 17 March 1997 (OJ 1997 L 83, p. 3), establishes a registration procedure allowing any group, which is defined as any association of producers and/or processors working with the same agricultural products or foodstuffs or, under certain conditions, any natural or legal person, to apply for registration of a protected designation of origin or protected geographical indication for the agricultural products or foodstuffs which they produce or obtain and which originate in the specific geographical area, in the Member State in which the specific geographical area is situated. The Member State checks that the application is justified and forwards it to the Commission which, if it considers that the name qualifies for protection, publishes in the *Official Journal of the European Communities* the information specified in Article 6(2) of Regulation No 2081/92.

5 Article 6(3) of Regulation No 2081/92 provides:

'If no statement of objection is notified to the Commission in accordance with Article 7, the name shall be entered in a register kept by the Commission entitled

"Register of protected designations of origin and protected geographical indications", which shall contain the names of the groups and inspection bodies concerned.'

6 Article 7 of Regulation No 2081/92, as amended by Regulation No 535/97 of 17 March 1997, 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 the 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,

— or shows that the registration of the name proposed would jeopardise the existence of an entirely or partly identical name or of a 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 between 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 to 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

7 The applicant produces several varieties of cider and since 1988 has sold it under various names, including the indication 'Pays d'Auge'.

8 By decree of the French Government dated 19 March 1996, the name 'Pays d'Auge' was registered, at national level, as an 'appellation d'origine contrôlée' (controlled designation of origin). The applicant brought an action before the French Conseil d'État (Council of State) for annulment of the decree on the grounds that, since the entry into force of Regulation No 2081/92, the French authorities no longer had jurisdiction to grant such protection by decree.

9 By a letter dated 17 April 1997, the French Government forwarded to the Commission, pursuant to Article 5(5) of Regulation No 2081/92, an application for registration as PDOs of the names 'Pays d'Auge/Pays d'Auge-Cambremer' from an association formed to promote the ciders of Pays d'Auge.

10 The application was published in Official Journal C 120 of 18 April 1998, in accordance with Article 6(2) of Regulation No 2081/92.

11 By letter dated 13 October 1998 the applicant sent the competent French authority a statement of objection to the registration, on the basis of Article 7 of Regulation No 2081/92, and asked for it to be forwarded to the Commission within the prescribed period, that is to say, by 18 October 1998. According to the applicant, the registration application infringes Article 2 of Regulation No 2081/92 in that it applies to a product which has no specific features as regards its recommended method of manufacture and also in that the specifications enclosed with it impose an unduly restrictive manufacturing procedure.

12 A copy of the statement of objection was forwarded to the Commission by the applicant's lawyer on the same day.

13 By letter dated 16 October 1998 the Head of the Production and Markets Department of the Production and Trade Division of the French Ministry of Agriculture and Fisheries notified the applicant that its objection did not comply with the conditions for admissibility laid down in Article 7(3) of Regulation No 2081/92 and would not, therefore, be forwarded to the Commission, given, in particular, that the grounds on which it was formulated had already been taken into consideration during the procedure to recognise the designation of origin at national level. On 16 December 1998, the applicant initiated proceedings for annulment of that decision before the French Council of State.

14 By letter and fax of 19 October 1998, the Director-General of Directorate-General (DG VI) for Agriculture of the Commission notified France's permanent representative at the European Union that, on 13 and 15 October 1998, his staff had received copies of three statements of objection to the registration application in question, among them that of the applicant. He pointed out that, if registration of the relevant names would jeopardise the existence of a mark or of products

which, on 18 April 1998, had been legally on the market for at least five years, the statements of objection should be forwarded to the Commission together with the comments of the French Government, if appropriate.

15 By letter dated 9 November 1998, the competent French authority replied that, pursuant to Article 7(3) of Regulation No 2081/92, it had considered that the objections in question were not justified and had therefore decided not to forward them to the Commission.

16 The Commission adopted Regulation (EC) No 378/1999 of 19 February 1999 supplementing 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 Regulation No 2081/92 (OJ 1999 L 46, p. 13, hereinafter 'the contested regulation'). In the words of the third recital of the regulation, 'no statement of objection has been received by the Commission pursuant to Article 7 of Regulation No 2081/92 for any of the names given in the Annex hereto following their publication in the *Official Journal of the European Communities*'. The Commission considered, therefore, that the names 'Pays d'Auge/Pays d'Auge-Cambremer' should be entered in the 'Register of protected designations of origin and protected geographical indications' and, accordingly, be protected as PDOs at Community level.

Procedure and arguments of the parties

17 This action was commenced by application lodged at the Court Registry on 11 May 1999.

18 By a separate document filed at the Court Registry on 5 July 1999, the Commission raised an objection of inadmissibility under Article 114 of the Rules of Procedure.

19 On 31 August 1999, the applicant submitted to the Court Registry its written observations in response to the objection of inadmissibility.

20 The applicant claims that the Court should:

— reject the objection of inadmissibility or, alternatively, reserve a decision on the Preliminary objection for the final judgment;

— annul the contested regulation in so far as it registers the names 'Pays d'Auge/ Pays d'Auge-Cambremer';

— order the Commission to pay the costs.

21 The defendant contends that the Court should:

— dismiss the action as inadmissible;

— order the applicant to pay the costs.

22 By an application lodged at the Court Registry on 4 November 1999, the French Republic applied to intervene in support of the defendant.

Admissibility of the action

Arguments of the parties

23 The Commission maintains that the action is inadmissible on the grounds that the contested regulation is a measure of general application, that the applicant is not in a situation which differentiates it from any other person and that the applicant is not involved in the registration procedure at Community level.

24 Firstly, the contested regulation, like the parent Regulation No 2081/92, is a measure of general application within the meaning of Article 249 EC. It is addressed not to specific traders but to all producers likely to benefit from the name in question and also to all those who, although they have used the name, no longer satisfy the conditions laid down by the Community legislation. As the regulation is a legislative measure, the action is therefore inadmissible, in accordance with established case-law (judgment of the Court of Justice of 6 October 1982 in Case 307/81 *Alusuisse* v *Council and Commission* [1982] ECR 3463; the orders of the Court of 23 November 1995 in Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, and 24 April 1996 in Case C-87/95 P *CNPAAP* v *Council* [1996] ECR I-2003; judgment of the Court of First Instance of 10 July 1996 in Case T-482/93 *Weber* v *Commission* [1996] ECR II-609; see, in particular, with regard to regulations concerning the registration of protected designations of origin or protected geographical indications, orders of the Court of first Instance of 15 September 1998 in Case T-109/97 *Molkerei Grossbraun-*

shain and Bene Nahrungsmittel v *Commission* [1998] ECR II-3533, paragraph 51, and of 26 March 1999 in Case T-114/96 *Biscuiterie-Confiserie LOR and Confiserie du Tech* v *Commission* [1999] ECR II-913, paragraph 28).

25 Secondly, the mere fact that the applicant has used the name in question does not mean that it is adversely affected by the contested regulation by reason of certain attributes peculiar to it or by reason of circumstances in which it is differentiated from all other persons. In this respect, the approach taken by the Court in its judgment of 18 May 1994 in Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853 could not be applied in this instance.

26 Thirdly, the present case cannot be compared with Case 191/82 *Fediol* v *Commission* [1983] ECR 2913. In that case, the Commission had refused to initiate the anti-subsidy proceedings prescribed, at Community level, by the regulation in question, even though the regulation specifically granted any undertaking or association of undertakings a series of procedural rights, such as the right to lodge a complaint, the right to have their complaint examined and the right to obtain certain information. On the other hand, in the present case the objection procedure laid down by Article 7 of Regulation No 2081/92 is conducted before the competent authority of the Member State in which the objector resides or is established, during the preparatory examination stage of the registration application. The objector may submit his observations only to that authority, which is required only 'to consider the comments or objection within the deadlines laid down'. Moreover, if the objection is 'admissible', a term which refers to its substance, the Member States concerned are asked to seek agreement between themselves, without the intervention of the individuals involved (see the order in *Molkerei Grossbraunshain and Bene Nahrungsmittel* v *Commission*, paragraph 60).

27 The Commission also points out that, although Article 7(3) of Regulation No 2081/92 grants to 'any legitimately concerned natural or legal person' the opportunity of objecting to registration, the 13th recital expressly refers to 'any

person individually and directly concerned'. This expression, which is based on the wording of Article 230 EC, must mean that the conditions for admissibility of the objection are to be interpreted more restrictively. Moreover, a Council regulation cannot broaden the conditions for admissibility laid down by the Treaty.

28 The Commission also submits that the responsibility for deciding not to forward the objection raised by the applicant before the competent French authority lies exclusively with that authority. As this is a purely national procedure under the exclusive supervision of the Member State concerned, it is a matter for the applicant to assert its rights before the French courts.

29 Finally, the Commission contends that, under Article 7 of Regulation No 2081/92, it may not consider an objection communicated by a person other than a Member State, although it definitely takes the view that the Member States are required to forward to it any objection which satisfies the two conditions laid down in Article 7(3).

30 The applicant considers itself to be directly and individually affected by the contested regulation.

31 It points out, first of all, that the argument that the action is inadmissible because the regulation is of general application is irrelevant, since the applicant can show that it is affected by the regulation by reason of certain attributes peculiar to it or by reason of circumstances in which it is differentiated from all other persons (judgment in *Codorniu* v *Council*).

32 The applicant goes on to explain that it has sold cider under the name 'Pays d'Auge' for a long time. It produces more than a million bottles a year, which puts it in a dominant position in relation to the other producers in the region, whose total annual production, taking all the marks together, is only 400 000 bottles. It considers, therefore, that it is in a special position under the contested regulation, which reserves the monopoly on use of the name at issue to a group of producers from which the applicant is excluded.

33 The applicant also claims that the persons specifically addressed by the legislative act in connection with which the contested regulation was adopted or by the regulation itself are, as a matter of principle, entitled to bring an action for annulment of the regulation inasmuch as they are in circumstances which differentiate them from any other person, as referred to in the judgment of the Court of Justice in Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, 107).

34 The 13th recital of Regulation No 2081/92 states that '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', and Article 7 of the Regulation defines the persons concerned as either 'all persons who can demonstrate a legitimate economic interest' (paragraph 2) or 'any legitimately concerned natural or legal person' (paragraph 3).

35 In this case, the applicant is legitimately concerned by the registration of the names 'Pays d'Auge/Pays d'Auge-Cambremer' which has the effect of prohibiting the applicant from selling its cider under the name 'Pays d'Auge', even though it is the leading producer and seller of cider from the region.

36 The applicant considers, therefore, that the right to bring an action for annulment before the Community Court is a necessary consequence of its acknowledged right to intervene in the administrative procedure. It invokes, in this connection, the judgment of 17 June 1998 in Case T-135/96 *UEAPME* v *Council* [1998] ECR II-2335, in which the Court held that the right to participate in the drafting and adoption of a legislative measure distinguishes the signatory thereof as a person to whom the measure is addressed, thus giving him the right to bring an action against the measure.

37 This is the case *a fortiori* since the applicant was unable to assert its rights before the Commission, as the objection which it had properly submitted to the French authorities was not forwarded to the Commission, in breach of the procedural safeguards specifically granted to it by Article 7 of Regulation No 2081/92 (see the judgment in *Fediol* v *Commission*, cited above, at p. 2935).

38 In response to the argument that it is not involved in the registration procedure at Community level, the applicant states that the defendant itself accepts that the Member State is required to forward to the Commission the objection made by an individual, and has no authority to assess its admissibility. The individual is, therefore, involved in the Community procedure and is entitled to bring proceedings to enforce the procedural safeguards granted to him by the Regulation in issue.

39 Finally, the applicant submits that the admissibility of this action is linked to the relevance of one of the grounds for complaint put forward in support of its action for annulment, so that a decision on the objection to inadmissibility must, in any event, be reserved for final judgment (judgment of the Court of Justice of 12 December 1996 in Case C-142/95 P *Associazione Agricoltori della Provincia di Rovigo and Others* v *Commission and Others* [1996] ECR I-6669).

Findings of the Court

40 Article 114 of the Rules of Procedure provides that the Court may, if a party so requests, give a ruling on inadmissibility without going into the substance of the case. Under Article 114(3), this will be an oral procedure, unless a decision is taken to the contrary. In this instance, the Court considers that an examination of the documents in the case has clarified the situation sufficiently for it to be able to rule on the claim without commencing oral proceedings.

41 Under the fourth paragraph of Article 230 EC, the admissibility of an action for annulment brought against a regulation by a natural or legal person is subject to the condition that the contested regulation is, in actual fact, a decision which concerns that person directly and individually. The Court has consistently held that the criterion for distinguishing between a regulation and a decision has to be sought in the general application or otherwise of the measure in question (orders in *Asocarne* v *Council*, paragraph 28, and *CNPAAP* v *Council*, paragraph 33). A measure is of general application if it applies to objectively determined situations and produces its legal effects with respect to categories of persons envisaged generally and in the abstract (see the judgment in *Weber* v *Commission*, paragraph 55).

42 In the present case, the contested regulation affords the names 'Pays d'Auge' and 'Pays d'Auge-Cambremer', amongst others, protection as designations of origin as provided for by Regulation No 2081/92, Article 2(2)(a) of which defines the designation of origin as the name of a region, a specific place or, in exceptional circumstances, a country, used to describe an agricultural product or foodstuff originating in that region, specific place or country, the quality or characteristics of which are essentially or exclusively due to the particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area. As the Commission has correctly pointed out, the contested regulation, far from addressing specific traders, such as the applicant, gives all undertakings whose products meet the prescribed geographical and quality requirements the right to

market them under one of the abovementioned names and refuses that right to undertakings whose products do not satisfy those conditions, which are identical for all producers.

43 This legislation therefore appears to be a measure of general application within the meaning of the second paragraph of Article 249 EC; moreover, the applicant does not dispute this. It applies to objectively determined situations and produces legal effects with respect to persons envisaged generally and in the abstract, that is to say, all undertakings which manufacture a product having objectively defined characteristics (see the orders in *Molkerei Grossbraunshain and Bene Nahrungsmittel* v *Commission* and *Biscuiterie-Confiserie LOR and Confiserie du Tech* v *Commission*, cited above).

44 Nevertheless, the possibility remains that a provision which, by virtue of its nature and scope, is a legislative measure may be of individual concern to natural or legal persons if it affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and thereby distinguishes them individually, just as in the case of the addressee of a decision (judgments in *Codorniu* v *Council*, paragraphs 19 and 20, and *Weber* v *Commission*, paragraph 56).

45 In this respect, the applicant points out that for many years it has used in France the name 'Pays d'Auge' to market the cider it produces and that it is a leader in the market concerned. It considers, therefore, that it is in a special position with regard to the contested regulation, as was the applicant company in the case leading to the judgment in *Codorniu* v *Council*, cited above.

46 However, the fact that the applicant controls a large part of the market in question is not in itself enough to differentiate it from any other trader affected by

the contested regulation. In this connection, it should be noted that the Court of Justice and the Court of First Instance have consistently held that the general application and, hence, the legislative nature of a measure are not called in question by the fact that it is possible to determine the number or even the identity of the persons to whom it applies at a given moment, with a greater or lesser degree of precision, as long as it is established that it is applied, as in the present case, by virtue of an objective legal or factual situation, defined in relation to the objective of the measure (see, for example, the judgment of the Court of Justice in Case 6/68 *Zuckerfabrik Watenstedt* v *Council* [1968] ECR 409, at 414 and 415, and the order of the Court of First Instance of 29 June 1995 in Case T-183/94 *Cantina Cooperativa fra Produttori Vitivinicoli di Torre di Mosto and Others* v *Commission* [1995] ECR II-1941, paragraph 48).

47 Moreover, in *Codorniu* v *Council* the applicant company was prevented, by a legislative provision regulating the use of a name, from using the graphic mark which it had registered and used for a long time before the adoption of the contested regulation, so that it was differentiated from all the other traders. It follows from that judgment, as interpreted by the Court of Justice and the Court of First Instance, that a legislative provision may be of individual concern to an economic operator if it adversely affects that operator's specific rights (orders in *Asocarne* v *Council*, paragraph 43, and *CNPAAP* v *Council*, paragraph 36; judgment in *Weber* v *Commission*, paragraph 67; order of the Court of First Instance of 15 September 1998 in Case T-100/94 *Michailidis and Others* v *Commission* [1998] ECR II-3115, paragraph 66).

48 In the present case, however, the applicant has not shown, or even claimed, that it has used the geographical name on which it relies in the exercise of a similar specific right which it acquired at national or Community level before the adoption of the contested regulation and which the regulation affected in the way described in the aforementioned case-law.

49 The applicant also points out that it is 'legitimately concerned' within the meaning of Article 7(3) of Regulation No 2081/92, that it objected on this

ground to the registration of the name in question by sending a duly substantiated statement to the competent authority of the Member State in which it is established, and that, since the objection was not forwarded to the Commission, there has been an infringement of the procedural safeguards specifically granted to it by Article 7. The applicant submits that these circumstances are enough to establish the admissibility of the present action.

50 In this connection it should be noted that neither the process of preparing legislative acts nor the acts themselves, as measures of general application, require the participation, by virtue of the general principles of Community law, such as the right to a fair hearing, of the persons affected, their interests being deemed to be represented by the political bodies called upon to adopt those acts (orders of the Court of First Instance of 30 September 1997 in Case T-122/96 *Federolio* v *Commission* [1997] ECR II-1559, paragraph 75, and in *Molkerei Grossbraunshain and Bene Nahrungsmittel* v *Commission*, paragraph 60). Consequently, in the absence of expressly guaranteed procedural rights, it would be contrary to the wording and 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 in *Asocarne* v *Council*, paragraph 40, and *Molkerei Grossbraunshain and Bene Nahrungsmittel* v *Commission*, paragraph 68).

51 The admissibility of this action must therefore be evaluated only in the light of the procedural safeguards specifically afforded to individuals by Regulation No 2081/92.

52 Under the scheme for registering objections established by Regulation No 2081/92, the procedural safeguards expressly afforded to individuals fall exclusively within the scope of responsibility of the Member States and do not involve the exercise of any power of assessment on the part of the Commission.

53 Consequently, Article 7(1) of Regulation No 2081/92 grants only to the Member States entitlement to raise objections to registration before the Commission.

Although, under Article 7(3) of the regulation, any legitimately concerned natural or legal person may also object to the proposed legislation, he must do so by sending a duly substantiated statement to the competent authority of the Member State in which he resides or is established. The provision does not require the Member State concerned to forward to the Commission the objection which has been submitted to it in this way, but merely to take the necessary measures 'to consider' the objection within the deadlines laid down. Furthermore, although the 13th recital of Regulation No 2081/92 provides that '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', such notification is given 'through the Member State'. No provision in Article 7 of Regulation No 2081/92 authorises the Commission to consider an objection notified to it by anyone other than a Member State. Lastly, where an objection is acknowledged to be 'admissible' within the meaning of Article 7(4) of Regulation No 2081/92, Article 7(5) provides that the Commission is to ask the Member States concerned to seek agreement between themselves; it makes no provision for any intervention by individuals.

54 It should be added that the provisions of Article 7 of Regulation No 2081/92 concerning the right of individuals to object differ fundamentally from the very specific provisions relating to dumping and subsidies, which give certain traders a special role in Community procedures to adopt anti-dumping or anti-subsidy measures (see the judgment in *Fediol* v *Commission*, paragraphs 16 and 25). Consequently, reference to that judgment is irrelevant to the present case.

55 It is apparent from the above that Regulation No 2081/92 does not establish specific procedural safeguards, at Community level, for individuals.

56 Furthermore, even if the competent French authority did infringe certain of the applicant's procedural rights by refusing to forward to the Commission the

objection which the applicant had submitted, it does not follow that this action is admissible for that reason alone.

57 In an action brought under Article 230 EC, the Community judicature has no jurisdiction to rule on the lawfulness of a measure adopted 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 is binding on the Community decision-taking authority and therefore determines the terms of the Community decision to be adopted (see, regarding a decision-making procedure, the judgment of the Court of Justice in Case C-97/91 *Oleificio Borelli* v *Commission* [1992] ECR I-6313, paragraphs 9 and 10).

58 That is so where the competent national authority decides not to forward to the Commission an objection submitted to it by an individual under Article 7(3) of Regulation No 2081/92. It follows from the foregoing (see paragraph 53 above) that the Commission is bound by that decision and may not consider an objection communicated to it by any person other than a Member State.

59 Accordingly, subject to the possibility of bringing proceedings before the Court of Justice under Article 226 EC, it is for the national courts alone, where

appropriate after obtaining a preliminary ruling from the Court, to rule on the lawfulness of the national measure at issue (see the judgment in *Oleificio Borelli* v *Commission*, paragraph 13) and on the possible liability of the Member State if it is claimed that the measure has caused loss.

60 It should be pointed out that the applicant brought an action before the French Council of State against the decision of the competent French authority not to forward its objection to the Commission and, on 21 June 1999, lodged a complaint with the Commission seeking the initiation of proceedings under Article 226 EC against the French Republic for failure to fulfil its obligations, on the grounds that, by taking the aforementioned decision, it contravened Article 7 of Regulation No 2081/92.

61 It is apparent from the foregoing considerations that the applicant is not individually concerned by the contested regulation, within the meaning of the fourth paragraph of Article 230 EC and that the action must therefore be dismissed as inadmissible.

62 In those circumstances, it is unnecessary to consider the application for leave to intervene made by the French Republic.

Costs

63 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. However, under Article 87(4) of the Rules of Procedure, Member States which have intervened in the proceedings shall bear their own costs. Since the applicant has been unsuccessful and the Commission has applied for costs, the former must be ordered to pay its own costs and those incurred by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby orders:

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

2. **It is unnecessary to consider the application for leave to intervene made by the French Republic.**

3. **The applicant is ordered to bear its own costs and also those incurred by the Commission.**

4. **The party which applied for leave to intervene is to bear its own costs.**

Luxembourg, 9 November 1999.

H. Jung — B. Vesterdorf

Registrar — President