implementation of improvement plans in the nut and locust bean sector by laying down more stringent conditions for applications by producers to change their plans in the course of execution, to receive annual instalments of aid and to draw advances in respect of such aid, is not of individual concern to producers' organizations whose plans were approved before the regulation was adopted.

In so far as the said Article 1 does not refer specifically to the aforementioned organizations, contains no concrete indication that the measures it introduces were adopted specifically taking account of the applicants' plans and it applies in the same way to all producers' organizations, whatever the date of approval of their plans, it is addressed in general terms to indeterminate classes of persons and applies to objectively determined situations.

REPORT FOR THE HEARING
in Case C-213/91 *

I — Relevant facts and legislation

1. Abertal and the other applicants are associations of Spanish producers of nuts and locust beans.

2. Council Regulation (EEC) No 789/89 of 20 March 1989 instituting specific measures for nuts and locust beans and amending Regulation (EEC) No 1035/72 on the common organization of the market in fruit and vegetables (OJ 1989 L 85, p. 3), added Title IIa to Regulation No 1035/72 of 18 May 1972 (OJ, English Special Edition 1972 (II), p. 437), as subsequently amended.

3. Title IIa of Regulation No 1035/72 provides for specific measures for aid in the sector of nuts and locust beans which, according to the preamble to Regulation No 789/89, seek to remedy the structural deficiencies of the market in those products, which is markedly out of step with technical and commercial requirements from the point of view of both technical production conditions, which are typified by a large number of small holdings and a low level of mechanization, and of marketing conditions.

4. The measures for aid envisaged are, in particular, an additional flat-rate aid to producers' associations as an incentive to formation (Article 14b of Regulation No 1035/72),

* Language of the case: Spanish.

a specific aid to producers' associations which set up a revolving fund (Article 14c of Regulation No 1035/72) and, finally, an aid for the implementation of a quality and marketing improvement plan presented by the producers' organizations and approved by the competent authorities of the appropriate Member States (Article 14d of Regulation No 1035/72).

5. The improvement plan referred to in Article 14d has as its primary aim the improvement, by means of varietal conversion or cultural improvement, of the quality of produce from orchards which are given over to producing one homogeneous crop and are not scattered among other plantations and, where needed, the improvement of marketing.

6. Under Article 14d of Regulation No 1035/72, the approved plan qualifies for Community aid of 45% for its execution, provided it is funded to a level of 45% by the producers' organizations and to a level of 10% by the Member State. Funding from the Member State and aid from the Community are subject to a ceiling and are paid over a period of 10 years.

7. The conditions for the approval of improvement plans and, *inter alia*, the detailed rules for payment of the aid for implementing the plans were laid down by Commission Regulation (EEC) No 2159/89 of 18 July 1989 laying down detailed rules for applying the specific measures for nuts and locust beans as provided for in Title IIa of Council Regulation (EEC) No 1035/72 (OJ 1991 L 207, p. 19). Regulation No 2159/89 was first amended by Commission Regulation No 3403/89 of 13 November 1989 (OJ 1989 L 328, p. 23). The latter regulation made provision for granting advances on aid for implementing improvement plans.

8. Article 1 of Commission Regulation (EEC) No 1304/91 of 17 May 1991 amending the aforementioned Regulation (EEC) No 2159/89 made certain amendments to Regulation No 2159/89, as amended, and it is those amendments which the applicants, as producers' associations with approved improvement plans which are being implemented, consider to be illegal in so far as they are concerned.

9. Firstly, the contested regulation amends Article 8(4) of Regulation No 2159/89, which concerns requests to change plans which have already been approved. Where such requests were made for technical reasons or through a desire to extend the area covered by the plan, in particular following an increase in the number of member producers, a decision had to be taken by the competent national authority in accordance with the same rules as those applying to the original approval of the improvement plan. Pursuant to the amended provision, a request to change a plan, in order to extend the surface area, which has already been approved can only be made once and only as from the fourth year following approval of the plan. This period should, according to the preamble to the contested regulation, enable an

assessment of the stability of the organizations and of progress in implementing the plans following their approval to be made.

10. Secondly, the contested Regulation No 1304/91 amends Article 19 of Regulation No 2159/89 concerning the payment of Community aid for improvement plans. To obtain such aid, the producers' organizations qualifying for it submit an aid application to the competent national authority at the end of each annual period of the plan's implementation. Aid applications must be accompanied by the invoices and all other documentary evidence relating to the work done. The amendment requires aid applications to include all necessary information to enable the geographical location of the section of the orchard covered by each type of work carried out to be ascertained and also requires the invoices and supporting documents to give a detailed reference to the part of the orchard in which the work in question was carried out. According to the preamble to the regulation, this information should enable the progress made in carrying out the work throughout the entire area of the orchards covered by an improvement plan to be monitored and checked.

11. Thirdly, the contested regulation amends Article 22a(3) of Regulation No 2159/89, which relates to advances on annual aid for implementing improvement plans. The maximum advance, which was previously 80% of the total financial contribution from the Member State and the Community to the annual cost of implementing the plan, was reduced to 50% of the annual financial contribution by the Community, and this payment was conditional on 50% of the Member State's contribution having actually been paid. In order to obtain the advance, the associations receiving the aid submit proof that the annual phase of implementation of the plan has begun. Such proof originally had to relate to at least 20% of the estimated annual cost, but the contested regulation increases this to not less than 50%. Finally, according to the amended provision, no advance in respect of an annual phase of implementation of the plan may be made before all payments relating to the previous annual phase have been effected under the conditions laid down in Article 19 of Regulation No 2159/89, as amended. According to the preamble to the contested regulation, these amendments to the rules on the payment of advances seek to ensure that Community funds are properly used.

12. Under Article 2 of Regulation No 1304/91, these amendments came into force on 21 May 1991.

II — Written procedure and forms of order sought

13. The application of Abertal SAT Limitada and 19 other Spanish associations of producers of nuts and locust beans was lodged at the Court Registry on 10 August 1991.

14. By an application lodged at the Court Registry on 12 August 1991, the applicants applied for interim measures to suspend the operation of Article 1 of Regulation No 1304/91 pending the Court's judgment on the substance of the case.

That application was dismissed by order of the President of the Court on 18 October 1991.

15. By letter lodged at the Court Registry on 2 December 1991, Agrupación de Productores de Almendra del Mediterraneo, Sociedad Cooperativa, one of the applicants, informed the Court that it wished to withdraw its application.

By order of 17 January 1992, the President of the Court ordered the name of Agrupación de Productores de Almendra del Mediterraneo, Sociedad Cooperativa, to be removed from the list of applicants in Case C-213/91 and ordered it to bear the costs relating to its action.

16. *Abertal* and the other applicants claim that the Court should:

— annul Article 1 of Regulation (EEC) No 1304/91;

— order the Commission to pay the costs.

17. By document lodged at the Court Registry on 23 October 1991, the *Commission*, the defendant, contends pursuant to Article 91(1) of the Rules of Procedure that the Court should:

— rule the present application inadmissible;

— order the applicants to pay the costs.

18. By document lodged at the Court Registry on 2 December 1991, *Abertal* and the other applicants claim that the Court should:

— rule that the application in Case C-213/91 is admissible;

— order the Commission to pay the costs.

19. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

The Court requested the applicants to concentrate their submissions on the actual circumstances which they consider permit them to be regarded as individually affected by the contested measures.

III — Pleas and arguments of the parties

20. The *Commission*, the defendant in the main proceedings and the applicant in respect of the preliminary objection, states that the application lodged by Abertal and the other applicants is inadmissible on the ground that the applicants are neither directly nor individually affected by the contested regulation.

The Commission contends, firstly, that the Court has no jurisdiction to hear and determine the present application for annulment

because the aid scheme in question is administered by the Member States and the contested regulation can affect the applicants only in so far as it has been applied in individual cases by the national authorities concerned, and such measures should therefore be contested before the national courts.

The Commission adds that the contested regulation does not concern the applicants individually, but has general effect in that it applies, according to objective criteria, to classes of persons considered generally. It applies to all recognized producers' associations whose plans have already been approved and to those which will be recognized and whose plans will be approved in the future, on the basis only of their objective status as producers' associations fulfilling the conditions laid down by Community law. Furthermore, in the present case there is no causal connection between the position of the alleged addressees of the measure and the contested measures, which were adopted with the sole aim of improving the administration of the aid scheme and of filling the gaps which had appeared in the course of practice.

21. Abertal and the other applicants argue, firstly, that their position is directly affected by the contested regulation as the national authorities have no discretion in applying the provisions in question.

Secondly, they contend that they are individually affected by the contested regulation. They observe that the producers' organizations in the sector concerned were specially set up in order to implement the Community legislation. In addition, the applicants had plans which were approved before the contested regulation was adopted and had therefore taken specific action before a given date, which distinguished them from all other persons. Accordingly they are a limited class of producers whose identity was known to the Community authorities as a result of plans they had submitted. Furthermore, the amendments made by the contested regulation to the aid scheme, which are tantamount to a unilateral amendment by the Commission of the contract entered into with the applicants in accordance with the previous legislation, arose from the applicants' position, as the Commission wished to reduce the cost of the scheme due to the number of producers' associations which had been formed and due to the amount of aid applied for. Therefore Regulation No 1304/91 was intended to and did in fact affect the applicant organizations individually.

F. A. Schockweiler

Judge-Rapporteur