OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER
delivered on 12 September 1996 *

1. In the present case, the appellants [1] (Associazione Agricoltori della Provincia di Rovigo, Associazione Polesana Coltivatori Diretti di Rovigo, Consorzio Cooperative Pescatori del Polesine and Mr C. Brena) seek the setting-aside of the order of the Court of First Instance of 21 February 1995 in Case T-117/94, in which the application was declared inadmissible.

2. In the proceedings before the Court of First Instance, they sought the annulment of the decision of the Commission of 15 October 1993 granting financial support for actions concerning the protection of habitats and of nature [2] ('the contested decision'), in so far as it granted economic assistance to the Veneto region to carry out actions in the Po delta area. They also sought annulment of the ensuing contract signed on 31 December 1993 between the Commission and the Italian Ministry of the Environment.

3. By the order which it is now sought to have set aside, the Court of First Instance dismissed the action brought before it as inadmissible on the ground that the applicants lacked capacity to bring proceedings.

4. The Court of First Instance considered, in sum, that none of the applicants, either the natural persons or the associations, were addressees of the contested decision, and that it was not of individual concern to them; they therefore lacked the necessary capacity to contest that decision, in accordance with the fourth paragraph of Article 173 of the EC Treaty.

* Original language: Spanish.

1 — The proceedings before the Court of First Instance were also brought by another natural person (Mr M. Girello), who is not a party to the appeal. Nor do the appellants include Mr G. Daniele; although he is referred to in the contested order as one of the applicants, it transpired in the proceedings before the Court of First Instance that he was acting solely in his capacity as President of the Consorzio Cooperative Pescatori del Polesine, and not on his own behalf.

2 — The total financial assistance amounted to ECU 20 645 000, divided amongst more than 20 projects submitted by the various Member States. The proportion of the financing to be borne by the Community was 50% of the total estimated cost of each project; in a few exceptional cases, that proportion amounted to 75%.

Findings of fact by the Court of First Instance

5. The main stages in the elaboration of the Community acts complained of, as set out in the contested order, are as follows:

'1. By Regulation (EEC) No 1973/92 of 21 May 1992 (OJ 1992 L 206, p. 1), the Council established a financial instrument for the environment, known as "LIFE", the objective of which is to contribute to the development and implementation of Community environmental policy and legislation essentially by financing priority actions in the Community. The fields of action defined in the annex to the regulation are eligible for financial assistance if they are of Community interest, contribute significantly to the implementation of Community environmental policy and meet the conditions for implementing the polluter-pays principle.

2. As regards the protection of habitats and nature, Article 2(2) of Regulation No 1973/92 provides that the assistance must in particular contribute to the co-financing of measures necessary for the maintenance or restoration, at a favourable conservation status, of priority natural habitat types and priority species on the sites concerned, as listed in Annex I and Annex II respectively to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural and semi-natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7).

3. At the end of 1992 the Italian Republic submitted to the Commission, in accordance with Article 9(1) of Regulation No 1973/92, two proposals for actions relating to the Po delta area for which it sought financing. The area to which the proposed actions relate straddles two regions: Emilia-Romagna and Veneto. A regional park of the Po delta was established in Emilia-Romagna by Regional Law No 87 of 2 July 1988. The Veneto region has not adopted any particular protection measure. Nevertheless, Article 35(4) of Law No 394 of 6 December 1991, a framework law on protected areas, provides that the regions concerned are — with the agreement of the Ministry for the Environment — to proceed with the establishment of an inter-regional park of the Po delta within two years of the Law's entry into force. The same provision stipulates that if no such measures are taken, central government will take steps to establish a national park in the area in question.

4. Since the actions concerned related to the conservation of priority natural habitats, the Commission first submitted a proposal pursuant to Articles 3, 8 and 21 of Directive 92/43 for the co-financing of a single draft measure resulting from the amalgamation of the two proposals, entitled "Conservation programme for the geographical area of the

Po delta" (hereinafter "the Po delta programme"), to the committee provided for in Article 20 of that directive. The amount earmarked in the draft measure for the initial phase was ECU 1.5 million. The committee unanimously approved the draft on 30 April 1993.

5. The Commission then submitted to the committee set up by Article 13 of Regulation No 1973/92 a draft breakdown of the amounts available in the budget for actions carried out pursuant to that regulation, including the Po delta programme. The committee unanimously approved that draft on 16 July 1993.

6. On 15 October 1993 the Commission officially adopted the framework decision, to which the various actions approved by the Commission — including the Po delta programme — were annexed, and the breakdown of appropriations as between those actions. The decision adopted the draft measure approved by the aforesaid two committees.

7. In the meantime the Commission had negotiated the procedures for implementing the Po delta programme with the parties involved in drawing up the draft measure to be financed. On 3 and 4 June 1993, a meeting was organized at Ferrara; apart from the Commission, representatives attended from the Italian Ministry for the Environment, the Italian Ministry for the Coordination of Agricultural, Food and Forestry Policies, the Veneto region, the region of Emilia-Romagna, the provinces concerned and the Lega Italiana Protezione Uccelli (Italian Society for the Protection of Birds, hereinafter referred to as "LIPU").

8. On 31 December 1993 the contract provided for in Article 9(5)(b) of Regulation No 1973/92 was signed. The two main parties to the contract were the Commission and the Italian Ministry for the Environment, acting as the responsible agency. The Italian Ministry for the Coordination of Agricultural, Food and Forestry Policies, the Veneto region and LIPU were associated with the Environment Ministry.'

The grounds of the order of the Court of First Instance

6. Having confirmed that 'none of the natural persons and none of the three applicant associations is an addressee of the contested decision', the Court of First Instance proceeded to 'consider whether that decision is of direct and individual concern to them'.

7. It held that, in so far as the contested decision grants financial assistance to the Italian Po delta programme, it is a measure of general scope which applies to situations determined objectively and has legal effects

with regard to categories of persons viewed generally and in the abstract.

8. It follows, in the finding of the Court of First Instance, that the contested decision concerns the applicants who are natural persons merely by virtue of their objective capacity as agriculturalists operating in the Po delta area, in the same manner as any other agriculturalist who is, or might be in the future, in the same situation.

9. As regards the applicant associations — and assuming that they represented all the agriculturalists in the region concerned — it was held that the contested decision did not concern them 'individually'.

10. In that connection, the contested order refers to the case-law of the Court of Justice, to the effect that it cannot be accepted as a principle that an association, in its capacity as the representative of a category of traders, is individually concerned by a measure affecting the general interests of that category. [3]

3 — Order in Case 60/79 *Fédération nationale des producteurs de vins de table et vins de pays* v *Commission* [1979] ECR 2429 and judgment in Case 282/85 *DEFI* v *Commission* [1986] ECR 2469, paragraph 16.

11. In the case at issue, it was held that the contested decision, which affects the general interests of the category of traders represented by the applicant associations, did not affect them otherwise than in their capacity as representatives of that category. Consequently, the procedural requirement laid down by Article 173 of the Treaty for bringing an action for annulment was not fulfilled.

12. Nevertheless, the order continues, 'both the applicants who are natural persons and those which are associations maintain that they are individually concerned by the contested decision on the ground that the Commission was under a duty to consult them before adopting the decision, which is sufficient to distinguish them'.

13. The Court of First Instance observed in that connection that none of the provisions mentioned by the applicants placed the Commission under a duty, before granting financial assistance pursuant to Regulation No 1973/92, to take account of the particular situation of each of the agriculturalists carrying on activities in the areas concerned by the programme of actions financed, to take account of the particular situation of each of the associations representing them or to consult them.

14. The Court of First Instance held that 'the absence of any duty on the Commission to take account of the particular situation of the various applicants or to consult them before adopting the contested decision is

corroborated by the fact that none of the applicants relied, in support of its application, on pleas alleging that the Commission is in breach of any obligation to consult them, whilst the Commission averred, without being contradicted by any of the applicants, that the latter had not been consulted in any way before the contested decision was adopted'.

15. The order concludes: 'It follows from the foregoing that none of the natural persons and none of the associations is individually concerned by the Commission's decision of 15 October 1993 to grant financial assistance to the programme for the conservation of the geographical area of the Po delta. Consequently, the application for its annulment is admissible in respect of none of them (...)'.

16. Finally, the Court of First Instance took the view that the same reasoning applied, *a fortiori*, to the contract concluded between the Commission and the Italian Republic, determining the procedures for the grant of Community financial assistance and the conditions to be complied with by the recipient of that assistance.

17. The Court of First Instance held that the applicants were not parties to that contract and that it was no more of individual concern to them than was the contested decision of 15 October 1993, of which, moreover, it constituted merely an implementing measure.

18. The applicants appeared to admit this, it considered, when they stated that 'since the contract constitutes merely a measure implementing the contested decision which is confined to laying down the procedures for the deployment of the Community financing instrument LIFE, the fact that the contested contract is unlawful follows from the fact that the decision is unlawful and the contract is therefore devoid of any logical or legal basis'.

The appellants' pleas in law and submissions in opposition to the contested order

19. The appeal is founded on the following single plea: 'error of law, infringement of the second paragraph of Article 173 of the Treaty, and error in the premise that the conditions for an action were not met'.

20. The appellants complain that the Court of First Instance carried out an 'incorrect and superficial assessment of their positions' which led it wrongly to find the action inadmissible on the ground that they lacked capacity to bring proceedings. They base that assertion on the arguments summarized below.

21. Regulation No 1973/92 is simply a financial instrument for Community policy and legislation regarding the environment. It is intended to contribute to the development and implementation of Community environmental policy and legislation by financing certain priority actions in the Community.

22. Inasmuch as the contested decision was adopted after approval had been given to the fifth Community programme of policy and action in relation to the environment and sustainable development ('the Fifth Programme'), [4] its approval should have taken account of the guidelines contained in that programme. Those guidelines include, in particular, active participation by interested parties to enable the main social partners to be involved in concerted action.

23. Thus, as regards actions for the preservation of natural habitats, agriculturalists are given a leading role to play. Their representative associations must therefore be 'parties concerned' in the elaboration of measures aimed at 'environmental protection'.

24. The measures comprised in the 'Conservation programme for the geographical area of the Po delta park (first phase)', the financing of which forms the subject-matter of the contested decision, were adopted after dialogue with 'all the main actors involved, with the sole exception of agriculturalists' and even of the main organizations representing them.

25. The appellant organizations therefore consider that they are 'individually concerned', because their 'specific functional interests' as 'participants' in the procedure for establishing the park have been adversely affected.

26. The appellants maintain that, according to the case-law of the Court of Justice, the fact that an association has taken part, in a negotiating capacity, in the formulation of Community rules relating to a particular policy is enough to confer on it the legal right to contest a Community decision which, whilst not addressed to it directly, concerns that policy.

4 — Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council, of 1 February 1993 on a Community programme of policy and action in relation to the environment and sustainable development — European Community programme of policy and action in relation to the environment and sustainable development (OJ C 138, pp. 1 and 5).

Admissibility of the appeal

27. The Commission submits that the appeal is inadmissible, inasmuch as 'it constitutes, in substance, a new application not made at first instance'.

28. According to that argument, the appellants, in contesting the order of the Court of First Instance, are in fact making a new application distinct from their application to that Court, since they are now advancing the fresh plea, on which they did not rely at first instance, that they did not participate in the procedure culminating in the adoption of the Commission's contested decision of 15 October 1993.

29. The Commission points out that, before the Court of First Instance, the applicants raised, as grounds for annulment, only the following three pleas:

(a) 'nullity by reason of an *ultra vires* act having a defective basis' and lack of competence;

(b) infringement of the third subparagraph of Article 2(2) of Regulation No 1973/92, inasmuch as that provision requires that financial projects must 'contribute significantly to the implementation of Community environmental policy', which was not the case with the project in question;

(c) infringement of the second paragraph of Article 1 of Regulation No 1973/92 and misuse of powers.

30. According to the Commission, since none of those grounds of annulment is the same as that now advanced in the appeal, the appeal should be declared inadmissible. That conclusion is borne out, it argues, by the fact that the order of the Court of First Instance expressly states that 'none of the applicants relied, in support of its application, on pleas alleging that the Commission is in breach of any obligation to consult them'.

31. I do not think that the objection of inadmissibility should be upheld; in my view, the appellants are not submitting, in the proceedings before the Court of Justice, any new argument which does not constitute a response to the grounds set out in the contested order.

32. It is certainly true that the appellants did not plead, in support of their initial application for annulment, infringement of their alleged right to be consulted during the elaboration of actions regarding the environment.

33. However, it is also true that, when the Commission raised its objection of inadmissibility before the Court of First Instance, arguing that the applicant associations lacked the capacity to bring proceedings, they stated that 'the Commission was under a duty to consult them before adopting the decision, which, in their view, is sufficient to distinguish them'.

34. That was therefore one of the main issues dealt with in the argument before the Court of First Instance, which was resolved in the order by the finding that the action for annulment was inadmissible.

35. The contested order in fact states, *inter alia*, that the applicants' lack of capacity to bring proceedings, as a result of not meeting the requirement of individual concern, is consistent with the absence of any obligation on the Commission to consult them during the procedure for the adoption of the acts in issue.

36. In those circumstances, I do not think that the challenge levelled against the contested order by the appellant associations in their criticism of the legal grounds set out in it can be regarded as 'inadmissible'. That challenge, formulated in the terms set out above, must be regarded as consistent with the arguments advanced before the Court of First Instance, as reflected in its order.

37. In other words, far from merely reiterating before the Court of Justice their pleas advanced at first instance against the acts of the Commission, the appellant associations have acted consistently — from a procedural point of view — by basing their appeal against the contested order on arguments concerning the contents of that order and the submissions made at the hearing which preceded it.

38. This is a separate issue from the question whether or not those arguments are sufficiently well founded in law to justify the setting-aside of that order; it is precisely that question which is to be decided by the Court of Justice in its final judgment.

Substance

39. Did the Court of First Instance err in law in finding that the applicants lacked capacity to bring proceedings for annulment

of the acts contested by them? That, in plain and simple terms, is the question to be resolved by the Court of Justice.

40. I should like to state, at the outset, that I share the view, advanced *inter alia* by certain Advocates General, [5] favouring a more broadly-based right of access to the Community judicature, particularly as regards actions for annulment. The present limitations on the right to bring proceedings may in fact, on occasion, leave persons or undertakings with no redress whatever where their interests are adversely affected by the conduct of the Community institutions. [6] The fact that a single person or undertaking may be in the same situation as many others, all affected by the Community acts which it is sought to contest, in no way palliates that lack of redress.

41. More particularly, I consider that, in environmental matters, which involve such a multiplicity of crucial, and sometimes opposing, social interests, capacity to bring proceedings should be more widely recognized, so that both associations such as the appellants and others representing wider interests can have free access to judicial protection. [7]

42. I recognize, however, that, as matters currently stand, my personal preference does not accord with the way in which the fourth paragraph of Article 173 of the EC Treaty has consistently been interpreted, which has imposed strict limits on the right to bring proceedings for annulment of Community acts.

43. Having regard to the conditions in which the dispute arose, the order of the Court of First Instance is, as explained further below, in accordance with the interpretation normally given to the fourth paragraph of Article 173 of the Treaty. For that reason, the appeal should be dismissed.

5 — In his work entitled 'Le recours en annulation des particuliers (article 173, deuxième alinéa du traité CE): nouvelles réflexions sur l'expression "la concernent ... individuellement"', *Festschrift für Ulrich Everling*, 1995, p. 852, Judge Moitinho de Almeida stated: 'la Cour n'a jamais suivi les suggestions de ses avocats généraux visant à une interprétation plus large de l'exigence d'un intérêt individuel' ('the Court of Justice has never followed the suggestions of its Advocates General that a wider interpretation be given to the requirement of individual concern').

6 — The Court of Justice has itself stated, in paragraph 20 of the *Report of the Court of Justice on certain aspects of the application of the Treaty on European Union* (Luxembourg, May 1995): 'It may be asked, however, whether the right to bring an action for annulment under Article 173 of the EC Treaty (and the corresponding provisions of the other Treaties), which individuals enjoy only in regard to acts of direct and individual concern to them, is sufficient to guarantee for them effective judicial protection against possible infringements of their fundamental rights arising from the legislative activity of the institutions.'

7 — Even though the conditions governing capacity to bring proceedings differ from one Member State to the next, the development of legislation and case law tends to favour a broader right of access to the courts for individuals and associations involved in the protection of the environment. A concrete example of this can be seen in the case of actions for annulment of administrative acts adopted in that sphere. Certain legal systems (Spain and Portugal) even recognize the concept of the *actio popularis*, which permits recourse to the courts for an order requiring compliance with environmental legislation. The tenor of the Fifth Programme is to the same effect; it states, in Chapter 9: 'Individuals and public interest groups should have practicable access to the courts in order to ensure that their legitimate interests are protected and that prescribed environmental measures are effectively enforced and illegal practices stopped.'

44. The finding by the Court of First Instance that the action for annulment was inadmissible derived from the fact that none of the individuals or associations by whom the action was brought — and to whom the contested decision was not, of course, addressed [8] — was 'individually concerned' by it within the meaning of that term as interpreted by the case-law.

45. The fourth paragraph of Article 173 of the EC Treaty 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 or a decision addressed to another person, is of direct and individual concern to the former'. [9]

46. The case-law on the interpretation of that provision, going back to the judgment in *Plaumann* v *Commission*, [10] may be summarized by a quotation from the judgment of 15 February 1996 in *Buralux and Others* v *Council*, [11] in which the Court of Justice dismissed an appeal against another order of the Court of First Instance, similar to that in issue in the present case, dismissing proceedings as inadmissible.

47. Paragraphs 24 and 25 of the judgment in *Buralux* reflect the case-law as it stands at present in relation to the conditions governing capacity to bring proceedings which natural or legal persons must fulfil for the Court to entertain an action for annulment. The term 'individual concern' is interpreted in that judgment as follows:

'It is settled case-law that the possibility of determining more or less precisely the number or even the identity of the persons to whom a measure [...] applies does not in any way imply that it must be regarded as being of individual concern to them, as long as it is established that such application takes effect by virtue of an objective legal or factual situation defined by the measure in question (see, for example, the judgment in Case C-264/91 *Abertal and Others* v *Council* [1993] ECR I-3265, paragraph 16, and the order in Case C-131/92 *Arnaud and Others* v *Council* [1993] ECR I-2573, paragraph 13).

For such persons to be capable of being regarded as individually concerned, their legal position must be affected because of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as a person to whom a measure is addressed (see, in particular, the judgment in Case 26/86 *Deutz and Geldermann* v *Council* [1987] ECR 941, paragraph 9).'

8 — Article 4 of the contested decision states that it is addressed to the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Portuguese Republic and the United Kingdom of Great Britain and Northern Ireland.

9 — Current version, as amended by Article G(53) of the Treaty on European Union.

10 — Judgment of 15 July 1963 (Case 25/62 [1963] ECR 95).

11 — Case C-209/94 [1996] ECR I-615.

48. It is necessary, on the basis of that case-law, to examine two series of factors which might in theory identify the appellants as persons individually concerned by the contested decision, either by reason of its material effects (substantive identification or interest) or because of their participation in its elaboration (procedural identification or interest).

49. The first series of factors would be such as have a particular effect on the situation of the agricultural holdings or fishing activities of persons having an interest in the area concerned. They might be described as 'material' or 'substantive' and might involve those aspects of the contested decision which impose on the recipient Member States certain conditions concerning their environmental projects, with a negative impact on agricultural or fishing activities in the area concerned (for example, a ban on cultivation or restrictions on fishing).

50. Such factors would necessitate discussion of the extent to which each of the individual economic operators concerned fell to be differentiated and of the degree of impact which the contested decision entailed in that regard.

51. However, the appellants have declined to adopt that approach, persuaded, perhaps, that it is pointless to do so in view of the case-law cited above: the contested decision contains no specific provision affecting their legal situation in any particular or exclusive way. The link between the appellants and the decision is to be found in their objective status as persons or associations having economic interests in the geographical area concerned, a position which they share with numerous other persons or associations representing various interests.

52. Given, therefore, that the present case does not involve any particular factual situation which differentiates the appellants 'from all other persons and distinguishes them individually in the same way as a person to whom a measure is addressed', there is nothing to be gained, for the purposes of determining whether they have capacity to challenge the decision in law, from an analysis of its economic impact on their activities.

53. The second series of factors as a result of which the contested decision might, in theory, be of individual concern to the appellants concerns the formal aspects of the process by which it was elaborated, and it is on those aspects that the appeal is based.

54. The central argument advanced in the appeal is that, according to the case-law of the Court of Justice, the fact that an association has taken part, in a negotiating capacity,

in the formulation of Community rules relating to a particular policy is enough to confer on it the legal right to contest a Community decision which, whilst not addressed to it directly, concerns that policy. Since the appellant associations should have been consulted in relation to the elaboration of the environmental protection measures in issue, they must be regarded as parties involved in the 'policy' implemented by the decision and, consequently, as having capacity to challenge that decision in law.

55. Even assuming the premiss on which that line of argument is based to be valid — which could only be the case if certain aspects not touched upon by the appellants are taken into consideration, [12] the conclusion itself cannot be valid, for two reasons:

(a) first, because the appellants did not in fact participate in any way in the elaboration of the decision — an omission which is not even pleaded by them as a procedural defect in their claim for annulment; [13]

(b) second, because the Commission was not legally obliged to give them an opportunity to be heard during the course of that elaboration.

56. The first of those statements is purely factual in nature and, as such, does not fall to be discussed (*a fortiori* in the context of an appeal) but merely verified. The Court of First Instance considers it to have been proved and that is enough for the purposes of these proceedings.

57. The second statement, on the other hand, needs to be supported by reasons.

58. In response to the applicants' submissions on this point, the Court of First Instance stated, as recalled above, that none

12 — The case-law cited by the appellants has been established by judgments of the Court of Justice in decisions relating to competition, State aid, dumping and subsidies. In the cases in question, the Court considered the significance of the participation of third parties in the administrative procedure preceding the adoption of a decision not addressed to them, and declared that, in certain specific circumstances, such participation gave rise to a presumption that the proceedings brought by them for annulment of the decision in question were admissible. Those circumstances were held to include the existence of an express provision (contained, as a general rule, in a basic regulation) requiring the Community institutions to consult the operators concerned before finally adopting the measure proposed. Once the parties' right to bring proceedings has been thus recognized, the action may seek a review by the Community judicature not only of the question whether the applicants' procedural rights have been respected but also whether the decision adopted is vitiated by a manifest error of assessment or misuse of powers (Case 26/76 *Metro* v *Commission* [1977] ECR 1875, Case 191/82 *Fediol* v *Commission* [1983] ECR 2913 and Case 169/84 *Cofaz* v *Commission* [1986] ECR 391).

13 — See points 14 and 30 of this Opinion.

of the provisions which they mentioned [14] obliges the Commission, before granting financial assistance pursuant to Regulation No 1973/92, to take account of their particular situation or to consult them.

59. The appellants appear to acknowledge this, at least in part, since, in their appeal application (point 12), they concede, with regard to the 'absence of an obligation to consult the economic and social parties involved in the LIFE action programme', that 'it is true that there is currently no specific rule expressly providing for any such obligation [...]'.

60. In order to circumvent the absence of any 'specific rule' imposing a duty to consult them, the appellants rely on general principles which they infer, for the most part, from the Fifth Community Programme of policy and action in relation to the environment and sustainable development, cited above. They plead in that regard the principle of active participation by parties involved in the environmental sector, or the principle of cooperation with, and the joint responsibility of, the economic agents concerned, including agriculturalists.

61. In my view, however, those principles have not been reflected in any binding legal provision; nor, in any event, do they have the effect of requiring the Commission to engage in prior consultation of each and every economic agent concerned with environmental matters where the objective of the Community intervention is merely to grant financial aid in support of actions proposed by the Member States.

62. As regards the first statement, it is clear from the Fifth Programme that it does not involve any binding legal provision. In that text, the Council and the representatives of the Governments of the Member States

— 'invite the Commission to come forward with appropriate proposals to give effect to the programme in so far as it pertains to action at Community level'; and

— expressly state, with regard to the long-term objectives to be pursued in order to achieve sustainable development and the targets and results to be achieved up to the year 2000: 'Those objectives and tar-

14 — The applicants stated that their right to participate in the procedure derived from the second indent of Article A of the Treaty on European Union, from Articles 1 and 2 of Regulation No 1973/92, from the preparatory work preceding the adoption of that regulation, from points 10 and 18 of the Fifth Environment Action Programme, from the third recital in the preamble to Directive 92/43, from the resolution of the European Parliament of 10 July 1987 on the establishment and conservation of Community nature reserves (OJ 1987 C 246, p. 121) and from Article 7 of the proposal for a regulation COM(91) 0028 establishing a financial instrument for the environment (LIFE) (OJ 1991 C 267, p. 211).

gets do not constitute legal commitments [...] Neither should all the actions indicated require legislation at Community or national level.' [15]

63. As regards the second statement (concerning the absence of any duty to engage in consultation), the Fifth Programme acknowledges that the Community institutions are under no general obligation to consult individuals, or associations such as the appellants, during the procedure leading to the adoption of financial aid measures in favour of the Member States.

64. With regard to the financial aid mechanisms used within the framework of Regulation No 1973/92 to promote the effective application of the environment policy, point 17 of the Fifth Programme envisages that the parties involved in the discussions are to be the Community institutions and the Member States. In contrast to the way in which matters are handled in other sectors, it thus excludes from participation in that stage of the procedure economic agents who may be affected by the national measures to which the aid relates.

65. In my view, it is consistent with the nature of Community financial aid for the preparatory negotiations to take place between the Member States and the Community institutions where, as in the present case, it is the former who propose the projects for which aid is to be granted. [16]

66. In such cases, the 'natural' field of action for the economic agents concerned is at national level, where they can assert their interests with a view to shaping, in one form or another, the content of the national proposals or the actions resulting therefrom.

67. The appellants themselves acknowledge that, 'in the course of the procedure for the creation of the Po delta nature park, the active role of the associations representing the interested parties has hitherto been recognized by continual consultation, contacts, requests by the public authorities for the submission of comments regarding projects affecting the park ...'. [17]

15 — Point 12 of the summary.

16 — Article 9 of Regulation No 1973/92 provides that proposals for actions to be financed are to be submitted to the Community by the Member States. However, the Commission may ask any legal or natural persons established in the Community to submit applications for assistance in respect of measures of particular interest to the Community by means of a notice published in the *Official Journal of the European Communities*. In the latter case, the Commission is required to forward to the Member States any proposals received.

17 — In support of that assertion, they have lodged various documents from the Italian provincial and national authorities. Those documents request the associations operating in the sectors concerned to submit comments on the standards of protection to be applied to the park and provide for the creation of a special body with responsibility for its management, within which those associations are to be represented.

68. It is likewise at national level that the economic agents concerned (and possibly environmental protection associations) may — indeed, must — state their response to any illegalities vitiating the national actions for which Community aid is granted. [18]

69. Consequently, the Commission was under no legal obligation to widen the scope of the administrative procedure preceding the grant of financial aid under Regulation No 1973/92 so as to encompass the participation of individuals and other economic agents potentially affected by the national measures for which that aid was granted. That being so, the legal argument underlying the appeal loses its basis.

70. In accordance with Article 122 of the Rules of Procedure, if the Court dismisses the appeal, it should order the appellants to pay the costs.

Conclusion

71. In the light of the foregoing, I propose that the Court should:

(1) dismiss the appeal;

(2) order the appellants to pay the costs.

18 — In the documents accompanying the application to the Court of First Instance, two of the applicant associations (the Associazione Agricoltori della Provincia di Rovigo and the Associazione Polesana Coltivari Diretti) in fact confirmed having brought proceedings before the Tribunale Amministrativo Regionale di Venezia (Venice Regional Administrative Court) for annulment of the agreement concluded between the Minister of the Environment and the Regions of Veneto and Emilia-Romagna concerning the interregional Po delta park and of the acts relating to and subsequent to that agreement.