ORDER OF THE COURT (Fifth Chamber)
12 December 2003 *

In Case C-258/02 P,

Bactria Industriehygiene-Service Verwaltungs GmbH, whose registered office is in Kirchheimbolanden (Germany), represented by K. van Maldegem and C. Mereu, avocats,

appellant,

APPEAL against the order of the Court of First Instance of the European Communities (Second Chamber) of 29 April 2002 in Case T-339/00 *Bactria* v *Commission* [2002] ECR II-2287, seeking to have that order set aside,

the other parties to the proceedings being:

Commission of the European Communities represented by R.B. Wainwright and L. Ström, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

* Language of the case: English.

Eurobrom BV, established in Rijswijk (Netherlands),

Lonza GmbH, established in Wuppertal (Germany),

Arch Chemicals SA, established in Paris (France),

and

Troy Chemical Company BV, established in Maassluis (Netherlands),

interveners at first instance,

THE COURT (Fifth Chamber),

composed of: C. Gulmann (Rapporteur), President of the Chamber, A. La Pergola and R. Silva de Lapuerta, Judges,

Advocate General: F.G. Jacobs,
Registrar: R. Grass,

after hearing the views of the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 12 July 2002 Bactria Industriehygiene-Service Verwaltungs GmbH ('Bactria') brought an appeal under Article 49 of the EC Statute of the Court of Justice against the order of the Court of First Instance of 29 April 2002 in Case T-339/00 *Bactria* v *Commission* [2002] ECR II-2287 ('the contested order'), which rejected as inadmissible its application for the annulment of Commission Regulation (EC) No 1896/2000 of 7 September 2000 on the first phase of the programme referred to in Article 16(2) of Directive 98/8/EC of the European Parliament and of the Council on biocidal products (OJ 2000 L 228, p. 6).

Legal background

2 The purpose of Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ 1998 L 123, p. 1, 'the Directive') is to establish a Community system for the evaluation and placing on the market of biocidal products.

3 According to Article 3(1) of the Directive, 'Member States shall prescribe that a biocidal product shall not be placed on the market and used in their territory unless it has been authorised in accordance with this directive'. Under Article 3(2)(ii), by way of derogation from paragraph 1, the Member States are to allow the placing on the market and use of commodity substances for biocidal purposes once they have been entered in Annex IB to the Directive.

4 Article 5(1)(a) of the Directive provides that Member States are to authorise a biocidal product only if the active substance(s) included therein are listed in Annex I or IA and any requirements laid down in these Annexes are fulfilled.

5 Article 11 of the Directive lays down the procedure for inclusion of an active substance in Annex I, IA or IB thereto. An application must be submitted before an active substance can be included in one of those lists, or subsequent changes made. Under Article 11(1)(a), the applicant must forward to the competent authority of one of the Member States a dossier on the active substance which satisfies the requirements of Annex IIA, IIIA or IVA to the Directive, as the case may be, as well as a dossier on at least one biocidal product containing the active substance, which satisfies the requirements of Article 8 of the Directive. After evaluation, the dossier is to be sent, inter alia, to the Commission and a decision is to be taken under the procedure provided for in Article 28 of the Directive as to whether that substance may be listed in Annex I, IA or IB thereto.

6 Article 12 of the Directive contains provisions governing the use, for other applicants, of information communicated by the applicant and held by the competent authorities. Those provisions prohibit the Member States, subject to certain exceptions, from using for the benefit of subsequent applicants the information obtained when an application for authorisation is lodged.

7 Article 16 of the Directive, setting out transitional measures, provides in paragraph 1 that by way of derogation from, inter alia, Article 3(1) of the Directive, a Member State may, for a period of 10 years from 14 May 2000, continue to apply its current system or practice of placing biocidal products on the market. It may, in particular, in accordance with its existing national rules, authorise the placing on the market in its territory of a biocidal product containing active substances not listed in Annex I or IA to the Directive for that product type. Such active substances must be on the market on 14 May 2000 as active substances of a biocidal product for purposes other than those indicated in Article 2(2)(c) and (d).

8 Article 16(2) of the Directive provides for the adoption, in the form of a regulation, of a 10-year programme of work for the systematic examination of the said active substances. During that 10-year period and from 14 May 2000, it may be decided 'that an active substance shall be included in Annexes I, IA or IB and under which conditions, or, in cases where the requirements of Article 10 are not satisfied or the requisite information and data have not been submitted within the prescribed period, that such active substance shall not be included in Annex I, IA or IB'.

9 The purpose of Regulation No 1896/2000 is to implement the first phase of the programme of work for the systematic evaluation of all existing active substances, namely those already on the market on 14 May 2000 as active substances of biocidal products ('the review programme').

10 Article 3(1) of Regulation No 1896/2000 provides that '[e]ach producer of an existing active substance placed on the market for use in biocidal products shall identify that active substance by submitting to the Commission the information on the active substance referred to in Annex I' and that every 'formulator',

namely the manufacturer of the biocidal product or his sole representative in the Community for the purposes of that regulation, may identify an existing active substance.

11 Under the first subparagraph of Article 4(1) of that regulation, '[p]roducers, formulators and associations wishing to apply for the inclusion in Annex I or Annex IA to the Directive of an existing active substance in one or more product types shall notify that active substance to the Commission by submitting the information referred to in Annex II to this regulation to be received not later than 18 months after this regulation enters into force'.

12 Under Article 5(2) and (3) of Regulation No 1896/2000, Member States may identify existing active substances other than those mentioned on the list of all existing active substances and may indicate their interest in the possible inclusion in Annex I or Annex IA to the Directive of an existing active substance used in product types for uses which the Member State considers essential, in particular for the protection of human health or of the environment, and for which no notification has been accepted by the Commission.

13 Article 6(1)(b) of that regulation provides for the adoption, as a consequence of identification and notification, of a regulation containing, inter alia, the exhaustive list of existing active substances to be examined in the second phase of the review programme. That list contains, in particular, the existing active substances for which the Commission has accepted at least one notification or which are the subject of an indication of interest on the part of the Member States.

14 Article 6(2) of the same regulation provides that '[w]ithout prejudice to Article 16(1), (2) or (3) of the Directive, all producers of an active substance included in the list referred to in paragraph 1(b) and all formulators of biocidal products containing that active substance may start or continue to place on the market the active substance, as such or in biocidal products, in the product type or types for which the Commission has accepted at least one notification'.

Procedure before the Court of First Instance

15 By application lodged at the Registry of the Court of First Instance on 8 November 2000, Bactria, which produces and markets the active substance 'peracetic acid', and biocidal products containing that active substance, brought an action, under the fourth paragraph of Article 230 EC, for the annulment of Regulation No 1896/2000.

16 In support of its application, Bactria claimed that that regulation was incompatible with its legal basis, namely the Directive. Inter alia, it went beyond the provisions relating to data protection contained in the Directive by ignoring the protection provided for by the Directive of commercially sensitive and valuable information on active substances during the review period of those active substances. Moreover, that regulation distorted competition in breach of the EC Treaty since it enabled companies not participating in the review programme to profit without cost from the notifications made by diligent participating companies such as the applicant.

17 By a document lodged at the Registry of the Court of First Instance on 18 January 2001, the Commission raised an objection of inadmissibility against Bactria's application for annulment under Article 114(1) of the Rules of Procedure of the Court of First Instance.

The contested order

18 By the contested order the Court of First Instance dismissed the application as inadmissible.

19 In paragraphs 42 to 46 of the contested order, the Court of First Instance found that, although Bactria was calling in question the status as a regulation of the measure to which the proceedings before it related, Regulation No 1896/2000 applies to objectively determined situations and produces legal effects in respect of persons considered in a general and abstract manner. According to the Court of First Instance, that regulation, by virtue of its general application, is normative in character and does not constitute a decision within the meaning of Article 249 EC.

20 Paragraphs 47 to 55 of the contested order read as follows:

'47 However, the normative character of... Regulation [No 1896/2000] does not exclude it from being of direct and individual concern to certain natural or legal persons within the meaning of the fourth paragraph of Article 230 EC (*Codorniu* v *Council*, paragraph 19, *Antillean Rice Mills and Others* v *Commission*, paragraph 66, and Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraph 50). That is the case if the act in question affects natural or legal persons because of certain attributes which are particular to them or

by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person addressed (*Plaumann* v *Commission*, at p. 223, and *Codorniu* v *Council*, paragraph 20).

48 In this regard, it must be held that the applicant's argument that... Regulation [No 1896/2000] applies to the closed category of companies which have placed a biocidal product containing existing active substances on the Community market cannot be accepted. The Regulation is addressed to all those who have an interest in the identification and notification of existing active substances and biocidal products containing those substances and not only operators who placed a biocidal product containing existing active substances on the market before 14 May 2000. In particular, Article 6(2) of the Regulation — to which the applicant appears to make particular reference — allows all producers and formulators to continue or to begin marketing existing active substances and biocidal products containing those substances for the product type(s) for which the Commission has accepted at least one notification.

49 In that context it must be pointed out that notification of an existing active substance may be made by any operator which can provide evidence that the active substance was placed on the market before 14 May 2000, and that that evidence does not in any way mean that that operator itself marketed the active substance or a biocidal product containing that active substance before 14 May 2000. Similarly, the other data listed in Annex II to the Regulation may, in principle, be provided by any interested operator.

50 It follows that access to the identification procedures and/or notification procedures is not reserved exclusively for the operator serving a specific part of the market. The argument advanced by the interveners, to the effect that the applicant is individually concerned by the Regulation in that it is the sole

producer of peracetic acid in a position to notify the peracetic acid used in liquid-cooling and liquid-treatment systems, cannot therefore be accepted. The Regulation is intended to identify all the existing active substances of biocidal products as defined by Article 2(a) of the Regulation, with the help of the information provided by all of the producers and formulators concerned.

51 The applicant's argument that it participated in the process leading to the adoption of the Regulation is equally untenable. In the first place, it was not the applicant which participated in an individual capacity in this process, but rather the ECIC, an association to which the applicant belongs. In addition, it is clear from the case-law that the fact that a person participates, in one way or another, in the process leading to the adoption of a Community act does not distinguish him individually in relation to the act in question unless the relevant Community legislation has laid down specific procedural guarantees for such a person (Case T-60/96 *Merck and Others* v *Commission* [1997] ECR II-849, paragraph 73, and the case-law cited). In the circumstances of the present case, there are no provisions requiring the Commission, before the adoption of the Regulation, to follow procedures under which persons such as the applicant are accorded the right to put forward any claim they may have or even to be heard. In this connection, the only provision relied on by the applicant is recital 23 in the preamble to the Directive, under which its implementation, the adaptation of its Annexes to the development of technical and scientific knowledge and the inclusion of active substances in the appropriate annexes require close cooperation between the Commission, the Member States and the applicants, and under which, where it is applicable, the procedure of the Standing Committee on Biocidal Products provides a suitable basis for cooperation. That provision does not confer procedural rights on the applicant.

52 The applicant's argument that the Commission was obliged to take into account its specific interests when adopting the Regulation, with the result

that it has a right of action in this case, cannot be accepted either. Unlike the cases which led to the judgments in *Piraiki-Patraiki* v *Commission* and *Antillean Rice Mills and Others* v *Commission*, there is no provision in this case that requires the Commission to take account of the consequences which the act it is planning to adopt may have for the position of any particular individuals.

53 The question whether the provisions of the Regulation infringe the applicant's property rights, as protected by Article 12 of the Directive, is one relating to the substance of the case. In any event, that alleged infringement, supposing it were established, is not sufficient to distinguish the applicant individually in relation to any other operator who gives notification of an existing active substance.

54 Finally, with regard to the applicant's argument that the present action is the only legal remedy open to it, it must be held that the possible absence of remedies, supposing it is established, cannot justify an amendment by way of judicial interpretation of the system of remedies and procedures laid down in the Treaty. In no case does it allow an annulment action brought by a natural or legal person to be declared admissible where it does not satisfy the conditions laid down by the fourth paragraph of Article 230 EC (Case T-138/98 *ACAV and Others* v *Council* [2000] ECR II-341, paragraph 68).

55 It follows that the Regulation cannot be regarded as being of individual concern to the applicant. As the applicant thus fails to satisfy one of the conditions of admissibility laid down by the fourth paragraph of Article 230 EC, the action must be dismissed as inadmissible.'

The appeal

21 In its appeal, Bactria claims that the Court of Justice should:

— declare the appeal admissible and well founded;

— annul the contested order;

— declare that it has standing to bring proceedings for the annulment of Regulation No 1896/2000 and refer the case back to the Court of First Instance for the latter to give judgment on the substance;

— order the Commission to pay the costs both of the proceedings at first instance and of the appeal.

22 The Commission contends that the Court of Justice should:

— dismiss the appeal as inadmissible in part and unfounded in part;

— order Bactria to pay the costs.

23 Bactria puts forward, in essence, four pleas in law in support of its appeal. First, it maintains that the reasoning relied on by the Court of First Instance to reject its contention that it belonged to a 'closed category' of economic operators is contradictory and based on an error of law. Second, it alleges that the Court of First Instance adopted an overly restrictive interpretation as a basis for denying that it has procedural rights. Third, it argues that the reasoning relied on by the Court to exclude the existence of pre-existing rights in its favour is erroneous. Fourth, it contends, first, that the interpretation of the term 'person individually concerned' adopted by the Court of First Instance is overly restrictive and outdated having regard to the recent case-law of the Court itself and, second, that it has no other remedy available to protect its rights.

24 The Commission objects that the first three pleas put forward by the appellant must be regarded as inadmissible or, in the alternative, as unfounded. As far as the fourth plea is concerned, it should be rejected as unfounded.

25 It must be borne in mind that, under Article 119 of its Rules of Procedure, where an appeal is clearly inadmissible or clearly unfounded, the Court may, at any time, dismiss it by reasoned order.

The first plea

Arguments of the parties

26 Bactria claims that the reasoning relied on by the Court of First Instance in paragraph 48 of the contested order in denying the existence of a 'closed

category' of economic operators when Regulation No 1896/2000 was adopted is contradictory. The Court of First Instance found, on the one hand, that that regulation concerned all those who had an interest in the identification and notification of existing active substances and biocidal products containing those substances and not only operators who placed a biocidal product containing existing active substances on the market before 14 May 2000, whereas, on the other hand, it recognised the specific status of the notifiers where it held that that regulation allowed all producers and formulators to continue or to begin marketing existing active substances and biocidal products containing those substances for which the Commission had accepted at least one notification. The Court of First Instance thus drew a distinction between the abstract category comprising 'all those who had an interest in the identification and notification' and that made up of the ascertained and closed group of companies whose notification was accepted by the Commission. That was therefore equivalent to implicitly recognising that the first category of operators could remain in the market only because notifiers had fulfilled the requirement of the contested regulation.

27 According to Bactria, the Court of First Instance thus accepted the particular situation of the notifiers and, consequently, should have concluded that Regulation No 1896/2000 applied individually to the latter as a bundle of individual decisions, each affecting the legal position of each notifier.

28 Bactria also contends that the Court of First Instance erred in law in considering, in paragraph 49 of the contested order, that notification of an existing active substance may be made by any operator which can provide evidence that the active substance was placed on the market before 14 May 2000. It contends that the information required in Annex II to Regulation No 1896/2000 for notification is selective and very detailed and is available not to every operator but only to those who placed the notified substances on the market before 14 May 2000 and can prove that they did so.

29 Bactria adds that Regulation No 1896/2000 set a time-limit for notification, namely 28 March 2002, and that consequently, when the Court of First Instance made its order, it was no longer possible for all operators to make a notification but there was a closed circle of operators, of which it formed part, who had made such a notification. That had recently been confirmed by the Commission, which published a list of the names of the notifiers accepted.

30 The Commission contends that this plea is inadmissible because the arguments put forward by Bactria to show that it belonged to a 'closed category' of economic operators constitute a repetition of those already put forward before the Court of First Instance. Therefore, the appellant is not putting forward pleas in law but is merely criticising the findings of the Court of First Instance. In any event, the Commission considers that those arguments should be regarded as unfounded.

Findings of the Court

31 It must be borne in mind that it follows from Article 225 EC, the first paragraph of Article 58 of the Statute of the Court of Justice and Article 112(1)(c) of its Rules of Procedure that an appeal must indicate precisely the contested elements of the order which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal. Where an appeal merely reproduces the pleas in law and arguments previously submitted to the Court of First Instance, without even including an argument specifically identifying the error of law allegedly vitiating the order under appeal, it fails to satisfy that requirement. In reality, such an appeal amounts to no more than a request for re-examination of the application submitted to the Court of First Instance, which falls outside the jurisdiction of the Court of Justice (see, in particular, Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraphs 34 and 35, and Case C-41/00 P *Interporc* v *Commission* [2003] ECR II-2125, paragraphs 15 and 16).

32 In this case it appears that, by its first plea, Bactria is challenging paragraphs 48 and 49 of the contested order on the basis that the reasoning of the Court of First Instance is contradictory and based on an error of law. Accordingly, the Commission's objection of inadmissibility to the effect that this plea constitutes a repetition of the arguments already put forward by the applicant before the Court of First Instance must be rejected.

33 As regards the allegedly contradictory nature of the reasoning of the Court of First Instance, it must be observed that the fact that Regulation No 1896/2000 allows all producers and formulators to continue or to begin marketing existing active substances and biocidal products containing those substances for the product type(s) for which the Commission has accepted at least one notification does not appear to be inconsistent with the fact that the regulation is addressed to all those who have an interest in the identification and notification of existing active substances and biocidal products containing those substances and not only operators who placed a biocidal product containing such substances on the market before 14 May 2000. In fact, contrary to Bactria's contention, it cannot be inferred from those two facts that the Court of First Instance drew a distinction between the abstract category comprising all those operators who had an interest in identification and notification and that made up of the ascertained and closed group of companies whose notification was accepted by the Commission, with the result that notifiers should have been regarded as individually concerned by the said regulation.

34 In that connection it must be borne in mind that a measure of general application such as a regulation can be of individual concern to natural and legal persons only if it affects them by reason of certain attributes peculiar to them, or by reason of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as the addressee (see, inter alia, Case C-451/98 *Antillean Rice Mills* v *Council* [2001] ECR I-8949, paragraph 49; Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677, paragraph 36, and Case C-142/00 P *Commission* v *Nederlandse Antillen* [2003] ECR I-3483, paragraph 65). However, on the date of its adoption, Regulation No 1896/2000 was in principle capable of applying to an indeterminate number of economic operators with an interest in notification and not to a closed category thereof whose notifications had been accepted by the Commission.

35 Bactria's argument that the difficulty of gathering the information required to make a notification is such as to distinguish individually the economic operators who placed substances on the market before 14 May 2000 and can prove that they did so likewise cannot be upheld. Such a difficulty is inherent in the specificity of the market in question and is not as such capable of ruling out the possibility that an indeterminate number of operators might be in possession of that information.

36 Finally, the fact that, on the date on which the contested order was made, a specific number of notifications had been accepted by the Commission, and that number could not be changed, is not relevant here. As is clear from paragraph 34 of this order, Regulation No 1896/2000 was, according to its terms, capable of applying to an indeterminate number of addressees.

37 It must therefore be held that the Court of First Instance did not err in law in holding that Bactria did not belong to a 'closed category' of economic operators. The first plea must therefore be rejected as manifestly unfounded.

The second plea in law

Arguments of the parties

38 By its second plea, Bactria submits that the Court of First Instance erred in law by disregarding the existence of procedural rights attaching to it which were such as to distinguish it individually. In that connection it claims, first, that the finding in paragraph 51 of the contested order to the effect that there are no provisions requiring the Commission, before the adoption of Regulation No 1896/2000, to

follow procedures under which persons such as the applicant are accorded the right to put forward any claim they may have or even to be heard is in contradiction with the finding in paragraph 50 of the contested order that the said regulation is intended to identify all the existing active substances of biocidal products as defined by Article 2(a) thereof, with the help of the information provided by all of the producers and all of the formulators concerned, the latter finding implying recognition of the specific situation, as regards that regulation, of the producers and formulators who supplied that information.

39 Furthermore, it objects to the fact that the Court of First Instance held that recital 23 in the preamble to the Directive did not confer on it procedural rights in connection with the procedure for the adoption of Regulation No 1896/2000. In that connection it refers to Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125 and the order of 23 November 1995 in Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149) to demonstrate its right to take action against that regulation. Bactria adds that the specific situation of applicants is taken into consideration in many instances in the Directive and that the President of the Court of First Instance, in the proceedings for the adoption of interim measures, did not exclude the possibility that Bactria might form part of a category of economic operators whose interests had to be taken into account at the time of the adoption of Regulation No 1896/2000.

40 The Commission contends that the arguments regarding Bactria's participation in the procedure leading to the adoption of Regulation No 1896/2000, which it puts forward to show its standing to take proceedings, do not concern issues of law. The second plea should therefore be declared inadmissible. In any event, in its view it is unfounded.

Findings of the Court

41 It must be borne in mind first that, as indicated in paragraph 31 of this order, pleas relied on in support of an appeal must, in order to be regarded as

admissible, indicate precisely the contested elements of the order which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal.

42 In the present case, the second plea put forward by Bactria must be regarded as admissible since it contests the fact that the Court of First Instance denied that it enjoyed procedural rights and it puts forward legal arguments in support of that plea.

43 It must also be observed, first, that there is no contradiction between the passages in paragraphs 50 and 51 of the contested order criticised by the appellant. The fact that Regulation No 1896/2000 provides that a list of existing active substances is to be drawn up with the help of the information provided by all of the producers and all of the formulators concerned has no connection with the fact that the Commission was not required, with a view to the adoption of the regulation, to hear persons such as Bactria. Moreover, the situation envisaged by that regulation, namely that existing active substances are to be listed, with the help of the information provided by all of the producers and all of the formulators concerned, cannot be assimilated to a situation in which producers and formulators had already obtained that information.

44 Second, it must be observed that the Court of First Instance was right to hold that recital 23 in the preamble to the Directive does not confer procedural rights on Bactria in the context of the procedure for the adoption of Regulation No 1896/2000. That recital merely states that the implementation of the Directive, the adaptation of its annexes to developments in technical and scientific knowledge and the inclusion of active substances in the appropriate annexes necessitate close cooperation between the Commission, the Member States and applicants and that, in the event of its application, the procedure of the Standing Committee on Biocidal Products provides an appropriate basis for such cooperation. In any event, such a recital is not in any event capable of distinguishing the appellant individually in relation to the said regulation.

45 Third, the fact that in numerous instances the Directive may take account of the specific situation of applicants cannot, even if substantiated, be regarded as such as being capable of distinguishing Bactria individually in relation to Regulation No 1896/2000.

46 Fourth, so far as concerns the fact that, in the order made by the President of the Court of First Instance on the application for interim relief on 15 June 2001, the President did not exclude that Bactria might belong to a closed circle of economic operators, it must be held that it is irrelevant in the context of the present proceedings and, in particular, for the purposes of considering whether the second plea is well founded. These proceedings are an appeal against the contested order and not against the order made in relation to the application for interim relief. Moreover, the assessment made in the proceedings on the application for interim relief is a prima facie assessment and cannot prevent the Court of First Instance from making a different assessment in the proceedings on the substance of the case.

47 It follows that the second plea must be rejected as manifestly unfounded.

The third plea in law

Arguments of the parties

48 In its third plea, Bactria submits that, in paragraphs 52 and 53 of the contested order, the Court of First Instance wrongly took the view that it had no standing to bring proceedings, whereas Regulation No 1896/2000 affects its specific rights, in particular its property rights and data-protection rights. In this case, the fact that specific rights were conferred on it to market peracetic acid in various Member

States and that it proceeded to make a notification within the prescribed period at Community level, so as to ensure that it would be able to continue to market and use that substance under the Community rules, is in itself capable of conferring on it standing to bring proceedings.

49 The Commission contends that this plea must be declared inadmissible since it is founded on a manifestly new argument, supported by insufficient reasoning, and that it constitutes a criticism of the reasoning of the Court of First Instance which is not based on legal arguments. In any event it considers that the plea is unfounded.

Findings of the Court

50 Even if this plea were admissible, it must be pointed out that the situation referred to by Bactria cannot be regarded as being such as to distinguish it individually. The fact that the applicant was granted the right to market peracetic acid in various Member States and made a notification in respect of that active substance under the first subparagraph of Article 4(1) of Regulation No 1896/2000 so as to ensure that it would be able to continue to use and market that substance under Article 6(2) of that regulation could not in any event have been taken into account on the date when the regulation was adopted as a situation peculiar to Bactria capable of differentiating it from any other person.

51 Moreover, as the Court of First Instance held in paragraph 53 of the contested order, the alleged infringement of Bactria's property rights is not sufficient to distinguish it individually in relation to any other operator who gives notification of an existing active substance.

52 Accordingly, the third plea must be rejected as manifestly unfounded.

The fourth plea

Arguments of the parties

53 In support of its fourth plea, the appellant puts forward two arguments.

54 First it submits that the Court of First Instance's reasoning in paragraph 54 of the contested order conflicts with the new interpretation of the term 'person individually concerned' adopted by the Court of First Instance itself in Case T-177/01 *Jégo-Quéré* v *Commission* [2002] ECR II-2365. By virtue of that new interpretation, a natural or legal person is individually concerned by a Community measure of general application if it limits his rights or imposes new obligations on him in a definite and immediate fashion. Bactria submits therefore that it is individually concerned by Regulation No 1896/2000 by reason of the fact that Article 6(2) thereof enables companies which made no notification to commence or continue selling their products in reliance on a notification made by it, thereby infringing its rights as provided for in Article 12 of the Directive.

55 Bactria also maintains that, since it has no judicial remedy other than recourse to the Community judicature, its application constitutes the only way of protecting

itself against the infringement of its rights deriving from the adoption of Regulation No 1896/2000.

56 The Commission, first, does not accept Bactria's argument based on the new interpretation of the term 'person individually concerned' adopted by the Court of First Instance in *Jégo-Quéré* v *Commission*. It contends that that interpretation cannot be applied since a regulation, in view of its general application, always affects certain persons by restricting their rights or imposing obligations on them. Moreover, after the adoption of the contested order, it seems that the Court of First Instance reconsidered its interpretation and returned to the traditional case-law confirmed by the Court of Justice in its judgment in *Unión de Pequeños Agricultores* v *Council*, cited above. Second, the Commission, relying on the latter judgment, contests the appellant's contention that its action should be declared admissible because it constitutes the only legal remedy available to it.

Findings of the Court

57 As has been pointed out in paragraph 34 of this order, a measure of general application such as a regulation can be of individual concern to natural and legal persons only if it affects them by reason of certain attributes peculiar to them, or by reason of a factual situation which differentiates them from all other persons and thereby distinguishes them individually in the same way as the addressee.

58 Moreover, a direct action for annulment could not be brought before the Community Court even if it could be shown, following an examination by that

Court of the national procedural rules, that those rules do not allow an individual to bring proceedings to contest the validity of the Community measure at issue. Such an approach would require the Community Court, in each individual case, to examine and interpret national procedural law, which would go beyond its jurisdiction when reviewing the legality of Community measures (see *Unión de Pequeños Agricultores* v *Council*, paragraph 43).

59 It follows that neither Bactria's contention concerning the new interpretation of the term 'person individually concerned' nor its claim that it lacks any other remedy can be accepted as a basis for recognising that the appellant is entitled in this case to bring an action for the annulment of Regulation No 1896/2000 before the Community Court. Accordingly, the fourth plea in law must be rejected as manifestly unfounded.

60 In those circumstances, the appeal must be dismissed as manifestly unfounded under Article 119 of the Rules of Procedure.

Costs

61 Under Article 69(2) of the Rules of Procedure, which applies to the procedure on appeal by virtue of Article 118 thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for Bactria to be ordered to pay the costs and the latter has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby orders:

1. **The appeal is dismissed.**

2. **Bactria Industriehygiene-Service Verwaltungs GmbH is ordered to pay the costs.**

Luxembourg, 12 December 2003.

R. Grass

Registrar

C. Gulmann

President of the Fifth Chamber