ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)

8 September 2005 *

In Joined Cases T-295/04 to T-297/04,

Centro Provincial de Jóvenes Agricultores de Jaén (ASAJA), established in Jaén (Spain),

Salvador Contreras Gila, José Ramiro López, Antonio Ramiro López, Cristóbal Gallego Martínez, Benito García Burgos and Antonio Parras Rosa, residing in Jaén,

represented by J. Vázquez Medina, lawyer,

applicants,

v

Council of the European Union, represented by M. Balta and F. Florindo Gijón, acting as Agents,

defendant,

* Language of the case: Spanish.

APPLICATION for annulment of point 7 of Article 1 of Council Regulation (EC) No 864/2004 of 29 April 2004 amending Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, and adapting it by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union (OJ 2004 L 161, p. 48),

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

composed of M. Jaeger, President, J. Azizi and E. Cremona, Judges,

Registrar: H. Jung,

makes the following

Order

Legal context

1 On 22 September 1966, the Council adopted Regulation No 136/66/EEC on the establishment of a common organisation of the market in oils and fats (OJ, English Special Edition 1965-1966, p. 221; 'the Basic Regulation'). In particular, the Basic Regulation set up a common organisation of the market in olive oil, structured

around a system of intervention prices, storage contracts and subsidies for production and consumption.

2 The mechanisms introduced by the Basic Regulation have been amended several times subsequently, in particular by Council Regulation (EEC) No 1915/87 of 2 July 1987 (OJ 1987 L 183, p. 7), by Council Regulation (EC) No 1638/98 of 20 July 1998 (OJ 1998 L 210, p. 32), and by Council Regulation (EC) No 1513/2001 of 23 July 2001, which also amends Regulation No 1638/98 as regards the extension of the period of validity of the aid scheme and the quality strategy for olive oil (OJ 2001 L 201, p. 4).

3 Those amendments, based on the principles of the common agricultural policy (CAP) reform initiated in 1992, were designed essentially to replace the scheme supporting prices and production with a scheme supporting the income of farmers. That reform culminated, so far as concerns certain agricultural products, in the adoption of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1).

4 Similarly, in order to adapt the common organisations of the markets in the olive oil, raw tobacco, hops and cotton sectors to the CAP reform, the Council adopted, on 29 April 2004, Regulation (EC) No 864/2004 amending Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers, and adapting it by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia to the European Union (corrected version OJ 2004 L 206, p. 20).

5 Regulation No 864/2004 repealed the former aid scheme for olive oil production and introduced a system under which the aid is not linked to the quantity of olive oil actually produced, known as a 'single payment' or 'decoupled aid' system. However, for certain types of production, a system known as 'coupled aid' or 'production-linked aid' was retained under certain conditions and within certain limits.

6 So far as concerns olive oil, point 7 of Article 1 of Regulation No 864/2004 ('the contested provision') amended Article 37(1) of Regulation No 1782/2003 by establishing as the reference amount for calculating the amount of decoupled aid 'the four-year average of the total amounts of payments which a farmer was granted under the olive oil support scheme referred to in Annex VI [to Regulation No 1782/2003, as amended], calculated and adjusted according to Annex VII [to Regulation No 1782/2003, as amended], during the marketing years 1999/2000, 2000/01, 2001/02 and 2002/03'.

7 Furthermore, point 11 of Article 1 of Regulation No 864/2004 amended Article 44 (2) of Regulation No 1782/2003 by providing that a hectare eligible for decoupled aid means any area under olive trees planted before 1 May 1998 (except in the case of Cyprus and Malta), or new olive trees replacing existing olive trees, or olive trees within approved planting schemes and registered in a geographic information system.

Procedure and forms of order sought by the parties

8 By applications lodged at the Registry of the Court of First Instance on 22 July 2004, the applicants brought the present actions.

9 The applicant in Case T-295/04, Centro Provincial de Jóvenes Agricultores de Jaén (ASAJA), is a professional farming organisation which, according to its memorandum and articles of association, was constituted to represent, manage and defend the professional interests of its members in the province of Jaén, Spain.

10 The applicants in Cases T-296/04 and T-297/04 are olive oil producers who received aid in that sector for the marketing years 1999/2000, 2000/01 and 2001/02.

11 By separate documents lodged at the Court Registry on 29 October 2004 (in Case T-295/04) and on 29 November 2004 (in Cases T-296/04 and T-297/04), the Council raised an objection of inadmissibility under Article 114(1) of the Rules of Procedure of the Court of First Instance.

12 By documents lodged at the Court Registry on 15 November 2004, the Commission sought leave to intervene in each of the cases in question.

13 On 10 January 2005, the applicants lodged their observations on the objections of inadmissibility raised by the Council.

14 By order of 6 June 2005, and in accordance with Article 50 of the Rules of Procedure, after the parties had been heard, Cases T-295/04, T-296/04 and T-297/04 were joined for the purposes of the oral procedure and of the judgment, on account of the connection between them and in fact concerned the same subject-matter.

15 In their applications, the applicants claim that the Court should:

— declare the action admissible;

— annul the contested provision;

— reserve the costs.

16 In its objections of inadmissibility, the Council contends that the Court should;

— dismiss the actions as inadmissible;

— order the applicants to pay the costs.

17 In their observations on the objections of inadmissibility, the applicants claim that the Court should:

— reject the objections of inadmissibility raised by the Council;

— order the Council to pay the costs.

Law

Arguments of the parties

18 The Council maintains that the actions are inadmissible on the ground that the applicants are not individually concerned by the contested provision.

19 In that regard, it points out that a natural or legal person cannot bring an action for annulment against a legislative measure of general application unless the person is concerned by that measure by reason of certain attributes peculiar to that person, or by reason of a factual situation which differentiates that person from all other persons and distinguishes him individually in the same way as the addressee of a decision (Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677, paragraphs 36 and 37).

20 The applicants maintain, on the other hand, that they have standing to bring an action for annulment and that their actions are therefore admissible.

21 In that respect, they claim that the contested provision is not a measure of general application, but rather a bundle of individual decisions.

22 The applicants therefore point out that the sole function of the contested provision is to establish the reference amounts for calculating aid in the olive oil sector. Accordingly, the immediate and direct effect of that provision is to inform each producer of the exact amounts to which he is entitled for the reference years

1999/2000, 2000/01, 2001/02 and 2002/03 and — on the basis of the four-year average of the total amounts of the payments which he is granted during those reference years — the definitive amount of the aid which he is entitled to receive.

23 Furthermore, according to the applicants, the contested provision produces 'direct' legal effects only for a specific category of persons, namely farmers who produced olive oil during those marketing years.

24 The applicants consider, therefore, that the contested provision is of direct and individual concern to them (Case C-358/89 *Extramet Industrie* v *Council* [1991] ECR I-2501, paragraph 13; Case C-41/99 P *Sadam Zuccherifici and Others* v *Council* [2001] ECR I-4239, paragraph 27; and Case C-452/98 *Nederlandse Antillen* v *Council* [2001] ECR I-8973, paragraph 60).

25 They point out, in particular, that they have certain attributes which are peculiar to them, in so far as they produced olive oil during the reference period and therefore belong to the category of persons to which the contested provision applies.

26 Moreover, the applicants allege that they have suffered pecuniary damage as a result of the inclusion of the marketing year 1999/2000 for the purposes of calculating aid in the olive oil sector.

Findings of the Court

27 Pursuant to Article 114 of the Rules of Procedure, the Court may, following an application by one of the parties, rule on the question of admissibility without addressing the merits of the case. Under Article 114(3) of those rules, the remainder of the proceedings is to be oral unless the Court decides otherwise. In the present case, the Court considers that the information in the documents before it is sufficient for there to be no need to proceed to the oral stage of the proceedings.

28 Under the fourth paragraph of Article 230 EC, '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 of a decision addressed to another person, is of direct and individual concern to the former'.

29 According to settled case-law, the primary objective of the fourth paragraph of Article 230 EC — which allows individuals to challenge any decision which, although in the form of a regulation, is of direct and individual concern to them — is to prevent the Community institutions from being able, merely by choosing the form of a regulation, to preclude an individual from bringing an action against a decision which concerns him directly and individually and thus to make it clear that the nature of a measure cannot be changed by the form chosen (Joined Cases 789/79 and 790/79 *Calpak and Società emiliana lavorazione frutta* v *Commission* [1980] ECR 1949, paragraph 7; orders in Case T-122/96 *Federolio* v *Commission* [1997] ECR II-1559, paragraph 50, and Case T-173/98 *Unión de Pequeños Agricultores* v *Council* [1999] ECR II-3357, paragraph 34).

30 In the present case, the applicants dispute the legislative nature of the contested provision, arguing that it should be regarded as a bundle of individual decisions. It is therefore necessary, first, to consider the nature of point 7 of Article 1 of Regulation No 864/2004.

31 It is also settled case-law 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 (Joined Cases 16/62 and 17/62 *Confédération nationale des producteurs de fruits et légumes and Others* v *Council* [1962] ECR 471, 478, and Case 307/81 *Alusuisse* v *Council and Commission* [1982] ECR 3463, paragraph 19; order in Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraph 28). Thus, an act has general application if it applies to objectively determined situations and entails legal effects for categories of persons regarded generally and in the abstract (Case C-244/88 *Usines coopératives de déshydratation du Vexin and Others* v *Commission* [1989] ECR 3811, paragraph 13, and *Sadam Zuccherifici and Others* v *Council*, cited in paragraph 24 above, paragraph 24; order in Case T-231/02 *Gonnelli and AIFO* v *Commission* [2004] ECR II-1051, paragraph 29, and the case-law cited therein).

32 In the present case, the Court of First Instance considers that the contested provision constitutes a measure of general application and cannot therefore be classed as a bundle of individual decisions.

33 In that regard, it should be pointed out that the contested provision lays down the criteria for calculating aid in the olive oil sector within the framework of Regulation No 1782/2003 (see paragraph 6 above).

34 It must be stated that those criteria are set out in general and abstract terms. Indeed, the method of calculating the reference amounts and the amount of the aid is established without any account whatsoever being taken of the specific circumstances of each olive oil producer affected by the contested provision, but rather through the application of objective and general criteria.

35 Accordingly, the contested provision applies to objectively determined situations and produces legal effects vis-à-vis categories of persons conceived generally and in

the abstract. In that regard, it should be pointed out that the provisions of a measure are deemed to apply to objectively determined situations if they apply to an objective legal or factual situation, as defined by the measure in relation to its purpose (order in *Unión de Pequeños Agricultores* v *Council*, cited in paragraph 29 above, paragraph 40).

36 In the present case, the applicants are affected by the contested provision by reason specifically of an objective factual situation, namely that they produced olive oil during the reference period and received aid under one of the aid schemes established by the earlier legislation. That situation is defined in terms of the very purpose of the regulation containing the contested provision: the introduction of a new aid scheme in the olive oil sector.

37 Moreover, the fact that the contested provision may have the effect, in particular, of limiting the number of operators eligible for certain forms of aid by making the grant of the aid conditional upon the oil being produced from plantings existing before the date of its adoption and entry into force cannot divest that provision of its general application, since it is common ground that the contested provision applies to all the economic operators affected who are in the same objectively determined factual or legal situation (see, to that effect, the order in *Unión de Pequeños Agricultores* v *Council*, cited in paragraph 29 above, paragraph 39). As it is, the applicants have not adduced evidence that the position was otherwise with regard to application of the contested provision.

38 Accordingly, the argument by which the applicants seek to cast doubt on the general application of the contested provision, on the ground that it applies only to a specific category of farmers — those who produced olive oil during the reference period and received aid under one of the aid schemes established by the earlier legislation — cannot be upheld. The applicants are affected by the contested provision solely and indistinguishably on the basis of purely objective and abstract facts.

39 Accordingly, the contested provision constitutes a measure of a legislative nature and cannot therefore be classed as a bundle of individual decisions addressed to the applicants.

40 That finding is unaffected by the applicants' claim that the contested provision informs them of the definitive amount of the aid granted to them on an individual basis.

41 The Court of Justice and the Court of First Instance have classed a measure as a bundle of individual decisions in circumstances very different from the situation in the present case. Thus, a contested measure, adopted in the guise of a measure of general application, is deemed to constitute a bundle of individual decisions if it has been adopted in order to respond to individual claims, so that the contested measure affects the legal position of each applicant (Case C-354/87 *Weddel* v *Commission* [1990] ECR I-3847, paragraphs 20 to 23, and Joined Cases 41/70 to 44/70 *International Fruit Company and Others* v *Commission* [1971] ECR 411, paragraphs 13 to 22).

42 However, in the present cases, the purpose and legal effect of the contested provision are not to decide on the treatment of individual applications for aid in the olive oil sector lodged by traders with the national competent authorities. Indeed, the provision was adopted not to lead to a specific result in respect of certain specific persons, but to address an objective factual situation, namely the application of the new aid scheme in the olive oil sector to farmers who had produced olive oil during the reference period and had received aid under an aid scheme established by earlier legislation (see, to that effect, Case C-73/97 P *France* v *Comafrica and Others* [1999] ECR I-185, paragraphs 34 to 38; Case T-138/98 *ACAV and Others* v *Council* [2000] ECR II-341, paragraph 55; and Joined Cases T-198/95, T-171/96, T-230/97, T-174/98 and T-225/99 *Comafrica and Dole Fresh Fruit Europe* v *Commission* [2001] ECR II-1975, paragraph 106).

43 It follows that the contested provision constitutes a measure of general application.

44 However, it has repeatedly been held that the fact that the contested measure is, by its nature, of general application and does not constitute a decision within the meaning of Article 249 EC is not sufficient in itself to preclude the possibility that an individual may bring an action for its annulment (see Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 19; Case C-451/98 *Antillean Rice Mills* v *Council* [2001] ECR I-8949, paragraph 49; order in *Gonnelli and AIFO* v *Commission*, cited in paragraph 31 above, paragraph 31, and the case-law cited therein).

45 In certain circumstances, even a measure of general application to all traders may be of direct and individual concern to some of them (*Extramet Industrie* v *Council*, cited in paragraph 24 above, paragraph 13, and *Codorniu* v *Council*, cited in paragraph 44 above, paragraph 19; orders in Case T-223/01 *Japan Tobacco and JT International* v *Parliament and Council* [2002] ECR II-3259, paragraph 29, and *Gonnelli and AIFO* v *Commission*, cited in paragraph 31 above, paragraph 32).

46 For that to be the case, a natural or legal person must be directly and individually affected by the measure in question by reason of certain attributes peculiar to that person, or by reason of a factual situation which differentiates that person from all other persons and distinguishes him individually in the same way as the addressee of a decision (Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, 107, and order in Case C-258/02 P *Bactria* v *Commission* [2003] ECR I-15105, paragraph 34; order in *Gonnelli and AIFO* v *Commission*, cited in paragraph 31 above, paragraph 35).

47 If that condition is not fulfilled, a natural or legal person does not have standing to bring an action for annulment (*Unión de Pequeños Agricultores* v *Council*, cited in paragraph 19 above, paragraph 37, and order in *Asocarne* v *Council*, cited in paragraph 31 above, paragraph 26).

48 Consequently, it must be ascertained whether, in the present case, the applicants are affected by the contested provision by reason of certain attributes peculiar to them or a factual situation which differentiates them from all other persons.

49 It is therefore necessary, first, to examine the admissibility of the action brought in Case T-295/04 by ASAJA, a professional farming organisation responsible for protecting and representing the interests of its members.

50 In that regard, it should be pointed out that a professional association set up to protect and represent the interests of its members may bring an action for annulment in three types of situation: where a legal provision expressly confers upon it a number of powers of a procedural nature; where the association is differentiated by reason of the impact on its own interests as an association, in particular because its position as a negotiator has been affected by the measure of which the annulment is sought; and where the association represents the interests of undertakings which themselves have locus standi (orders in *Federolio* v *Commission*, cited in paragraph 29 above, paragraph 61; Case T-38/98 *ANB and Others* v *Council* [1998] ECR II-4191, paragraph 25; *Unión de Pequeños Agricultores* v *Council*, cited in paragraph 29 above, paragraph 47, and Case T-196/03 *EFfCI* v *Parliament and Council* [2004] ECR II-4263, paragraph 42).

51 In the present case, ASAJA clearly cannot invoke any of those three situations in order to establish that its action for annulment is admissible.

52 In that regard, the Court finds, as regards the first situation, that ASAJA is not asserting any procedural right accorded to it under Community law in the field of the common organisation of the market in olive oil.

53 The same is true as regards the third situation in which an action may be admissible, since it is settled case-law that an association formed in order to promote the collective interests of a category of persons cannot be regarded as individually concerned if those persons themselves are not individually concerned (orders in Case C-409/96 P *Sveriges Betodlares and Henrikson* v *Commission* [1997] ECR I-7531, paragraph 45, and Case T-78/98 *Unione provinciale degli agricoltori di Firenze and Others* v *Commission* [1999] ECR II-1377, paragraphs 36 and 37).

54 However, the applicant association has adduced no evidence to support a finding that its members are affected by the contested provision by reason of certain attributes peculiar to them or a factual situation which differentiates them from all other persons.

55 As regards the second situation, there is no information in the documents before the Court to substantiate the conclusion that ASAJA is differentiated under the contested provision because its position as negotiator is affected by the provision which it seeks to have annulled.

56 It follows that ASAJA cannot be regarded as individually concerned within the meaning of the case-law cited in paragraph 50 above.

57 As regards, secondly, the admissibility of the actions brought in Cases T-296/04 and T-297/04 by olive oil producers, the Court of First Instance considers that they cannot be individually concerned by the contested provision.

58 Indeed, the applicants in Cases T-296/04 and T-297/04 are affected by the contested provision only by reason of their objective capacity as olive oil producers during the reference period and beneficiaries under one of the aid schemes established by the previous legislation, in the same way as any other olive oil producer to whom the contested provision applies. There is therefore no attribute peculiar to the applicants or factual situation which differentiates them from the other economic traders belonging to the category of persons to which the contested provision applies.

59 In that regard, it should be pointed out that, as the Council maintains in its objections of inadmissibility, the contested provision — in laying down the criteria for calculating aid in the olive oil sector — applies equally to all the producers concerned, irrespective of the quantity actually produced by them, or of whether they produced any quantity at all, during the reference period.

60 It should also be pointed out that, in the light of the case-law, the fact that a measure of general application may have practical effects which differ as between the various persons to whom it applies is not such as to differentiate them in relation to all the other operators concerned where that measure is applied on the basis of an

objectively determined situation (see *ACAV and Others* v *Council*, cited in paragraph 42 above, paragraph 66, and the case-law cited therein). In the present case, even if the contested provision may produce effects which vary from one olive oil producer to another, that is not sufficient to show that the applicants have attributes which are peculiar to them or are in a factual situation which differentiates them from other producers.

61 Moreover, even supposing that, pursuant to the contested provision, the applicants were no longer eligible for the aid in question in the olive oil sector, they still could not be individually concerned by that provision. The fact that certain traders may be more affected economically by a measure than the other traders in the same sector is not sufficient for them to be regarded as individually concerned by that measure (orders in Case T-11/99 *Van Parys and Others* v *Commission* [1999] ECR II-2653, paragraphs 50 and 51, and *Gonnelli and AIFO* v *Commission*, cited in paragraph 31 above, paragraph 45).

62 Furthermore, even if it were to be established that they were no longer eligible, the fact remains that similar consequences would ensue for the other olive oil producers to whom the contested provision applies (see, to that effect, Case C-142/00 P *Commission* v *Nederlandse Antillen* [2003] ECR I-3483, paragraph 77).

63 It follows from the foregoing considerations that the applicants in Cases T-296/04 and T-297/04 are not individually concerned by the contested provision.

64 That conclusion is unaffected by the applicants' claim, in all three cases, that they have suffered harm as a consequence of the criteria laid down in the contested provision for calculating aid in the olive oil sector.

65 In that regard, it must be stated that that assertion falls within the scope of the examination of the substance, not of the examination of admissibility.

66 In any case, even assuming that that argument proved to be well founded, the Court considers that the applicants might suffer harm in the same way as any other olive oil producer to whom the contested provision applies might suffer harm. The applicants have adduced no evidence that the damage allegedly suffered is likely to differentiate them from all other persons affected by the contested provision (see, to that effect, the order in *Gonnelli and AIFO* v *Commission*, cited in paragraph 31 above, paragraphs 43 to 45).

67 In the light of the foregoing, since the applicants do not fulfil one of the conditions for admissibility laid down in the fourth paragraph of Article 230 EC, it is not necessary to consider whether they are directly concerned by the contested provision.

68 Accordingly, the actions brought in Cases T-295/04, T-296/04 and T-297/04 must be dismissed as inadmissible, and there is no need to adjudicate on the application by the Commission for leave to intervene (see, to that effect, the order in Case C-341/00 P *Conseil national des professions de l'automobile and Others* v *Commission* [2001] ECR I-5263, paragraphs 35 to 37).

Costs

69 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. Since the applicants have been unsuccessful, they must be ordered to pay the costs of the proceedings, including those incurred by the Council, as applied for by the latter.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby orders:

1. **The actions are dismissed as inadmissible.**

2. **The applicants must bear their own costs and pay those incurred by the Council.**

3. **There is no need to adjudicate on the application by the Commission for leave to intervene.**

Luxembourg, 8 September 2005.

H. Jung

Registrar

M. Jaeger

President