ORDER OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
30 January 2001 *

In Case T-215/00,

SCEA La Conqueste, established in Morlaas (France), represented by A. Lyon-Caen, lawyer, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by J.L. Iglesias Buhigues and X. Lewis, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for the annulment of Commission Regulation (EC) No 1338/2000 of 26 June 2000 supplementing the Annex to Regulation (EC) No 2400/96 on the entry of certain names in the Register of protected

* Language of the case: French.

designations of origin and protected geographical indications provided for in Council Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 2000 L 154, p. 5), in so far as it recognises 'canard à foie gras du Sud-Oest' as a protected geographical indication,

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

composed of: P. Lindh, President, R. García-Valdecasas and J.D. Cooke, Judges,

Registrar: H. Jung,

makes the following

Order

Legal background

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

protection of designations of origin and geographical indications for certain agricultural products and certain foodstuffs.

2 Article 2(2)(b) of Regulation No 2081/92 defines geographical indication as the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff originating in that region, specific place or country, and which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area.

3 Registration as a protected designation of origin (PDO) or a protected geographical indication (PGI) of the name of an agricultural product or foodstuff, which must, for that purpose, satisfy the conditions laid down by Regulation No 2081/92 and, in particular, comply with specifications defined in Article 4 of the Regulation, confers Community protection on that name.

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

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

'If no statement of objections is notified to the Commission in accordance with Article 7, the name shall be entered in a register kept by the Commission entitled "Register of protected designations of origin and protected geographical indications", which shall contain the names of the groups and the inspection bodies concerned.'

6 Article 7 of Regulation No 2081/92, as amended by Regulation No 535/97, provides:

'1. Within six months of the date of publication in the *Official Journal of the European Communities* referred to in Article 6(2), any Member State may object to the registration.

2. The competent authorities of the Member States shall ensure that all persons who can demonstrate a legitimate economic interest are authorised to consult the application. In addition and in accordance with the existing situation in the Member States, the Member States may provide access to other parties with a legitimate interest.

3. Any legitimately concerned natural or legal person may object to the proposed registration by sending a duly substantiated statement to the competent authority of the Member State in which he resides or is established. The competent authority shall take the necessary measures to consider these comments or objection within the deadlines laid down.

4. A statement of objection shall be admissible only if it:

— either shows non-compliance with the conditions referred to in Article 2,

— or shows that the registration of the name proposed would jeopardize the existence of an entirely or partly identical name or of a mark or the existence of products which have been legally on the market for at least five years preceding the date of the publication provided for in Article 6(2),

— or indicates the features which demonstrate that the name whose registration is applied for is generic in nature.

5. Where an objection is admissible within the meaning of paragraph 4, the Commission shall ask the Member States concerned to seek agreement among themselves in accordance with their internal procedures within three months. If:

(a) agreement is reached, the Member States in question shall communicate to the Commission all the factors which made agreement possible together with the applicant's opinion and that of the objector. Where there has been no change to the information received under Article 5, the Commission shall proceed in accordance with Article 6(4). If there has been a change, it shall again initiate the procedure laid down in Article 7;

(b) no agreement is reached, the Commission shall take a decision in accordance with the procedure laid down in Article 15, having regard to traditional fair practice and of the actual likelihood of confusion. Should it decide to proceed

with registration, the Commission shall carry out publication in accordance with Article 6(4).'

Facts

7 The applicant is an undertaking established in southwestern France, which produces and hatches mallard duck eggs, and also rears and force-feeds the ducks.

8 On 5 May 1999, the French Government forwarded to the Commission, pursuant to Article 5(5) of Regulation No 2081/92, an application for registration as a protected geographical indication of the name 'canard à foie gras du Sud-Ouest', from the Association pour la défense du palmipède du Sud-Ouest.

9 On 28 September 1999, the application was published in the *Official Journal of the European Communities*, in accordance with Article 6(2) of Regulation No 2081/92 (OJ 1999 C 274, p. 5).

10 By letter dated 6 October 1999, the applicant sent the French Minister for Agriculture and Fisheries a statement of objections to the registration on the basis of Article 7(3) of Regulation No 2081/92. It stated, particularly, that the procedure for registering as a protected geographical indication the name 'canard à foie gras du Sud-Ouest' had not been adequately publicised at national level and that the specifications accompanying the application for registration made by the Association pour la défense du palmipède à foie gras du Sud-Ouest contained particulars which 'had nothing to do with the protection of geographical origin'. In particular, the applicant disputed the relevance of the requirements relating to the 'maximum production capacity of the structures for rearing and force-feeding

ducks for foie gras' and maintained that those requirements had very serious consequences for the health, hygiene and safety of production, owing to the fact that the traditional small-scale structures would be put in the position of having a monopoly.

11 On 6 October 1999, the applicant also sent that statement of objections to the Commission which, by letter of 20 October 1999, pointed out to the applicant that, under Article 7(3) of Regulation No 2081/92, the statement should be sent to the competent French authorities. By letter of 2 November 1999, the applicant replied to the Commission, saying that it had sent the statement to the Commission and to the French authorities at the same time.

12 By letter of 8 March 2000, the French Ministry of Agriculture and Fisheries notified the applicant that its statement of objections did not satisfy the conditions for admissibility laid down by Regulation No 2081/92 and that, therefore, it would not be forwarded to the Commission. The Ministry pointed out, in particular, that the applicant's argument that the restriction on the size of the farms and force-feeding houses would have serious consequences for the health, hygiene and safety of production could not be accepted '[since] the hygiene and safety rules apply to everyone, whatever the size of the structures'. By application lodged on 8 April 2000, the applicant brought an action for the annulment of that decision before the French Council of State.

13 On 28 March 2000, France's permanent representative at the European Union sent a note to the Commission setting out the reasons for which the competent French authorities had decided not to forward the applicant's statement of objection to the Commission.

14 The Commission adopted Regulation (EC) No 1338/2000 of 26 June 2000 supplementing the Annex to Regulation (EC) No 2400/96 on the entry of certain

names in the Register of protected designations of origin and protected geographical indications provided for in Regulation No 2081/92 (OJ 2000 L 154, p. 5, hereinafter 'the contested regulation'). The third recital in its preamble to that regulation states: 'No statements of objection have been received by the Commission under Article 7 of that Regulation in respect of the name given in the Annex to this Regulation following its publication in the *Official Journal of the European Communities*.' The Commission considered, therefore, that the name 'canard à foie gras du Sud-Ouest' deserved to be entered in the Register of protected designations of origin and protected geographical indications and, consequently, to be protected at Community level as a protected geographical indication.

Procedure and forms of order sought by the parties

15 The present action was brought by application lodged at the Court Registry on 22 August 2000.

16 By separate document lodged at the Court Registry on 12 October 2000, the Commission raised a plea of inadmissibility under Article 114 of the Rules of Procedure of the Court of First Instance.

17 On 21 November 2000 the applicant lodged at the Court Registry its written observations in response to the plea of inadmissibility.

18 The applicant claims that the Court should:

— reject the plea of inadmissibility

— annul the contested regulation;

— order the Commission to pay the costs.

19 The Commission contends that the Court should:

— dismiss the application as inadmissible;

— order the applicant to pay the costs.

20 Under Article 114 of the Rules of Procedure, if one of the parties so requests, the Court of First Instance may give a decision on admissibility without going to the substance of the case. Under Article 114(3) the remainder of the proceedings is to be oral, unless the Court of First Instance decide otherwises. In this instance, the Court has sufficient information, from examining the documents in the case, to be able to give a decision on the application without opening the oral procedure.

Admissibility of the application

Arguments of the Parties

21 The Commission contends that the application is inadmissible on the grounds that the contested regulation is a measure of general application, that the applicant is not in a situation which differentiates it from all other persons and that the applicant is not involved in the registration procedure at Community level. It adds that this case is identical to *CSR Pampryl* v *Commission* (Case T-114/99 [1999] ECR II-3331) in which the Court of First Instance held the application before it to be inadmissible.

22 The Commission also argues that the fact that the competent French authority decided not to forward to it the applicant's statement of objection cannot render this application admissible. It is for the applicant to assert its rights before the national courts, which may or must, as the case may be, refer the question of the interpretation or validity of the Community measure at issue to the Court of Justice for a preliminary ruling under Article 234 EC.

23 Finally, the Commission maintains that, under Article 7 of Regulation No 2081/92, it cannot take into consideration a statement of objections notified by a person other than a Member State, even if it considers that the Member States are required to forward to it any statement of objections which satisfies the two conditions laid down in paragraph 3 of that provision.

24 The applicant contends that it is directly and individually concerned by the contested regulation.

25 It claims, first, that that regulation affects it by reason of circumstances in which it is differentiated from all other persons (judgments of the Court of Justice in Case 25/62 *Plaumann* v *Commission* [1963] ECR 197 and Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853).

26 In that regard, it states, first of all, that the specifications relating to the products concerned provide that annual production may not exceed 36 000 ducks per farmer and 72 000 ducks per farm, and that the maximum number of force-feeding places per farmer is limited to 1 000 ducks or, in the case of farms on which several farmers are grouped together, 3 000 ducks. It also points out that, unlike other producers, its activities are 'part of a vertically-integrated production chain', wholly situated in the geographical area concerned, and that, therefore, it is attributed an annual production of more than 600 000 ducks. Consequently, it does not comply with the conditions set out in the abovementioned specifications and can no longer use the name in question, under which it has been marketing its products for over 20 years. As a result it is excluded from the southwestern foie gras market and its existence is therefore in jeopardy. Indeed, according to the applicant, those conditions were introduced into the specifications with that intention.

27 The applicant, referring to the judgment in *Codorniu* v *Council*, contends, second, that a legislative provision may be of individual concern to an economic operator if it adversely affects his specific rights.

28 Third, invoking the judgments of the Court of Justice in Case 191/82 *Fediol* v *Commission* [1983] ECR 2913 and Case 264/82 *Timex* v *Council and Commission* [1985] ECR 849, the applicant submits that it is individually concerned by the contested regulation by reason of the infringement of the procedural safeguards accorded to it by Article 7(3) of Regulation No 2081/92. It argues that, since the statement of objection it submitted to the French authorities was admissible, they were not justified in refusing to forward it to the Commission. It adds that it had, at the same time, sent a statement of objections to the

Commission, which ought to have found that the statement satisfied the conditions for admissibility laid down by Article 7(4) of Regulation No 2081/92.

29 Furthermore, the applicant claims that it cannot be considered that individuals are involved in the registration procedure only at national level. Article 7(3) of Regulation No 2081/92 does not preclude a legitimately concerned natural or legal person from sending a statement of objection directly to the Commission if the Member State in which that person resides fails to do so. To interpret the provision differently would be incompatible with the thirteenth recital in the preamble to Regulation No 2081/92 and would infringe the principle of the autonomy of Community law as 'a new legal order of international law' (Case 26/62 *Van Gend & Loos* [1963] ECR 3) and also the right of individuals, particularly in the context of protected geographical indications, to an effective remedy before the Community judicature.

30 Fourth, the applicant maintains that the present case is different from *CSR Pampryl* v *Commission*, cited above.

Findings of the Court

31 Under the fourth paragraph of Article 230 EC, the admissibility of an action for annulment brought against a regulation by a natural or legal person is subject to the condition that the contested regulation is, in reality, a decision which is of direct and individual concern to that person. It is 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 (Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraph 28, and Case C-87/95 P *CNPAAP* v *Council* [1996] ECR I-2003, paragraph 33). A measure is of general application if it applies to objectively determined situations and produces its legal

effects with respect to categories of persons envisaged in the abstract. Case T-482/93 *Weber* v *Commission* [1996] ECR II-609, paragraph 55).

32 In the present case, the contested regulation affords the name 'canard à foie gras du Sud-Ouest' the protection of geographical indications provided for in Regulation No 2081/92, Article 2(2)(b) of which defines geographical indication as the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff originating in that region, specific place or country, and which possesses a specific quality, reputation or other characteristics attributable to that geographical origin and the production and/or processing and/or preparation of which take place in the defined geographical area. As the Commission has rightly pointed out, the contested regulation, far from being addressed to specific economic operators, such as the applicant, confers on any undertaking whose products fulfil the prescribed geographical and qualitative requirements the right to market them under the above name and denies that right to any undertaking whose products do not fulfil those requirements, which are the same for all producers.

33 This legislation is therefore to be seen as a measure of general application within the meaning of the second paragraph of Article 249 EC and, moreover, the applicant does not contest this. It applies to objectively determined situations and produces its legal effects with respect to categories of persons envisaged generally and in the abstract, namely, any undertaking which manufactures a product with objectively defined characteristics (Case T-109/97 *Molkerei Großbraunshain and Bene Nahrungsmittel* v *Commission* [1998] ECR II-3533, paragraph 51, Case T-114/96 *Biscuiterie-confiserie LOR and Confiserie du Tech* v *Commission* [1999] ECR II-913, paragraph 28, and *CSR Pampryl* v *Commission*, cited above, paragraph 43).

34 However, a provision which, by virtue of its nature and scope, is of a legislative nature, may be of individual concern to natural or legal persons where it affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of those factors distinguishes them individually just as in the case of an

addressee of a decision (*Codorniu* v *Council*, paragraphs 19 and 20, and *Weber* v *Commission*, paragraph 56).

35 In this respect, the applicant claims that the organisation of the 'production chain' of which its activities form part places it in a special position by comparison with the other producers of ducks for foie gras in the southwest.

36 It must be observed that, under the contested regulation, only products which satisfy the conditions set out in the specifications accompanying the registration application concerned may be marketed under the name 'canard à foie gras du Sud-Ouest'. Those conditions include limits on the number of ducks which may be raised and force-fed annually per farm or per farmer. As a result of the fact that the applicant belongs to a group and of the manner in which the group's activities are organised, the applicant's annual production of ducks is in excess of the abovementioned limits and it is therefore precluded from marketing the products obtained from those ducks under the name in question. It must be pointed out, however, that any other producer who is now, or may be in the future, in the same position as the applicant, is affected by the contested regulation in the same way as the applicant. Therefore, with regard to the applicant, that regulation is a measure which may affect various categories of persons envisaged objectively, generally and in the abstract. As regards the claim that the requirements in the specifications had been introduced with the sole aim of ejecting the applicant from the foie gras market in the southwest, suffice it to say that this is not corroborated by any evidence.

37 It is also of no avail to the applicant for it to plead the fact that the contested regulation had a serious economic impact on its business. The fact that a legislative measure may have specific effects which differ according to the various persons to whom it applies is not such as to differentiate them in relation to all

the other operators concerned where — as in this case — that measure is applied on the basis of an objectively determined situation (T-138/98 *ACAV and Others* v *Council* [2000] ECR II-341, paragraph 66).

38 Nor is the judgment in *Codorniu* v *Council*, cited above, of assistance to the applicant's case.

39 In the case which gave rise to that judgment, the applicant undertaking was prevented, by a legislative measure regulating the use of a designation, from using the graphic trade mark which it had registered and used for a long time before the adoption of the contested regulation, so that it was distinguished from all the other economic operators. It follows from that judgment, as interpreted by the Court of Justice and the Court of First Instance, is that a provision of a legislative nature may be of individual concern to an economic operator in so far as it adversely affects that operator's specific rights (*Asocarne* v *Council*, cited above, paragraph 43, *CNPAAP* v *Council*, cited above, paragraph 36, *CSR Pampryl* v *Commission*, cited above, paragraph 47, and *Weber* v *Commission*, cited above, paragraph 67).

40 In the present case, the applicant has not proved, or even claimed, that the use of the geographical designation which it cites is the consequence of a similar specific right, acquired at national or Community level before the adoption of the contested regulation and adversely affected by the regulation within the meaning of the aforementioned case-law.

41 Furthermore, the applicant claims that, since the French authorities did not forward its statement of objections to the Commission, they failed to observe the procedural safeguards specifically provided by Article 7 of Regulation No 2081/92. That circumstance is reason enough for this application to be declared admissible.

42 In that connection, it should be pointed out that neither the process of preparing legislative acts, nor the acts themselves, as measures of general application, require the participation, by virtue of the general principles of Community law, such as the right to a fair hearing, of the persons affected, their interests being deemed to be represented by the political bodies called upon to adopt those acts (*Molkerei Großbraunshain and Bene Nahrungsmittel* v *Commission*, paragraph 60 and *CSR Pampryl* v *Commission*, paragraph 50). Consequently, in the absence of expressly guaranteed procedural rights, it would be contrary to the wording and spirit of Article 230 EC to allow any individual, where he has participated in the preparation of a legislative measure, subsequently to bring an action against that measure (*Molkerei Großbraunshain and Bene Nahrungsmittel* v *Commission*, paragraph 68 and *CSR Pampryl* v *Commission*, paragraph 50).

43 The admissibility of this application must therefore be evaluated only in the light of the procedural safeguards specifically afforded to individuals by Regulation No 2081/92 (*CSR Pampryl* v *Commission*, paragraph 51).

44 Contrary to what the applicant claims, under the scheme for registering objections established by Regulation 2081/92, the procedural safeguards afforded to individuals fall exclusively within the responsibility of the Member States and do not involve the exercise of any discretion by the Commission.

45 Thus, Article 7(1) of Regulation No 2081/92 grants only to the Member States the right to raise objections to registration before the Commission. Although, under Article 7(3) of that regulation, any legitimately concerned natural or legal person may also object to the proposed registration, he must do so by sending a duly substantiated statement to the competent authority of the Member State in which he resides or is established. That provision does not require the Member State concerned to forward to the Commission the objection thus stated to it, but merely to take the necessary measures 'to consider' the objection within the deadlines laid down. Furthermore, although the thirteenth recital in the preamble to Regulation No 2081/92 provides that 'the registration procedure should enable any person individually and directly concerned in a Member State to

exercise his rights by notifying the Commission of his opposition', such notification is given 'through the Member State'. No provision in Article 7 of Regulation No 2081/92 authorises the Commission to consider an objection notified to it by anyone other than a Member State. Lastly, where an objection is acknowledged to be 'admissible' within the meaning of Article 7(4) of Regulation No 2081/92, Article 7(5) provides that the Commission is to ask the Member States concerned to seek agreement among themselves; it makes no provision for any intervention by individuals.

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

47 It follows from the foregoing that Regulation No 2081/92 does not establish specific procedural safeguards, at Community level, for individuals (*CSR Pampryl* v *Commission*, paragraph 55).

48 Furthermore, even assuming that the competent French authority did infringe certain of the applicant's procedural rights by refusing to forward to the Commission the objection which the applicant had submitted, it does not follow that the present application is admissible for that reason alone.

49 In an action for annulment brought under Article 230 EC, the Community judicature has no jurisdiction to rule on the lawfulness of a measure adopted by a national authority even if the measure in question forms part of a Community decision-making procedure, where it clearly follows from the division of powers

in the field in question between the national authorities and the Community institutions that the measure adopted by the national authority is binding on the Community decision-taking authority and therefore determines the terms of the Community decision to be adopted (*CSR Pampryl* v *Commission*, paragraph 57).

50 That is so where the competent national authority decides not to forward to the Commission an objection submitted to it by an individual under Article 7(3) of Regulation No 2081/92 (*CSR Pampryl* v *Commission*, paragraph 58). It follows from the foregoing (see paragraph 45 above) that the Commission is bound by that decision and may not consider an objection communicated to it by any person other than a Member State.

51 Accordingly, subject to the possibility of bringing proceedings before the Court of Justice under Article 226 EC, it is for the national courts alone, where appropriate after obtaining a preliminary ruling from the Court of Justice, to rule on the lawfulness of the national measure at issue and on the possible liability of the Member State if it is claimed that the measure has caused loss (*CSR Pampryl* v *Commission*, paragraph 59).

52 In that respect, it should be pointed out that the applicant has brought an action before the French Council of State against the decision of the competent French authority not to forward its objection to the Commission.

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

Costs

54 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the other party's pleadings. Since the applicant has been unsuccessful and the Commission has asked for costs, the applicant must be ordered to bear its own costs and pay those incurred by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby orders:

1. **The application is dismissed as inadmissible;**

2. **The applicant shall bear its own costs and pay those incurred by the Commission.**

Luxembourg, 30 January 2001.

H. Jung
Registrar

P. Lindh
President