ORDER OF THE COURT (Second Chamber)
26 October 2000 *

In Case C-447/98 P,

Molkerei Großbraunshain GmbH, established in Altenburg, Germany,

and

Bene Nahrungsmittel GmbH, established in Altenburg, Germany,

represented by M. Loschelder and T. Klingbeil, Rechtsanwälte, Cologne, with an address for service in Luxembourg at the Chambers of M. Loesch, 4 Rue Carlo Hemmer,

appellants,

APPEAL against the order of the Court of First Instance of the European Communities (Second Chamber) of 15 September 1998 in Case T-109/97 *Molkerei Großbraunshain and Bene Nahrungsmittel* v *Commission* [1998] ECR II-3533, seeking to have that order set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by J.L. Iglesias Buhigues, Legal Adviser, and U. Wölker, of its Legal Service, acting as Agents, assisted by

* Language of the case: German.

B. Wägenbaur, of the Brussels Bar, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant at first instance,

supported by

French Republic, represented by K. Rispal-Bellanger, Head of Subdirectorate in the Legal Affairs Directorate at the Ministry of Foreign Affairs, and C. Vasak, Secretary for Foreign Affairs in that directorate, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8B Boulevard Joseph II,

intervener on appeal,

Freistaat Thüringen, represented by G.M. Berrisch, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of G. Harles, 8–10 Rue Mathias Hardt,

and

Molkerei und Weichkäserei K.-H. Zimmermann GmbH, established in Falkenhain, Germany, represented by P. Lotze and S. Lehr, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of R. Faltz, 6 Rue Heinrich Heine,

THE COURT (Second Chamber),

composed of: V. Skouris, President of the Chamber, R. Schintgen (Rapporteur) and N. Colneric, Judges,

Advocate General: P. Léger,
Registrar: R. Grass,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By application lodged at the Registry of the Court of Justice on 7 December 1998, Molkerei Großbraunshain GmbH and Bene Nahrungsmittel GmbH brought an appeal pursuant to Article 49 of the EC Statute of the Court of Justice against the order of the Court of First Instance of 15 September 1998 in Case T-109/97 *Molkerei Großbraunshain and Bene Nahrungsmittel* v *Commission* [1998] ECR II-3533 ('the contested order'), dismissing as inadmissible their application for annulment of Commission Regulation (EC) No 123/97 of 23 January 1997 supplementing the Annex to Commission Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Regulation (EEC) No 2081/92 (OJ 1997 L 22, p. 19), in so far as it registered the protected designation of origin 'Altenburger Ziegenkäse' for too extensive a geographical area.

2 By order of the President of the Court of 1 June 1999, the French Republic was given leave to intervene in support of the form of order sought by the Commission.

Legislative background

3 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, as stated in Articles 1(1) and 2(1), rules on the Community protection of designations of origin and geographical indications for certain agricultural products and foodstuffs.

4 Article 2(2)(a) of Regulation No 2081/92 states:

'For the purposes of this Regulation:

(a) designation of origin: means 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

— the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and the production, processing and preparation of which take place in the defined geographical area'.

5 Article 4(1) of Regulation No 2081/92 provides that '[t]o be eligible to use a protected designation of origin (PDO) or a protected geographical indication (PGI) an agricultural product or foodstuff must comply with a specification'. According to paragraph 2(c) and (d) of that article, the specification must include *inter alia* 'the definition of the geographical area' and 'evidence that the agricultural product or the foodstuff originates in the geographical area, within the meaning of Article 2(2)(a)'.

6 According to the 12th recital in the preamble to Regulation No 2081/92, 'to enjoy protection in every Member State geographical indications and designations of origin must be registered at Community level'. According to the 13th recital, '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'.

7 Articles 5 to 7 of Regulation No 2081/92 define the 'ordinary' procedure for registration of geographical indications and designations of origin. The application for registration, from a group of producers and/or processors or, subject to certain conditions, a natural or legal person (Article 5(1) and (2)), must be sent to the Member State in which the geographical area concerned is located (Article 5(4)). The Member State checks that the application is justified and forwards it to the Commission, together with *inter alia* the product specification referred to in Article 4 (Article 5(5)).

8 The Commission verifies, within a period of six months, by means of a formal investigation, whether the registration application includes all the particulars

provided for in Article 4 (Article 6(1)). If it concludes that the name qualifies for protection, it publishes a notice in the *Official Journal of the European Communities* (Article 6(2)). If no statement of objections from a Member State or a legitimately concerned natural or legal person is notified to it in accordance with Article 7, it enters the name in a register entitled 'Register of protected designations of origin and protected geographical indications' (Article 6(3)). The names entered in the register are then published in the *Official Journal of the European Communities* (Article 6(4)). If, on the other hand, in the light of the investigation provided for in paragraph 1, the Commission concludes that the name does not qualify for protection, it decides, in accordance with the procedure provided for in Article 15, not to proceed with the publication provided for in Article 6(2) (Article 6(5)).

9 Article 7 of Regulation No 2081/92 lays down the procedure for objecting to a registration. It 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 proposed registration of a name would jeopardise the existence of an entirely or partly identical name or trade mark or the existence of products which are legally on the market at the time of publication of this regulation in the *Official Journal of the European Communities*,

— 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).'

10 Article 17 of Regulation No 2081/92 establishes a 'simplified' or 'short' procedure for the registration of names which already exist at the date of entry into force of the regulation. It states:

'1. Within six months of the entry into force of the Regulation, Member States shall inform the Commission which of their legally protected names or, in those Member States where there is no protection system, which of their names established by usage they wish to register pursuant to this Regulation.

2. In accordance with the procedure laid down in Article 15, the Commission shall register the names referred to in paragraph 1 which comply with Articles 2 and 4. Article 7 shall not apply. However, generic names shall not be added.

3. Member States may maintain national protection of the names communicated in accordance with paragraph 1 until such time as a decision on registration has been taken.'

11 Article 13(1) of Regulation No 2081/92 prescribes:

'Registered names shall be protected against:

(a) any direct or indirect commercial use of a name registered in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name or in so far as using the name exploits the reputation of the protected name;

(b) any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation" or similar;

(c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;

(d) any other practice liable to mislead the public as to the true origin of the product.

Where a registered name contains within it the name of an agricultural product or foodstuff which is considered generic, the use of that generic name on the

appropriate agricultural product or foodstuff shall not be considered to be contrary to (a) or (b) in the first subparagraph.'

12 For the adoption of the measures provided for, Article 15 of Regulation No 2081/92 states:

'The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148(2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.'

13 Regulation No 2081/92 was published in the *Official Journal of the European Communities* of 24 July 1992. In accordance with Article 18 of the regulation, it entered into force twelve months after that date, on 25 July 1993.

Facts of the dispute and procedure before the Court of First Instance

14 The facts of the dispute, as they appear from paragraphs 7 to 9 of the contested order, are as follows.

15 On 20 December 1993 the German authorities adopted regulations amending *inter alia* the regulations on cheese. The annex to the regulations on cheese, as so amended, *inter alia* registered the name 'Altenburger Ziegenkäse' as a designation of origin. The geographical area of manufacture corresponding to that designation comprised the districts of Altenburg, Schmölln, Gera, Zeitz, Geithain, Grimma, Wurzen and Borna and the city of Gera. The names of these districts were subsequently changed — for example, Schmölln and Altenburg became Altenburger Land — but the geographical area covered by the 'Altenburger Ziegenkäse' designation remained unchanged.

16 By letter of 26 January 1994 the Federal Republic of Germany requested the Commission to register the name 'Altenburger Ziegenkäse' as a protected designation of origin (PDO) pursuant to Article 17 of Regulation No 2081/92.

17 Molkerei Großbraunshain, which has since 1898 manufactured a cheese sold under the description 'Altenburger Ziegenkäse', and Bene Nahrungsmittel, which holds all the shares in Molkerei Großbraunshain, took various steps at national and Community level to have the geographical area covered by that designation

altered. Thus they made a complaint to that effect on 4 April 1995 to the relevant German ministry, and on 9 August 1995 they complained to the Commission, asking for an action for failure to fulfil obligations to be brought against Germany under Article 169 of the EC Treaty (now Article 226 EC).

18 In support of their complaints, the appellants argued that the geographical area defined in the German regulations on cheese and the request for registration made to the Commission as the area of manufacture of 'Altenburger Ziegenkäse' was too extensive, since it included several districts in Saxony and Saxony-Anhalt, in particular the district of Wurzen in Saxony, the place of establishment of Molkerei und Weichkäserei K.-H. Zimmermann GmbH, which has since 1936 likewise manufactured a cheese sold under the name 'Altenburger Ziegenkäse'. The appellants considered that the area of manufacture should have been limited to the district of Altenburger Land in Thuringia, as the product 'Altenburger Ziegenkäse' could come only from the district which had given it its name.

19 The competent German ministry rejected the appellants' complaint by letter of 13 July 1995 and explained the reasons for the definition of the contested geographical area.

20 The Commission's Directorate-General for Agriculture (DG VI) replied by letter of 18 March 1996 that it would recommend that the Commission take no action on the appellants' complaint, but would ask the Federal Republic of Germany for further information on the geographical area of manufacture in question. By letters of 31 July, 12 November and 28 November 1996, the Federal Republic of Germany gave the Commission further information on the point.

21 By the adoption of Regulation No 123/97, the Commission registered *inter alia* the name 'Altenburger Ziegenkäse' as a protected designation of origin within the meaning of Regulation No 2081/92.

22 In the first recital in the preamble to Regulation No 123/97, the Commission noted that 'additional information was requested concerning certain designations notified by the Member States under Article 17 of Council Regulation (EEC) No 2081/92 in order to make sure that they complied with Articles 2 and 4 of that Regulation;... this additional information shows that the designations comply with the said Articles'.

23 By application lodged at the Registry of the Court of First Instance on 11 April 1997, the appellants brought an action under the fourth paragraph of Article 173 of the EC Treaty (now, after amendment, the fourth paragraph of Article 230 EC) seeking essentially the annulment of Regulation No 123/97. They submitted that, contrary to Articles 2(2)(a) and 4(2)(c) and (d) of Regulation No 2081/92, under which the geographical area covered by a designation had, in their view, to be limited to the territory whose name corresponded to that designation, the geographical area covered by the designation 'Altenburger Ziegenkäse' extended beyond the boundaries of the district of Altenburger Land, thus enabling undertakings outside that district to use that designation, to the detriment of the appellants' interests.

24 In support of their application, the appellants submitted that the Commission had infringed the above provisions of Regulation No 2081/92 and the principle of non-discrimination, that it had committed a misuse of powers by simply taking over the information supplied by the Federal Republic of Germany without exercising the discretion conferred on it by Article 15 of Regulation No 2081/92, and that it had failed to respect the appellants' rights of defence by depriving them, by choosing the simplified procedure under Article 17, of the right to object to the proposed registration which exists in the ordinary procedure under Articles 5 to 7.

25 By separate document lodged at the Registry of the Court of First Instance on 14 July 1997, the Commission raised a plea of inadmissibility pursuant to Article 114(1) of the Rules of Procedure of the Court of First Instance. In support of the plea of inadmissibility the Commission submitted, first, that Regulation No 123/97 did not adversely affect the appellants, second, that it was not of individual concern to them, third, that they had no right to institute proceedings as a result of their having been heard by the Commission before Regulation No 123/97 was adopted or, fourth, of their procedural rights having been reduced as a result of the use of the simplified registration procedure, and, fifth, that they had no interest in bringing proceedings.

26 By the contested order, the Court of First Instance upheld the plea, and so dismissed the application as inadmissible.

The contested order

27 After noting the settled case-law of the Court of Justice on the admissibility of applications by individuals for annulment of a regulation, the Court of First Instance found, in paragraphs 50 and 51 of the contested order, that Regulation No 123/97, far from being addressed to specific traders such as the appellants, gives all undertakings whose products meet the requirements prescribed in the regulation the right to market them under the protected designation of origin 'Altenburger Ziegenkäse', and is thus a measure of general application which applies to objectively determined situations and produces legal effects with respect to categories of persons envisaged generally and in the abstract, namely all undertakings which manufacture a product with objectively defined characteristics.

28 As regards the appellants' argument that 'Altenburger Ziegenkäse' is manufactured by only two producers, Molkerei Großbraunshain and Zimmermann, that

the number of manufacturers will not change in the foreseeable future, and that the possibility of 'Altenburger Ziegenkäse' being made by other producers is so unlikely that it may be dismissed, the Court of First Instance pointed out, in paragraph 52 of the contested order, that the legislative character of a measure is not called into question by the fact that it is possible to determine with a greater or lesser degree of precision the number or even the identity of the persons to whom it applies at a given moment, as long as it is established that it applies by virtue of an objective legal or factual situation defined by the measure in relation to its objective (Case 6/68 *Zuckerfabrik Watenstedt* v *Council* [1968] ECR 409, at p. 415).

29 In the present case, the Court of First Instance held, in paragraphs 53 to 55 of the contested order, that:

— Regulation No 123/97 confers protection with respect to a geographical area defined objectively;

— the argument concerning the unchanging number of manufacturers was no more than a mere supposition;

— the economic benefits of the protection conferred by Regulation No 123/97 are enjoyed not only by the manufacturers of 'Altenburger Ziegenkäse' but also by the producers of the cows' and goats' milk which is processed into 'Altenburger Ziegenkäse'.

30 The Court of First Instance concluded from all those factors, in paragraph 56 of the contested order, that Regulation No 123/97, by its nature and application, is a legislative measure and not a decision within the meaning of the fourth paragraph of Article 189 of the EC Treaty (now the fourth paragraph of

Article 249 EC). Since, however, it considered that in certain circumstances even a legislative measure which applies to the traders concerned in general may concern some of them individually, provided that they are affected by the measure in question by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons (Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraphs 19 and 20), it examined whether that was the case with the appellants.

31 As the appellants relied in this connection on the fact that they had been heard by the Commission during the procedure which led up to the adoption of Regulation No 123/97, and complained that the Commission had infringed their procedural rights by choosing the registration procedure under Article 17 of Regulation No 2081/92 even though the conditions for the application of that provision were not satisfied, the Court of First Instance held, first, in paragraph 60 of the contested order, that the appellants had not challenged the lawfulness of the procedure laid down in Article 17 of Regulation No 2081/92 on the ground that it infringed the lawful rights of participation which all traders concerned by the registration of a protected designation of origin should have, and that neither the procedure for drawing up legislative measures nor the legislative measures themselves, as measures of general application, require, by virtue of the general principles of Community law such as the right to a hearing, the participation of the persons affected, since their interests are deemed to be represented by the authorities called upon to adopt those measures.

32 In paragraph 61 of the contested order, the Court of First Instance therefore considered that 'for the present action directed against Regulation No 123/97, which was adopted following a legislative procedure in which the traders concerned have no procedural rights, to be admissible, it is not sufficient for the [appellants] merely to submit that the conditions for the application of Article 17 of Regulation No 2081/92 were not met in the present case and to draw the conclusion that the Commission should therefore have used the other legislative procedure, laid down by Articles 5 to 7, which would have given them procedural rights and the consequent right to bring proceedings. That argument challenges the legal basis of [Regulation No 123/97] and thus concerns the substance of the case.'

33 The Court of First Instance supported that conclusion by finding, in paragraph 62 of the contested order, that 'the criticism of the legislature for choosing, from the two legislative procedures provided for, the one which deprives the persons concerned of procedural rights is irrelevant for the purpose of assessing the admissibility of an action brought against the legislative measure adopted at the end of the legislative procedure chosen, a measure which is in principle presumed to be lawful (Case C-137/92 P *Commission* v *BASF and Others* [1994] ECR I-2555, paragraph 48), unless the legislature's choice is shown to constitute an abuse of procedure'.

34 On this point, the Court of First Instance found, in paragraphs 63 to 65 of the contested order, that in the present case:

— the appellants had not produced any evidence to show that the Commission, possibly by arrangement with the Federal Republic of Germany, chose the simplified legislative procedure precisely in order to deal with the particular situation and evade the ordinary procedure giving the appellants procedural rights;

— in Germany, protection of the designation 'Altenburger Ziegenkäse' by the regulations on cheese likewise resulted from a legislative procedure, in which the question of the geographical area of 'Altenburger Ziegenkäse' was expressly discussed before being decided at both national and Community level in the way challenged by the appellants;

— the Commission could not be criticised for abuse of procedure by not objecting, when adopting Regulation No 123/97, to the definition of the geographical area at issue made by the German legislature, which was better placed than the Community legislature to define the geographical area, taking account of the particular features of production and marketing in the region.

35 The Court of First Instance concluded, in paragraph 66 of the contested order, that 'the fact that the Commission chose the legislative procedure under Article 17 instead of that under Articles 5 to 7 of Regulation No 2081/92 for the adoption of [Regulation No 123/97] cannot distinguish the [appellants] individually for the purposes of the fourth paragraph of Article 173 of the Treaty'.

36 Second, the Court of First Instance found, in paragraphs 67 and 68 of the contested order, that the mere fact that the appellants were heard by the Commission before Regulation No 123/97 was adopted was also incapable of distinguishing them individually from all other traders, as Article 17 of Regulation No 2081/92 did not give them any rights of a procedural nature, that the legislative procedure at issue, by its very nature, did not oblige the legislature to observe a right of the persons affected to be heard, and that, in the absence of expressly guaranteed procedural rights, it would be contrary to the wording and spirit of Article 173 of the Treaty to allow any individual who has taken part in the preparation of a legislative measure subsequently to bring an action against that measure (order in Case C-10/95 P *Asocarne* v *Council* [1995] ECR I-4149, paragraph 40).

37 In view of those factors, the Court of First Instance held, in paragraphs 69 to 76 of the contested order, that the appellants' reference to a number of judgments in which the Court of Justice had held that applications brought by individuals against regulations or decisions addressed to other persons were admissible was immaterial.

38 With respect more particularly to the *Codorniu* judgment, the Court of First Instance accepted, in paragraph 71 of the contested order, that the definition of a too extensive geographical area may in theory cause a reduction in the real value of a designation of origin which was previously restricted to a smaller geographical area, and possibly affect the specific rights of the undertakings in the smaller geographical area which use that designation. It considered, however, that since Zimmermann had manufactured and marketed the product in question under the name 'Altenburger Ziegenkäse' or the similar name 'Altenborger

Zeege' since 1936, and that the appellants had not succeeded at national level in having that designation restricted to a smaller geographical area, namely the district of Altenburger Land, the appellants had not produced any evidence to show that Regulation No 123/97 weakened their rights in the way described above.

39 Having regard to all those considerations, the Court of First Instance concluded, in paragraph 77 of the contested order, that the appellants were not individually concerned by Regulation No 123/97, and that the action therefore had to be held to be inadmissible, without there being any need to examine whether that regulation actually affected them adversely as a matter of law and whether they had an interest in bringing proceedings.

40 It added, in paragraph 78 of the contested order, that in so far as the appellants contended that it would be incompatible with the principles of the rule of law to refuse them judicial protection against Regulation No 123/97, they had not, however, shown or even claimed that it was legally impossible for them to address themselves to a national court which could, if appropriate, make a reference to the Court of Justice for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) on the validity of that regulation.

The appeal

41 In support of their appeal, the appellants, supported by Freistaat Thüringen (State of Thuringia), submit essentially that the contested order is wrong in law, in that the conclusion that the appellants are not individually concerned constitutes a breach of the fourth paragraph of Article 173 of the Treaty. They therefore consider that the application should be declared admissible and the substance examined.

42 They submit, first, that, in view of the particular situation, the Court of First Instance was wrong to conclude that Regulation No 123/97 concerned a group of persons defined generally and in the abstract, and consequently that the category of potential applicants was not known at the time of its adoption. They point out in this respect that for a hundred years now only two undertakings, themselves and Zimmermann, have made and marketed 'Altenburger Ziegenkäse' under that name on an industrial scale. Further, because of the small size of the geographical area referred to in Regulation No 123/97 and *a fortiori* of the district of Altenburger Land and of the insufficient production in that area of goats' milk needed to make the cheese in question, the number of producers can in fact scarcely change.

43 The appellants contend, second, that the Court of First Instance was also wrong to consider, in paragraph 55 of the contested order, that as a result of Regulation No 123/97 they enjoyed more extensive protection, so that they did not need judicial protection and had no interest in bringing proceedings. They assert that, on the contrary, before the entry into force of Regulation No 123/97, Paragraph 3 of the Gesetz gegen den unlauteren Wettbewerb (the German Law of 7 June 1909 against unfair competition) gave them effective protection against the misleading use of the name 'Altenburger Ziegenkäse', but because of the definition of a too wide geographical area the name itself is now less meaningful and less valuable, in that it may now also be used for products not coming from the district of Altenburger Land.

44 They consider, third, that the Court of First Instance misinterpreted Regulation No 2081/92 and the procedures it lays down, by rejecting their argument that the choice of the simplified procedure under Article 17 of Regulation No 2081/92 unlawfully deprived them of the right to take part in the registration procedure, and hence of the right to challenge Regulation No 123/97.

45 On this point, the appellants submit, to begin with, that after the expiry of the six-month period laid down in Article 17(1) of Regulation No 2081/92 the simplified procedure could no longer be used. Since the Federal Republic of Germany did not complete its request for registration of 'Altenburger Ziegenkäse' until more than two and a half years after the expiry of that period, the Commission should have applied the ordinary procedure laid down in Articles 5 to 7 of Regulation No 2081/92. The State of Thuringia adds that, in those circumstances, the Court of First Instance ought not to have restricted itself to examining whether the Community legislature's choice constituted an abuse of procedure, and submits that, even if the choice of procedure was not abusive but merely unlawful, the appellants had still been unlawfully deprived of procedural rights which would have given them standing to seek the annulment of Regulation No 123/97 on the basis of the fourth paragraph of Article 173 of the Treaty.

46 The appellants submit, next, that the Court of First Instance erred in law in accepting, in paragraph 64 of the contested order, that the Commission could rely, with respect to the definition of the geographical area at issue, on the assessments and decisions made by the German legislature, thereby simply extending the new provisions of the German regulations on cheese at Community level without making autonomous use of its own power of assessment and decision.

47 They consider, finally, that the reasoning of the Court of First Instance in paragraphs 70 and 71 of the contested order, denying the existence of a weakening of their rights as a result of the definition by Regulation No 123/97 of a too wide geographical area, is not conclusive, if only because the scope of the German regulations on cheese is limited to German territory whereas Regulation No 123/97 applies in all the Member States. The State of Thuringia adds that to link the admissibility of an application to the existence of a right which must be obtained precisely by means of that application is an illogical argument which is wrong in law.

48 The appellants submit, fourth, that in paragraph 78 of the contested order the Court of First Instance wrongly found that they had not shown or even alleged that they were unable to obtain protection of their rights by applying to the national courts and requesting them to refer a question for a preliminary ruling pursuant to Article 177 of the Treaty.

49 They submit, fifth, that the Court of First Instance could not properly rule on the admissibility of the application without examining the substance. They consider that, even to assess the admissibility of the application, the Court of First Instance should have decided on the substantive complaints alleging that the Commission should not have registered the designation at issue on the basis of the simplified procedure under Article 17 of Regulation No 2081/92, nor taken over unchanged the information on the geographical area in question supplied by the Federal Republic of Germany.

50 The Commission, supported by the French Republic, asks the Court to dismiss the appeal as clearly inadmissible within the meaning of Article 119 of the Rules of Procedure. Zimmermann asks the Court to dismiss it as partly inadmissible and partly unfounded, or in the alternative as entirely unfounded.

51 In support of their pleas of inadmissibility, those parties submit essentially that in their appeal the appellants challenge a number of findings and assessments of fact made by the Court of First Instance, restrict themselves in general to repeating the pleas in law and arguments relied on at first instance, and fail on several occasions to indicate precisely which points of the contested order are criticised and the legal arguments which specifically underlie their claim for the order to be set aside.

Findings of the Court

52 Under Article 119 of the Rules of Procedure, where an appeal is clearly inadmissible or clearly unfounded, the Court may at any time dismiss it by reasoned order.

Admissibility

53 It should be noted that under Article 168a of the EC Treaty (now Article 225 EC) and the first paragraph of Article 51 of the EC Statute of the Court of Justice, an appeal is limited to points of law and must be based on lack of competence of the Court of First Instance, a breach of the procedure before it which adversely affects the interests of the appellant, or the infringement of Community law by the Court of First Instance (see *inter alia* Case C-284/98 P *Parliament* v *Bieber* [2000] ECR I-1527, paragraph 30).

54 Article 112(1)(c) of the Rules of Procedure of the Court of Justice states that an appeal must contain the pleas in law and legal arguments relied on.

55 It follows from the above provisions that an appeal may be based only on pleas relating to the infringement of rules of law, to the exclusion of any appraisal of the facts. The Court of First Instance has exclusive jurisdiction to establish the facts, except where the substantive inaccuracy of its findings is apparent from the documents submitted to it, and to assess those facts. When the Court of First Instance has established or assessed the facts, the Court of Justice has jurisdiction under Article 168a of the Treaty to review the legal characterisation of those facts by the Court of First Instance and the legal conclusions it has drawn from them (see, *inter alia*, *Parliament* v *Bieber*, paragraph 31).

56 It also follows 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. That requirement is not satisfied by an appeal which, without even including an argument specifically identifying the error of law allegedly vitiating the contested order, confines itself to reproducing the pleas in law and arguments previously submitted to the Court of First Instance. Such an appeal amounts in reality to no more than a request for re-examination of the application submitted to the Court of First Instance, which is outside the jurisdiction of the Court of Justice (see, *inter alia*, Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraphs 34 and 35).

57 First, in their appeal the appellants ask the Court to examine whether the Court of First Instance was entitled to consider that they were not individually concerned, within the meaning of the fourth paragraph of Article 173 of the Treaty, by Regulation No 123/97. The various legal arguments they rely on in that respect challenge several points on which the Court of First Instance based the reasoning of its decision.

58 It is clear that, while the appellants in this connection also challenge certain findings and appraisals of fact by the Court of First Instance, they do not challenge them as such, however, but in so far as they were precisely the basis on which that Court ruled that they did not have standing to bring proceedings under the fourth paragraph of Article 173 of the Treaty.

59 Second, an appeal may be based on arguments already adduced at first instance, in order to show that the Court of First Instance infringed Community law by rejecting the pleas and arguments which the appellant submitted to it (Case C-82/98 P *Kögler* v *Court of Justice* [2000] ECR I-3855, paragraph 25), so that the points of law examined at first instance may be discussed again in the course of an appeal, where the appellant challenges the interpretation or application of Community law by the Court of First Instance (Case C-210/98 P *Salzgitter* v *Commission* [2000] ECR I-5843, paragraph 43).

60 In the present case, it appears from the application to the Court of Justice that the present appeal is not merely a literal reproduction of the pleas and arguments submitted at first instance, and that the appellants have indicated precisely the contested elements of the order they seek to have set aside and the arguments on the basis of which they consider that the legal assessment made by the Court of First Instance is wrong.

61 In that context, even if the appeal did not formally identify on each occasion the precise points of the contested order, the Commission and the interveners in support of the form of order sought by it were properly able to take a position on the arguments brought against them.

62 In those circumstances, the pleas of inadmissibility raised by the Commission, the French Republic and Zimmermann must be rejected and the substance of the appeal be considered.

Substance

63 Under the fourth paragraph of Article 173 of the Treaty, a natural or legal person may bring an action against a decision which, although in the form of a regulation, is of direct and individual concern to him.

64 On the question whether the appellants are individually concerned by Regulation No 123/97, it is settled case-law that the general application and hence the legislative nature of a measure is not called into question by the fact that it is possible to identify more or less exactly the number or even the identity of the persons to whom it applies at any given time, as long as it is established that it applies to them by virtue of an objective legal or factual situation defined by the

measure in question in relation to its purpose (see, *inter alia*, *Codorniu*, paragraph 18).

65 For such persons to be regarded as individually concerned, the contested measure must affect 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 (see, *inter alia*, *Codorniu*, paragraph 20).

66 In the present case, by registering the name 'Altenburger Ziegenkäse' as a protected designation of origin, Regulation No 123/97 gives all economic operators whose products satisfy the prescribed geographical and quality requirements, as they appear from the specification referred to in Article 4 of Regulation No 2081/92 and annexed to the application for registration, the right to market them under the name 'Altenburger Ziegenkäse', and confers on that name the protection which Regulation No 2081/92 accords to all duly registered protected designations of origin.

67 Regulation No 123/97 thus constitutes a measure of general application, and hence of a legislative nature, which applies to objectively defined situations and produces legal effects for categories of economic operators who satisfy a number of conditions defined in a general and abstract manner. Even if the persons to whom it applies were identifiable at the time when it was adopted and it were established that their number could in fact scarcely change, its legislative character would not thereby be called into question, as it envisages only objective legal or factual situations (see, to this effect, *inter alia* the order in Case C-87/95 P *CNPAAP* v *Council* [1996] ECR I-2003, paragraph 35).

68 It follows that Regulation No 123/97 concerns the appellants only in their objective capacity of undertakings producing the cheese in question in the

geographical area defined in the specification and marketing it, on the same basis as any other economic operator currently or potentially in the same position.

69 The Court of First Instance did not therefore err in law in finding that the appellants are not individually concerned by that regulation.

70 That conclusion cannot be called into question by the appellants' argument that they would have been individually concerned if the Commission had chosen to have Regulation No 123/97 adopted on the basis of the ordinary procedure provided for in Articles 5 to 7 of Regulation No 2081/92, under which any legitimately concerned natural or legal person has an opportunity to object to a proposed registration of a designation.

71 Even if recourse to the procedure under Article 17 of Regulation No 2081/92 had been unlawful, and the existence of procedural rights expressly guaranteed to an individual by the relevant legislation or the mere fact that that individual has taken part in the procedure for the adoption of a legislative measure by a Community institution were capable of distinguishing him individually within the meaning of the fourth paragraph of Article 173 of the Treaty, the exercise of the possibility of objecting, as provided for in the ordinary registration procedure, would still not be such as to give the appellants the right to bring an action against the act adopted as a result of that procedure.

72 On this point, it must be noted, first, that under Article 7(1) and (3) of Regulation No 2081/92 a statement of objection to a proposed registration may be made to the Commission only by a Member State which has been applied to by a natural or legal person who can demonstrate a legitimate economic interest.

73 Second, it appears from Article 7(5) of Regulation No 2081/92 that, once an admissible objection has been made to the Commission, the objection procedure confronts the Member State or States which object to registration and the Member State which has applied for registration. Under that provision, it is for 'the Member States concerned' to seek agreement among themselves and notify the Commission if agreement is reached.

74 It thus follows from the wording and the scheme of Article 7 of Regulation No 2081/92 that a statement of objection to a registration cannot come from the Member State which has applied for registration and that the objection procedure established by Article 7 of Regulation No 2081/92 is not therefore intended to settle disputes between the competent authorities of the Member State which has sought registration and a natural or legal person resident or established in that Member State.

75 Such objections must in principle be dealt with before that Member State forwards to the Commission, in accordance with Article 5 of Regulation No 2081/92, an application for registration which has been addressed to it by a group or, in certain circumstances, a natural or legal person.

76 In the event that, at that stage of the procedure, the competent authorities of the Member State do not take account of the observations made by a legitimately concerned trader against an application for registration, it is for that trader to bring proceedings in the competent national courts to establish, if appropriate, the unlawfulness of the conduct of those authorities with respect to the provisions of Regulation No 2081/92, compliance with which the Member State is obliged, under Article 5(5) thereof, to verify before forwarding the application to the Commission.

77 Moreover, the appellants have not shown that it was not possible for them to bring proceedings in a national court against a competitor marketing a cheese

under the name 'Altenburger Ziegenkäse' on the ground that it was not produced in the geographical area which, in their view, is the only one consistent with the provisions of Regulation No 2081/92. In such proceedings they could argue that Regulation No 123/97 was unlawful, and so enable that court to rule on all complaints brought in that respect, if appropriate after referring a question on the validity of that regulation to the Court of Justice for a preliminary ruling.

78 It follows from all the foregoing that the appeal must be dismissed as manifestly unfounded pursuant to Article 119 of the Rules of Procedure.

Costs

79 Under Article 69(2) of the Rules of Procedure, which applies to proceedings on appeal by virtue of Article 118, 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 and Zimmermann have so applied and the appellants have been unsuccessful, they must be ordered to pay the costs. Under Article 69(4) of the Rules of Procedure, the French Republic and Freistaat Thüringen, interveners, must bear their own costs.

On those grounds,

THE COURT (Second Chamber)

hereby orders:

1. **The appeal is dismissed.**

2. **Molkerei Großbraunshain GmbH and Bene Nahrungsmittel GmbH are ordered to pay the costs.**

3. **The French Republic and Freistaat Thüringen are ordered to bear their own costs.**

Luxembourg, 26 October 2000.

R. Grass

Registrar

V. Skouris

President of the Second Chamber