the provisions as a whole within which they are found and, in the absence of any misuse of powers, are of the same general nature as those provisions. The suspension by the article in issue of the application of the regulation, which is itself general in scope, affects equally all air carriers wishing to operate an air service between another Community airport and Gibraltar airport and, more generally, all those using the latter airport. Furthermore, apart from the fact that it is not the only temporary derogation from the arrangements laid down by the regulation which applies to an airport, it merely reflects the existence of an obstacle of an objective nature to the immediate application of the regulation to Gibraltar airport, arising from differences between two Member States.

ORDER OF THE COURT
12 July 1993 *

In Case C-397/92,

Government of Gibraltar and Gibraltar Development Corporation, represented by Ian S. Forrester QC, of the Scots Bar, Richard O. Plender QC, of the Bar of England and Wales, and Alasdair R. M. Bell, Solicitor, Scotland, with an address for service in Luxembourg at the Chambers of Marc Loesch, 11 Rue Goethe,

applicants,

v

Council of the European Communities, represented by Antonio Sacchetini, a Director in its Legal Service, and John Carbery, Legal Adviser in its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Bruno Eynard, Manager of the Legal Directorate of the European Investment Bank, 100 Boulevard Konrad-Adenauer,

defendant,

* Language of the case: English.

supported by

Kingdom of Spain, represented by Alberto Navarro González, Director-General for Community Legal and Institutional Coordination, and by Rosario Silva de Lapuerta, Abogado del Estado, Head of the Legal Department for Matters before the Court of Justice of the European Communities, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard Emmanuel Servais,

United Kingdom of Great Britain and Northern Ireland, represented by John E. Collins, Assistant Treasury Solicitor, acting as Agent, assisted by Derrick Wyatt QC, with an address for service in Luxembourg at the British Embassy, 14 Boulevard Roosevelt,

Commission of the European Communities, represented by Thomas van Rijn, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Nicola Annecchino, of its Legal Service, Wagner Centre, Kirchberg,

interveners,

APPLICATION for the annulment of Article 1(3) of Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (OJ 1992 L 240, p. 8),

THE COURT,

composed of: O. Due, President, C. N. Kakouris, G. C. Rodríguez Iglesias, M. Zuleeg and J. L. Murray (Presidents of Chambers), G. F. Mancini, R. Joliet, F. A. Schockweiler, J. C. Moitinho de Almeida, F. Grévisse, M. Diez de Velasco, P. J. G. Kapteyn and D. A. O. Edward, Judges,

Advocate General: C. O. Lenz,
Registrar: J.-G. Giraud,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 17 November 1992, the Government of Gibraltar and the Gibraltar Development Corporation applied under the second paragraph of Article 173 of the EEC Treaty for the annulment of Article 1(3) of Council Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes (OJ 1992 L 240, p. 8).

2 Regulation No 2408/92 concerns access to routes within the Community for scheduled and non-scheduled air services. Its aim is to continue the liberalization undertaken with a view to the achievement of the internal market in air transport, by settling all questions relating to access to the market.

3 That regulation partially replaces Council Regulation (EEC) No 2343/90 of 24 July 1990 on access for air carriers to scheduled inter-regional air service routes and on the sharing of passenger capacity between air carriers on scheduled air services between Member States (OJ 1990 L 217, p. 8) and Council Regulation (EEC) No 294/91 of 4 February 1991 on the operation of air cargo services between Member States (OJ 1991 L 36, p. 1).

4 Like those regulations, Regulation No 2408/92 contains a provision suspending its application to Gibraltar airport until the cooperation arrangements agreed between the Governments of the Kingdom of Spain and the United Kingdom come into operation.

5 That provision, which is contained in Article 1(3) of Regulation No 2408/92, is worded as follows:

'Application of the provisions of this Regulation to Gibraltar airport shall be suspended until the arrangements in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 have come into operation. The Governments of Spain and the United Kingdom will so inform the Council on that date.'

6 The Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 provides in particular, in its paragraph 8, that the arrangements for the joint use of Gibraltar airport will come into operation when the British authorities have notified their Spanish counterparts that the legislation necessary to give effect to paragraph 3.3 (customs and immigration controls in the respective terminals) is in force, or on completion of the construction of the Spanish terminal, whichever is the later, but in any event not more than one year after the notification referred to above.

7 Pursuant to the first subparagraph of Article 91(1) of the Rules of Procedure of the Court of Justice, the Council has raised an objection of inadmissibility against the application and has requested the Court to decide on that objection without going into the substance of the case.

8 Pursuant to Article 93(1) and (2) of the Rules of Procedure, the President of the Court has granted the Kingdom of Spain (order of 9 February 1993), the United Kingdom (order of 22 March 1993) and the Commission of the European Communities (order of 29 April 1993) leave to intervene in support of the form of order sought by the defendant.

In support of its objection of inadmissibility, the Council first challenges the capacity of the Government of Gibraltar to bring proceedings, asserting that under British law the power to bring an action such as this is vested in the Governor. It further maintains that the contested provision is not of direct or individual concern to either the Government of Gibraltar or the Gibraltar Development Corporation.

10 Pursuant to Article 92(2) of the Rules of Procedure, the Court may at any time of its own motion consider whether there exists any absolute bar to proceeding with a case and give its decision in accordance with Article 91(3) and (4) of those Rules. In the present case, since the documents before the Court contain all the requisite information enabling it to give its decision, the Court has decided to rule on the admissibility of the application by way of an order, without waiting until the time-limits laid down in these proceedings have expired.

11 Article 173 of the EEC Treaty provides as follows:

'The Court of Justice shall review the legality of acts of the Council and the Commission other than recommendations or opinions. It shall for this purpose have jurisdiction in actions brought by a Member State, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers.

Any natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or decision addressed to another person, is of direct and individual concern to the former ... .'

12 Since the Government of Gibraltar and the Gibraltar Development Corporation are not — and do not claim to be — amongst the applicants provided for in the first paragraph of Article 173, the admissibility of their application must be determined solely in the light of the second paragraph of that article.

13 It should be noted, first, that the Court has held, since its judgment in Joined Cases 16/62 and 17/62 *Confédération nationale des producteurs de fruits et légumes* v *Council* [1962] ECR 471, that the term 'decision' used in the second paragraph of Article 173 of the Treaty has the technical meaning employed in Article 189, and that the criterion for distinguishing between a measure of a legislative nature and a decision within the meaning of that latter article must be sought in the general 'application' or otherwise of the measure in question.

14 Furthermore, the Court has consistently held that the general application, and thus the legislative nature, of a measure is not called in question by the fact that it is possible to determine more or less precisely the number or even the identity of the persons to whom it applies at any given time, as long as it is established that such application takes effect by virtue of an objective legal or factual situation defined by the measure in question in relation to its purpose (Case 6/68 *Zuckerfabrik Watenstedt* v *Council* [1968] ECR 409; Case 64/69 *Compagnie française commerciale et financière* v *Commission* [1970] ECR 221, paragraph 11; Case 242/81 *Roquette Frères* v *Council* [1982] ECR 3213, paragraph 7; Joined Cases 97/86, 193/86, 99/86 and 215/86 *Astéris* v *Commission* [1988] ECR 2181, paragraph 13; order in Case 160/88 R *Fédération européenne de la santé animale* v *Council* [1988] ECR 4121, paragraph 29; Joined Cases C-15/91 and C-108/91 *Buckl* v *Commission* [1992] ECR I-6061, paragraph 25).

15 Lastly, the Court has already recognized that, where an instrument contains limitations or derogations which are temporary (*Zuckerfabrik Watenstedt*, cited above, and *Compagnie française commerciale et financière*, cited above, paragraphs 12 to 15) or territorial in nature (Joined Cases 103/78 to 109/78

Société des Usines de Beauport v *Council* [1979] ECR 17, paragraphs 15 to 19), they form an integral part of the provisions as a whole within which they are found and, in the absence of any misuse of powers, are of the same general nature as those provisions.

16 In the present case, there is no dispute as to Regulation No 2408/92 being of general application, save as regards Article 1(3), and the regulation does indeed concern all Community air carriers, for whom it lays down new rules regarding access to the market and, in particular, the use of traffic rights.

17 The provision under challenge suspends the application of those new rules to services to or from Gibraltar until the arrangements in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 come into operation. As the Court has already held in respect of the same provision contained in Council Directive 89/463/EEC of 18 July 1989 amending Directive 83/416/EEC concerning the authorization of scheduled inter-regional air services for the transport of passengers, mail and cargo between Member States (OJ 1989 L 226, p. 14), that suspension affects equally all air carriers wishing to operate a direct inter-regional air service between another Community airport and Gibraltar airport and, more generally, all those using the latter airport. It therefore applies to objectively defined situations (Case C-298/89 *Government of Gibraltar* v *Council* [1993] ECR I-3605, paragraph 20).

18 Furthermore, it should be noted that Gibraltar airport is not the only airport to have been temporarily excluded from the territorial scope of the regulation. Other airports (those in the Greek islands and in the Atlantic islands comprising the autonomous region of the Azores) have been temporarily exempted from the application of that regulation, by virtue of its Article 1(4), because of the inadequate development of the air traffic system in those islands.

19 Regulation No 2408/92 justifies the suspension of its application to Gibraltar airport by reference to the agreement in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987. As the Court has already pointed out in its aforesaid judgment in Case C-298/89 *Government of Gibraltar* v *Council*, paragraph 22, this constitutes a finding that there is an obstacle of an objective nature to the application of the regulation, having regard to its aims. In view of the differences between the Kingdom of Spain and the United Kingdom, discussed at length by the applicants themselves, concerning sovereignty over the territory on which Gibraltar airport is situated and the operational problems resulting from those differences, the development of air services between that airport and the other airports within the Community is conditional on the implementation of the cooperation arrangements agreed between those two States.

20 In those circumstances, Article 1(3) of Regulation No 2408/92 cannot be regarded as constituting a decision within the meaning of the second paragraph of Article 173 of the Treaty, but on the contrary is of the same general nature as that regulation.

21 It follows that the application is inadmissible and must therefore be dismissed, without there being any need to consider the other submissions made in support of the objection of inadmissibility.

Costs

22 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Government of Gibraltar and the Gibraltar Development Corporation have been unsuccessful, they must be ordered to pay the costs. In accordance with the first subparagraph of Article 69(4) of the Rules of Procedure, the Kingdom of Spain, the United Kingdom and the Commission, interveners, are to bear their own costs.

On those grounds,

THE COURT

hereby orders:

1. The application is dismissed as inadmissible.

2. The applicants are ordered to pay the costs.

3. The Kingdom of Spain, the United Kingdom and the Commission, interveners, are ordered to pay their own costs.

Luxembourg, 12 July 1993.

J.-G. Giraud — Registrar

O. Due — President