ORDER OF THE COURT
14 November 1991 *

In Joined Cases C-232/91 and C-233/91,

Odette Nikou Petridi Anonimos Kapnemporiki Eteria AE, a company incorporated under Greek law, whose registered office is at Kavala (Greece), (Case C-232/91),

Syllogos Kapnemporon Makedonias kai Thrakis, a federation, whose registered office is at Kavala (Case C-233/91),

represented by Eleni Liratzaki, of the Athens Bar, with an address for service in Luxembourg at the Chambers of Marc Dupuis, 9 Rue Plaetis,

applicants,

v

Commission of the European Communities, represented by Xenophon A. Yataganas, a member of its Legal Service, with an address for service in Luxembourg at the office of Roberto Hayder, a representative of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of Commission Regulation (EEC) No 2436/91 of 7 August 1991 opening an invitation to tender for the sale of baled tobacco held by the German, Greek and Italian intervention agencies (Official Journal 1991 L 222, p. 23) and of notice of invitation to tender No 91/C 213/04 of 15 August 1991 issued by the Commission and published pursuant to the aforesaid Regulation No 2436/91 (Official Journal 1991 C 213, p. 5),

* Language of the case: Greek.

THE COURT,

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

Advocate General: W. Van Gerven,
Registrar: J.-G. Giraud,

after hearing the Advocate General,

makes the following

Order

1 By applications lodged at the Court Registry on 17 September 1991, Odetti Nikou Petridi Anonimos Kapnemporiki Eteria AE (Case C-232/91) and Syllogos Kapnemporon Makedonias kai Thrakis (Case C-233/91) brought actions under the second paragraph of Article 173 of the EEC Treaty for the annulment of Commission Regulation (EEC) No 2436/91 of 7 August 1991 opening an invitation to tender for the sale of baled tobacco held by the German, Greek and Italian intervention agencies (Official Journal 1991 L 222, p. 23) and of notice of invitation to tender No 91/C 213/04 of 15 August 1991 issued by the Commission and published pursuant to the aforesaid Regulation No 2436/91 (Official Journal 1991 C 213, p. 5).

2 By order of 5 November 1991 the President of the Court joined Cases C-232/91 and C-233/91 pursuant to Article 43 of the Rules of Procedure for the purposes of the written and oral procedure and the judgment.

3 Article 1 of Regulation No 2436/91 provides for the sale for export of eleven lots of baled raw tobacco from the 1986, 1987, 1988 and 1989 harvests, held by the German, Greek and Italian intervention agencies, with a total weight of 105 486 276 kilograms. The Annex to the regulation defines the lots and the quantities to be sold in four successive sales.

4 In notice No 91/C 213/04, the Commission laid down the procedures and conditions applying to the first sale of four lots, with a total weight of 54 557 558 kilograms of baled tobacco. The notice of invitation to tender states that tenders may not be submitted for part of a lot and that tenders must be accompanied by proof that security of ECU 0.339 per kilogram of tobacco has been lodged.

5 As regards the admissibility of the applications, the applicants assert that the contested measures are of direct and individual concern to them, within the meaning of the second paragraph of Article 173 of the EEC Treaty, even though they were adopted in the form of a regulation and of an act of general application. The measures at issue are of individual concern to the applicants, since the Commission is aware both of the identity of the undertakings taking part in the tenders and of the size of the lots for which those undertakings are in a position to tender. The measures at issue are of direct concern to the applicants inasmuch as they affect the applicants' legal position.

6 As to the substance of the application, the applicants maintain that the magnitude of the lots for which tenders are sought and of the sums to be lodged as security is such as to make it possible only for large international companies to take part in the tender, and to exclude smaller potential tenderers such as the applicants. By proceeding as it has done, the Commission has infringed the second subparagraph of Article 7(2) of Regulation (EEC) No 727/70 of the Council of 21 April 1970 on the common organization of the market in raw tobacco (Official Journal, English Special Edition 1970 (I), p. 206), which requires that disposal of the tobacco bought in by intervention agencies is to take place in such a way as to avoid any disturbance of the market and to ensure equal access to goods and equal treatment of purchasers; the Commission has also infringed the general principles

of free trade and free competition and Article 3(f) in conjunction with Article 86 of the EEC Treaty and has misused its powers.

7 Under Article 92(1) of the Rules of Procedure, where an action is manifestly inadmissible the Court may, by reasoned order, after hearing the Advocate General and without taking further steps in the proceedings, give a decision on the action.

8 As regards the admissibility of an action brought pursuant to the second paragraph of Article 173 of the EEC Treaty, it is to be noted that that provision empowers private persons to contest decisions addressed to them or decisions which, although in the form of a regulation or a decision addressed to another person, are of direct and individual concern to them.

9 The Court has previously held that it is unnecessary to consider whether the contested measure may be regarded as a regulation and that it is sufficient to establish whether it is in fact of direct and individual concern to the applicants (judgment in Case 123/77 *UNICME* v *Council* [1978] ECR 845).

10 The Court has also stated that the possibility of determining more or less precisely the numbers or even the identity of the persons to whom a measure applies by no means implies that it must be regarded as being of individual concern to them (judgment in *UNICME*, cited above).

11 The Court finds in that regard that the contested regulation and notice of invitation to tender, which lay down the principle and conditions of the sale of the tobacco by tender, are of concern to the applicants only in their general capacity as economic operators in the tobacco trade, in the same way as any economic operator in an identical situation.

12 In those circumstances, the actions must be dismissed as inadmissible pursuant to Article 92(1) of the Rules of Procedure.

Costs

13 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicants have been unsuccessful, they must be ordered to pay the costs.

On those grounds,

THE COURT

hereby orders:

1. The applications in Cases C-232/91 and C-233/91 are dismissed as inadmissible;

2. The applicants are ordered to pay the costs.

Luxembourg, 14 November 1991.

J.-G. Giraud
Registrar

O. Due
President