JUDGMENT OF THE COURT
15 June 1993 *

In Case C-264/91,

Abertal SAT Ltda, a company governed by Spanish law, established in Reus, Tarragona (Spain), and 18 other organizations of Spanish producers of nuts and locust beans established in Spain, represented by Fernando Pombo García, Ricardo García Vicente and Iñigo Igartua Arregui, of the Madrid Bar, with an address for service in Luxembourg at the Chambers of Claude Wassenich, 6 Rue Dicks,

applicants,

v

Council of the European Communities, represented by Bernhard Schloh and Ramón Torrent, Legal Advisers, with an address for service in Luxembourg at the office of Xavier Herlin, Manager of the Legal Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

supported by

Commission of the European Communities, represented by Francisco José Santaolalla and Eugenio de March, Legal Advisers, acting as Agents, with an address for service in Luxembourg at the office of Roberto Hayder, of its Legal Service, Wagner Centre, Kirchberg,

intervener,

* Language of the case: Spanish

APPLICATION for the annulment of Article 1 of Council Regulation (EEC) No 2145/91 of 15 July 1991 amending Regulation (EEC) No 790/89 as regards the maximum amount of aid for quality and marketing improvement in the nut and locust bean sector (OJ 1991 L 200, p. 1),

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 and P. J. G. Kapteyn, Judges,

Advocate General: W. Van Gerven,
Registrar: H. von Holstein, Deputy Registrar

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 10 March 1993,

after hearing the Opinion of the Advocate General at the sitting on 21 April 1993,

gives the following

Judgment

1 By application lodged at the Court Registry on 15 August 1991, Abertal SAT Limitada and 18 other organizations of Spanish producers of nuts and locust beans ('the applicants') brought an action under the second paragraph of Article 173 of the EEC Treaty for the annulment of Article 1 of Council Regulation (EEC) No 2145/91 of 15 July 1991 amending Regulation (EEC) No 790/89 as regards the maximum amount of aid for quality and marketing improvement in the nut and locust bean sector (OJ 1991 L 200, p. 1).

2 Council Regulation (EEC) No 789/89 of 20 March 1989 instituting specific measures for nuts and locust beans and amending Regulation (EEC) No 1035/72 on the common organization of the market in fruit and vegetables (OJ 1989 L 85, p. 3) added Title IIa to Regulation No 1035/72 of 18 May 1972 (OJ, English Special Edition 1972 (II), p. 437), as subsequently amended.

3 Title IIa of Regulation No 1035/72 provides for certain aid measures in the nuts and locust beans sector and, in particular, aid for the implementation of quality and marketing improvement plans, submitted by the producers' organizations and approved by the national authorities (Article 14d of Regulation No 1035/72).

4 The plans referred to by this provision are intended to improve, by means of varietal conversion or cultural improvement, the quality of produce from orchards which are given over to producing one homogenous crop and are not scattered among other plantations and, where needed, to improve marketing.

5 Under Article 14d of Regulation No 1035/72 the approved improvement plans qualify for Community aid of 45% for their execution provided they are funded to a level of 45% by the producers' organizations and a level of 10% by the Member State. Funding from the Member State and aid from the Community is subject to a ceiling and paid over a period of 10 years. The maximum level of aid decreases gradually.

6 The maximum amount per hectare in respect of improvement aid which was set by Article 2 of Council Regulation (EEC) No 790/89 of 20 March 1989 (OJ 1989 L 85, p. 6) at ECU 300 per year during the first five years and at ECU 210 for the following five years, was amended by Article 1 of Regulation No 2145/91.

7 Under Regulation No 2145/91, which is the subject of this action, the maximum aid per hectare depends on the nature of the work carried out to execute the plan and is set at:

— ECU 475 per year during five years for grubbing operations followed by replanting and/or varietal conversion; however, these operations may only relate to an area not greater than 40% of the total area of the orchard covered by the plan (i. e. a maximum of 20% in the first two years and a maximum of 20% in the next three years);

— ECU 200 per year for the remaining years for the execution of the plan, for areas replanted or converted;

— ECU 200 per year for the work connected with the execution of any other operations relating to the remaining part of the orchard.

8 Pursuant to Article 3 of Regulation No 2145/91, the regulation came into force on 23 July 1991. Under the second and third paragraphs of Article 3, the new maximum amounts of aid applied forthwith in respect of plans approved from the date of entry into force of the regulation. On the other hand, for plans approved prior to that date, those amounts applied only from 1 September 1993 and they did not apply in respect of expenditure committed by producers' organizations before the date of entry into force for the execution of plans previously approved.

9 By separate document lodged at the Court Registry on 23 October 1991, the Council objected, pursuant to Article 91(1) of the Rules of Procedure, that the action was inadmissible. In accordance with Article 91(3) of the Rules of Procedure, the Court decided to open the oral procedure in order to examine the objection.

10 By order of the President of the Court of 9 March 1992, the Commission was granted leave to intervene in support of the forms of order sought by the Council.

11 Reference is made to the Report for the Hearing for a fuller account of the facts and the legal context of the case, the procedure and the pleas and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

12 In support of the objection of inadmissibility, the Council, supported by the Commission, contends that the applicants are neither directly nor individually concerned by the contested regulation.

13 The applicants submit that, firstly, they are directly affected by the contested regulation because the competent national authorities have no discretion in applying the amendments at issue. Secondly, even if the contested regulation is of a general and abstract nature in so far as concerns producers' organizations whose plans were approved after it entered into force, it is of individual concern to the applicants in so far as, before a particular date, they carried out a specific formality, namely the presentation of approved improvement plans, and the change in the maximum aid for plans approved before the regulation was adopted was made because of the amount of aid applied for by the applicants, which is said to have exceeded the Community budget estimates.

14 In order to give a ruling on the Council's objection of inadmissibility, it must be observed that the second paragraph of Article 173 of the Treaty enables any natural or legal person to institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.

15 Since the present action seeks the annulment of a provision in a regulation, it must be ascertained whether the contested measure is of direct and individual concern to the applicants.

16 As to the question whether applicants are individually concerned, the Court has consistently held that the possibility of determining more or less precisely the number 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 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 (see, for example, Case 123/77 *UNICME* v *Council* [1978] ECR 845 and Case 26/86 *Deutz und Geldermann* v *Council* [1987] ECR 941).

17 The contested provision of Regulation No 2145/91 serves to amend for the future, for all producers' organizations, the maximum aid for carrying out improvement plans in the nut and locust bean sector by appreciably increasing the maximum amount for grubbing operations followed by replanting and/or varietal conversion, and reducing the maximum aid for other operations which, under Article 7 of Commission Regulation (EEC) No 2159/89 of 18 July 1989 laying down detailed rules for applying the specific measures for nuts and locust beans as provided for in Title IIa of Council Regulation (EEC) No 1035/72 (OJ 1989 L 207, p. 19), may be the subject of a plan.

18 As stated by the first recital in the preamble to the contested regulation, the aid scheme in issue essentially seeks to promote grubbing operations followed by replanting and/or varietal conversion as those operations contribute most to improving the quality of the produce. Therefore the greater part of the aid should be for those operations, particularly as they not only entail high expenses, but also a temporary loss of income for the growers concerned, while a smaller amount has to be set aside for the other operations relating to the remainder of the orchard.

19 Consequently this provision, far from affecting the applicants by reason of certain characteristics which are particular to them or a factual situation which differentiates them from all other producers, is addressed in general and abstract terms

to indeterminate classes of persons and applies to objectively determined situations.

20 In the light of its purpose, the contested regulation does not specifically relate to the applicants, but concerns them only in their objective capacity as producers' organizations in the sector in question, in the same way as any other producer who is, actually or potentially, in the same situation.

21 As the Advocate General noted in point 32 of his Opinion, the only distinction which the contested regulation makes between plans which had already been approved and those approved after it came into force is that it lays down transitional provisions for producers with plans which had already been approved.

22 Under Article 3 of Regulation No 2145/91, the new amounts of aid apply to already approved plans only from 1 September 1993, that is, more than two years after the regulation came into force, and they do not apply in respect of expenditure committed by producers' organizations before the date of its entry into force.

23 In addition, Commission Regulation (EEC) No 3746/91 of 18 December 1991 amending for the fourth time Regulation (EEC) No 2159/89 laying down detailed rules for applying the specific measures for nuts and locust beans as provided for in Title IIa of Council Regulation (EEC) No 1035/72 (OJ 1991 L 352, p. 53) provides that, for plans already approved, producers may, not later than 31 December 1992, apply to change their plans in order to redirect them to grubbing operations followed by replanting and/or varietal conversion, and thereby receive the increased aid for those operations.

24 However, these differences appear to be objectively justified by the need to attain the purpose of the rules in question in the light of existing factual situations and they cannot therefore lead to the conclusion that the applicants are individually concerned by Article 1 of Regulation No 2145/91, which alone is the subject of the present action for annulment.

25 Furthermore, there is no concrete indication in the contested regulation that the measures in question were adopted specifically taking account of the applicants' plans.

26 Therefore the contested provision is not of individual concern to the applicants within the meaning of the second paragraph of Article 173 of the Treaty and the action must be dismissed as inadmissible.

Costs

27 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. Under Article 69(4) of the Rules of Procedure, the Commission, the intervener in this action, is to bear its own costs.

On those grounds,

THE COURT

hereby:

1. **Dismisses the application as inadmissible;**

2. **Orders the applicants to pay the costs;**

3. **Orders the Commission, as intervener, to bear its own costs.**

Due Kakouris Rodríguez Iglesias Zuleeg

Murray Mancini Joliet

Schockweiler Moitinho de Almeida Grévisse Kapteyn

Delivered in open court in Luxembourg on 15 June 1993.

J.-G. Giraud O. Due

Registrar President