maximum aid for the implementation of improvement plans in the nut and locust bean sector, is not of individual concern to producers' organizations whose plans were approved before the regulation was adopted.

In so far as the said Article 1 does not refer specifically to the aforementioned organizations, contains no concrete indication that the measures it introduces were adopted specifically taking account pf the applicants' plans and makes no distinction between plans already approved and those which will be approved in the future, save for laying down transitional measures applying to the former, it is addressed in general and abstract terms to indeterminate classes of persons and applies to objectively determined situations.

REPORT OF THE JUDGE-RAPPORTEUR in Case C-264/91 *

I — Relevant facts and legislation

1. Abertal and the other applicants are associations of Spanish producers of nuts and locust beans.

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 for the sector of nuts and locust beans which, according to the preamble to Regulation No 789/89, seek to remedy the structural deficiencies of the market in those products as it is markedly out of step with technical and commercial requirements from the point of view of both technical production conditions, which are typified by a large number of small holdings and a low level of mechanization, and marketing conditions.

4. The proposed measures are, in particular, an additional flat-rate aid to producers' associations as an incentive to formation (Article 14b of Regulation No 1035/72), a specific aid to producers' organizations which set up a revolving fund (Article 14c of Regulation No 1035/72) and, finally, aid for the implementation of quality and marketing improvement

* Language of the case: Spanish.

plans presented by such organizations and approved by the competent authorities of the appropriate Member State (Article 14d of Regulation No 1035/72).

5. The aim of the improvement plans referred to in Article 14d is 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, the improvement of marketing.

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

7. The maximum amount of improvement aid per hectare 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 for the first five years and ECU 210 for the following five years, was amended by Article 1 of Council Regulation (EEC) No 2145/91 of 15 July 1991. The applicants, as producers' organizations with approved improvement plans which are being carried out, consider this amendment to be unlawful so far as they are concerned.

8. Article 2 of Regulation No 790/89, as amended by Article 1 of Regulation No 2145/91, which is contested by the applicants, provides that:

'The maximum amount per hectare referred to in Article 14d(2) of Regulation (EEC) No 1035/72 in respect of a plan to be carried out over a period of ten years shall be broken down as follows:

(1) A maximum amount of ECU 475 per year during five years shall relate to grubbing operations followed by replanting and/or varietal conversion.

This maximum amount shall cover the financing of the work connected with execution for the abovementioned operations, which shall relate to an area not greater than 40% of the total area of the orchard covered by the plan, of which a maximum of 20% during the first two years of the carrying out of the plan and a maximum of 20% during the three other years.

For the remaining years for the carrying out of the plan, the maximum amount paid for areas replanted or converted shall be ECU 200 per year;

(2) A maximum amount of ECU 200 per year, over a period of ten years, for the work connected with the execution of any other operations relating to the remaining part of the orchard.'

9. Regulation No 2145/91 came into force on 23 July 1991 pursuant to Article 3 thereof.

Under the second and third paragraphs of Article 3, the new maximum amounts of aid were to apply forthwith to plans approved after the entry into force of Regulation No 2145/91. 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.

II — Written procedure and forms of order sought

1. The application of Abertal SAT Limitada and 18 other associations of Spanish producers of nuts and locust beans was lodged at the Court Registry on 15 October 1991.

2. *Abertal* and the other applicants claim that the Court should:

— annul Article 1 of Regulation (EEC) No 2145/91;

— order the Council to pay the costs.

3. By document lodged at the Court Registry on 23 December 1991, the *Council*, the defendant, contends that pursuant to Article 91(1) of the Rules of Procedure the Court should:

— rule that the application is inadmissible;

— order the applicants to pay the costs.

4. By document lodged at the Court Registry on 3 February 1992, *Abertal* and the other applicants claim that the Court should:

— rule that the application in Case C-264/91 is admissible;

— order the Council to pay the costs.

5. 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.

6. By document lodged at the Court Registry on 9 April 1992, the *Commission*, the intervener, contends that the Court should:

— rule that the application is inadmissible;

— order the applicants to pay the costs, including those of the intervener.

7. By document lodged at the Court Registry on 9 May 1992, *Abertal* and the other applicants claim that the Court should:

— rule that the application in Case C-264/91 is admissible;

— order the Council and the Commission to pay the costs.

8. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

The Court requested the applicants to concentrate their submissions on the actual circumstances which they consider permit them to be regarded as individually affected by the contested measures.

III — Pleas and arguments of the parties

1. (a) The Council, the defendant in the main proceedings and the applicant on the preliminary objection, considers that the action brought by Abertal and the other applicants is inadmissible.

It contends that the condition laid down by the Court's case-law (see the order of 5 November 1986 in Case 117/86 *UFADE* v *Council and Commission* [1986] ECR 3255, and the judgment in Case 55/86 *Arposol* v *Council* [1988] ECR 13), to the effect that an action brought by a producers' organization is only admissible where the contested Community measure produces legal effect without the need for a subsequent decision by the national authority, is not fulfilled in the present case. As the national authorities approve the plans and grant the aid, the dispute concerning the scheme falls within the exclusive jurisdiction of the national courts.

Alternatively, the Council submits that, according to the Court's case-law (see Case 333/85 *Mannesmann* v *Council* [1987] ECR 1381), the legal nature of the contested act depends on the nature of the acts which it amends and with which it is connected, and in the present case those are Regulation No 790/89, which sets the maximum aid, and Regulation No 789/89, which forms an integral part of the legislation concerning the common organization of the markets in the sector in question. However, these regulations are indisputably of general application.

The Council contends in the further alternative that the first recital in the preamble to the contested regulation shows that the regulation applies by virtue of an objective legal and factual situation which it defines in relation to its purpose, so that the applicants' argument that they constitute a limited class of producers consisting of a definite, identifiable number of persons, is irrelevant.

In the final alternative, the Council observes that there are 19 applicants, while Annex V of the application refers to more than 35 organizations of Spanish producers. In addition, the regulation in question does not apply to Spanish organizations alone, and French and Italian producers' organizations are in the process of requesting recognition. Therefore the applicants cannot maintain that they are a limited class of producers.

(b) The *Commission*, intervening in support of the Council's submissions, contends firstly that the applicants have no right of action because their situation has not deteriorated by reason of the adoption of the contested regulation, particularly in the light of the rules concerning the new maximum aid subsequently adopted by the Commission.

Secondly, it argues that the Court has no jurisdiction to hear and determine the action because measures taken by the authorities of the Member States to implement the regulation in question must be challenged before the national courts.

Thirdly, the Commission maintains that the contested regulation does not constitute a body of decisions of individual concern to the applicants as it affects them in their objective capacity as producers' organizations in the sector concerned in the same way as any other producer who is actually or potentially in the same situation. Furthermore, there is no causal connection between the applicants' situation and the measures adopted because they were adopted, not in order to reduce the cost of the operation, but to redirect the aid to its primary objective, which was to encourage grubbing operations followed by replanting and/or varietal conversion, whereas the first year of operation of the system showed that most plans were basically for operations other than varietal conversion or land improvement.

2. *Abertal* and the other applicants consider that the action is admissible.

They refute the arguments of the Council and the Commission, contending, firstly, that they have a right of action because the contested regulation adversely affects them by reason of the reduction in the maximum overall aid which it entails.

Secondly, they contend that they are directly concerned by the disputed amendments as a national decision is not necessary in that connection, and that the Court has exclusive jurisdiction to hear and determine the dispute.

The applicants add that even if the contested regulation applies generally to 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 in respect of the plans which were already approved was made because of the amount of aid applied for by the applicants, which is said to have exceeded the Community budget estimates.

Furthermore, according to the applicants, the case-law concerning producers' organizations relied upon by the Council merely means that an action is inadmissible where the contested provision affects the interests only of the members of the association in question, to the exclusion of the interests of the association itself. However, in the present case the regulation in question affects the interests of the producers' organizations themselves, which receive the aid.

Finally, the applicants contend that the *Mannesmann* judgment is not relevant to the present action and that in any case the general or individual effect of a provision does not depend on the measures which it amends or to which it relates, but rather on its own purpose and provisions.

F. A. Schockweiler
Judge-Rapporteur