ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)
11 July 2000 *

In Case T-268/99,

Fédération nationale d'agriculture biologique des régions de France (FNAB), whose registered office is in Paris (France),

Syndicat européen des transformateurs et distributeurs de produits de l'agriculture biologique (Setrab), whose registered office is in Paris,

Est Distribution Biogram SARL, established in Château-Salins (France),

represented by D. Leermakers, of the Brussels and Luxembourg Bars, and C. Hatton, Solicitor, with an address for service in Luxembourg at the Chambers of Messrs De Meester and Oostvogels, 5 place du Théâtre,

applicants,

v

Council of the European Union, represented by F. Anton and J. Monteiro, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the

* Language of the case: French.

office of A. Morbilli, General Counsel of the Legal Affairs Directorate in the European Investment Bank, 100 boulevard Konrad Adenauer,

defendant,

APPLICATION for partial annulment of Council Regulation (EC) No 1804/1999 of 19 July 1999 supplementing Regulation (EEC) No 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs to include livestock production (OJ 1999 L 222, p. 1),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of: K. Lenaerts, President, J. Azizi and M. Jaeger, Judges,

Registrar: H. Jung,

makes the following

Order

Description of the applicants

1 The Fédération nationale d'agriculture biologique des régions de France (FNAB) is a federation which, 'by virtue of the trades unions, trades union associations and trades-union-style producers' organisations which make up its membership, [brings together] organic farmers from all regions in France' (Article 1 of FNAB's statutes). FNAB is said to count among its members more than 20 regional groupings of organic farmers, representing up to 70% of all French organic producers.

2 The Syndicat européen des transformateurs et distributeurs de produits de l'agriculture biologique (Setrab) is an 'association of product producers, processors and distributors engaged in an organic farming activity' (Article 4 of Setrab's statutes). One of the aims of that association is to promote the values of organic farming (Articles 4 and 5 of Setrab's statutes). Setrab is said to have more than 70 members.

3 Est Distribution Biogam (hereinafter 'Biogam') is a company established in Lorraine since 1975 whose object is 'the purchase, processing, storage, transport and distribution of agricultural products and products of agricultural origin, in particular those produced organically' (Article 2 of Biogam's statutes). Those products include, *inter alia*, organic cheese and yoghurts marketed under the 'Biogam' trade mark.

Factual background

4 Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs (OJ 1991 L 198, p. 1) authorises the marketing of agricultural products and foodstuffs bearing indications referring to organic production only if they have been obtained in accordance with the rules of production laid down in the regulation. Regulation No 2092/91 applied solely to plant products or products of plant origin.

5 The scope of Regulation No 2092/91 was extended by Council Regulation (EC) No 1804/1999 of 19 July 1999 supplementing Regulation No 2092/91 to include livestock production (OJ 1999 L 202, p. 1).

6 Thus amended, Regulation No 2092/91 applies to production of plant and animal origin. The indications in the labelling, advertising material or commercial documents which are considered by the consumer as a reference to the organic production method are reserved by Regulation (EEC) No 2092/91 for products obtained in accordance with that regulation.

7 Article 2 of Regulation No 2092/91, as amended, provides:

'For the purpose of this Regulation, a product shall be regarded as bearing indications referring to the organic production method, where, in the labelling, advertising material or commercial documents, such a product, its ingredients or feed materials are described by the indication in use in each Member State,

suggesting to the purchaser that the product, its ingredients or feed materials have been obtained in accordance with the rules of production laid down in Article 6 and in particular the following terms or their usual derivatives (such as bio, eco etc.) or diminutives, alone or combined, unless such terms are not applied to agricultural products in foodstuffs or feedingstuffs or clearly have no connection with the method of production:

...

— in French: biologique

...'.

8 The Council considered it necessary to provide a transitional period 'in order to permit trade-mark holders to adapt their production to the requirements of organic farming ...' (recital 27 in the preamble to Regulation No 1804/1999).

9 Accordingly, Article 1(7) of Regulation No 1804/1999 (hereinafter 'the contested provision'), provides:

'The following paragraph shall be inserted in Article 5:

"3a. By way of derogation from paragraphs 1 to 3, trade marks which bear an indication referred to in Article 2 ... may continue to be used until 1 July 2006 in the labelling and advertising of products which do not comply with this regulation provided that:

— registration of the trade mark was applied for before 22 July 1991 — and in Finland, Austria, and Sweden before 1 January 1995 — and is in conformity with the First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks [OJ 1988 L 40, p. 1, as amended by Decision 92/10/EEC (OJ 1992 L 6, p. 35)];

and

— the trade mark is already reproduced with a clear, prominent, and easily readable indication that the products are not produced according to the organic production method as prescribed in this regulation".'

10 The applicants maintain that, as a result of the contested provision, products referred to as 'bio', although not organically produced, will become interchangeable, in the eyes of consumers, with genuine organic products. In their submission, the contested provision thus provides a means of poaching customers who purchase organic products.

Procedure and forms of order sought by the parties

11 It was in those circumstances that, by application lodged at the Registry of the Court of First Instance on 15 November 1999, the applicants brought this action.

12 The applicants claim that the Court should:

— declare their application admissible and well founded;

— find that the derogation provided for in Article 1(7) of Regulation No 1804/1999 is severable in nature and annul that derogation;

— order the Council to pay the costs.

13 By a separate document lodged at the Registry of the Court of First Instance on 21 January 2000, the Council raised a plea of inadmissibility under Article 114(1) of the Rules of Procedure of the Court of First Instance.

14 In its plea, the Council contends that the Court should:

— dismiss the action as inadmissible;

— order the applicants to pay the costs.

15 The applicants lodged their observations on the plea of inadmissibility on 3 April 2000.

16 By documents lodged at the Registry of the Court of First Instance on 26 April, 28 April and 16 May 2000 respectively, Danone SA, a company incorporated under Spanish law, Compagnie Gervais Danone, a company incorporated under French law, and CLESA SA, a company incorporated under Spanish law, applied for leave to intervene in support of the form of order sought by the Council. By documents lodged at the Registry of the Court of First Instance on 5 July 2000, the Commission and SKW Biosystems GmbH, a company incorporated under German law, also applied for leave to intervene in support of the form of order sought by the Council.

Admissibility

17 Under Article 114(3) of the Rules of Procedure, the remainder of the proceedings on a plea of inadmissibility is to be oral, unless the Court of First Instance

otherwise decides. The Court (Third Chamber) considers that, in this case, it has sufficient information from the documents on the file and that there is no need to open the oral procedure.

Arguments of the parties

18 The Council submits that the action is inadmissible by reason of the nature of the contested provision, on the one hand, and the fact that the applicants are not individually concerned, on the other.

19 First, the Council points out that the contested provision is a measure of general application. According to the Council, the contested provision applies to objectively determined situations and is intended to produce legal effects with respect to a category of persons envisaged in a general and abstract manner (judgment in Case T-482/93 *Weber* v *Commission* [1996] ECR II-609).

20 Secondly, the Council maintains that the applicants are not individually concerned. As regards Biogam first of all, the Council argues that, even if it were the case that the contested provision made it more likely that that company would lose customers to Danone, Biogam would be in the same position as any other producer processing and distributing products obtained according to an organic method of production. As regards FNAB and Setrab, the Council submits that they cannot claim to be in the position of a negotiator affected by the contested provision. Regulation No 1804/1999 was negotiated within, and adopted by, the Council, so that the applicants cannot claim to have taken part in its drafting. They cannot therefore be said to be distinguished individually because their own interests have been affected (Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219, paragraphs 21

to 24). Furthermore, FNAB and Setrab cannot claim to have substituted themselves for their members who were themselves entitled to bring an action (Joined Cases T-447/93, T-448/93 and T-449/93 *ATTEC and Others* v *Commission* [1995] ECR II-1971, paragraph 62). The Council explains in this regard that the contested provision does not affect the members of FNAB and Setrab by reason of certain attributes which are peculiar to them or by reason of a factual situation which differentiates them from all other persons (Case C-209/94 P *Buralux and Others* v *Council* [1996] ECR I-615, paragraph 25, and Case T-135/96 *UEAPME* v *Council* [1998] ECR II-2335). The fact that a member of FNAB and Setrab is a competitor of Danone does not put it in a specific factual situation which differentiates it from all other persons.

21 Finally, the Council observes that, if it had not included the derogation contained in the contested provision, traders marketing under a 'bio' or 'eco' trade mark products not fulfilling the requirements of Regulation No 2092/91 would inevitably have challenged Regulation No 1804/1999 (Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853).

22 The applicants dispute the argument put forward by the Council and maintain that their action is admissible.

23 First of all, the applicants contend that the contested provision constitutes an individual measure which is severable from the other provisions of Regulation No 1804/1999, the legislative nature of which they do not dispute. In their submission, the contested provision is of concern only to manufacturers of livestock food products not obtained according to an organic method of production and marketed under a trade mark containing the terms 'bio' or 'biologique' which was registered before 21 July 1991. It is settled case-law that a provision which takes the form of a legislative measure but which is of individual concern to certain traders by reason of certain attributes which are peculiar to

them or by reason of circumstances in which they are differentiated from all other persons must be treated in the same way as an individual measure (judgments in *Codorniu* v *Council*, cited in paragraph 21 above, paragraph 19, and Case T-435/93 *ASPEC and Others* v *Commission* [1995] ECR II-1281, paragraph 70).

24 The applicants consider that Danone is the only company in any of the Member States to benefit from the contested provision. In any event, the only trade mark currently used in France to designate non-organic products which contains the term 'bio' and suggests organic farming is the trade mark 'Bio Danone', which was registered under No 1749028, filed at the Institut national de la propriété industrielle (National Intellectual Property Institute) (INPI) on 2 September 1987 and renewed on 26 August 1997 for use in connection with the sale of yoghurts. It is the only trade mark to benefit from the derogation contained in the contested provision.

25 Secondly, the applicants argue that they are individually concerned by the contested provision. They explain that, under Decree 94-1212 of 26 December 1994 implementing the Consumer Affairs Code as regards the organic production of agricultural products and references thereto on agricultural products and foodstuffs (*Journal officiel de la République française* of 31 December 1994, p. 19026), use of the term 'bio' to refer to products obtained according to a non-organic method of production, whether of plant or animal origin, was prohibited in France. Moreover, a trade mark containing the term 'bio' to refer to such products could be declared invalid prior to the adoption of Regulation No 1804/1999, since Article 3(g) of Directive 89/104 provides that 'trade marks which are of such a nature as to deceive the public' are invalid. The applicants maintain that, by making it lawful for non-organic products to be marketed under a manifestly misleading trade mark including the term 'bio', the contested provision removes the possibility previously available to producers of organic products of bringing proceedings, under Directive 89/104 or under the French legislation, against manufacturers whose products had previously been marketed in breach of the aforementioned Community and national rules. They further claim that the fact that they have suffered the sudden and unforeseeable loss of the legislative protection which they were legitimately entitled to expect constitutes a specific circumstance, within the meaning of the judgment in Joined

Cases 10/68 and 18/68 *Eridania and Others* v *Commission* [1969] ECR 459, in which they are distinguished individually from all other traders.

26 The applicants point out that genuine organic yoghurts and yoghurts bearing the 'Bio' trade mark are wholly interchangeable in the eyes of the consumer. The contested provision is thus of individual concern to traders operating on the market for organic products who are adversely affected by the unfair competition practised by Danone, which the contested provision makes lawful.

27 The applicants, referring to the judgments in Case T-3/93 *France* v *Commission* [1994] ECR II-121 and *ASPEC and Others* v *Commission*, cited in paragraph 23 above, point out that an undertaking whose own position on the market is affected as a result of the adoption of a decision addressed to a competitor undertaking is individually concerned by the decision in question. The same is true of an association representing the interests of undertakings whose competitive position is affected in this way. An association which represents the interests of undertakings which are directly and individually concerned by the contested measure is also entitled to bring an action against that measure (Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, and *AITEC and Others* v *Commission*, cited in paragraph 20 above).

28 The situation of Biogam and the members of FNAB and Setrab is characterised by the fact that, prior to the adoption of Regulation No 1804/1999, those undertakings benefited from protection for their organic products, whether of plant or animal origin, and that they premissed their entire development strategy on the certainty of that protection. As a result of the adoption of the contested provision, the competitive position of those undertakings has been considerably weakened in relation to that of Danone, their direct competitor, since the derogation contained in the contested provisions jeopardises the sale of their

organic yoghurts. In consequence, Biogam, in its capacity as a producer, and FNAB and Setrab, in their capacity as representative bodies acting to protect the interests of their members, are individually concerned by the contested provision.

29 The applicants observe that the Council has recognised that Danone is entitled to bring an action against Regulation No 1804/1999. *A fortiori*, they should be accorded the same right, since they are the only ones whose legal position has been affected by the adoption of the contested provision.

30 Finally, the applicants argue that FNAB is individually concerned by the contested provision since its position as a negotiator has been affected (judgments in *Van der Kooy and Others* v *Commission*, cited in paragraph 20 above, Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125, and Case T-465/93 *Consorzio Gruppo di azione locale 'Murgia Messapica'* [1994] ECR II-361). They point out, in this regard, that FNAB was actively involved throughout the procedure for drafting Regulation No 1804/1999. The French Ministry of Foreign Affairs entrusted FNAB with the task of 'scrutinising and defending "organic farming" legislation (tracking and proposals)'. In order to emphasise the role played by FNAB in the drafting of Regulation No 1804/1999, the applicants refer to the minutes of the 'legislative scrutiny' steering committees of 10 March and 5 May 1999. FNAB also sent reports and proposals for regulations to the Community authorities. The applicants refer in particular to the report entitled 'Contribution of French organic farmers to the draft European regulation on livestock production in organic farming'.

31 Thirdly, the applicants submit that the contested provision is also of direct concern to them within the meaning of the fourth paragraph of Article 230 EC and that, consequently, all the conditions for declaring this action admissible are fulfilled.

Findings of the Court

32 It is settled case-law (see orders in Case T-122/96 *Federolio* v *Commission* [1997] ECR II-1559, paragraphs 50 and 51, and Case T-120/98 *Alce* v *Commission* [1999] ECR II-1395, paragraph 17), that the fourth paragraph of Article 230 EC entitles individuals to challenge any decision which, although in the form of a regulation, is of direct and individual concern to them. The objective of that provision is in particular to prevent the Community institutions from being able, merely by choosing the form of a regulation, to preclude an individual from bringing an action against a decision which concerns him directly and individually and thus to make it clear that the nature of a measure cannot be changed by the form chosen (see judgment in Joined Cases 789/79 and 790/79 *Calpak and Società Emiliana Lavorazione Frutta* v *Commission* [1980] ECR 1949, paragraph 7, and order in Case T-476/93 *FRESA and FNSEA* v *Council* [1993] ECR II-1187, paragraph 19). It is also settled case-law that the test for distinguishing between a regulation and a decision is whether or not the measure in question has general application (see, *inter alia*, judgment in Case 307/81 *Alusuisse Italia* v *Council and Commission* [1982] ECR 3463, paragraph 8).

33 It is therefore appropriate to determine, first, the nature of the contested provision.

34 Clearly, Regulation No 1804/1999 supplements Regulation No 2092/91 to include livestock production. Regulation No 1804/1999 contains rules of general scope which apply to all the traders concerned and relate, *inter alia*, to products of animal origin obtained according to an organic method of production.

35 It follows that, by virtue of its general application, Regulation No 1804/1999 is of a legislative nature and does not constitute a decision within the meaning of Article 249 EC.

36 The applicants claim, however, that the contested provision constitutes an individual decision since only one undertaking benefits from the derogation contained in that provision.

37 It should be borne in mind that the contested provision contains a temporary derogation to the principle that only products obtained in accordance with the rules laid down in Regulation No 2092/91 may bear indications referring to an organic method of production. The derogation, applicable until 1 July 2006, thus allows trade marks containing such indications to be used in connection with products which are not obtained in accordance with the aforementioned rules in order to enable the holders of such trade marks to adapt their production to the requirements of organic farming. However, in order to avoid any confusion on the part of consumers, the contested provision expressly provides that the trade marks in question must always be accompanied by a 'clear, prominent and easily readable indication that the products are not produced according to the organic production method as prescribed in [Regulation No 2092/91]'. Moreover, only trade marks for which an application for registration was made before the entry into force of Regulation No 2092/91 and which are in conformity with the provisions of Directive 89/104 may benefit from the temporary derogation contained in the contested provision.

38 It must therefore be observed that the contested provision applies to objectively determined situations and involves legal consequences for a category of trade mark holders viewed in a general and abstract manner. In those circumstances, the temporary derogation at issue must be regarded as forming an integral part of the provisions as a whole in which it is contained and is of the same general nature as those provisions (see, to that effect, judgments in Case 6/68 *Zuckerfabrik Watenstedt* v *Council* [1968] ECR 409, 415, Joined Cases 103/78 to 109/78 *Société des usines de Beauport and Others* v *Council* [1979] ECR 17, paragraphs 15 to 19, and Case C-298/89 *Gibraltar* v *Council* [1993] ECR I-3605, paragraphs 18 to 23).

39 As regards the applicants' argument that only Danone benefits from the derogation contained in the contested provision, it must be pointed out that

the legislative nature of a measure is not called into question by the fact that it is possible to determine the identity of the persons to whom it applies, as long as it is established that it applies to them by virtue an objective legal or factual situation defined by the measure in question in relation to its purpose (judgments in *Codorniu* v *Council*, cited in paragraph 21 above, paragraph 18, and Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission* [1995] ECR II-2305, paragraph 65). Furthermore, the applicants' argument is factually defective. First, the documents included in Annex 25d to the observations on the plea of inadmissibility show that before the entry into force of Regulation No 2092/91 other companies filed trade marks in France which, like the 'Bio Danone' trade mark, can be used in connection with animal food products obtained according to a non-organic method of production. Thus, the company Pierre Fabre Cosmétique filed the 'Bio-Lancyl' trade mark for use in connection with, *inter alia*, the following products: meat, meat extracts, eggs, milk and other dairy products. Odo-Sapro, a diet-food company, registered the 'Bio Cereal' trade mark for food products. Similarly, the health-food company Du Comté filed the 'Bio jolie' trade mark for use in connection with milk drinks, meat extracts, meat jellies and tinned meat. Next, it is clear from the application for leave to intervene made by CLESA SA that that company also benefits from the derogation contained in the contested provision in respect of its 'Bioclesa', 'Byoclesa', 'Clesabio' and 'Bio CLESA' trade marks, which it filed, *inter alia*, for use in connection with milk products.

40 It must therefore be concluded that the contested provision is of the same legislative nature as the other provisions of Regulation No 1804/1999.

41 It is important, however, to consider whether, despite the general application of the contested provision, the applicants may nevertheless be regarded as being directly and individually concerned by it. The fact that a measure applies generally does not *per se* preclude it from being potentially of direct and individual concern to certain natural or legal persons (see judgments in *Codorniu*, cited in paragraph 21 above, paragraph 19, *Antillean Rice Mills and Others* v *Commission*, cited in paragraph 39 above, paragraph 66, and *Exporteurs in Levende Varkens and Others* v *Commission*, cited in paragraph 27 above, paragraph 50).

42 With regard, first of all, to whether the applicants are individually concerned by the contested provision, it should be recalled that, in order for natural or legal persons to be regarded as being individually concerned by a provision of general application, they must be affected by the provision at issue by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons (judgment in Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, 107; orders in *Federolio* v *Commission*, cited in paragraph 32 above, paragraph 59, and *Alce* v *Commission*, cited in paragraph 32 above, paragraph 19).

43 In this connection, the applicants submit that the contested provision is of individual concern to Biogam because it considerably weakens the competitive position of that company, which markets organic agricultural products. FNAB and Setrab are said to be individually concerned by the contested provision since they represent the interests of their members, who are likewise subject to unfair competition because of the application of that provision.

44 With respect to FNAB and Setrab, it should be remembered that, according to settled case-law, an action brought by an association may be held to be admissible where the association represents the interests of undertakings which themselves would be entitled to bring proceedings (judgment in *Exporteurs in Levende Varkens and Others* v *Commission*, cited in paragraph 27 above, paragraph 64; orders in *Federolio* v *Commission*, cited in paragraph 32 above, paragraph 61, and Case T-173/98 *Unión de Pequeños Agricultores* v *Council* [1999] ECR II-3359, paragraph 47).

45 However, the applicants have not shown that Biogam and the members of the FNAB and Setrab are affected by the contested provision by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons.

46 It must be pointed out, first of all, that the applicants claim that the fact that the contested provision makes it lawful for Danone products to be sold under the 'Bio' trade mark considerably affects their competitive position since, in the eyes of consumers, yoghurts bearing the 'Bio' trade mark are wholly interchangeable with yoghurts obtained according to an organic method of production.

47 It is not disputed that Danone was already selling yoghurts under the 'Bio' trade mark before Regulation No 1804/1999 was adopted. The contested provision simply maintains that status quo until 1 July 2006 at the latest. It must also be pointed out that the contested provision stipulates that 'the trade mark [must] already [be] reproduced with a clear, prominent and easily readable indication that the products are not produced according to the organic method production as prescribed in [Regulation No 2092/91]' (see paragraph 9 above). That obligation is such as to ward off or at least reduce the allegedly unfair competition on the part of Danone to which the applicants were subject before the adoption of the contested provision.

48 In those circumstances, it cannot be accepted that the contested provision has weakened the competitive position of the applicants or their members.

49 Moreover, even if the contested provision had considerably affected the competitive position of the applicants or their members, that fact would not be such as to differentiate them from all other traders operating on the market for organic products. The contested provision concerns Biogam and the members of FNAB and Setrab only by reason of their objective status as traders operating on that market, in the same way as it concerns all other Community traders operating there.

50 Next, the applicants cannot claim that the contested provision makes it lawful for products not obtained according to an organic method of production to be marketed under a trade mark suggesting such a method of production, in breach of the provisions of Directive No 89/104. The contested provision (see paragraph

9 above) states that traders may temporarily continue to use such an existing trade mark for non-organic products, provided, however, that that trade mark 'is in conformity with the First Council Directive 89/104'. Moreover, as has already been indicated in paragraphs 9, 37 and 47 above, measures were included in the contested provision to avoid any confusion on the part of consumers.

51 The argument that the contested provision has made it lawful for Danone to engage in a practice which infringes the French legislation introduced in 1994 is undermined by the fact that the 'Bio Danone' trade mark was renewed, for use in France, on 26 August 1997 (see Annex 25e of the observations on the plea of inadmissibility).

52 In any event, even if the contested provision had made lawful a practice prohibited under the Community and national rules, such a fact would not be such as to distinguish the applicants individually for the purposes of the fourth paragraph of Article 230 EC. It must again be observed that, in those circumstances, the contested provision would concern Biogam and the members of FNAB and Setrab only by reason of their objective status as traders operating on the market for products obtained according to an organic method of production, in the same way as it would concern all other traders operating on that market.

53 Finally, it remains to be considered whether FNAB is individually concerned because its position as a negotiator has been affected by the contested provision.

54 It must be pointed out that, according to settled case-law (judgments in *Van der Kooy and Others* v *Commission*, cited in paragraph 20 above, paragraphs 21 to 24, and *CIRFS and Others* v *Commission*, cited in paragraph 30 above, paragraphs 28 to 30; orders in *Federolio* v *Commission*, cited in paragraph 32 above, paragraph 61, and *Unión de Pequeños Agricultores* v *Council*, cited in

paragraph 44 above, paragraphs 47 and 54), an action brought by an association may be held to be admissible where the association is differentiated because its position as a negotiator is affected by the measure which it seeks to have annulled.

55 However, it must be observed that Regulation No 1804/1999 was negotiated and adopted by the Council on a proposal from the Commission and after consultation of the European Parliament and the Economic and Social Committee. Even though FNAB sent reports to the Community and French authorities during the procedure which led to the adoption of that regulation, only the aforementioned Community authorities may be regarded as having taken part in that procedure. From the arguments raised by the applicants it can be inferred only that FNAB was regarded by the French authorities as being sufficiently representative of the interests of farmers practising organic farming in France to be involved, at a stage and to an extent which it is impossible to determine, in choosing the position adopted by the French delegation which spoke within the Council.

56 In those circumstances, the applicants' argument to the effect that FNAB's position as a negotiator has been affected by the contested provision must be dismissed.

57 It follows from the foregoing that the applicants cannot be regarded as being individually concerned by the contested provision. Since the applicants do not satisfy one of the conditions of admissibility laid down in the fourth paragraph of Article 230 EC, there is no need to consider also whether they are directly concerned by that provision.

58 It follows that this action must be dismissed as inadmissible, there being no need to rule on the applications for leave to intervene.

Costs

59 Under Article 87(2) of the Rules of Procedure, 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 applicants have been unsuccessful, they should be ordered to bear not only their own costs but also those of the Council, as applied for by the latter.

60 Under Article 87(4) and (6) of the Rules of Procedure, the Commission, Danone SA, Compagnie Gervais Danone, CLESA SA and SKW Biosystems GmbH, as applicants for leave to intervene, are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber),

hereby orders:

1. The action is dismissed as inadmissible.

2. There is no need to rule on the applications of the Commission, of Danone SA, of Compagnie Gervais Danone, of CLESA SA and of SKW Biosystems GmbH for leave to intervene.

3. The applicants are to bear their own costs and to pay the costs incurred by the Council.

4. The Commission, Danone SA, Compagnie Gervais Danone, CLESA SA and SKW Biosystems GmbH, as applicants for leave to intervene, are to bear their own costs

Luxembourg, 11 July 2000.

H. Jung

Registrar

K. Lenaerts

President