# ORDER OF THE COURT OF FIRST INSTANCE (Second Chamber)

22 July 2005 *

In Case T-376/04,

**Polyelectrolyte Producers Group,** established in Brussels (Belgium), represented by K. Van Maldegem and C. Mereu, lawyers,

applicant,

v

**Council of the European Union,** represented by J.-P. Hix and B. Hoff-Nielsen, acting as Agents,

and

**Commission of the European Communities,** represented by J. Forman and M. Wilderspin, acting as Agents, with an address for service in Luxembourg,

defendants,

* Language of the case: English.

ACTION for annulment of the defendants' acts permitting the Kingdom of Norway to apply more stringent concentration limits for acrylamide than those applicable in the European Community and set out in Decision of the EEA Joint Committee No 59/2004 of 26 April 2004 amending Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement (OJ 2004 L 277, p. 30), and annulment of the Community's position relating to that decision,

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

composed of J. Pirrung, President, N.J. Forwood and S. S. Papasavvas, Judges,

Registrar: H. Jung,

makes the following

## Order

### Legal context

*Community legislation*

1 Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ, English Special Edition 1967, p. 234), as

amended for the seventh time by Council Directive 92/32/EEC of 30 April 1992 (OJ 1992 L 154, p. 1), lays down rules concerning the marketing of 'substances', which are defined as 'chemical elements and their compounds in the natural state or obtained by any production process, including any additive necessary to preserve the stability of the products and any impurity deriving from the process used, but excluding any solvent which may be separated without affecting the stability of the substance or changing its composition'.

2 Directive 67/548 has been amended several times since its adoption, most recently by Commission Directive 2004/73/EC of 29 April 2004 adapting to technical progress for the 29th time Council Directive 67/548 (OJ 2004 L 152, p. 1). Article 4 of Directive 67/548, as amended, provides that substances are to be classified on the basis of their intrinsic properties according to the categories of danger laid down in Article 2(2). Annex I to Directive 67/548 contains a list of dangerous substances, as well as specifications for the classification and labelling of each substance. Acrylamide was described in Annex I to that directive as a carcinogenic substance in Category 2, a mutagenic substance in Category 2 and as a toxic substance, but not subject to a concentration limit.

3 Chemical preparations, defined as being mixtures of chemical substances, are governed by Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 concerning the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations (OJ 1999 L 200, p. 1). That directive replaces Council Directive 88/379/EEC of 7 June 1988 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations (OJ 1988 L 187, p. 14). Point 7.1 in Part A of Annex II to Directive 1999/45 establishes a concentration limit of 0.1% for carcinogenic substances in Category 2.

4 Directive 67/548, as amended, indicated that acrylamide was regarded as a carcinogen in Category 2 giving rise to moderate concerns as regards its dangerousness, without it being necessary to lay down specific values for concentration limits.

*Provisions of the Agreement on the European Economic Area*

5 The Agreement on the European Economic Area (OJ 1994 L 1, p. 3, 'the EEA Agreement'), signed on 2 May 1992 by the Member States of the European Community and the member countries of the European Free Trade Association (EFTA), provides for the possibility of derogations from the provisions of Directives 67/548 and 88/379. It is stated in point 1 in Chapter XV of Annex II to the EEA Agreement that the Contracting Parties 'agree on the objective that the provisions of the Community acts on dangerous substances and preparations should apply by 1 January 1995' and that, '[p]ursuant to the cooperation to be initiated from the signature of this Agreement in order to solve remaining problems, a review of the situation will take place'. According to the same provision, '[i]f an EFTA State concludes that it will need any derogation from the Community acts relating to classification and labelling, the latter shall not apply to it unless the EEA Joint Committee agrees on another solution'.

6 The EEA Joint Committee ('the Joint Committee'), an organ created within the framework of the EEA Agreement, consists of representatives of the Contracting Parties and ensures, pursuant to Article 92(1) of the EEA Agreement, the effective implementation and operation of the Agreement.

7 Under Article 93(2) of the EEA Agreement, 'the EEA Joint Committee shall take decisions by agreement between the Community, on the one hand, and the EFTA States speaking with one voice, on the other'. The Community's position is determined in accordance with Council Regulation (EC) No 2894/94 of 28 November 1994 concerning arrangements for implementing the Agreement on the European Economic Area (OJ 1994 L 305, p. 6).

8 Article 1(2) of that regulation states that the Community's position regarding EEA Joint Committee decisions which simply extend acts of Community legislation to

the EEA, subject to any technical adjustments needed, is to be adopted by the Commission. Under Article 1(3) of Regulation No 2894/94, for other Joint Committee decisions the Community's position is to be adopted by the Council, on a proposal from the Commission, as follows:

'(a) for the purpose of adopting the Community's position regarding ... Joint Committee decisions which extend an act of Community legislation to the EEA and in so doing introduce changes which are more than mere technical adjustments, the Council shall act by the majority laid down in the provision adopted as the legal basis of that act;

(b) for the purpose of adopting the Community's position regarding ... Joint Committee decisions other than those which extend Community legislation to the EEA, the Council shall act:

— by a simple majority when the decision which the ... Joint Committee proposes to take relates to the said Committee's Rules of Procedure or a question of procedure,

— by a qualified majority if the decision which the ... Joint Committee proposes to take relates to an area for which such a majority is required for the adoption of internal rules,

— unanimously in other cases.'

9 Article 104 of the EEA Agreement states that decisions taken by the Joint Committee are, unless otherwise provided for therein, upon their entry into force to be binding on the Contracting Parties, which are to take the necessary steps to ensure their implementation and application.

10 On the basis of the joint statement of the Joint Committee of 1995 on Chapter XV of Annex II to the EEA Agreement regarding the review clauses in the field of dangerous substances (OJ 1996 C 6, p. 7), the Kingdom of Norway obtained derogations from Directive 67/548. It follows from Annex II to the joint statement of 1995 that, first, the Kingdom of Norway may request the use of different classification, labelling or specific concentration limits for substances listed in point 1(a)(i) and, second, that the criteria for classification and labelling of carcinogenic substances such as those set out in point 4.2.1 in Annex VI to Directive 67/548 are not to apply to the Kingdom of Norway, which may use different classification criteria. Acrylamide is not one of the substances for which the Kingdom of Norway is entitled to derogations from Directive 67/548.

11 The joint statement adopted at the 62nd meeting of the Joint Committee on 26 March 1999 (OJ 1999 C 185, p. 6), replaced the joint statement of 1995. The list of substances referred to in point 1(a)(ii) of Annex II to the joint statement of 1995 was amended without, however, including acrylamide in the list of substances for which the Kingdom of Norway could impose concentration limits different to those prescribed by the Community legislation. However, since the joint statement of 1999 permitted the Kingdom of Norway to adopt different provisions as regards impurities, it increased the scope of derogation provided for in the joint statement of 1995, and thus allowed that State to fix lower concentration limits for acrylamide as an impurity. The Kingdom of Norway thus had the power to classify polyacrylamide as carcinogenic, if the concentration of acrylamide equalled or exceeded the concentration limits prescribed by the Norwegian legislation, in this case 0.01% of mass.

## Background to the dispute

12 On 24 February 2004, the Commission submitted to the Council a proposal for the adoption of the draft decision of the Joint Committee amending Annex II to the EEA Agreement. The Council stated its agreement to that proposal on 1 April 2004. That draft common position amends the text relating to Directive 67/548 and set out in Chapter XV of Annex II to the EEA Agreement. The Community's final position was submitted to the Joint Committee on 23 April 2004. On 26 April 2004, the Joint Committee adopted Decision No 59/2004 amending Annex II (Technical regulations, standards, testing and certification) to the EEA Agreement (OJ 2004 L 277, p. 30).

13 That decision introduced an express derogation from Article 30 of Directive 67/548 as regards the requirements in respect of the classification, labelling and/or specific concentration limits for acrylamide. Point 1.2(d)(i) of Annex I to the decision provides:

'The following provisions shall not apply to Norway:

(i) Article 30, in conjunction with Articles 4 and 5, with respect to the requirements for the classification, labelling and/or specific concentration limits for the substances or groups of substances listed in Annex I to the Directive ... . Norway may require the use of different classification, labelling and/or specific concentration limits for these substances ...'.

14 Acrylamide is one of the substances for which Norway may derogate from those provisions.

## Procedure and forms of order sought by the parties

15 By application lodged at the Court Registry on 17 September 2004, the applicant, a European economic interest grouping which represents producers of coagulants and synthetic flocculants the principal constituent of which is polyacrylamide, a polymer with an acrylamide base, brought this action.

16 By documents lodged at the Court Registry on 22 November 2004 and 13 December 2004 respectively, the Commission and the Council objected, under Article 114(1) of the Rules of Procedure of the Court of First Instance, that the action was inadmissible.

17 By document lodged at the Court Registry on 11 January 2005, the Kingdom of Norway applied for leave to intervene in support of the Commission and the Council.

18 The applicant claims that the Court should:

— annul the defendants' acts permitting the Kingdom of Norway to apply concentration limits for acrylamide more stringent than those applicable in the European Community and set out in Decision No 59/2004 of the Joint Committee and annul the Community's position relating to that decision;

— declare that the Joint Committee's joint statement of 26 March 1999 is unlawful and inapplicable to the applicant;

— order the defendants to pay it the provisional sum of EUR 1 for the loss suffered.

19 The Commission and the Council contend that the Court should:

— declare the action inadmissible;

— order the applicant to pay the costs.

**The admissibility of the claim for annulment**

*Arguments of the parties*

20 The Commission and the Council submit, first, that the action is not directed against acts which can be challenged under the first paragraph of Article 230 EC and, second, that the measures in question are not of direct and individual concern to either the applicant or its member companies. In addition, the action is time-barred.

21 In reply to the applicant's argument that, if this action were declared inadmissible, the applicant would have no legal remedy, the Commission and the Council state that the Court of First Instance has no jurisdiction to review the legality of Community measures if the requirements of the fourth paragraph of Article 230 EC are not met (Case C-263/02 P *Commission* v *Jégo-Quéré* [2004] ECR I-3425).

22 The applicant submits that the Court of First Instance has jurisdiction to adjudicate, under Article 230 EC, on the legality of the Community's position which was adopted in anticipation of the Joint Committee's decision.

23 The applicant points out that the Community's position, proposed by the Commission, then adopted by the Council, and which is set out in Decision No 59/2004, has definitive legal effects with regard to the Member States. The applicant cites in support of its argument the judgment in Case C-327/91 *France* v *Commission* [1994] ECR I-3641, which recognised that the act whereby the Commission has sought to conclude an international agreement must be open to an action for annulment, since exercise of the powers delegated to the Community institutions in international matters cannot escape review as to legality under Article 230 EC. In that regard, the applicant observes that the EFTA Court has accepted that a Joint Committee decision can be assimilated to an international agreement in simplified form (judgment of the EFTA Court in *CIBA Speciality Chemicals Water Treatment Ltd* v *Norway*, E-6/01 9 October 2002, Report of the EFTA Court, p. 281).

24 In addition, the applicant points out that the Court of Justice has found that it has jurisdiction to give preliminary rulings concerning the interpretation of the EEA Agreement (Case C-321/97 *Andersson and Wåkerås-Andersson* [1999] ECR I-3551). The applicant also submits that the Court has accepted, in Case C-192/89 *Sevince* [1990] ECR I-3461, that it had jurisdiction to give preliminary rulings not only as

regards international agreements concluded by the Community, but also as regards decisions adopted by the authority established by the Agreement as responsible for its implementation.

25 The applicant notes that it has the capacity and legal personality to bring legal proceedings before the Court of First Instance. It submits that, as a European economic interest grouping established in Belgium, it enjoys legal personality and may therefore be a party to judicial proceedings. In addition, its member companies have standing to bring proceedings, and are thus entitled to bring an action for annulment. Therefore, the applicant submits that it is entitled to bring an action for annulment under the fourth paragraph of Article 230 EC, since it is a substitute for its member companies, which are themselves entitled to bring such an action (Joined Cases T-447/93 to T-449/93 *AITEC and Others* v *Commission* [1995] ECR II-1971).

26 The applicant states also that it has no other legal remedy, given that it cannot bring an action before a national court of the European Union, because such a court cannot adjudicate on measures adopted by an EFTA Member State. Furthermore, it cannot bring an action against the Joint Committee's decision before a Norwegian court, with the intention of obtaining a preliminary ruling, because only the national courts of the European Union have that power. In addition, even if the competent Norwegian court sought an advisory opinion on that question from the EFTA Court, that court would have no jurisdiction to adjudicate on the Community's power to participate in the Joint Committee's decision.

27 Finally, the applicant maintains that if its action is inadmissible that would infringe its fundamental right to effective judicial protection such as flows from the common constitutional traditions of the Member States, which is, furthermore, a right provided for under Articles 6 and 13 of the European Convention for the Protection of Human Rights and Article 47 of the Charter of the fundamental rights of the European Union proclaimed on 7 December 2000 at Nice (OJ 2000 C 364, p. 1).

*Findings of the Court*

28 Under Article 114(1) of the Rules of Procedure, if a party so applies, the Court of First Instance may give a decision on admissibility without going into the substance of the case. In accordance with Article 114(3), unless the Court otherwise decides, the remainder of the proceedings on the objection of inadmissibility are to be oral. In this case, the Court considers that it is sufficiently informed by the documents in the Court file and that there is no need to open the oral proceedings.

29 The Court notes that, in these proceedings, the applicant challenges three acts, namely the Commission's proposal as to the Community's position, the Council's decision adopting that position and the Joint Committee's decision, even if, as regards the last, the applicant's pleadings are unclear as to whether the applicant really wishes to challenge it.

30 The Court's powers are those set out in Article 225 EC and in Article 140a EA, as specified by Article 51 of the Statute of the Court of Justice. Under those provisions, the Court of First Instance has jurisdiction only in actions brought under Article 230 EC or Article 146 EA against Community institutions and organs established by the Treaties or by acts adopted for their application.

31 Consequently, the Court has no jurisdiction to adjudicate on the decision of the Joint Committee, since the latter is not a Community institution or organ.

32 So far as concerns the adoption of the Community's position in this case, the Court observes that it results, first, from a proposal for the Community's position made by the Commission to the Council and, second, from its adoption by the Council.

33 As regards, first, the Commission's proposal as to the Community's position, it is settled case-law that preliminary or purely preparatory measures may not form the subject of an action for their annulment (see, to that effect, the order in Case T-175/96 *Berthu* v *Commission* [1997] ECR II-811, paragraphs 19 and 20).

34 In this case, the Community's position as regards the Joint Committee's decision was adopted by the Council, in accordance with Article 1(3) of Regulation No 2894/94, on the Commission's proposal. That proposal is a preparatory measure which cannot be the subject of an action for annulment.

35 As regards, secondly, the Council decision adopting the Community's position, the Joint Committee's decision cannot be assimilated to an international agreement as understood in *France* v *Commission*, cited above, since in that case it was a Commission decision to conclude an international agreement with the Government of the United States of America which was at issue, the facts which gave rise to that judgment being therefore intrinsically different to those of these proceedings.

36 In any event, the Court considers that it is unnecessary to rule on the legal status of the Joint Committee's decision, as the Council's decision cannot be of individual and direct concern to the applicant, which therefore has no legal standing to bring proceedings.

37 Under the fourth paragraph of Article 230 EC, any natural or legal person may institute proceedings for the annulment of a decision addressed to that person or of a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to the former (Case C-403/96 P *Glencore Grain* v *Commission* [1998] ECR I-2405, paragraph 40, and Case T-183/00 *Strabag Benelux* v *Council* [2003] ECR II-135, paragraph 27).

38 As regards, first, the question whether the applicant is concerned individually, it must be observed that an association formed to promote the collective interests of a category of persons cannot be deemed to be individually concerned by a measure affecting the general interests of that category of persons when they are not themselves individually affected (orders in Case T-268/99 *Fédération nationale d'agriculture biologique des régions de France and Others* v *Council* [2000] ECR II-2893, paragraph 44, and Case T-231/02 *Gonnelli and AIFO* v *Commission* [2004] ECR II-1051, paragraph 48). That answer also applies to the case of a European economic interest grouping which, like the applicant, has been constituted in order to represent and defend the interests of a category of undertakings and whose role is, therefore, comparable to that of an association.

39 In this case, the applicant has not shown that its member companies are adversely affected by the Council's decision by reason of certain attributes that are peculiar to them or by reason of circumstances which differentiate them from all other persons (Case 25/62 *Plaumann* v *Commission* [1963] ECR 95). The decision can affect them only inasmuch as they manufacture products containing polyacrylamide, with the result that it would affect them in the same way as it affects the other manufacturers of such products. Therefore, the Council's decision concerns them only by reason of an objective factual situation and not by reason of an attribute which is peculiar to them.

40 While the presence of special circumstances, such as the role played by an association in a procedure which has led to the adoption of an act within the meaning of Article 230 EC, may establish the admissibility of an action brought by an association whose members are not directly and individually concerned by that act, in particular where its position as negotiator has been affected by that act, that is not the case where the applicant association has not assumed the role of negotiator and where the legislation in question does not accord it any procedural rights (see, to that effect, the order in Case T-12/96 *Area Cova and Others* v *Council and Commission* [1999] ECR II-2301, paragraph 73).

41 It must be observed, first, that no provision confers any procedural rights on the applicant and, second, that the applicant played no role in the preparation of the Council decision at issue; furthermore, it has not shown that its role as negotiator, as a European economic interest grouping, was affected by that decision.

42 Therefore, the Council's decision is not of individual concern to the applicant.

43 As regards, secondly, the question whether the contested acts are of direct concern to the applicant, it is settled case-law that, for a person to be directly concerned by a Community measure, that measure must directly affect that person's legal situation and its implementation must be automatic and result from Community rules alone without the need for the application of other intermediate measures (Joined Cases T-198/95, T-171/96, T-230/97, T-174/98 and T-225/99 *Comafrica and Dole Fresh Fruit Europe* v *Commission* [2001] ECR II-1975, paragraph 96 and the case-law cited there). Therefore, an applicant is not directly concerned for the purposes of Article 230 EC, where it is affected by measures adopted by a Member State under a Community provision (see, to that effect, Joined Cases 103/78 to 109/78 *Usines de Beaufort and Others* v *Council* [1979] ECR 17, paragraphs 21 and 22). However, where the Member State has no individual discretion of its own, the direct connection between the Community measure and the applicant is not thereby

broken (see, to that effect, Case T-85/94 *Branco* v *Commission* [1995] ECR II-45, paragraph 27 and the case-law cited there). Furthermore, the Court of Justice has already accepted that, in certain cases, the implementation by a Member State of measures adopted to implement a Community act, where that act confers on it only a mere power to act for that purpose, does not necessarily cause the direct link between the Community measure and the applicant to be broken (see, to that effect, Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, paragraphs 7 to 9).

44 In this case, the act which might have adversely affected the applicant consists of the Norwegian measures, which could not have been adopted without the Joint Committee's decision.

45 However, the case-law arising from *Piraiki-Patraiki and Others* v *Commission*, cited above, can apply only with regard to the Joint Committee's decision and not in respect of the decision of the Council. The latter cannot be regarded as the institution which granted the derogation: it is merely one of the participants in that decision. Furthermore, when the Council's decision was adopted, there was real legal uncertainty as to the adoption of the Joint Committee's decision, an intermediate act interposed between the Council's decision and the Norwegian measures, as the proposed derogation could well have been rejected by the vote of the Contracting Parties' representatives on the Committee. Also, the Norwegian authorities were perfectly at liberty to take advantage or not of any power to derogate which might be conferred by that decision. As a result, the direct link between the Council's decision and the Norwegian measures is broken. Therefore, the Council's decision is not of direct concern to the applicant.

46 Consequently, the action for annulment must be declared inadmissible without it being necessary for the Court to rule on whether the action is out of time.

## The plea of illegality

*Arguments of the parties*

47 The Commission and the Council submit that the plea of illegality raised with regard to the joint statement of 1999 is inadmissible because Article 241 EC cannot apply to such statements, and that the main action is inadmissible.

48 The applicant argues that the plea of illegality regarding the joint statement of 1999 is admissible because it can be assimilated to an international agreement in simplified form, which results from an act of a Community institution and therefore forms an integral part of the European legal order.

*Findings of the Court*

49 According to settled case-law, the possibility offered by Article 241 EC of invoking the illegality of a measure which forms the legal basis of the contested act does not constitute an independent right of action and may only be sought incidentally, so that if the main action is inadmissible so also is the plea of illegality (see, to that effect, Case 33/80 *Albini* v *Council and Commission* [1981] ECR 2141, paragraph 17, and the order in Case C-289/99 P *Schiocchet* v *Commission* [2000] ECR I-10279, paragraphs 11 and 25).

50 Consequently, since the claim for annulment is inadmissible so also is the plea of illegality relating to the joint statement of 1999.

**The admissibility of the claim for damages**

*Arguments of the parties*

51 The Commission points out that its action had no legal effects and could not, as a result, give rise to any loss as regards the applicant. In addition, in the context of an action for damages, the loss must be specified. In this case, the applicant confines itself to maintaining that it has been put to extra expense in order to adapt its labelling and that it has suffered losses in terms of market share. Therefore, the applicant has not demonstrated any loss.

52 The Council submits that the claim for damages is inadmissible because the application is devoid of any evidence capable of proving unlawful conduct on the part of the Council. In addition, the nature and extent of the loss as well as the causal link between the Council's conduct and the loss are not established.

53 The applicant contends that the conduct of the Commission and of the Council which led to the Joint Committee's decision and to the joint statement of 1999 is unlawful. The applicant submits that the loss suffered is immediate and irreversible, since it had to alter the labelling of polyacrylamide sold in Norway, thus incurring additional costs. Since the amount of the loss is not yet clear and definitive, the applicant asks the Court to order the defendants to pay a provisional sum of EUR 1,

to be increased in the course of the proceedings (Case 74/74 *CNTA* v *Commission* [1975] ECR 533). Furthermore, the applicant submits that it has also suffered non-material damage as a result of the bad light shed over the classification of polyacrylamide containing more than 0.01% of acrylamide, causing loss of market share. As regards the causal link, the applicant states that the loss suffered results from the Joint Committee's decision.

*Findings of the Court*

54 According to Article 44(1)(c) of the Rules of Procedure, applications must state, in particular, the subject-matter of the action and give a summary of the pleas advanced. An application seeking compensation for damage allegedly caused by a Community institution must state the evidence on which the conduct alleged against the institution may be identified, the reasons why it considers that a causal link exists between that conduct and the damage which it claims to have suffered, and the nature and extent of that damage (Case T-387/94 *Asia Motor France and Others* v *Commission* [1996] ECR II-961, paragraphs 106 and 107, and Case T-195/95 *Guérin automobiles* v *Commission* [1997] ECR II-679, paragraphs 20 and 21). On the other hand, a claim for unspecified damages is not sufficiently concrete and must therefore be regarded as inadmissible (Case 5/71 *Zuckerfabrik Schöppenstedt* v *Council* [1971] ECR 975, paragraph 9, and Joined Cases T-79/96, T-260/97 and T-117/98 *Camar and Tico* v *Commission and Council* [2000] ECR II-2193, paragraph 181).

55 Admittedly, an applicant may not have put in figures the amount of the loss which it submits it has suffered, while clearly indicating the evidence which enables its nature and extent to be assessed, so that the defendant is in a position to conduct its defence. In such circumstances, the absence of precise figures in the application does not affect the other party's rights of defence.

56 In this case, it must be observed that the applicant does not clearly define the nature of the loss and is not clear as to whether that loss is to be quantified. It submits that the loss suffered flows, first, from additional costs for altering the labelling of the products sold by its member companies in Norway and from warnings as to the dangers posed by products containing acrylamide and, second, from the loss of market share caused by the bad publicity given to the products sold by the applicant's member companies. As regards the alleged losses of market share, the application contains no information defining the market. Furthermore, the value and extent of the loss resulting from the alteration of the labels are not sufficiently particularised. No precise figures are given to quantify that loss, even approximately. In addition, the application does not clearly state whether it is the European economic interest grouping which has suffered the damage or its member companies. The applicant's argument is thus confined to mere assertion wholly unsupported by relevant evidence which would enable the Court to evaluate the nature and extent of that loss.

57 Consequently, as a result of the lack, first, of a clear definition of the nature of the loss and, second, of an approximate quantification thereof, the claim for damages is inadmissible.

**The unavailability of a legal remedy**

58 As regards the applicant's argument based on the unavailability of a legal remedy, it must be noted that the only measures capable of adversely affecting the applicant or its members are the Norwegian authorities' measures implementing the derogations

relating to the concentration limits for acrylamide which result from the Joint Committee's decision. It is therefore for the Norwegian courts to guarantee judicial protection against those measures for those subject to them. In addition, at Community level, the unavailability of a legal remedy cannot lead to a change of the system of legal remedies and procedures established by the EC Treaty (see, to that effect, *Commission* v *Jégo-Quéré*, cited above).

**The application for leave to intervene**

59 In those circumstances, it is unnecessary for the Court to rule on the Kingdom of Norway's application for leave to intervene in support of the Commission and Council.

**Costs**

60 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 applicant has been unsuccessful, it must be ordered to pay the costs incurred by the Commission and the Council.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby orders:

1. **The action is dismissed as inadmissible.**

2. **The applicant is to bear its own costs and to pay those incurred by the Commission and the Council.**

Luxembourg, 22 July 2005.

H. Jung

Registrar

J. Pirrung

President